

**Act CXII of 1996**  
**on Credit Institutions and Financial Enterprises**  
***INTRODUCTORY PROVISIONS***

**Scope**

*Section 1.*

- (1) Unless otherwise provided for by international agreement, the provisions of this Act shall apply to:
- a) financial services, activities auxiliary to financial services, bank representation activities performed, and to deposit insurance arrangements provided in the Republic of Hungary in accordance with this Act,
  - b) the supervision [Paragraph c)] of bank representation activities, financial services and activities auxiliary to financial services provided - in accordance with the provisions of this Act - by credit institutions and financial enterprises established abroad by credit institutions registered in the Republic of Hungary,
  - c) the supervisory activities performed by Hungarian authorities as described in this Act,
  - d) mixed-activity holding companies and enterprises other than financial institutions with a close link to financial holding companies or credit institutions that are subject to supervision on a consolidated basis,
  - e) enterprises and mixed financial holding companies that have close links with credit institutions and mixed financial holding companies, other than financial institutions, which are subject to supplementary supervision,
  - f) the supervision of the outsourcing service provider under the provisions of this Act.
- (2) Unless otherwise prescribed by international agreement, the provisions of this Act shall apply to:
- a) the foundation and operation of financial institutions in the territory of the Republic of Hungary,
  - b) the foundation of subsidiaries and branch offices by financial institutions that are registered in Hungary and to their acquisition of any holding in a foreign financial institution,
  - c) the supervision - according to Paragraph c) of Subsection (1) - of financial services, activities auxiliary to financial intermediation and bank representation activities performed according to the provisions of this Act by the foreign subsidiaries or foreign branch offices of Hungarian-registered financial institutions,
  - d) the supervision - according to Paragraph c) of Subsection (1) - of financial services and activities auxiliary to financial intermediation performed abroad by Hungarian-registered financial institutions,
  - e) the foundation and operation of bank representation offices in the territory of the Republic of Hungary,
  - f) deposit insurance activities defined in this Act,
  - g) cross-border financial services and activities auxiliary to financial intermediation performed in the territory of the Republic of Hungary by foreign-registered financial institutions.

*Section 2.*

- (1) The provisions of this Act shall not apply to
- a) the activities of financial institutions listed in Schedule No. 1, performed in the territory of the Republic of Hungary;
  - b) the collection of repayable monetary instruments, which are not construed deposits, by the Hungarian Government and by local authorities from the public - as regulated in specific other legislation;
  - c) the management of cash deposits if falling under the scope of other legal regulations when performed for profit;
  - d) postal money intermediation services and postal cash transfer services;
  - e) money order services;
  - f) the provision of customs bond by persons other than financial institutions as well as the financial services provided by indirect representatives for the settlement of customs charges in customs procedures;
  - g)
  - h) the lending activities of the National Micro-Loan Fund of the Hungarian Foundation for Small Businesses and the lending operations of county and Budapest small business foundations providing micro-loans;
  - i) the activities of the organizers of consumer groups specified in specific other legislation.

- (2) The provisions of this Act shall not apply to
- a) appropriated state funds,
  - b)
  - c) the Hungarian State Treasury,
  - d) the Property Administration Agency of the Treasury,
  - e)
  - f) legal entities not operating as business associations prior to the entry into force of this Act, engaged exclusively in underwriting guarantees and providing surety facilities with the exception of what is contained in Sections 130/A-130/D, Sections 130/F-130/O, Chapter V of Schedule No. 2 and Chapter II of Schedule No. 3,
  - g) the Student Loan Center established under the provisions of specific other legislation, with the exception of what is contained in Sections 130/A-130/D, Sections 130/H-130/O, Chapter V of Schedule 2 and Points 1.1-1.3 of Chapter II of Schedule No. 3,
- (3) This Act shall apply to the National Bank of Hungary (hereinafter referred to as 'NBH') only to the extent pertaining to the authorization of activities auxiliary to financial services falling within its scope of licensing authority, and in connection with the regulations where this Act makes an express reference to the NBH.

## Financial Services and Activities Auxiliary to Financial Services

### *Section 3.*

- (1) Financial services shall be construed the for-profit performance of the following activities in Hungarian Forints or in foreign currencies:
- a) collection of deposits and acceptance of other repayable monetary instruments from the general public in excess of the equity capital;
  - b) credit and loan operations;
  - c) financial leasing;
  - d) financial transaction services;
  - e) issuing electronic money and cash-substitute payment instruments and performing services related thereto;
  - f) providing surety bonds and bank guarantees, as well as other banker's obligations;
  - g) commercial activities in foreign currency, foreign exchange - not including currency exchange activities -, bills and checks on own account or as commission agents;
  - h) intermediation of financial services (agency);
  - i) custodian services for collective investment undertakings;
  - j) account management services, safety deposit box services;
  - k) credit reporting services;
  - l) fund management services for voluntary mutual insurance funds;
  - m) money transmission services;
  - n) fund management services for private pension funds.
- (2) Activities auxiliary to financial services shall be construed the for-profit performance of the following in Hungarian Forints or in foreign currencies:
- a) currency exchange activities;
  - b) clearing operations (clearing transactions);
  - c) money processing activities;
  - d) financial brokering on the interbank market.
- (3) Subject to the exceptions set out in Subsections (9) and (10), the activities described in Subsections (1) and (2) shall be conducted as a business only if duly authorized.
- (4) Unless otherwise provide by law, the financial services defined under Subsection (1) as well as the activities auxiliary to financial services specified in Paragraphs a) and d) of Subsection (2) may be performed under the authorization issued by the State Financial Institutions Commission (hereinafter referred to as the "Commission") pursuant to this Act.
- (5) The Commission shall authorize performance of the financial service activities specified in Paragraphs d), e) and m) of Subsection (1) subject to the prior opinion of the NBH.
- (6) The authorization and control of the activities specified in Paragraphs b) and c) of Subsection (2) shall fall within the jurisdiction of the NBH, as well as the revocation of such authorization.

(7) The NBH shall notify the Commission regarding any new authorization granted for the activities described in Subsection (6). Based on such notification, the Commission shall register the legal person to whom the authorization was granted.

(8) An act of Parliament may be adopted to permit other legal entities to operate restricted current bank accounts [Paragraph d) of Subsection (1) of Section 3], use bills of exchange to engage in commercial activities on their own account or as commission agents [Paragraph g) of Subsection (1) of Section 3], and manage assets for voluntary mutual insurance funds and private pension funds [Paragraphs l) and n) of Subsection (1) of Section 3].

(9) The Commission's authorization is not required for the agency activities referred to in Paragraph h) of Subsection (1) and in Paragraph b) of Point 12 of Chapter I of Schedule No. 2. In this case, the credit institution shall disclose the particulars of the agent to the Commission with the frequency and in the manner stipulated by the Commission.

(10) The financial enterprise shall disclose the particulars of the agent specified in Point 12 of Chapter I of Schedule No. 2 to the Commission with the frequency and in the manner stipulated by the Commission.

(11) Venture capital funds may provide loans in the extent and to the persons specified in Act CXX of 2001 on the Capital Market (hereinafter referred to as "CMA").

#### *Section 3/A.*

(1) A foreign company [Paragraph a) of Section 2 of Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies (hereinafter referred to as "FCA")] may provide financial services or engage in activities auxiliary to financial services solely by way of its Hungarian branch office - subject to the exceptions stipulated in Subsections (3) and (4).

(2) In respect of the branch offices of third-country financial institutions, the provisions of Section 11, Subsection (2) of Section 17, Paragraph c) of Subsection (2) of Section 18, Sections 20 and 21, Sections 23-25, Sections 37-43, Sections 64-67, Section 73, Subsection (2) of Section 74, Subsections (1) and (4) of Section 75, Sections 90-96, Point 6 of Paragraph b) of Subsection (2) of Section 153, Points 1, 3 and 4 of Paragraph c) of Subsection (2) of Section 153, Sections 158-160 and Section 193 of this Act shall not be applied.

(3) A foreign financial institution registered in a member country of the Organization for Economic Cooperation and Development may also engage in the activities specified in Paragraphs b) and c) of Subsection (1) of Section 3 and in Paragraph d) of Subsection (2) of Section 3 in the form of cross-border services if it has permission to engage in such activities from the competent supervisory authority in whose jurisdiction it is registered.

(4) Credit institutions registered in another Member State of the European Union and financial enterprises that comply with the conditions specified in Subsection (4) of Section 15 may engage in cross-border services.

#### *Section 3/B.*

Credit institutions registered in another Member State of the European Union and financial enterprises that comply with the conditions specified in Subsection (4) of Section 15 need not obtain the authorization referred to in Subsection (4)-(6) of Section 3 for activities pertaining to cross-border services that are performed by their Hungarian branch offices and authorized by the competent supervisory authority in whose jurisdiction they are registered.

## Financial Institutions

#### *Section 4.*

(1) Credit institutions (Section 5) and financial enterprises (Section 6) shall be construed financial institutions.

(2) Unless otherwise prescribed in this Act, the financial services defined in Subsection (1) of Section 3 may be performed only by financial institutions.

(3) Unless otherwise provided by law, financial institutions may only engage in the following in addition to financial services within their regular business operations:

a) activities auxiliary to financial services,

b) insurance agency under the provisions prescribed in Act LX of 2003 on Insurance Institutions and the Insurance Business (hereinafter referred to as „Insurance Act”),

- c) investment services and activities auxiliary to investment services, commodity exchange services and securities lending and securities borrowing under the conditions laid down in the CMA,
- d) commercial gold transactions,
- e) keeping registers of shareholders,
- f) the services defined in Subsection (1) of Section 6 of Act XXXV of 2001 on Electronic Signatures;
- g) activities in support of the lending operations of the Student Loan Center established under the provisions of specific other legislation, and
- h) storage of data on electronic payment instruments on behalf of others.

## The Credit Institution and Its Organizational Forms

### *Section 5.*

(1) "Credit institution" means any financial institution that is engaged in all or part of the financial activities specified in Section 3, which must include the acceptance of deposits and other repayable funds from the general public (not including public bond issues specified in specific other legislation), in credit and loan operations and in the issue of electronic money.

(2) Only credit institutions shall be entitled to

- a) collect deposits and accept other repayable funds from the general public in excess of their own funds, without a bank guarantee or a surety guaranteeing repayment by a bank or the state,
- b) provide financial transaction services, unless otherwise provided by law, and
- c) issue cash-substitute payment instruments and provide services related thereto, with the exception stipulated in Subsection (3) of Section 6.
- d) provide currency exchange services.

(3) Credit institutions may be banks, specialized credit institutions or cooperative credit institutions (savings or credit unions).

(4) Banks are credit institutions for performing the activities defined in Paragraphs a), b) and d) of Subsection (1) of Section 3 as regular business operations. Only banks shall be authorized to perform all of the activities listed under Subsection (1) of Section 3.

(5) The activities of specialized credit institutions are governed in specific other legislation with the exception that it shall not be licensed to perform all of the activities listed under Subsection (1) of Section 3.

(6) Cooperative credit institutions may engage in the activities defined in Paragraphs a)-h), j) and m) of Subsection (1) of Section 3 and Paragraphs a) and d) of Subsection (2) of Section 3.

(7) With the exception of currency exchange, credit unions may perform the activities defined in Subsection (6) solely for their own members.

(8)

(9) A third-country credit institution may engage in the activities described in Paragraphs a)-h) and j)-m) of Subsection (1) of Section 3 and Subsection (2) of Section 3 through its branch office, if it has a license for such activities from the competent supervisory authority in whose jurisdiction it is registered.

## The Financial Enterprise

### *Section 6.*

(1) Financial enterprises are

- a) financial institutions licensed to perform one or more financial services, with the exception of the activities specified in Subsection (2) of Section 5,
- b) financial holding companies, and
- c) clearing houses for credit institutions.

(2) Financial enterprises may only engage in the activities specified in Paragraph m) of Subsection (1) of Section 3 and Paragraph d) of Subsection (2) of Section 3 as exclusive activities.

(3) Financial enterprises engaged in the activities specified in Paragraph b) of Subsection (1) of Section 3 may also engage in the activities specified in Paragraph e) of Subsection (1) of Section 3 - apart from the issue of electronic money and electronic payment instruments - within the framework of this activity.

(4) A foreign financial enterprise may engage in the activities described in Paragraphs b)-c), f)-h) and j)-m) of Subsection (1) of Section 3 and in Subsection (2) of Section 3 by way of its branch office, if it has a license for such activities from the competent supervisory authority in whose jurisdiction it is registered.

## Interpretative Provisions

### *Section 7.*

The interpretative provisions are contained in Schedule No. 2.

## **PART I**

### ***AUTHORIZATION OF FINANCIAL INSTITUTIONS***

#### Chapter I

#### General

### **Organizational Regulations**

### *Section 8.*

(1) Banks and specialized credit institutions may only operate in the form of joint-stock companies or branch offices, cooperative credit institutions as cooperatives, and financial enterprises in the form of joint-stock companies, cooperatives or branch offices.

(2) In respect of financial institutions operating as joint-stock companies, financial institutions operating as cooperatives (as consistent with their bylaws) and financial institutions operating as branch offices, the provisions of the Companies Act, the provisions of Act I of 1992 on Cooperatives (hereinafter referred to as "Coop") or Act CXLI of 2000 on New Cooperatives (hereinafter referred to as "NewCoop") and the provisions of the FCA shall be applied respectively, subject to the exceptions set forth in this Act.

(3) Business associations and cooperatives vested with legal personality, other than financial institutions, may also engage in the mediation of financial services [Paragraph *h*] Subsection (1) of Section 3] - in accordance with Paragraph *a*) of Point 12 of Chapter I of Schedule No. 2 - and in money processing activities [Paragraph *c*] Subsection (2) of Section 3].

(4) Business associations, cooperatives and private entrepreneurs, other than financial institutions, may also engage in the intermediation of financial services [Paragraph *h*] of Subsection (1) of Section 3] in accordance with Paragraph *b*) of Point 12 of Chapter I of Schedule No. 2.

### **Subscribed Capital Requirements**

### *Section 9.*

(1) A bank may be founded with a minimum subscribed capital of 2 billion HUF.

(2) The amount of subscribed capital for the foundation of specialized credit institutions is prescribed in other legal regulations.

(3) A cooperative credit institution may be founded with a minimum subscribed capital of two hundred and fifty million HUF.

(4) Financial enterprises - with the exception of financial holding companies and clearing houses for credit institutions - may be founded with a minimum subscribed capital of fifty million HUF.

(5) A financial institution may only pursue the activities specified in Paragraph *n*) of Subsection (1) of Section 3, where the managed assets of the private pension fund involved is two billion forints or more, if it has an equity capital of two hundred and fifty million forints plus one per cent of the sum that is in excess of two billion forints of

the private pension fund's assets it manages. If the equity capital of the financial institution is at least one billion forints, any increment in the managed private pension fund assets need not be compensated by increasing its own funds.

(6) Unless otherwise prescribed by law, a branch office of a third-country credit institution may be established with a minimum of two billion HUF in endowment capital.

(7) In respect of financial institutions operating as branch offices, the subscribed capital shall be understood as the endowment capital.

(8) Financial holding companies may be founded with at least two billion HUF in subscribed capital.

#### *Section 10.*

(1) When establishing a financial institution the subscribed capital must be paid up in cash. The subscribed capital may only be paid up or deposited into an account operated by a credit institution that is not involved in the foundation, in which the founder has no ownership share or which have no ownership share in the founder. Until the operating license is issued, the subscribed capital of the credit institution may only be used to finance the requirements specified in this Act for foundation and operation.

(2) Any increase in the registered share capital of financial institutions operating as joint-stock companies through the issue of new shares and any increase in the endowment capital in respect of financial institutions operating as branch offices may only be carried out with cash contributions. If the Hungarian State brings about a share capital increase by subscribing new shares, it may ultimately bring about a share capital increase by issuing government securities where the failure of a credit institution would seriously endanger the economic interests of the country or some of the larger regions or threaten the prudent functioning of the banking system and insolvency and/or liquidation can only be averted by Government intervention.

(3) Financial institutions may not validly stipulate any deferred payment or a repurchase commitment in connection with the sale of their own shares.

## **Owners with Qualifying Participation**

#### *Section 11.*

Any person with a qualifying participation in a financial institution must satisfy the following requirements:

a) be independent of any influences which may endanger the financial institution's sound, diligent and reliable (hereinafter referred to collectively as "prudent") operation, and have the capacity to provide reliable and diligent guidance and control of the financial institution, furthermore

b) transparency in business connections and ownership structure so as to allow the competent authority to exercise effective supervision over the financial institution.

#### *Section 12.*

## **Personnel and Material Requirements**

#### *Section 13.*

(1) Financial service activities may only be commenced or performed if the requirements pertaining to

a) the accounting and records system, as prescribed by law,

b) the internal rules and regulations in accordance with prudent operation,

c) personnel as defined in separate legal regulations for providing financial services,

d) the technological, informatics, technical, and security background and the premises suitable for carrying out the activities,

e) controlling procedures and systems, as well as the property insurance

f) information and control system for reducing operating risks, and a plan for handling extraordinary situations (hereinafter referred to collectively as "personnel and material requirements") are satisfied.

(2) Financial institutions - with the exception of financial holding companies - may only operate in places that meet the security and customer service requirements specified in specific other legislation.

(3) The requirements specified in Subsections (1) and (2) shall also be satisfied in the case of any changes in the registered address or business location and when modifying the sphere of financial service activities.

(4) For the duration specified in Section 16 of Act LXXXV of 1999 on Criminal Records and Police Penal Certificates or until the conclusion of criminal proceedings, any person who has been convicted for the crimes defined in Title III of Chapter XV of Act IV of 1978 on the Criminal Code (hereinafter referred to as "Criminal Code"), false accusation (Criminal Code, Section 233), misleading authorities (Criminal Code, Section 237), perjury (Criminal Code, Section 238), subornation to perjury (Criminal Code, Section 242), obstruction of justice (Criminal Code, Section 243), harboring a criminal (Criminal Code, Section 244), the crimes defined in Title VII of Chapter XV and any act of terrorism (Criminal Code, Section 261), violation of international economic restrictions (Criminal Code, Section 261/A), seizure of aircraft, any means of railway, water or road transport or any means of freight transport (Criminal Code, Section 262), illegal possession of explosives or explosive devices (Criminal Code, Section 263), illegal possession of firearms or ammunition (Criminal Code, Section 263/A), arms trafficking (Criminal Code, Section 263/B), crimes in connection with nuclear energy (Criminal Code, Section 264/B), crimes committed with weapons prohibited by international convention (Criminal Code, Section 264/C), the crimes defined in Title III of Chapter XVI, the crimes defined in Chapters XVII and XVIII, or a felony offense committed in a criminal organization; or any person who has been indicted on any of these offenses cannot be appointed or elected to an executive office with a currency exchange service provider, cannot directly engage in the management of currency exchange services and cannot directly engage in the provision of currency exchange services.

(5) The Commission shall be entitled to check in the register of convicted criminals and the register of individuals indicted under criminal charges in order to enforce the employment criteria defined in Subsection (4) before the employment contract is concluded, or before the activity permit is issued or extended, and also during the life of the employment contract.

## Outsourcing

### *Section 13/A.*

(1) In due observation of the provisions on data protection, credit institutions shall be authorized to outsource the activities connected to financial services and activities auxiliary to financial services as well as those mandatory activities prescribed by law that involve the management, processing and storage of data.

(2) The outsourcing service provider must satisfy - to a degree corresponding to the risk - the personnel, material and security requirements concerning the outsourced activities that are prescribed by law for credit institutions.

- (3) Upon entering into an outsourcing contract, the credit institution shall notify the Commission within two days
- a) of the contract executed,
  - b) the name and address (corporate or residence) of the outsourcing service provider,
  - c) the duration of outsourcing.

(4) The outsourcing contract shall contain the following:

- a) demonstration that the rules on data protection have been obeyed;
- b) the outsourcing contractor's consent for the control of the outsourced activities by the credit institution's department of internal control or its external auditor, and for on-site and off-site inspection performed by the NBH and the Commission;
- c) the outsourcing service provider's responsibility for performing the activity at an appropriate level and a clause for immediate cancellation of the contract by the credit institution in the event of the outsourcing service provider's repeated or serious violation of the contract;
- d) the detailed requirements for the quality of performance of the activities that is expected of the outsourcing service provider;
- e) the rules to be applied in order to avoid inside trading on the part of the outsourcing service provider.

(5) Credit institutions must have an action plan drafted and adopted to manage extraordinary situations arising from performing activities that differ from those stipulated in the contract on outsourcing activities.

(6) At least once a year, the credit institution's internal control must inspect the performance of the outsourced activity and ascertain that it is in compliance with the provisions of the contract.

(7) The credit institution is responsible to ascertain that the outsourcing service provider is performing the activity in compliance with the legal regulations and with due care and attention. The credit institution must immediately report to the Commission if the performance of the outsourced activity violates the law or the contract.

(8) The Commission may prohibit the outsourcing of an activity on the basis of the credit institution's report referred to in Subsection (7) or of any shortcomings that are uncovered during the on-site control.

(9) An outsourcing service provider that performs services for several credit institutions at one time must, in due observation of the provisions on data protection, separately handle the facts, data and information of which it thereby gains knowledge.

(10) The outsourcing service provider may employ a subcontractor if their contract - which must be approved by the credit institution - contains clauses that permit the Commission, the NBH and the credit institution's internal control and auditor to oversee the outsourced activities.

(11) Neither the executive officer of the credit institution nor his close relative shall be permitted to hold any interest in the outsourcing service provider, nor may the executive officer of the credit institution or his close relative be contracted to perform outsourced activities.

(12) Credit institutions must indicate the outsourced activities and the service provider performing such activities in the standard service agreement.

(13) Financial enterprises shall be authorized to outsource their administrative activities without having to notify the Commission; however, if the outsourced activity involves any bank secrets, the provisions laid down in Subsections (1)-(12) shall apply where appropriate.

## Protection of Information Systems

(1) Financial institutions are required to set up a regulatory regime concerning the security of their information systems used for providing financial services and financial mediation, and to provide adequate protection for the information system consistent with existing security risks. The regulatory regime shall contain provisions concerning requirements of information technology, the assessment and handling of security risks in the fields of planning, purchasing, operations and control.

(2) Financial institutions shall review and update the security risk assessment profile of the information system whenever necessary, or at least every other year.

(3) The organizational and operating rules shall be drawn up in light of the security risks inherent in the use of information technology, as well as the rules governing responsibilities, records and the disclosure of information, and the control procedures and regulations integrated into the system.

(4) Financial institutions shall install an information technology control system to monitor the information system for security considerations, and shall keep this system operational at all times.

(5) Based on the findings of the security risk analysis, the following utilities shall be installed as consistent with the existing security risks:

*a)* clear identification of major system constituents (tools, processes, persons) and keeping logs and records accordingly;

*b)* self-protect function of the information technology security system, checks and procedures to ensure the closure and complexity of the protection of critical components;

*c)* frequently monitored user administration system operating in a regulated, managed environment (access levels, special entitlements and authorizations, powers and responsibilities, entry log, extraordinary events);

*d)* a security platform designed to keep logs of processes which are deemed critical for the operation of the information system and that is capable to process and evaluate these log entries regularly (and automatically if possible), or is capable of managing irregular events;

*e)* modules to ensure the confidentiality, integrity and authenticity of data transfer;

*f)* modules for handling data carriers in a regulated and safe environment;

*g)* virus protection consistent with the security risks inherent in the system.

(6) Based on their security risk assessment profile financial institutions shall implement protection measures to best accommodate their activities and to keep their records safe and current, and shall have adopted the following:

*a)* instructions and specifications for using their information system, and plans for future improvements;

*b)* all such documents which enable the users to operate the information system designed to support business operations, whether directly or indirectly, independent of the status of the supplier or developer of the system (whether existing or defunct);



c) an information system that is necessary to provide services and equipment kept in reserve to ensure that services can be provided without any interruption, or in the absence of such equipment, solutions used in their stead to ensure the continuity of activities and/or services;

d) an information system that allows running applications to be safely separated from the environment used for development and testing, as well as proper management and monitoring of upgrades and changes;

e) the software modules of the information system (applications, data, operating system and their environment) with backup and save features (type of backups, saving mode, reload and restore tests, procedure), to allow the system to be restored within the restoration time limit deemed critical in terms of the services provided. These backup files must be stored in a fireproof location separately according to risk factors, and the protection of access in the same levels as the source files must be provided for;

f) a data storage system capable of frequent retrieval of records specified by law to provide sufficient facilities to ensure that archived materials are stored for the period defined by legal regulation, or for at least five years, and that they can be retrieved and restored any time;

g) an emergency response plan for extraordinary events which are capable of causing any interruption in services.

(7) Financial institutions shall have available at all times:

a) operating instructions and models for the inspection of the structure and operation of the information system they have developed themselves or that was developed by others on a contract basis;

b) the syntactical rules and storage structure of data in the information system they have developed themselves or that was developed by others on a contract basis;

c) the scheme of classification of information system components into categories defined by the financial institution;

d) a description of the order of access to data;

e) the documents for the appointment of the data manager and the system host;

f) proof of purchase of the software used;

g) complex and updated records of administration and business software tools comprising the information system.

(8) All software shall comprise an integrated system:

a) that is capable of keeping records of the data and information required for regular operations and as prescribed by law;

b) that is capable of keeping reliable records of moneys and securities;

c) that has facilities to connect, directly or indirectly, to national information systems appropriate for the activities of the financial institution;

d) that is designed for the use of checking stored data and information;

e) that has facilities for logic protection consistent with security risks and for preventing tampering.

(9) The internal regulations of the financial institution shall contain provisions concerning the knowledge required in the field of information technology for filling certain positions.

## Chapter II

### Authorization Procedure

#### *Section 14.*

(1) The Commission's permission is required, except for the cases described in Subsections (2)-(4), for:

a) the foundation;

b) the merger (takeover, fusion), demerger;

c) the amendment of the bylaws (Section 20);

d) the acquisition of its shares in an extent to constitute qualifying participation and for increasing the qualifying participation up to threshold limit prescribed in this Act;

e) the election or appointment of executive officers;

f) the commencement of operation;

g) the amendment of the sphere of activities;

h) the performance of financial services through a person authorized to mediate the financial services specified in Point 12 a) of Chapter I of Schedule No. 2 (hereinafter referred to as "agent");

i) founding representative offices, branch offices or - as described by Act C of 2000 on Accounting (hereinafter referred to as "Accounting Act") - subsidiaries (credit institutions, financial enterprises or other companies) in a third country;

j) the acquisition of qualifying participation in a non-resident enterprise;

k) the transfer of the account portfolio and the contracts for repayment of monetary instruments (hereinafter referred to as "assignment of customer accounts");

l) the exemption from the obligation to maintain a trading book;

m)

n) the termination of operations;

o) repaying subordinated loan capital, before the deadline specified in the contract or before five years;

p) repaying junior subordinated loan capital, before the deadline specified in the contract or before two years,

q) loan security value assessment regulations of credit institutions, drafted according to specific other legislation, and in observation of the provisions of specific other legislation on the methodological principles for establishing loan security value.

r) the cancellation of core and subsidiary loan capital outstanding of a credit institution, and for any repayment of principal prior to the maturity fixed in the contract,

of a credit institution.

(2) The Commission's permission is required for:

a) the foundation,

b) the commencement of operations,

c) the amendment of the sphere of activities,

d) performing financial services through intermediation,

e) the appointment of an executive officer,

f) the assignment of customer accounts,

g) the exemption from the obligation to maintain a trading book,

h)

i) the termination of operations

of a credit institution operating as a branch office.

(3) The Commission's authorization referred to in Subsection (1) is not required to establish a credit institution branch office in another Member State of the European Union.

(4) The permission referred to in Subsection (2) is not required for the branch offices of credit institutions that are registered in another Member State of the European Union.

#### *Section 15.*

(1) The Commission's permission is required, subject to the exceptions contained in Subsection (2), for:

a) the foundation,

b) the amendment of the sphere of activities;

c) the transformation, merger (takeover, fusion), demerger, and

d) the appointment of executive officers,

of a financial enterprise.

(2) The Commission's permission is required for:

a) the foundation,

b) the amendment of the sphere of activities,

c) the appointment of executive officers,

of a credit institution operating as a branch office.

(3) The authorization granted for the foundation of a financial enterprise also constitutes permission for establishing its sphere of activities and for the commencement of operations.

(4) The permission referred to in Subsection (2) is not required if the financial enterprise is registered in another Member State of the European Union and

a) the financial enterprise

1) is the subsidiary of, or is controlled by the same persons - whether natural or legal - as control a credit institution that is registered in the same member state as the financial enterprise or

2) is the subsidiary of, or is controlled by the same persons - whether natural or legal - as control a financial enterprise that satisfies the condition specified in Point 1 and is registered in the same member state as the subsidiary and

- b) performs its activities in the Member State in which it is registered,
- c) the parent company holds at least ninety per cent of the voting rights,
- d) the parent company provides the Commission with a certificate from the competent supervisory authority of the country in which it is registered regarding the fact that the financial enterprise is managed in a prudent and circumspect manner,
- e) the parent - with the consent of the competent supervisory authority - undertakes full responsibility for the financial enterprise's obligations and
- f) the financial enterprise is subject to supervision on a consolidated basis with the parent company.

#### *Section 16.*

(1) Authorization to engage in the activities auxiliary to financial services defined in Paragraph a) of Subsection (2) of Section 3 shall be granted to credit institutions and to agents of credit institutions.

(2) A financial enterprise (hereinafter referred to as "clearing house for credit institutions") may only receive the authorization described in Subsection (6) of Section 3 to engage in the auxiliary financial activity defined in Paragraph b) of Subsection (2) of Section 3, with the exception described in Subsection (4), upon providing proof

- a) of having a minimum subscribed and paid-up capital of five hundred million HUF,
- b) that clearing transactions comprise its principal activity - as recorded by the court of registry - and its other activities complement the principal activity or do not have a negative impact on the manner in which the principal activity is performed,
- c) of operating in the form of a public limited liability company or as a branch office of such.

(3) Only the NBH, credit institutions, clearing houses for credit institutions and other similar bodies providing clearing or settlement services under the CMA may hold shares in clearing houses for credit institutions.

(4) If a clearing house for credit institutions performs activities auxiliary to financial services that exclusively involve cash-substitute payment instruments, the applicant may be granted the authorization referred to in Subsection (6) of Section 3 upon providing proof of having - contrary to Paragraph a) of Subsection (2) - a minimum subscribed and paid-up capital of one hundred and fifty million HUF.

(5)

(6) A legal person or a branch office may be granted the authorization described in Subsection (6) of Section 3 to engage in the auxiliary financial activity defined in Paragraph c) of Subsection (2) of Section 3 only upon providing proof

- a) of having a minimum subscribed capital of twenty million HUF,
- b) of having a liability insurance coverage of fifty million HUF for each damage event.

(7) In consideration of the provisions of Subsection (4) of Section 13 and in addition to the conditions set out in Subsections (1)-(6), authorization shall also be subject to the applicant's ability to satisfy the personnel and material requirements prescribed in specific other legislation.

(8) A financial enterprise may only receive the authorization described in Subsections (4) and (5) of Section 3 to engage in the auxiliary financial activity defined in Paragraph d) of Subsection (2) of Section 3 upon providing proof

- a) of having a minimum subscribed capital of fifty million HUF paid up in cash,
- b) of operating in the form of a public limited liability company or as a branch office of such,
- c) of compliance with the personnel and material requirements prescribed in specific other legislation.

## **Application for Foundation Permit**

#### *Section 17.*

(1) The application for foundation permit of a financial institution shall include:

- a) the deed of foundation which clearly defines the type and sphere of activities of the financial institution to be established;
- b) the document which defines the territory proposed to be served (nation-wide or limited to a specific region);
- c) proof of deposit of fifty percent of the subscribed capital defined in Section 9 for credit institutions, or the full amount of the subscribed capital defined in Section 9 for financial enterprises as paid up by the founders;
- d) a description of the drafts for the organizational structure, system of management, decision making and control mechanisms as well as the bylaws, if such are not contained in detail in the deed of foundation;

e) in the case of applicants domiciled abroad, a statement concerning the applicant's agent for service of process; such agent must be an attorney or a law firm registered in Hungary, or the applicant's bank representative office in Hungary;

f) in the case of a financial enterprise, proof of compliance with personnel and material requirements for providing financial services, as well as the documents listed in Paragraphs d)-f), h), k) and l) of Subsection (2) section 18.

g) in the case of credit institutions that are subject to supervision on a consolidated basis or supplementary supervision, a description of the apparatus for the conveyance of information related to supervision on a consolidated basis or supplementary supervision and a statement from the persons with close links to the credit institution guaranteeing to provide the Commission with the data, facts and information that are necessary for supervising the credit institution on a consolidated basis or for supplementary supervision;

h) in the case of credit institutions that are subject to supervision on a consolidated basis or supplementary supervision, a statement from each natural person closely affiliated with the credit institution containing his consent to have the personal data he has disclosed to the credit institution processed and released for the purposes of supervision on a consolidated basis or supplementary supervision in accordance with this Act.

(2) If there is a person among the founders who wishes to acquire a qualifying participation in the financial institution under foundation, in addition to the requirements set forth in Subsection (1) the following must also be attached to the application for authorization:

a) the deed of foundation of the company,

b) certificate of incorporation issued within three months to date, or the original certificate of incorporation for foreign companies and the authentic Hungarian translation of such, or proof of the company having been registered in the companies (business) register,

c) the identification data (Schedule No. 3) of the person having a qualifying participation in the company, as well as evidence of having no criminal record,

d) evidence of having no criminal record for natural persons,

e) statement(s) issued within thirty days to date in evidence that the persons participating in the foundation have no debts toward the tax authorities, customs authorities or social security administration,

f) statement, with the relevant documentary evidence attached, that the funds used to pay up the subscribed capital or finance the purchase of shares are part of founder's or buyer's legitimate income,

g) the audited and approved balance sheet and profit and loss statement of the business association for the past three calendar years in the case of credit institutions, or for one calendar year in the case of financial enterprises,

h) a declaration on any pending and future liabilities defined as such by the Accounting Act,

i) a detailed description of the founder's ownership structure and of the circumstances under which the founder is considered to be affiliated to a group of persons in partnership, furthermore the leading company's consolidated annual report for the previous year if the leading company is required to prepare a consolidated annual report,

j) a statement of full probative force from the persons indicated in the application in which to grant consent to having the authenticity of the documents attached to the application for authorization checked by the Commission by way of the agencies it has contacted.

(3) If there is a foreign-registered financial institution, insurance company or investment company among the founders who wishes to acquire a qualifying participation, in addition to the requirements set forth in Subsections (1) and (2), a statement from the competent supervisory authority of the country of origin stating that the enterprise conducts its activities in compliance with prudential regulations shall also be attached to the application for authorization.

(4) Before a foundation permit can be issued a statement must be made to the effect that the financial institution will be directed from the main office to be established in Hungary.

(5) The application for authorization of a financial holding company must include:

a) the material specified in Paragraphs a) and c)-e) of Subsection (1),

b) a business plan for the first three years,

c) the material specified in Paragraphs f) and h) of Subsection (2) of Section 18,

d) a statement to the effect that the financial institutions belonging to the holding company will provide the Commission with the necessary data, facts, information, and conclusions for supervising it.

(6) Upon receipt of the foundation permit credit institutions may engage in activities related to foundation of a bank.

#### *Section 17/A.*

(1) In respect of the foundation of a financial institution operating as a branch office, the following shall be attached to the application for foundation permit in addition to the documents prescribed in Subsection (1) of Section 17:

- a) the foreign financial institution's instrument of constitution,
- b) the foreign financial institution's certificate of incorporation issued within three months to date in proof of the foreign financial institution being registered in the companies (business) register,
- c) a copy of the authorization issued by the competent supervisory authority of the country where the foreign financial institution is registered,
- d) a certificate issued within the thirty days to date proving that the foreign financial institution participating in the foundation has no debts to the tax or customs authorities or the social security administration in Hungary or the country in which its home office is located or registered,
- e) a certificate from the competent supervisory authority of the country in which it is registered to the effect that the main office directing the financial institution is in the country in which it is registered,
- f) in respect of a credit institution or a financial enterprise, the audited and approved balance sheet and the profit and loss statement of the founder for the previous three fiscal years or for the previous fiscal year, respectively,
- g) a statement on the off-balance sheet liabilities of the foreign financial institution,
- h) a detailed description of the founder's ownership structure and of the circumstances under which the founder is considered to be affiliated to a group of persons in partnership, furthermore the leading company's consolidated annual report for the previous year if the leading company is required to prepare a consolidated annual report,
- i) a statement of full probative force from the persons indicated in the application in which to grant consent to having the authenticity of the documents attached to the application for authorization checked by the Commission by way of the agencies it has contacted,
- j) a list of the activities, described in Section 3, performed by the applicant under authorization by the supervisory authority of the country where established, and the locations where such activities are performed,
- k) the scope of authority of the executive officer of the financial institution operating as a branch office, and the applicant's bodies the approval of which is expressly required for passing certain resolutions,
- l) a statement of the competent supervisory authority in evidence of having no grounds for exclusion regarding the executive officer - of citizenship other than Hungarian - filling and occupying such office.

(2) The Commission shall grant a foundation permit for a financial institution operating as a branch office, above and beyond of having the conditions described in Subsection (1) and in Subsection (1) of Section 17 satisfied, if

- a) there is a valid and effective international cooperation agreement, based on mutual recognition of the supervisory authorities, which also covers the supervision of branch offices, between the Commission and the supervisory authority of the country where applying financial institution is established,
- b) the country where the applicant's registered office is located has legal regulations on money laundering that conform to the requirements called for by Hungarian law,
- c) the applying financial institution has data management regulations which satisfies the requirements of Hungarian legal regulations as well,
- d) the applying financial institution has filed a statement offering full guarantees concerning the liabilities incurred by its branch office under its corporate name,
- e) the applying financial institution has submitted the permit for the foundation of a branch office issued by the supervisory authority of the country where the applicant is established, and/or its declaration of approval or acknowledgment,
- f) the legal regulations of the country in which the applicant's registered office is located guarantee the prudent and safe operation of financial institutions.

(3)

## **Application for Operating (Business) License**

### *Section 18.*

(1) A credit institution may commence operations, that is to engage in financial services and activities auxiliary to financial services in possession of the Commission's authorization.

(2) Credit institutions shall attach the following to the application for the Commission's authorization:

- a) proof of payment of the subscribed capital in full as described in Subsection (1) Section 10,

- b) if all or part of the assets specified in Paragraph a) is spent, evidence or a statement in which to declare that such expenditure was made in connection with foundation or the commencement of operations,
  - c) information for the identification of each shareholder of the credit institution with minimum five percent share or voting right,
  - d) a business plan for the first three years, and the facts regarding compliance with the personnel and material requirements prescribed for operations,
  - e) one or more standard service agreements, also containing the standard contract conditions, pertaining to the activities planned to be performed,
  - f) a statement in which to specify the date proposed for commencement of operations,
  - g) a copy of its statement of admission sent to the National Deposit Insurance Fund and, for credit unions, also a copy of the statement of admission sent to a voluntary institutional protection fund, unless the credit institution operating as a branch office is not required to join the National Deposit Insurance Fund under Subsection (3) of Section 97,
  - h) a statement in which to specify the state of preparation to comply with data disclosure obligations as prescribed in or on the basis of legal regulations, as well as the results of tests of the computer programs used for such disclosure of data,
  - i) the scheme of accounting policy and detailed accounting system,
  - j) a statement concerning a direct connection to the transfer system for clearing transactions between credit institutions and an auditor's certificate concerning the information technology system providing this connection, or a statement concerning the acceptance of an indirect connection,
  - k)
  - l) a statement on joining a central credit information system, furthermore
  - m)
  - n) the order of procedure, approved by the executive board, to be applied in the event of an emergency situation seriously jeopardizing the liquidity or solvency of the credit institution,
  - o) the organizational structure, system of management, decision making and control procedures as well as the bylaws, if such are not contained in detail in the deed of foundation,
  - p) in regard to branch offices of third-country credit institutions, if, on the basis of the Commission's authorization under Subsection (3) of Section 97, they do not join the National Deposit Insurance Fund,
  - 1) their commitment pertaining to providing customers with information in Hungarian with regard to forms of insured deposits,
  - 2) the parent company's commitment pertaining to the indemnification of deposit holders in Hungary,
  - 3) the conditions and method of indemnification, the manner in which procedures are carried out, and agreements ensuring payment of indemnification.
- (3) The application of an already operating financial institution or investment enterprise for adding financial services to the scope of its activities shall be accompanied by a certificate in proof of having satisfied the personnel and material conditions required for performing such activities as well as the conditions defined in Paragraphs d)-f), h), k), l) and n) of Section (2), if these have not been submitted previously.

#### *Section 18/A.*

- (1) A financial institution applying for authorization to engage in the financial services specified in Paragraphs l) and n) of Subsection (1) of Section 3, as well as any other applicant that is otherwise authorized by law to provide such services, shall be authorized if
- a) it meets the requirements specified in Schedule No. 11 to the CMA in terms of personnel, equipment, operating and technical conditions,
  - b) the operational regulations are in conformity with the criteria and it contains all the components specified in Schedule No. 12 to the CMA,
  - c) it has adopted procedural regulations in accordance with Schedule No. 13 to the CMA.
- (2) When performing the financial services specified in Paragraphs l) and n) of Subsection (1) of Section 3, the provisions laid down in the CMA relative to portfolio management (Sections 125-137) shall apply *mutatis mutandis*, with the exception of Subsection (2) of Section 126, Section 127, Section 128, Subsections (3) and (4) of Section 130, and Subsection (2) of Section 133.

#### *Section 19.*

In the case defined in Paragraph h) of Subsection (1) of Section 14, the written contract, which must contain a clause to grant unlimited powers to the Commission or the credit institution to check the agent's financial management and business records regarding the activity for which it has been commissioned, must also be attached to the application.

## **Authorization of Activities Auxiliary to Financial Services Falling Within the Scope of Licensing Authority of the National Bank of Hungary**

### *Section 19/A.*

(1) Applications for the authorization of activities auxiliary to financial services falling within the scope of the licensing authority of the NBH [Subsection (6) of Section 3] shall have attached:

- a)* the applicant's deed of foundation;
- b)* the registration document issued by the Registrar of Companies and a certificate of incorporation issued within three months to date, or if not yet registered the application for registration together with a certificate from the court of registry in proof of receipt of the application;
- c)* statement(s) issued within thirty days to date in evidence that the persons participating in the foundation, or the applicant if an existing company, have no debts overdue for over thirty days toward the tax authorities, customs authorities or social security administration;
- d)* a document which defines the territory proposed to be served (nationwide or limited to a specific region);
- e)* a description of the applicant's organizational structure, system of management, decision making and control mechanisms if not contained in detail in the deed of foundation;
- f)* in the case of applicants domiciled abroad, a statement concerning the applicant's agent for service of process; such agent must be an attorney or a law firm registered in Hungary;
- g)* proof of compliance with personnel and material requirements for providing the services to which the application pertains;
- h)* proof of having the subscribed capital paid up in full by the founders;
- i)* if all or part of the assets specified in Paragraph *h)* is spent, evidence or a statement in which to declare that such expenditure was made in connection with foundation or the commencement of operations and the amount involved;
- j)* a medium-term business plan, for the first three years;
- k)* a standard service agreement, also containing the standard contract conditions, pertaining to the activities planned to be performed;
- l)* a statement in which to specify the date proposed for commencement of operations;
- m)* a statement in which to specify the state of preparation to comply with data disclosure obligations as prescribed in or on the basis of, legal regulations.

(2) If the applicant for authorization is a credit institution, the requirements under Paragraphs *a)-f)* and *h)-i)* of Subsection (1) may be disregarded.

(3) If a foreign company wishes to engage in activities auxiliary to financial services falling within the scope of the licensing authority of the NBH by way of its branch office, the following shall be attached with their application in addition to what is contained in Paragraphs *d)-m)* of Subsection (1):

- a)* the foreign company's deed of foundation;
- b)* the foreign company's certificate of incorporation issued within three months to date or proof of the company having been registered in the companies (business) register;
- c)* a copy of the authorization issued by the competent supervisory authority of the country where the foreign company is registered;
- d)* a certificate issued within thirty days to date proving that the foreign company has no debts to the tax or customs authorities or the social security administration in Hungary or the country in which its home office is located or registered;
- e)* the audited and approved balance sheet and the profit and loss statement of the foreign company for the previous fiscal year;
- f)* a statement on the off-balance sheet liabilities of the foreign company;
- g)* a detailed description of the foreign company's ownership structure and of the circumstances under which the foreign company is considered to be affiliated to a group of persons in partnership, furthermore the leading company's consolidated annual report for the previous year if the leading company is required to prepare a consolidated annual report;

*h)* a statement of full probative force from the persons indicated in the application in which to grant consent to having the authenticity of the documents attached to the application for authorization checked by the NBH by way of the agencies it has contacted;

*i)* a list of the activities performed by the applicant under authorization by the supervisory authority of the country where established, and the locations where such activities are performed;

*j)* the scope of authority of the executive officer of the branch office, and the applicant's bodies the approval of which is expressly required for passing certain resolutions;

*k)* a statement of the competent supervisory authority in evidence of having no grounds for exclusion regarding the executive officer - of citizenship other than Hungarian - filling and occupying such office.

(4) The National Bank of Hungary shall authorize the branch office to provide the services in question, above and beyond of having the conditions described in Paragraphs *d)-m)* of Subsection (1) and in Subsection (3) of this Section satisfied:

*a)* if the applicant is a foreign financial institution, there is a valid and effective international cooperation agreement, based on mutual recognition of the supervisory authorities, which also covers the supervision of branch offices, between the Commission and the supervisory authority of the country where the applying financial institution is established;

*b)* if the country where the applicant's registered office is located has legal regulations on money laundering that conform to the requirements called for by Hungarian law;

*c)* if the applying foreign company has data management regulations which satisfies the requirements of Hungarian legal regulations as well;

*d)* if the applying foreign company has filed a statement offering full guarantees concerning the liabilities incurred by its branch office under its corporate name;

*e)* if the applying foreign company has submitted the permit for the foundation of a branch office issued by the supervisory authority of the country where the applicant is established, and/or its declaration of approval or acknowledgment;

*f)* if the applicant is a foreign financial institution, the legal regulations of the country in which the applicant's registered office is located guaranteeing the prudent and safe operation of financial institutions.

(5) In the case of an existing branch office, the application for authorization shall have attached - instead of the documents listed in Subsection (3) if they were already presented to the Commission or the NBH in a previous authorization procedure - the foreign company's deed of foundation and the registration document issued by the Registrar of Companies and a certificate of incorporation issued within three months to date, or if not yet registered, the application for registration together with a certificate from the court of registry in proof of receipt of the application. The NBH may request the applicant at any time to verify the requirements set out in Subsection (3).

#### *Section 19/B.*

In addition to the requirements set out in Subsection (1) of Section 19/A the following shall also be attached with applications for the authorization of money processing activities:

*a)* a certificate of no criminal record issued within thirty days to date for executive employees, for the manager placed in charge of money processing operations, and for all employees directly involved in money processing activities;

*b)* a certificate from the customs authority's bureau for minor offenses for the persons referred to in Paragraph *a)* in accordance with Paragraph *b)* of Subsection (1) of Section 44/A;

*c)* documents in proof of the education of employees in executive positions;

*d)* a liability insurance policy in the original or a copy endorsed by a notary public;

*e)* a declaration offering guarantees that the applicant will abide by the statutory provisions governing money processing operations;

*f)* internal regulations relating to administrative procedures and security,

*g)* regulations for the prevention and combating of money laundering.

#### *Section 19/C.*

Applications for authorization to engage in clearing operations (clearing transactions) shall have attached - in addition to the requirements set out in Subsection (1) of Section 19/A - the following:

*a)* a certificate of no criminal record issued within thirty days to date for executive employees;

*b)* drafts of agreements to be concluded with clearing members for clearing operations;



- c) internal regulations concerning the transfer system for clearing transactions, for the security regime and the information technology system, including administrative instructions;
- d) the standard service agreements and other internal regulations of clearing houses for credit institutions;
- e) a detailed description of data transmission and communications systems (networks);
- f) a plan to ensure continuity in operations.

*Section 19/D.*

The NBH shall grant the authorization for a predetermined period of time, subject to specific conditions and territorial limitations and, within the service activities, with a limitation of business branches or products.

*Section 19/E.*

(1) The provisions of Act IV of 1957 on the General Rules of State Administration Procedures shall apply to the procedures conducted by the NBH pursuant to this Act.

(2) Decisions of the NBH may not be appealed through administrative channels.

## **Authorization for the Amendment of Bylaws**

*Section 20.*

The amendment of the bylaws of a credit institution shall be subject to permission by the Commission in the following cases:

- a) changing the company's name and registered address,
- b) amendment of the sphere of activities,
- c) reducing the subscribed capital,
- d) changing the class of shares, issuing a new class of shares or modifying the class of previously issued shares,
- e) amendment of the powers and authority of the board of directors,
- f) issuing convertible bonds or bonds with subscription right, and amendment of the regulations applicable thereto,
- g) establishing and changing preemption rights relating to shares.

## **Authorization of Transformations, Mergers and Demergers**

*Section 21.*

(1) The regulations governing foundation shall be applied to the transformation of a credit institution into a different type of credit institution or a financial enterprise, as well as that of a financial enterprise into a credit institution.

(2) A credit institution can only be transformed into a financial institution if all its customer accounts have been assigned prior to the general meeting's resolution to make the transformation.

*Section 22.*

(1) A financial enterprise may merge only with another financial institution or may be taken over only by a credit institution. Credit institutions may take over other credit institutions, financial enterprises, associated companies or investment companies; credit institutions may only merge with other credit institutions.

(2) A financial institution operating as a joint-stock company may not merge with financial institution operating as a cooperative.

(3) In the case of merger by a credit institution or a financial enterprise, the following documents shall be submitted together with the application for authorization:

- a) the merger agreement;
- b) auditor approved
  - 1) draft statement of holdings,
  - 2) the schedule of assets and liabilities;

c) all documents stipulated in Section 18 required for authorizing the activities to be performed,  
d) for the merger of credit institutions, the data from which the existence of the condition stated in Subsection (2) of Section 74 can be ascertained.

(4) A financial institution operating as a branch office may not merge with a legal person or with an unincorporated business association.

#### *Section 23.*

The Commission's authorization for the merger of financial institutions shall not constitute the authorization of the Economic Competition Office in any way or form.

#### *Section 24.*

In respect of the merger of financial institutions, the Commission may issue a single resolution for the foundation permit and for the authorization for operation.

#### *Section 25.*

(1) For the demerger of credit institutions and financial enterprises the provisions on foundation shall be duly applied.

(2) In respect of the authorization of the amendment of bylaws the provisions of this Act pertaining to the authorization of foundation and operation shall be applied.

## **Authorization**

#### *Section 26.*

(1) In the course of the authorization procedure, the Commission and the NBH shall carefully study the documents and information furnished with the application, and it shall ascertain that the granting of authorization does not violate any legal provision. As part of the authorization procedure the Commission and the NBH shall conduct site inspections to check whether all requirements for authorization are satisfied.

(2) The Commission shall consult the NBH before issuing the authorization required for the foundation or operation of a bank or a specialized credit institution, the amendment of the bylaws of a bank or a specialized credit institution owing to the reduction of subscribed capital, and the merger of a bank or a specialized credit institution.

(3) The Commission shall request the opinion of the competent supervisory authorities of other Member States of the European Union concerned prior to issuing a foundation permit to a credit institution if the credit institution requesting the permit:

*a)* is a subsidiary of an investment firm, credit institution or insurance company established in another Member State of the European Union;

*b)* is a subsidiary of the parent company of an investment firm, credit institution or insurance company established in another Member State of the European Union;

*c)* has an owner, whether a natural or legal person, with a dominant influence in an investment firm, credit institution or insurance company that is established in another Member State of the European Union.

## **Rejection of Authorization**

#### *Section 27.*

(1) The Commission shall refuse to grant authorization for foundation if

- a) any information provided by the applicant is false or misleading,
- b) if the financial institution intended to be established by the applicant fails to meet the statutory provisions concerning subscribed capital, corporate form, company form, ownership and controlling body,
- c) the applicant is a nonresident and does not have an agent for service of process,

d) if the person who is in close link with the credit institution is established in a third country where there are legal impediments to the transfer of the necessary information for consolidated supervision.

(2) The Commission shall reject the application for the foundation of a branch office if either of the conditions listed in Subsection (1) of Section 17 and in Section 17/A is not satisfied.

(3) The Commission shall reject to grant authorization for an activity, if the applicant

- a) is subject to either of the reasons for rejection referred to in Subsection (1),
- b) fails to meet the personnel and material requirements prescribed,
- c) is apparently unable to comply with the statutory provision regarding prudent operation by virtue of its business plan, other documents attached to the application for authorization, or of any document, data or information furnished to the Commission.

#### *Section 27/A.*

(1) The NBH shall refuse to grant authorization to engage in activities auxiliary to financial services falling within its scope of licensing authority if:

- a) any information provided by the applicant is false or misleading;
- b) the applicant fails to meet the statutory provisions concerning subscribed capital, corporate form, and ownership;
- c) the applicant is a nonresident and does not have an agent for service of process, or if any of the criteria under Subsection (4) of Section 19/A is not satisfied.

(2) The NBH shall reject the application for authorization if the applicant:

- a) fails to meet the personnel and material requirements prescribed in legal regulations;
- b) is deemed unable to comply with the statutory provisions regarding prudent operation, as laid down in legal regulations and NBH decrees, by virtue of its business plan, other documents attached to the application for authorization, or of any document, data or information furnished to the NBH.

## **Validity Period of Foundation Permit**

#### *Section 28.*

The resolution granting permit for the foundation of a credit institution shall become void if the credit institution fails to submit the application for activities to the Commission within six months of receipt. No application for extension will be accepted upon failure to meet this deadline.

## **Withdrawal and Surrender of Authorization**

#### *Section 29.*

(1) The Commission may withdraw the authorization where

- a) the authorization was obtained by deceiving the Commission or by any other irregular means,
- b) the credit institution is engaged in activities prohibited by law,
- c) the financial enterprise fails to commence operation within twelve months of receipt of the foundation permit or the credit institution fails to commence operation within twelve months of receipt of the authorization,
- d) the financial enterprise is not engaged in providing financial services, or is engaged only insignificantly, for a period of twelve months,
- e) the financial institution is no longer in compliance with the provisions of this Act or other legal regulations regarding prudent operation,
- f) the financial institution has repeatedly and seriously violated regulations on accountancy, independent and reliable management and control, furthermore the provisions of this Act and other legal regulations on prudential requirements, and the regulations set forth in the Commission's resolutions,
- g) under the prevailing circumstances the credit institution's activities pose substantial hazard or injury in respect of the interests of account-holders and other customers, obstructs the free circulation of money or the proper functioning of the money and capital market,

h) the financial institution surrenders its foundation permit or authorization for operation as described in Section 31,

i) either of the conditions, in connection with the authorization of the branch office, described in Section 17/A no longer exists,

j) the flow of information referred to in Paragraph g) of Subsection (1) of Section 17 is not ensured.

(2) The Commission shall withdraw the authorization of the branch office if the authorization of its founder has been revoked by the supervisory authority responsible for the place where the founder is established

(3) The Commission may withdraw the authorization of economic organizations, other than financial institutions, by duly applying the provisions of Subsection (1).

#### *Section 30.*

(1) The Commission may withdraw the credit institution's authorization, above and beyond the cases described in Section 29, if the credit institution

a) has discontinued operations for a period of more than six months,

b) can no longer be relied on to fulfill its obligations,

c) fails to pay any of its undisputed debts within five days of the date on which they are due or no longer possesses sufficient own funds (assets) for satisfying the known claims of creditors,

d) has had its National Deposit Insurance Fund membership involuntarily terminated.

(2) When it withdraws a license, the Commission shall make a resolution for winding up the financial institution or initiate liquidation.

(3) The Commission shall withdraw a credit institution's authorization if the court has ordered the liquidation of the credit institution and it was initiated not by the Commission.

(4) The consent of the Minister of Finance and of the President of NBH is required for the Commission to withdraw a credit institution's operating license.

#### *Section 30/A.*

(1) The NBH may withdraw its authorization to engage in activities auxiliary to financial services falling within its scope of licensing authority where:

a) the authorization was obtained by deceiving the NBH or by any other irregular means;

b) the service provider carrying out the activities auxiliary to financial services is engaged in some unlawful conduct;

c) the service provider is no longer in compliance with the provisions of relevant legal regulations and NBH decrees;

d) the service provider surrenders its authorization for operation as described in Subsection (1) of Section 31;

e) the authorization of the foreign company has been revoked by the supervisory authority responsible for the place where the company is established.

(2) The NBH may withdraw the authorization of a service provider if:

a) the service provider has seriously violated regulations on accountancy and control, furthermore has violated the provisions of the relevant legal regulations and NBH decrees, and the regulations set forth in the resolutions adopted by the NBH and the Commission;

b) under the prevailing circumstances the service provider's activities falling within the scope of this Act pose substantial hazard or injury in respect of the interests of account-holders and other customers, or obstructs the free circulation of money;

c) the service provider fails to commence operation within one month of receipt of the authorization;

d) the service provider is not engaged in providing financial services for a period of three months;

e) the service provider imposes a potential and imminent jeopardy by virtue of its inability to fulfil its obligations;

f) the service provider can no longer be relied on to fulfill its obligations;

g) the service provider is undergoing liquidation or bankruptcy proceedings;

h) for branch offices, any of the conditions described in Paragraphs a)-b), d)-k) of Subsection (3) and in Subsections (4)-(5) of Section 19/A no longer exists.

#### *Section 31.*

(1) A financial institution and a service provider engaged in activities auxiliary to financial services falling within the scope of the licensing authority of the NBH may surrender its operating license, respectively, to the Commission or the NBH only upon providing evidence of having no liabilities remaining in connection with its financial services and activities auxiliary to financial services. The Commission and the NBH shall have powers to prescribe conditions and regulations and compel the financial institution or the service provider to continue to maintain operations in compliance with the relevant regulations until such conditions and regulations are fulfilled.

(2) A financial holding company may return its operating license to the Commission if it proves that it has no outstanding obligations.

## **Common Provisions**

### *Section 32.*

## **Rules for Establishing Branch Offices in another Member State of the European Union**

### *Section 32/A.*

(1) Credit institutions shall notify to the Commission if they wish to open a branch office in another Member State of the European Union.

(2) The notification referred to in Subsection (1) shall contain:

a) an indication of the European Union Member State in which the credit institution wishes to open the branch office,

b) documents pertaining to the branch office's organizational structure, management, and control procedures,

c) description of the activities it would like to pursue,

d) the business plan,

e) the name(s) of the person(s) responsible for managing the branch office,

f) the branch office's address.

(3) If, according to the information provided to the Commission, the management structure of the reporting credit institution and its financial situation are in accord with the relevant statutory provision, the Commission shall inform, in writing, the competent supervisory authority of the European Union Member State concerned within three months of the day on which it receives the notification and shall inform the affected credit institution accordingly.

(4) In the information specified in Subsection (3), the Commission shall inform the competent supervisory authority of the other Member State of the amount of own funds and the solvency ratio of the credit institution creating the branch office, and the detailed deposit insurance regulations pertaining to the deposits collected by the branch office.

(5) If the Commission refuses to communicate the information specified in Subsection (3), it shall issue a resolution informing the credit institution concerned within three months. The grounds for this decision must be presented.

(6) Within two months of receiving the information mentioned in Subsection (3), the competent supervisory authority of the other Member State may inform the concerned credit institution, in writing, regarding the conditions attached to performing the activities it would like to pursue.

(7) The branch office may be established and commence operations after the information specified in Subsection (6) has been received or the two-month disclosure period has passed.

(8) If in the course of operations, there is any change in the information specified in Paragraphs b)-f) of Subsection (2) or in the deposit insurance conditions pertaining to the deposits collected by the branch office, the credit institution must inform, in writing, the Commission and the competent supervisory authority of the other Member State of such change at least one month in advance.

(9) The Commission shall inform the supervisory authority of the other Member State of the European Union if it withdraws the operating license of a credit institution with a branch office in that member state.

### *Section 32/B.*

(1) Hungarian-registered financial enterprises operating in conformity with the conditions specified in Subsection (4) of Section 15 shall notify the Commission if they wish to establish a branch office in another Member State of the European Union.

(2) The notification referred to in Subsection (1) shall contain:

- a) an indication of the Member State in which the financial enterprise wishes to establish a branch office,
- b) documents pertaining to the branch office's organizational structure, management, and control system,
- c) description of the activities it would like to pursue,
- d) the business plan,
- e) the name(s) of the person(s) responsible for managing the branch office,
- f) the branch office's address.

(3) If, according to the information provided to the Commission, the management structure of the reporting financial enterprise and its financial situation are in accord with the relevant statutory provision, the Commission will inform, in writing, the competent supervisory authority of the Member State concerned within three months of the day on which it receives the notification and shall inform the affected financial institution accordingly.

(4) In the information specified in Subsection (3), the Commission shall inform the competent supervisory authority of the other Member State of the amount of own funds of the financial enterprise creating the branch office and the consolidated solvency ratio of its parent company. A certificate from the Commission concerning compliance with the conditions specified in Subsection (4) of Section 15 must be attached to the information.

(5) If the Commission refuses to communicate the information specified in Subsection (3), it shall issue a resolution informing the financial enterprise concerned within three months. The grounds for this decision must be presented.

(6) Within two months of receiving the information mentioned in Subsection (3), the competent supervisory authority of the other Member State may inform the concerned financial enterprise, in writing, regarding the conditions attached to performing the activities it would like to pursue.

(7) The branch office may be established and commence operations after the information specified in Subsection (6) has been received or the two-month disclosure period has passed.

(8) If in the course of operations there is any change in the information specified in Paragraphs b)-f) of Subsection (2), the financial enterprise must inform, in writing, the Commission and the competent supervisory authority of the other Member State of such change at least one month in advance.

(9) The Commission shall inform the supervisory authority of the other Member State of the European Union

- a) if the financial enterprise with a branch office in that Member State is no longer in compliance with the conditions set out in Subsection (4) of Section 15, or
- b) if it withdraws the operating license of the financial enterprise with a branch office in that Member State.

## **Rules Governing Cross-border Activities**

### *Section 32/C.*

(1) When a credit institution first wants to engage in financial services or activities auxiliary to financial services in another member state of the European Union as a cross-border activity, it shall notify the Commission in advance of the activities it wishes to pursue in the other Member State.

(2) Within one month of receiving the notification referred to in Subsection (1), the Commission shall inform the competent supervisory authority of the other Member State of the credit institution's planned activities and shall inform the affected credit institution accordingly.

(3) The credit institution may commence its activities in the other Member State once it has received the Commission's information.

### *Section 32/D.*

(1) A financial enterprise may provide cross-border services in another Member State of the European Union if it satisfies the conditions specified in Subsection (4) of Section 15.

(2) When a financial enterprise first intends to engage in financial services or activities auxiliary to financial services in another Member State of the European Union as a cross-border activity, it shall notify the Commission in advance of the activities it wishes to pursue in the other Member State.

(3) Within one month of receiving the notification referred to in Subsection (2), the Commission shall inform the competent supervisory authority of the other Member State regarding the financial enterprise's planned activities and shall inform the affected financial enterprise accordingly.

(4) A certificate from the Commission concerning compliance with the conditions specified in Subsection (4) of Section 15 must be attached to the information.

(5) The financial enterprise may commence its activities in the other Member State once it has received the Commission's information.

(6) If the financial enterprise is no longer in compliance with the conditions set out in Subsection (4) of Section 15, the Commission shall notify the supervisory authority of the Member State in which the financial enterprise provides cross-border services.

(7) If the Commission refuses to dispatch the information specified in Subsection (3), it shall issue a resolution informing the financial enterprise concerned within one month. The grounds for this decision must be presented. The Commission may refuse to dispatch the above-specified information only in the event of noncompliance with the criteria described in Subsection (4) of Section 15.

#### *Section 32/E.*

If the competent supervisory authority of another Member State of the European Union informs the Commission that a credit institution registered in its jurisdiction is opening a branch office in Hungary, the Commission shall inform the credit institution regarding the consumer protection regulations specified in Chapter XXIX, particularly

- a) the advertising regulations,
- b) information in Hungarian for customers and depositors,
- c) requirements for standard service agreement, and
- d) rules for making consumer loans.

### **Relations with the European Commission**

#### *Section 32/F.*

(1) The Commission shall provide the European Commission with written notification of the following:

- a) operating licenses issued to credit institutions,
- b) permits issued for establishing credit institutions operating as branch offices of parent companies that are credit institutions registered in a third country,
- c) acquisition of a share in a Hungarian-registered credit institution by a credit institution registered in a third country as a consequence of which the Hungarian credit institution becomes a subsidiary of the third-country credit institution,
- d) authorizations issued to financial holding companies.

(2) The notification referred to in Paragraph a) of Subsection (1) shall contain an indication if an operating license is issued to a credit institution that is directly or indirectly a subsidiary of one or more credit institutions registered in third countries. In such cases, the corporate structure of the company group must also be given.

(3) The notification referred to in Paragraph b) of Subsection (1) must also be sent to the Banking Advisory Committee specified in Directive 2000/12/EC of the European Parliament and of the Council.

### **Chapter III**

### **Special Regulations Pertaining to Bank Representative Offices**

#### *Section 33.*

(1) Bank representation offices are formed to maintain relations with persons and organizations, to provide data and information on the represented credit institution within the framework of law and to improve the services and customer relations of such, without being engaged in any for-profit activities.

(2) Bank representation offices registered in Hungary are legal persons, and as such must be registered by the court of registry.

*Section 34.*

Establishment of a bank representation office in Hungary by a foreign-registered credit institution shall be reported to the Commission. The Commission's authorization is required for Hungarian credit institutions to establish bank representation offices abroad and for such offices to commence operations.

*Section 35.*

(1) Credit institutions registered in Hungary shall attach the following to the application for authorization to establish a foreign representative office:

- a) name of the bank representative office with its representative function expressly indicated,
- b) detailed description of the activities planned to be performed,
- c) the planned duration of operation,
- d) number of prominent administrators and their credentials,
- e) the name and credentials of the director of the bank representation office.

(2) The following shall be attached to a notification submitted for the establishment of a Hungarian bank representation office for a foreign credit institution, in addition to the requirements set out under Subsection (1):

- a) the permit, statement of consent or acknowledgement from the competent supervisory authority relating to the establishment,
- b) a statement from the supervisory authority to evidence of having established no grounds for disqualification concerning the director of the bank representation office.

*Section 36.*

(1) The director of the bank representation office shall be responsible for compliance with the provisions of this Act pertaining to bank representations.

(2) The bank representation office shall be required to notify the Commission within five working days if relocated or terminated, or if the person performing the representation is replaced.

(3) If a bank representation office fails to comply with the provisions contained in Subsection (1) of Section 33, the Commission shall remove such from its register and shall concurrently prohibit it to engage in bank representation activities.

## ***PART II***

### ***EXERCISING OF OWNERSHIP RIGHTS OF CREDIT INSTITUTIONS AND FINANCIAL ENTERPRISES, ADMINISTRATION AND CONTROL***

#### **Chapter IV**

##### **Regulations on Exercising Ownership Rights**

##### **Acquisition and Variation of Qualifying Participations**

*Section 37.*

(1) The Commission's permission must be obtained, prior to the execution of the underlying contract,

- a) for the acquisition of qualifying participation in a financial institution,
- b) for the acquisition of additional qualifying participation by which to reach fifteen, thirty-three, fifty or seventy-five percent of ownership share or voting rights.

(2) When applying for the authorization referred to in Subsection (1) the applicant shall submit the documents prescribed in Paragraphs *g*) and *h*) of Subsection (1) of Section 17 and in Subsections (2) and (3) of Section 17.

(3) The owner of a financial institution may enter into contracts regarding ownership rights, voting rights or to secure advantages in excess of such rights only upon the Commission's permission.



(4) The Commission's permission must be obtained prior to the execution of the contract for the acquisition of majority ownership in an enterprise which holds a qualifying participation in a financial institution.

(5) The application for authorization of the activities described in Subsections (1)-(4) shall include

a) the name of the company which holds a qualifying participation in a financial institution,  
b) the percentage of share owned by the applicant in the enterprise which holds a qualifying participation in a financial institution,

c) the percentage of share planned to be acquired,

d) the contract proposal made for the acquisition of ownership or for an agreement to secure substantial advantages attached to voting rights,

e) the facts required to determine the grounds for disqualification described in Subsection (4) Section 44 and a statement regarding the criminal proceeding referred to in Subsection (6) Section 44 in respect of the executive officers of the applicant.

(6) The applicant or the owner may exercise

a) his voting right deriving from the qualifying participation for which the authorization is applied, or

b) the rights deriving from the advantages secured by the agreement - for which the authorization is applied - connected with the acquisition of ownership or voting rights

as of the ninetieth day of the Commission's receipt of the application for authorization, unless the Commission exercises its rights defined in Sections 39 and 40.

(7)

#### *Section 37/A.*

If the applicant is a credit institution, investment firm or insurance company that has a registered office in another Member State of the European Union, or a natural or legal person with dominant influence over such a credit institution, investment firm or insurance company, and if the application for the authorization specified in Subsections (1)-(4) of Section 37 is for the acquisition of a share or influence as a consequence of which the applicant has the capacity to exercise dominant influence over the credit institution, the Commission shall request the opinion of the competent supervisory authority of the other Member State concerned.

#### *Section 38.*

(1) The person holding a qualifying participation in a financial institution shall be required to notify the Commission two days prior to execution of the contract if he

a) wishes to terminate his qualifying participation in full, or

b) wishes to alter his ownership interest or the contract in which to secure advantages so as to reduce his ownership interest or voting rights to below fifteen, thirty-three, fifty or seventy-five percent.

(2) The person referred to in Subsection (1) shall notify the Commission within two days regarding his appointment of a new executive officer.

(3) The notification, in terms of Paragraph b) of Subsection (1), shall indicate the remaining ownership interest, the percentage of voting rights or the amendment of the agreement to secure substantial advantages.

#### *Section 39.*

(1) The Commission shall refuse to grant the authorization defined in Subsections (1)-(3) of Section 37 regarding the acquisition or increase of qualifying participation in a financial institution or the conclusion of an agreement to secure substantial advantages within ninety days of submission of the application, if the applicant's (or its owner's or executive officer's)

a) activities, influence on the financial institution endangers the prudential management for effective, reliable and independent operations of the financial institution,

b) the character of its business activities and relations, or its direct or indirect ownership in other enterprises is structured in a manner to obstruct supervisory activities.

(2) The activity of the person applying for authorization or his owner and executive officer, or the influence exercised on the financial institution shall be construed as jeopardizing the financial institution's independent, reliable and prudent management, particularly if

a) its financial and economic standing is inconsistent with the extent of the acquisition of ownership share as proposed,

b) the legitimacy of the origin of the funds used for acquisition of the ownership interest or the authenticity of the information the person specified as owner of the funds is not sufficiently evidenced,

c) fails to meet the conditions determined for the credit institution by the Commission in the restoration plan,

d) the Commission has suspended his right to exercise voting rights within five years preceding the notification,

e) in respect of natural persons, there is grounds for disqualification under Subsection (4) Section 44.

(3) If there is no grounds to refuse authorization for a contract for the acquisition of ownership, but there is a criminal proceeding referred to in Subsection (6) Section 44 pending against the applicant natural person, the Commission shall grant authorization subject to suspension of the owner's voting rights until conclusion of the criminal proceeding.

(4) In order to check the facts or circumstances defined in Subsections (1) and (2), the Commission may request data or information from either party concerned based on its authorization provided by law.

(5) If the requirements for authorization of the agreement for acquisition of ownership are no longer satisfied, the Commission shall suspend the owner's voting rights until the unlawful situation is terminated or until new evidence is furnished concerning such requirements.

(6) If the owner of a financial institution is restrained by law from exercising his voting rights, the voting rights of such owner must be disregarded in perspective of quorum.

(7) The permission of the Commission shall not constitute the authorization of the Economic Competition Office required for the acquisition of control.

#### *Section 40.*

In the case of failure to apply for the prescribed authorization, rejection of the application, failure to comply with the obligation of notification as prescribed or refusal to provide information, the Commission may prohibit the exercising of voting rights deriving from an agreement for the acquisition of ownership share or for securing advantages until the requirements stipulated by law are fulfilled.

#### *Section 41.*

(1) Any person

a) who has acquired a qualifying participation in a financial institution,

b) who has altered his qualifying participation in a financial institution

1) upon which to reach fifteen, thirty-three, fifty or seventy-five percent of ownership share or voting rights, or

2) upon which to drop below fifteen, thirty-three, fifty or seventy-five percent of ownership share or voting rights,

or

c) who has entered into an agreement providing substantial advantages attached to ownership rights or voting rights,

shall notify the Commission in writing within thirty days of execution of the agreement.

(2) The financial institution shall notify the Commission in writing within five business days upon gaining knowledge of any acquisition, sale or variation of ownership interest with regard to the limits set forth in Sections 37 and 38.

## Chapter V

### Regulations Pertaining to Owners, Members of Governing Bodies and Executive Officers

#### *Section 42.*

With the exception of non-voting preference shares, the shares of financial institutions operating as joint-stock companies may only be registered shares.

*Section 43.*

(1) The board of directors of the financial institution shall keep a register on registered shares and shareholders, and this register shall include at least the following information:

- a) shareholders' name, the address, mother's name, and citizenship for natural persons, the registered address for legal entities and unincorporated business associations,
- b) if a share is held by more than one person, the information of the owners and their common representative as set forth in Paragraph a),
- c) the share's securities code and its series and par value,
- d) type of the shares,
- e) date of purchase,
- f) date of recording purchase in the register of shareholders,
- g) date of overstriking,
- h) date of cancellation and elimination of share,
- i) the case number and date of the resolution of the Commission related to acquisition of ownership.

(2) The register of shareholders must contain sufficient facilities to permit unrestrained identification of all changes, modifications, deletions or corrections, the name of the person recording data and the legal title and date of entry.

(3) The register of shareholders shall have an appendix attached in which to record information for future identification of the direct ownership interest of owners of a financial institution holding at least five percent interest, calculated according to the formula illustrated in Schedule No. 4. Persons having or acquiring an ownership interest of five percent or more in a financial institution must announce their indirect ownership in the financial institution or any change therein - by disclosing simultaneously the data suitable for identification - to the financial institution.

(4) The Commission shall suspend the voting rights of any owner who fails to perform the obligations specified in Subsection (3) until the time at which such obligations are performed.

(5) Executives of financial institutions operating as joint-stock companies must formally notify the financial institution's board of directors concerning the shares issued by the financial institution that are in their ownership.

## **Common Provisions**

*Section 44.*

(1) The executive officer of a financial institution may be elected or appointed upon the prior authorization of the Commission, as well as the executive employee directing the operations of a financial holding company or a mixed financial holding company.

(2) Authorization shall be construed granted if the Commission does not reject it or does not suspend the procedure within thirty days of receipt of the application. If there is a criminal proceeding described in Subsection (6) pending against the person referred to in Subsection (1), the Commission shall suspend its procedure for the application until conclusion of the criminal proceeding.

(3) The Commission shall reject any application for authorization for the election or appointment of a natural person if there is grounds for disqualification under Subsections (4) and (5) with regard to the person proposed for appointment or election or, in the case of an executive, if the nominated person does not conform to the conditions specified in Section 68.

(4) The persons described in the following may not be elected and appointed as an executive officer:

a) having (or having had) a qualifying participation in or being (or having been) the executive officer of a financial institution

1) in the case of which insolvency can only be avoided by extraordinary measures taken by the Commission,

2) which was liquidated due to its operating permit being revoked

and whose personal responsibility for the development of this situation has been established in a definitive decree;

b) persons who have seriously or systematically violated the provisions of this Act or another legal regulation pertaining to banking or the management of financial institutions and such has been determined by the Commission, another authority or a court in a final resolution dated within the previous five years;

c) having a criminal record.

(5) Above and beyond the provisions set forth in Subsection (4), with the exception of supervisory board members, the person to be executive officer of a credit institution or a clearing house for credit institutions must satisfy the following criteria:

*a)* have at least three years of experience in banking or business management, or in financial or economic management in government administration;

*b)* shall not act as auditor for another financial institution;

*c)* shall not hold another office or position which may hinder performance of his professional duties.

(6) No person who has been indicted by the public prosecutor for any of the criminal acts specified in Titles VII and VIII of Chapter XV and Chapters XVII and XVIII of Act IV of 1978 on the Criminal Code or who has been indicted abroad for a property or economic crime that is punishable under Hungarian law may be employed as an executive officer until the conclusion of the criminal procedure, and such persons shall be suspended from the performance of such duties and responsibilities.

#### *Section 44/A.*

(1) The executive employees of companies engaged in money processing activities with legal personality, and the persons placed in charge of money processing operations and all employees directly involved in money processing activities:

*a)* must have a clean criminal record;

*b)* must have no prior record of any violation of financial regulations or embezzlement within the two-year period preceding the date when the application was submitted.

(2) The executive employees of companies engaged in money processing activities with legal personality must have a degree in higher education, and the person placed in charge of money processing operations or at least one employee who is directly involved in money processing activities must have a degree in higher education and at least three years of previous experience.

(3) Within the context of Subsection (2) the criteria of experience may be satisfied by employment at the NBH or a credit institution in the position of a prominent administrator or higher, or in a position related to money processing, or by employment at a financial enterprise or a legal person engaged in money processing in a position related to money processing.

## Chapter VI

### Rules of Responsibility and Representation

#### *Section 45.*

The members of the executive board and of the supervisory board of a financial institution operating as a joint-stock company or as a cooperative and the executive officers of a financial institution operating as a branch office shall be responsible for the financial institution to perform the authorized activities in accordance with the provisions set forth in this Act and in other legal regulations.

#### *Section 46.*

The executive officers and employees of a financial institution shall at all times act with due diligence and expertise consistent with the professional requirements applicable for their respective positions, also in view of the interests of the financial institution and its customers, in compliance with the relevant legal regulations.

#### *Section 47.*

(1) The following shall be authorized to sign on behalf of the company, including disposal over bank accounts, and to undertake any commitment related to financial service activities on behalf of the credit institution:

*a)* in the case of credit institutions operating as joint-stock companies, two members of the board of directors or two executive officers,

*b)* in respect of a branch office of a foreign credit institution, two executive officers jointly.

(2) The joint right to sign as specified in Subsection (1) may be transferred as joint right to sign in accordance with the order of procedure defined in the internal rules and regulations approved by the credit institution's board of directors. The internal rules and regulations that stipulate the right to sign of the persons undertaking commitments on behalf of the credit institution must be presented when requested by any of the credit institution's customers.

*Section 48.*

The executive officers or the auditor of a financial institutions shall immediately notify the Commission if

a) there is any danger that the financial institution will not be able to fulfil the responsibilities arising from financial service activities or comply with the provisions of this Act, other legal regulations enacted by authorization of this Act, Act LX of 1991 on the National Bank of Hungary (hereinafter referred to as "NBH Act"), the legal provisions on money circulation and foreign exchange regulations,

b) the financial institution is unable to meet its payment obligations, or

c) the reason defined in Section 29 for revoking the financial institution's operating license and foundation permit has occurred,

d) the financial institution's solvency margin is less than 120% of the pertinent capital requirement at the time junior subordinated loan capital is repaid,

e) the financial institution does not repay junior subordinated loan capital because, as a consequence of this, it would not be in compliance with the pertinent capital requirement.

## Chapter VII

### Confidentiality

#### **Business Secrets**

*Section 49.*

(1) For the purposes of this Act, 'business secret' shall have the meaning defined in Subsection (2) of Section 81 of the Civil Code.

(2) The owner of a financial institution, the person planning to acquire an interest in the financial institution as well as executive officers and employees of the financial institution shall keep any business secrets made known to them in connection with the operation of the financial institution confidential without any time limitation.

(3) The obligation of confidentiality described in Subsection (2) shall not apply in respect of

a) the Commission,

b) the National Deposit Insurance Fund, voluntary deposit and institutional protection funds,

c) the NBH,

d) the national security service,

e) the State Audit Office,

f) the Economic Competition Office,

g) the Government Control Office, which controls the legality and propriety of the use of central budget funds,

h) property supervisors

acting as within the scope of their official capacity.

(4) The obligation of confidentiality described in Subsection (2) shall not apply, concerning the grounds for procedure, in respect of

a) investigating authorities and the public prosecutor acting within the scope of criminal procedures in progress and investigating charges,

b) the courts acting in criminal cases and civil cases connected with estate, or in bankruptcy and liquidation procedures as well as of proceedings of local self-governments for settlement of debts

acting within the scope of their official capacity.

(5) Upon the investigating authority's "urgent matter" request, financial institutions shall disclose data, whether or not deemed a business secret, from their files which are incidental to the case in question even without the public prosecutor's approval prescribed in specific other legislation.

(6) The disclosure of information by the Commission to the Ministry of Finance on credit institutions, in a manner suitable for the identification of such institution, for the purpose of analyzing national economy procedures and for planning the central budget shall not be construed as violation of business secrets.

## **Bank Secrets**

### *Section 50.*

(1) All facts, information, know-how or data in the financial institution's possession on customers relating to the person, data, financial standing, business activities, management, ownership and business relationships as well as the balance and money movements on the account of a customer maintained with the financial institution as well as to his contracts entered into with the financial institution shall be construed bank secrets.

(2) For the purposes of the provisions of this Act regarding bank secrets, any person who receives financial services from the financial institution shall be considered a customer of the financial institution.

### *Section 51.*

(1) Bank secrets may only be disclosed to third parties, if

a) so requested by the customer of the financial institution or his legitimate representative in a public document or in a private document with full probative force that expressly indicates the bank secrets relating to the customer that may be disclosed; it is not necessary to make the request in a public document or in a private document with full probative force if the customer provides a statement to that extent as an integral part of the contract with the financial institution,

b) this Act grants an exemption from the obligation of bank secrecy,

c) so facilitated by the financial institution's interests for selling its receivables due from the customer or for enforcement of its outstanding receivables.

(2) Based on the provisions of Paragraph b) of Subsection (1), the obligation to keep bank secrets shall not apply in respect of

a) the National Deposit Insurance Fund, the National Bank of Hungary, the State Audit Office, the Economic Competition Office, the Commission, voluntary institutional protection and deposit insurance funds, and the Government Control Office, which controls the legality and propriety of the use of central budget funds, the European Anti-Fraud Office (OLAF) monitoring the protection of the Community's financial interests, when the above are acting within the scope of their official capacity,

b) notaries public in connection with probate proceedings, and the guardian authority acting in an official capacity,

c) bankruptcy trustees, liquidators, fiduciaries, and receivers acting in bankruptcy proceedings, liquidation proceedings, in local self-government debt settlement procedures, and in winding up procedures,

d) investigating authorities and the public prosecutor's office, acting in a pending criminal procedure and seeking additional evidence,

e) courts acting in criminal proceedings, civil proceedings, bankruptcy proceedings, liquidation proceedings, and local self-government debt settlement procedures,

f) organs authorized to use secret service means and to conduct covert investigations if the conditions prescribed in a separate act are provided for,

g) the national security service acting within the scope of its official capacity as defined by law, based upon the special permission of the director-general,

h) the Minister of Internal Affairs and the Minister of Finance as set forth in Subsection (5) Section 17 of Act LXXXIX of 1992 on the System of Allocated and Appropriated Subsidies for Local Self-Governments,

i) tax authorities, customs authorities, and social security agencies in their procedures to check compliance with tax, customs and social security payment obligations for the enforcement of an executable document issued for such debts and for the recovery of any provisions that had been claimed and received unlawfully,

j) bailiffs acting in judicial execution proceedings or in administrative execution proceedings, including the notice to the name and address of the joint holder of a joint account who is not named judgment debtor as specified in Subsection (2) of Section 79/C of Act LIII of 1994 on Judicial Execution, and the Department of Property Administration of the Treasury when wishing to enter the enforcement procedure under authority conferred in the Government Decree on Subsidies for Housing Purposes,

upon the written request of such agencies to the financial institution.

(3) Furthermore, the obligation to keep banking secrets shall not apply

*a)* when the tax authority or the Commission makes a written request for information from a financial institution in order to fulfill the written requests made by foreign authorities pursuant to an international agreement or partnership for cooperation, if the request contains a confidentiality clause signed by the foreign authority,

*b)* in respect of information provided by a credit institution under Subsection (8) of Section 52 Act XCII of 2003 on the Rules of Taxation.

(4) Written requests shall indicate the customer or the bank account about whom or which the agencies or authorities specified in Subsection (2) are requesting the disclosure of banking secrets as well as the type of requested data and the purpose of the request, unless the Commission, proceeding within the scope of its official capacity, or the NBH conducts an on-site inspection.

(5) The entities authorized to receive information according to Subsections (2) and (3) shall use such information solely for the purpose indicated in advance.

(6) Financial institutions may not refuse to provide information, citing their obligation of secrecy, in the cases set forth in Subsections (1) and (3) and in Section 52.

(7) The obligation to keep banking secrets shall not apply when a Hungarian law enforcement agency or the National Police Headquarters makes a written request for information - that is considered bank secret - from a financial institution acting within its powers conferred under Act XV of 2003 on the Prevention and Combating of Money Laundering or in order to fulfill the written requests made by a foreign law enforcement agency or a foreign financial intelligence unit pursuant to an international agreement if the request contains a confidentiality clause signed by the foreign law enforcement agency of financial intelligence unit.

(8) The Commission and the NBH are entitled to obtain banking secrets in the course of data disclosure prescribed for financial institutions in legal regulation.

(9) Furthermore, the obligation to keep banking secrets shall not apply where a financial institution informs the Ministry of Finance of the restrictive measures it has taken on the basis of:

*a)* regulations adopted under Article 60 of the Treaty establishing the European Community on the restrictive measures to be applied relating to liquid assets, other financial interests and economic resources, or on the basis of regulations or decisions adopted under authorization by these regulations;

*b)* common positions adopted under Article 15 of the Treaty establishing the European Union, on the restrictive measures to be applied relating to liquid assets, other financial interests and economic resources, with a view to discharging the obligation contained therein.

(10) With respect to the information obtained under Subsection (9), the Ministry of Finance shall have powers:

*a)* to disclose them to Member States of the European Union and their institutions;

*b)* to retain them for five years for the purpose of cross referencing; and

*c)* to use them for statistical purposes if the person to whom it pertains cannot be identified.

#### *Section 52.*

Financial institutions shall satisfy the written requests of investigating authorities, the national security service and the public prosecutor's office without delay concerning its customer's bank account and the transactions on such account if it is alleged that the bank account or the transaction is associated with

*a)* trafficking of narcotic drugs,

*b)* terrorism,

*c)* illegal trafficking in arms,

*d)* money laundering,

*e)* organized crime.

#### *Section 53.*

(1) The financial institution shall not inform the customer affected on any disclosure of data made under Paragraphs *d)*, *f)* and *g)* of Subsection (2) of Section 51, Subsection (7) of Section 51 and Section 52.

(2) With the exceptions set forth in Subsection (1), the agency requesting information shall be required to notify the customer affected regarding its receipt of information.

#### *Section 54.*

- (1) The following shall not constitute as a breach of bank secrecy:
- a) the disclosure of aggregate data from which the customers' personal or business data cannot be determined,
  - b) the disclosure of data pertaining to the name of a current account holder or the account holder's current account number,
  - c) the disclosure of data by a financial institution that is engaged solely in the activities specified in Paragraphs *b)-c)* and *e)-f)* of Subsection (1) of Section 3, a legal person engaged solely in underwriting guarantees and providing surety facilities to the central credit information system and the disclosure of data - as specified in Chapter XX/A - from this system to the reference data providers referred to in Point 3 of Chapter V of Schedule No. 2,
  - d) the disclosure of data to an auditor authorized by a financial institution, a fiduciary, a legal or other expert as well as to an insurance institution providing insurance coverage for a financial institution to the degree necessary for performing an insurance contract,
  - e) the disclosure of data - with the written consent of the financial institution's board of directors - to an owner who has a qualifying participation in the financial institution, a person (company) who would like to acquire a qualifying participation, a company planning to take over the business as well as auditors, and legal or other experts authorized by such owner or such potential owners,
  - f) upon request of court, presenting the specimen signature of the persons authorized to dispose over the account of a party to a suit,
  - g) in compliance with bank secrecy regulations, providing data by the Commission suitable for individual identification of credit institutions
    - 1) to the Central Statistics Office for statistical purposes,
    - 2) to the Ministry of Finance for the purpose of analyzing national economy trends and for planning the central budget,
  - h) the conveyance of data by a financial institution to a foreign financial institution if the customer of such financial institution (data subject) has consented in writing and the foreign financial institution (data receiver) is able to satisfy the conditions of data management required by Hungarian law regarding each data item, and if the country where the registered office of the foreign financial institution is located has legal regulations on data protection which satisfies the requirements of Hungarian legal regulations,
  - i) disclosure of data to the Commission with jurisdiction over the registered office of the foreign financial institution that is necessary for its supervisory activities, and the disclosure of data between the foreign supervisory authority and the Commission in the manner stipulated in the cooperation agreement, if the agreement contains provisions pertaining to confidential management and use of data as well as the consent of the Commission to forward the data given to the foreign supervisory authority to the competent foreign law enforcement agencies,
  - j) disclosure of data that is necessary for carrying out activities that have been outsourced by the credit institution to the outsourcing service provider,
  - k) disclosure of data in order to comply with the regulations stipulated in Chapters XIV and XIV/A of this Act, in Chapters XIX/A and XIX/B of the CMA and in Chapter III/A of Part Eight of the Insurance Act,
  - l) the disclosure by the Commission to the Office of Economic Competition, acting in its official capacity, of data on credit institutions that can be used for identification,
  - m) data disclosed by the National Deposit Insurance Fund to foreign deposit insurance schemes and to foreign supervisory authorities under the cooperation agreement if they guarantee equivalent or better legal protection for the processing and utilization of such data with the protection afforded under Hungarian law.
  - n) disclosure made in connection with the amount and maturity of a claim of a third party relating to the financial institution's exposures covered by such third party,
  - o) disclosure of the client's account number and
    - 1. - if a natural person - the client's surname and forename, married name (if applicable), and address
    - 2. - if a legal person - the client's name, abbreviated name, registered office, and address of any branch office (if applicable)
 to a foreign financial institution in connection with providing correspondent banking services.
- (2)-(10)

## **Common Provisions on Business and Bank Secrets**

### *Section 55.*

- (1) The persons acquiring any business or bank secrets must keep them confidential without any time limitation.



(2) By virtue of the obligation of secrecy, no facts, information, know-how or data within the sphere of business and bank secrets may be disclosed to third parties beyond the scope defined in this Act without the consent of the customer or the financial institution, or used beyond the scope of official responsibilities.

(3) The person acquiring any business or bank secrets may not utilize such for his own benefit or for the benefit of a third person, whether directly or indirectly, or to cause any disadvantage to the financial institution or its customers.

(4) In the event of termination of a credit institution without a successor, the business documents managed by the credit institution and the documents containing banking secrets may be used for archival research conducted after sixty years of their origin.

#### *Section 55/A.*

Any information that is declared by specific other legislation to be information of public interest or public information and as such is rendered subject to disclosure may not be withheld on the grounds of being treated as a business secret.

## **Chapter VIII**

### **Incompatibility**

#### *Section 56.*

An executive officer shall immediately notify the Commission

a) when elected member of the board of directors or supervisory board of another financial institution or when terminating such office,

b) when acquiring a qualifying participation in a company or when terminating such share,

c) when indictment in a criminal proceeding described in Subsection (6) of Section 44.

#### *Section 57.*

(1) An executive officer or an employee authorized to make business decisions may not participate in the preparation or passing of decisions relative to any commitment by the financial institution if he

a) holds an executive position, or

b) has a qualifying participation

at the customer on behalf of whom the risk is assumed.

(2) An executive officer, and an employee or appointed expert of the financial institution may not participate in the preparation and passing of decisions in which such officer, employee or expert or their close relatives or the enterprise owned by such persons, whether directly or indirectly, has any business interests.

(3) An executive officer may not assume any contractual obligations and may not enter into any sales contract with the financial institution in which he is a member of the board of directors or supervisory board, or is a managing director thereof, unless the board of directors has granted prior consent by unanimous decision.

(4) The provision set forth in Subsection (3) must be duly applied regarding any executive officer of the financial institution holding office in the board of directors or supervisory board or as a managing director concerning his plans to conclude a contract with another financial institution of the same bank group. In this case, the prior consent of the board of directors of the contracting financial institution and - if it is not the same as the controlling credit institution - of the controlling credit institution shall be required.

## **Insider Dealing**

#### *Section 58.*

(1) Insider information shall be construed as any information related to the financial institution's or its customer's financial standing, economic or legal position, or the expected changes therein which has not yet been made public

and if having been made public, it could have a significant influence on the opinion on the financial institution or its customer.

(2) For the purposes of this provision the following shall be treated as insider persons:

- a) any person who is an executive officer and any person who is regarded as a manager or executive officer by this Act and the financial institution's internal rules and regulations,
- b) any person performing official and expert's activities and having access to insider information in the course of his activities connected with the financial institution,
- c) the close relatives of the persons referred to in Paragraphs a)-b), and
- d) any person who has obtained insider information, including the head or employee of a foreign financial institution as well.

#### *Section 59.*

(1) The person defined in Subsection (2) of Section 58 may not use his position and the information obtained through such position in connection with the financial institution's operations and customers, nor may he convey such information to unauthorized persons or allow unauthorized persons access to such information.

(2) It is prohibited to conclude any deal, to give any order for transactions or to give any investment advice on the strength of insider information, or with the persons defined in Subsection (2) of Section 58 where any insider information is concerned, based on which the person defined in Subsection (2) of Section 58 or the close relative thereof or any third person acquires any pecuniary advantage or causes any damage to another persons.

### **Internal Loan**

#### *Section 60.*

(1) With the exceptions set forth in Subsections (2) and (3), a credit institution (excluding credit unions) may not assume risk for

a) the executive officers or auditors of the credit institution or of an enterprise closely affiliated with the credit institution,

b) close relatives of the persons referred to in Paragraph a),

c) an enterprise controlled by a person referred to in Paragraphs a) or b), or

d) the sale of an enterprise controlled by a person referred to in Paragraphs a) or b) to a third party.

(2) The restriction specified in Subsection (1) shall not apply to

a) lines of credit connected to current accounts at credit institutions,

b) salary advances made by employers, home loans or other similar loans

up to the amount specified in internal rules and regulations.

(3) Above and beyond the provisions of Subsection (2), a credit institution may grant only personal loans to the person referred to in Subsection (1) based on a decision made by two-thirds majority of the members of the board of directors in attendance and in compliance with the regulations approved by the board of directors, and shall keep separate records thereon. In respect of a credit institution operating as a branch office, a unanimous decision of the executive officers is required for granting a personal loan which qualifies as an internal loan. The decision passed by the board of directors of the credit institution or by the executive officers of the branch office shall also include the interest rates and the terms of installments.

### **Follow-up Loans**

61-61/A.

## **Chapter IX**

### **Management of Financial Institutions**

### **Bodies of Management and Control**

*Section 62.*

- (1) All members of the board of directors must be natural persons.
- (2) The board of directors of a credit institution shall have at least two members being in the employment of the credit institution (hereinafter referred to as "internal members").
- (3) The board of directors of a cooperative credit institution shall have at least one internal member.

*Section 63.*

- (1) The board of directors of a credit institution shall have at least two members holding Hungarian citizenship and qualified as residents according to foreign exchange laws and having had a permanent residence in Hungary for at least one year.
- (2)
- (3) The internal members of the board of directors shall be elected from among the managing directors of a credit institution. Any person who has been the auditor of the credit institution or of a financial institution with a close link to the credit institution during the preceding three years may not be elected to the board of directors.
- (4) Termination of the employment of internal members of the board of directors shall also constitute termination of their membership in the board of directors.

*Section 64.*

In respect of financial institutions employer's rights over the managing directors shall be exercised by the board of directors.

*Section 65.*

- (1) All meetings of the board of directors of the financial institution shall be recorded in minutes. The minutes shall include
  - a) the venue and date of the meeting,
  - b) the names of the members of the board of directors attending,
  - c) the motions presented,
  - d) the resolutions approved, and any protests raised against such decisions.
- (2) A member of the board of directors may request his statement to be recorded word by word in the minutes.
- (3) The minutes shall be signed by the chairman of the meeting and by two other members of the board of directors attending. A copy of the minutes shall be sent to all members of the board of directors and the chairman of the supervisory board within fifteen days following the meeting, regardless if they were present or not.
- (4) The board of directors may only make valid decisions by telephone, fax, telex or some other manner of the like within the time frame specified in the bylaws, if the percentage of votes of the members of board of directors - as prescribed in the bylaws - is reduced in a private document with full probative force and sent to the registered office of the financial institution.

*Section 66.*

- (1) All members of the supervisory board must be natural persons.
- (2) The supervisory board is a body consisting of at least three but not more than nine members; with the exception of the employees' representatives, members of the supervisory board may not be in the employment of the financial institution.
- (3) The supervisory board shall, among others, have the following responsibilities:
  - a) ensure that the financial institution has a comprehensive controlling system affording suitable facilities for effective operation,
  - b) present its nomination to the general meeting for the auditor to be elected, and for his remuneration,
  - c) review the financial institution's annual and interim financial reports,
  - d) directing the internal control organization, including
    - 1) approval of the internal control unit's annual control plan,

- 2) analysis of the reports prepared by internal control at least once every six months, and overseeing the implementation of the necessary measures,
- 3) the appointment, if necessary, of outside experts to assist in the work of the internal control,
- 4) recommendation of personnel changes in the internal control unit.
- e) file its recommendations and proposals based on the findings of internal control procedures.
- f)
  - (4) The prior approval of the supervisory board shall be necessary for taking decisions pertaining to the establishment and termination of the employment of the directors and employees of the internal control organization and for establishing their remuneration.
  - (5) The chairman of the supervisory board shall send copies of the minutes, proposals and reports to the Commission within ten days following the supervisory board meeting which concern any items on the agenda discussed by the supervisory board, the subject matter of which is a series violation of the internal rules and regulations of the financial institution or a serious case of misconduct within the management circles.
  - (6) Only the supervisory board, the head of the internal control unit or - with the consent of the supervisory board or by its subsequent order - the executive officer may stipulate any additional control and supervisory responsibilities and duties for the internal control unit apart from what is contained in the annual plan.
  - (7) The executive officer shall directly exercise employer's rights over internal control.

*Section 67.*

- (1) Banks and specialized credit institutions shall operate an internal control regime.
- (2) The purpose of the internal control regime is
  - a) to promote the lawful operation of the credit institution,
  - b) to oversee compliance with the provisions of the credit institution's internal rules and regulations,
  - c) to uncover and report any deviation from the legal regulations or the internal rules and regulations and to propose corrections for any discrepancies that are uncovered,
  - d) to provide the necessary financial and other information for making decisions,
  - e) to protect the assets of the credit institution and the customers and safeguard the interests of the owners.
- (3) The components of the internal control regime are internal control (control embedded in the process, management control and the internal control department) and the management information system.
- (4) The internal control regime must be consistent with the characteristics, extent, composition, and risks of the services provided by the credit institution.
- (5) Cooperative credit institutions and financial enterprises shall employ at least one internal controller. Cooperative credit institutions and financial enterprises may enter into written agreements stating that there is no objection to the mutual employment of an internal controller. The same person may be employed as internal controller at no more than three cooperative credit institutions or financial enterprises.
- (6) The organizational structure, powers and responsibilities of the internal control department, the professional requirements for the internal controller, and the rules of procedure must be written down in the internal rules and regulations.
- (7) The responsibilities of the internal control department (internal controller) of the financial institution shall be
  - a) to inspect the operation of the financial institution and ascertain that it is in compliance with the internal rules and regulations, and
  - b) to inspect the financial institution's financial services and activities auxiliary to financial services in terms of legality, security, and transparency;
 and
  - c) all other things conferred upon the internal controller by specific other legislation.
- (8) The internal control department
  - a) shall send its reports
    - 1) to the supervisory board and the board of directors,
    - 2) in the case of branch offices, to the founder's supervisory board and board of directors or to their appropriate bodies; moreover,
  - b) shall, if necessary, have its reports provided to the Commission.
- (9) The director of the internal control department, or the person entrusted with control duties where the financial institution employs only one internal controller,
  - a) must have a college or university degree in the area specified in Subsection (3) of Section 68, or must be a certified chartered accountant with at least three years of professional experience,

b) shall have no criminal record.

*Section 68.*

(1) Any person to be appointed or elected executive officer of a credit institution operating as a joint-stock company or a cooperative or as executive employee of a branch office shall

a) meet the general requirements set out in Section 44 pertaining to persons in executive positions;

b) be reported to the Commission - for the purpose of obtaining the preliminary approval - thirty days prior to the planned election or appointment, and the approval has been granted by the Commission or it is to be considered as granted based on Subsection (2) of Section 44;

c) have

1) a university or college degree in the relevant field and at least four years of management experience gained at a credit institution,

2) a university or college degree in the relevant field and at least five years of management experience gained at the NBH, the Commission, the National Deposit Insurance Fund or at voluntary deposit and institutional protection funds, or at an equivalent foreign institution,

3) a college or university degree in the relevant field and at least six years of relevant management experience - acquired in the private sector or in public administration, or

4) a degree of higher education in a non-related field, and at least six years of management experience at a financial institution or investment company of the same type or size.

(2) The notification referred to in Paragraph b) of Subsection (1) must include the professional credentials of the person proposed to be appointed as well as the documents or the authenticated copies thereof in proof of compliance with the requirements set forth in Subsection (1), and a statement in respect of the criminal procedure defined in Subsection (6) of Section 44.

(3) For the purposes of Points 1-3 of Paragraph c) of Subsection (1), a person having a university or college diploma in economics, law, finance and accountancy, in foreign trade, auditing, or higher education or post graduate qualification in the banking profession, particularly as a banking consultant, shall be regarded as a person having a degree of higher education of the relevant field.

(4) Any person to be appointed executive officer of a financial enterprise shall

a) meet the general requirements set out in Section 44 pertaining to persons in executive positions;

b) be reported to the Commission - for the purpose of obtaining the preliminary approval - thirty days prior to the planned election or appointment, and the approval has been granted by the Commission or it is to be considered as granted based on Subsection (2) of Section 44;

c) have

1) a college or university degree,

2) at least three years of professional experience at a financial institution, the NBH, the Commission or the civil service or

3) at least three years of management experience in another area of business.

(5) The notification referred to in Paragraph b) of Subsection (4) must include the professional credentials of the person proposed to be appointed as well as the documents or the authenticated copies thereof in proof of compliance with the requirements set forth in Subsection (4), and a statement in respect of the criminal procedure defined in Subsection (6) of Section 44.

*Section 69.*

(1) At least two executives, under contract of employment, must provide the management for a credit institution operating as a joint-stock company or a cooperative, and two persons in executive positions, under contract of employment, must provide the management for a branch office of a third-country credit institution.

(2) The staff of executive officers of the branch office of a third-country credit institution shall include at least one Hungarian citizen who is considered resident according to foreign exchange laws and who has a permanent residence in Hungary for at least one year.

## Internal Organizations

*Section 69/A.*

(1) Any credit institution that is engaged in investment services or activities auxiliary to investment services shall adopt an internal organizational, operational and procedural mechanism, within which the organizational units of financial services and investment services function as separate units. For this purpose, the activities defined in Paragraphs l) and n) of Subsection (1) of Section 3 shall be construed as investment services, with a view to Subsection (2) of Section 18/A as well.

(2) The purpose of such separation is to prevent the credit institution from influencing transactions between its customer, the various credit institution divisions, and between credit institutions and other participants.

(3) The organizational units operating independently within the credit institution may exchange bank secrets and securities secrets as prescribed in the internal rules and regulations. Such rules and regulations shall include provisions to allow bank secrets and securities secrets to be obtained only by the person for whom information is necessary to discharge his/her duties.

(4) The internal rules and regulations shall be submitted to the Commission.

***PART III***

***PRUDENT OPERATION OF FINANCIAL INSTITUTIONS***

**Chapter X**

**General Regulations**

*Section 70.*

Credit institutions, in due observation of the provisions on prudent operation, shall manage the funds placed in its custody as well as its own resources so as to maintain liquidity and solvency at all times.

**Chapter XI**

**Capital Requirements**

**Equity Capital**

*Section 71.*

(1) The amount of a financial institution's own funds may not be less than the minimum amount of subscribed capital prescribed in Section 9.

(2) If the amount of a credit institution's own funds falls below the minimum level prescribed in Subsection (1), the Commission shall give the credit institution a maximum of eighteen months to bring its own funds to compliance.

*Section 72.*

(1) If the amount of a financial institution's own funds falls below the amount of subscribed capital, the Commission may compel the financial institution's board of directors to convene the general meeting.

(2) In the case defined in Subsection (1), the general meeting shall decide whether the financial institution shall reduce the subscribed capital or the owners who have a qualifying participation shall provide for the financial institution's own funds to be restored to at least the amount of the prescribed subscribed capital.

**Reducing the Subscribed Capital**

*Section 73.*

(1) In respect of the reduction of the subscribed capital of a credit institution, if the institution's capital adequacy reaches or exceeds the limit prescribed in Subsection (2) of Section 76 following reduction of the subscribed capital, the receivables due therefrom shall be considered secured according to the provisions set forth in the Act on Business Associations.

(2) In the case described in Subsection (1), the resolution of the general meeting stipulating the reduction of the credit institution's subscribed capital must be made public by the board of directors in the manner set forth in the bylaws on two consecutive occasions with an interval of at least fifteen days. Upon providing proof of the publication of the subscribed capital reduction, the court of registry shall register the reduction of the subscribed capital upon request.

(3) In respect of the reduction of the subscribed capital of a credit institution, if the credit institution's capital adequacy ratio drops below the limit prescribed in Subsection (2) of Section 76 following reduction of the subscribed capital, but the general meeting ordering the reduction also resolved to have the capital increased in result of which the capital adequacy ratio reaches or exceeds the limit prescribed in Subsection (2) of Section 76, the receivables due from such credit institution shall be considered secured pursuant to the provisions set forth in the Act on Business Associations (hereinafter referred to as "Companies Act") and the provisions set forth in Sections 271-272 of the Companies Act shall not be applied.

(4) The increase and/or reduction of the subscribed capital, as described in Subsection (3), shall not be registered by the court of registry if the increase of capital fails to take place or fails to reach the extent in result of which the capital adequacy ratio of the credit institution would reach or exceed the limit prescribed in Subsection (2) of Section 76.

(5) If there is any negative value among the components of a financial institution's own funds, priority must be given to resolving the negative value by reclassifying the components of own funds that are over the subscribed capital - pursuant to the Accounting Act - and, in order to abate the loss, by reducing the capital so as to increase the other components of own funds, and only with regard to the remaining subscribed capital may the owners reduce capital for the purpose of disinvestment.

## **Solvency Margin**

*Section 74.*

(1) The solvency margin of a credit institution shall be determined as illustrated in Schedule No. 5.

(2) In respect of the merger of credit institutions, the subscribed capital of the general legal successor or the credit institution taking over the other institution, cannot be less than the amount of the solvency margin of the merging credit institutions prior to the merger.

## **General Reserves**

*Section 75.*

(1) A credit institution shall create general reserves from its after-tax profits prior to paying dividends and shares.

(2) A credit institution shall place ten percent of the after-tax profits of the year into general reserve.

(3) Upon request, a credit institution may be exempted by the Commission from the obligation to create general reserves if its solvency index (solvency ratio) is above twelve per cent and it has no negative profit reserves.

(4) A credit institution may pay dividends or shares only if it has created the general reserves described in Subsection (2) in the calendar year or if the Commission has granted exemption from the obligation to create general reserves.

(5) A credit institution may use general reserves only to offset the losses incurred during its activities.

(6) A credit institution may regroup its available profit reserves in whole or in part into general reserves.

## **Capital Adequacy of Credit Institutions**

*Section 76.*

(1) A credit institution - for the purpose of maintaining solvency and the ability to fulfil liabilities - must have a solvency margin complying at all times (in all survey periods) with the amount of the risk of the financial and investment activities performed thereby, which may not be less than the minimum subscribed capital amount stipulated in Section 9 as a prerequisite for authorization.

(2) A credit institution shall continuously maintain a solvency index of at least eight percent, as calculated by the formula prescribed by law.

(3) In order to ascertain a financial institution's capital requirements, a trading book must be kept to record the investment instruments in the trading portfolio that are exposed to the market risks fundamentally connected with investment and financial services - including the activities conducted with investment instruments between credit institutions, between credit institutions and investment services, between credit institutions and the institutional investors defined in the CMA, and between credit institutions and the National Bank of Hungary as well as the purchase and swap transactions conducted with bonds issued by the credit institutions themselves - and the risks undertaken in connection with these.

(4) Credit institutions must apply the rules of the CMA on trading books and large exposures with the understanding that credit institutions must be construed where the CMA mentions investment service providers or investment enterprises.

(5) In addition to the solvency margin required to cover the solvency index referred to in Subsection (2), credit institutions must have sufficient solvency margin - in an amount specified in specific other legislation - to cover the positions and exposures recorded in the trading book specified in Subsection (3) and the commodity risks and foreign exchange risks extant in the whole of the authorized activities. If the solvency margin is less than one hundred and twenty per cent of the capital requirement specified in Subsection (2) and in this Subsection, the Commission must be notified of all payments made in connection with the junior subordinated loan capital contained in Point 19 of Schedule No. 5.

(6) When so authorized by the Commission, a credit institution need not keep a trading book if

a) its revenue from investment services - including the revenue from activities conducted with investment instruments between credit institutions, between credit institutions and investment service providers, and between credit institutions and the National Bank of Hungary, as well as the revenue from the purchase and swap transactions conducted with bonds issued by the credit institutions themselves - does not exceed five per cent of the amount of received interest and similar income, revenue from other financial services, other revenue, revenue from investment services, and quarterly net sales revenue from non-financial and non-investment services, and

b) the aggregate value of the trading book positions - whether positive or negative - does not exceed four billion forints.

(7) A credit institution may, when so authorized by the Commission, be exempt from the obligation specified in Subsection (3) if

a) within one calendar year it exceeds the amounts referred to in Subsection (6) in no more than one quarter so that the percentage specified there does not exceed six per cent, and

b) the aggregate value of the trading book positions - whether positive or negative - does not exceed five billion forints.

(8) Credit institutions must report quarterly to the Commission the percentages referred to in Subsection (6) and the aggregate value of the trading book positions.

(9) Credit institutions must compute - in a manner prescribed in specific other legislation - the amount of capital necessary for covering the positions and exposures recorded in the trading book on a daily basis.

(10) If a credit institution keeps a trading book, the Commission may not authorize any exemption from any obligation relating to the trading book.

## Chapter XII

### Limitation of Exposures, Regulations on Transactions

#### Exposures

##### *Section 77.*



(1) Financial institutions, other than financial holding companies, must adopt internal rules and regulations, subject to approval by the board of directors, to provide sufficient facilities to establish the substantiality and transparency of placements and exposures as well as to control the assessment of risks and to reduce them.

(2) Financial institutions may only conclude transactions that involve any degree of exposure in writing. Oral transactions made in the money and capital markets must be confirmed in writing.

#### *Section 78.*

(1) Prior to deciding on a placement, the credit institution must ascertain the existence, value and enforceability of the necessary collaterals and securities. The documents substantiating such decision must be attached to the contract for the deal or to the discounted bill.

(2)

(3) A credit institution may not accept the following as a collateral:

a) self-issued securities incorporating membership rights,

b) securities incorporating membership rights that have been issued by an enterprise with close link to the credit institution;

c) the shares of a public limited liability company that is controlled by another company - holding a qualified majority as defined in the Companies Act - with close links to a credit institution that is subject to supervision on a consolidated basis.

d)

(4) During the term of the contract involving an exposure the credit institution shall regularly monitor and document the implementation of the contractual terms including any changes in the customer's financial and economic standing and the conditions described in Subsection (1).

## **Limitation of Large Exposures**

#### *Section 79.*

(1) A credit institution's exposure to a single client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10 per cent of its own solvency margin.

(2) The combined net value of a credit institution's exposures to a single client or a group of connected clients may not exceed twenty-five percent of the credit institution's solvency margin.

(3) The total value of a credit institution's large exposures may not exceed the eightfold amount of the credit institution's solvency margin.

(4) The liabilities stated in Paragraph c) of Point III.10.1 of Schedule No. 2 - with the exception of the futures transactions concluded by the credit institution - must be reckoned at fifty per cent value if a separate legal regulation on the calculation of the solvency ratio defines them as low-risk or risk-free transactions. The futures transactions concluded by credit institutions must be reckoned by weighting the risk of the transaction in the manner specified in specific other legislation on the calculation of the solvency ratio.

(5)

(6) For the definition of large exposures, the risks assumed in connection with financial service and investment service activities shall be accounted jointly. The limit specified in Subsection (2) may be exceeded by the exposures made in connection with investment service activities if the credit institution is in possession of the capital required by law to cover such exposures.

(7) If the given client or group of connected clients is the subsidiary or parent company of the credit institution, the subsidiary of the given parent company, an owner with a qualifying participation in the credit institution, or an enterprise in which the credit institution or the owner of the credit institution is a member of the board of directors, a member of the supervisory board, an executive officer, or a close relative of one of these has a qualifying participation; the percentage specified in Subsection (2) shall be twenty per cent.

(8) On the basis of the rules and regulations approved by the board of directors, the credit institution shall adopt decisions concerning the exposures referred to in Subsection (7) with a two-thirds majority of the members of the board of directors attending. Credit institutions shall keep separate records on exposures.

(9) The decisions referred to in Subsection (8) on exposures must contain the terms and conditions of interest and repayment.

(10) If a credit institution exceeds the limitation referred to in Subsections (2), (3), and (7) as a consequence of the ownership structure of the credit institution's customers or organizational changes therein, the Commission may exempt the credit institution - subject to specific conditions - from deducting the excess amount from the solvency margin for up to one year.

(11) Credit institutions shall immediately notify the Commission if the exposure referred to in Subsection (7) receive a below average or worse rating.

(12) If there is any dispute, the Commission shall decide whether the exposure is to be rated according to Subsection (7).

#### *Section 80.*

(1) The provisions of Subsections (1)-(3) and (7) of Section 79 shall not apply

a) to exposures to the central budget (state treasury), special state funds governed under specific other legislation, the National Bank of Hungary, or Zone A countries or central banks,

b) to the segments of the exposures covered by the guarantee transactions granted by the Hungarian Export-Import Bank Ltd. under joint and several guarantee provided by the central budget,

c) to the segments of the exposures covered by a legal entity dealing in assumption of sureties and guarantees, if provided in addition to the joint and several guarantee granted by the central budget,

d) to exposures guaranteed by avals undertaken by the central budget and guarantees undertaken by the NBH, by Zone A countries or central banks or the European Communities,

e) to any exposure covered by deposits made in the currency of a Zone A country earmarked as collateral, certificates of deposit given as collateral, government bonds issued in Zone A countries, securities issued by the central bank of a Zone A country, or debt securities issued by the NBH, unless the depositor of the collateral is undergoing liquidation proceedings,

f) in the case of export credit contracts covered by the Hungarian Export Credit Insurance Corporation's non-negotiable risk policy up to the insured amount, less any deductible if the export sales revenue has been transferred to a credit institution and the credit institution is entitled to indemnification from the insurance contract,

g) to exposures to the credit institution's parent company, another subsidiary of the given parent company or the credit institution's own subsidiary if the supervision on a consolidated basis to which the credit institution is subject applies to the companies concerned.

h) to exposures to the European Communities,

i) to exposures, the collateral for which is securities ranked zero risk weighted pursuant to specific other legislation and issued by Zone A countries or central banks or the European Communities,

(2) The credit institution must keep separate records on the securities described in Subsection (1).

(3) Regarding the exposures contained in Paragraph d) of Point 10.2 of Chapter I of Schedule No. 2, the provisions contained in Subsections (1)-(3) and (7) of Section 79 shall apply to the secured customer receivables purchased by a mortgage loan company, effective on the date on which the mortgage was purchased.

#### *Section 81.*

(1) In terms of the assessment of large exposures, the collaterals due to the credit institution as well as the receivables of the client or group of connected clients due from the credit institution - with the exceptions set forth in Subsection 80 - shall not be deducted.

(2) The credit institution's rules and regulations must define the order of judgement of the application relating to large exposures, making of decisions relating to large exposures, and of the separate recording and regular monitoring thereof.

## **Limitation of Exposures Related to Acquisition of Ownership**

#### *Section 82.*

(1) A credit institution may not assume risks for transactions whose purpose is for a customer to purchase shares giving access to company capital or securities treated as core loan capital, subsidiary loan capital or subordinated loan capital that has been issued by the credit institution or another company with close links to the credit institution.

(2)

(3) If a credit institution grants a loan for the purchase of shares issued by an enterprise or for acquiring a business share in an enterprise to which it is already exposed, it shall take into consideration this indirect risk created thereby when assuming a risk in respect of the client.

(4) No loans may be granted for purchasing securities issued by the credit institution itself, nor for acquiring ownership share in a company in which the credit institution has a qualifying participation.

## **Investment Restrictions**

### *Section 83.*

(1) A credit institution may not acquire or hold investments that constitute a direct or indirect ownership share in a company and whose net value is in excess of fifteen percent of its solvency margin, with the exception of other financial institutions, investment enterprises, commodities brokers, organizations providing clearing or settlement services under the CMA, investment fund managers, exchange market operators, insurance and reinsurance companies or associated companies.

(2) A credit institution may not acquire or hold any direct or indirect ownership share, calculated on net value, in any company to an extent exceeding fifty-one percent of the company's subscribed capital, with the exception of other financial institutions, investment enterprises, commodities brokers, organizations providing clearing or settlement services under the CMA, investment fund managers, exchange market operators, insurance and reinsurance companies, or associated companies.

(3) The total net amount of a credit institution's qualifying participation held in enterprises other than financial institutions, investment enterprises, commodities brokers, organizations providing clearing or settlement services under the CMA, investment fund managers, exchange market operators, insurance and reinsurance companies, or associated companies may not exceed sixty percent of its solvency margin.

(4) In terms of the restrictions described in Subsections (1)-(3), ownership shares, acquired by the credit institution for a temporary period of not more than three years of the date of execution of the contract, for reducing losses deriving from financial services or acquired as a result of swap transactions for partial share in loans or of a liquidation - registered and managed separately and rated regularly - must not be taken into consideration. Furthermore, the ownership shares recorded in the trading book need not be taken into consideration.

(5) A credit institution may exceed the limits prescribed in Subsections (1)-(3) if it is able to maintain the eight per cent solvency index with its solvency margin less any loan amounts in excess of such limits and if it is able to comply with other restricting requirements on the solvency margin.

## **Real Estate Investment Restrictions**

### *Section 84.*

(1) The total amount of a credit institution's real estate investment portfolio, not to include the real properties directly serving for banking purposes and notwithstanding the provisions of Subsection (2) and (3), may not exceed five percent of its solvency margin.

(2) A credit institution shall, within three years, sell the real properties acquired

a) through loan-real estate trade-off described in Subsection (4) of Section 83,

b) on the basis of Subsection (2) of Section 56 of Act IL of 1991 on Bankruptcy Proceedings, Liquidation Proceedings and Voluntary Dissolution (hereinafter referred to as "Bankruptcy Act").

c) pursuant to Act LIII of 1994 on Judicial Execution.

(3) The consolidated real estate investments of a credit institution that is subject to supervision on a consolidated basis under Subsection (1) of Section 90 shall not include, in addition to what is contained in Subsection (1), the real properties used for business purposes by companies that are supervised on a consolidated basis under Subsection (2) of Section 90.

(4) For the purposes of Subsection (1), the real estate or part of a real estate which is indispensable for the credit institution's business activities, uninterrupted and smooth operations or is required for providing the employees with welfare services and on which the credit institution keeps a separate register shall be construed as directly serving banking purposes.

## **Other Investment Restrictions**

### *Section 85.*

(1) The total - net - amount of a credit institution's investment portfolio may not exceed one hundred percent of its solvency margin.

(2) A credit institution may not acquire any ownership share in or establish any membership relationship with enterprises for the debts of which the credit institution could be subject to bear unlimited responsibility as an owner regardless of its percentage of ownership.

(3) For the investments described in Subsection (1), the following shall not be taken into consideration:

- a) the investments acquired by the credit institution for the purposes of reducing or avoiding losses deriving from financial services if they are owned or held by the credit institution for a period of not more than three years,
- b) acquisition of ownership interest in the Credit Guarantee Corporation during its foundation and thereafter,
- c) government securities,
- d) debt securities, and
- e) the item the equivalent of which has been deducted from the capital when calculating the solvency margin, if recorded and administered separately from other investments.

## **Qualification of Assets**

### *Section 86.*

(1) A credit institution is required to evaluate and appraise its assets (invested assets, receivables, securities, liquid assets and inventories), assumed liabilities as well as other placements on a regular basis.

(2) A credit institution must proceed to take all legal actions within its powers to collect due and outstanding receivables in default.

## **Risk Reserves**

### *Section 87.*

(1) To compensate for any lending and investment risk and country risks that arise in connection with assets, the credit institution shall apply value adjustments and readjustments, and shall create risk provisions to cover interest and exchange risks that have arisen as well as risks connected to off-balance sheet obligations and all other risks.

(2) In addition to the provisions stipulated in Subsection (1), credit institutions may create general risk provisions - up to a maximum of 1.25 per cent of the adjusted balance sheet total - to cover any unforeseeable and indeterminable losses in connection with exposures. Such general risk provisions must be recorded separately among risk provisions.

(3) Credit institutions shall create risk provisions, including general risk provisions, by recording them as expenditure. Risks provisions and general risk provisions must be used primarily for losses arising from exposures.

## **Chapter XIII**

### **Liquidity Requirements**

### **Collection of Resources**

### *Section 88.*

In addition to accepting deposits, credit institutions may only issue bonds and certificates of deposit in order to collect funds from the public.

## **Approximation of Maturity and Liquidity**

*Section 89.*

(1) A credit institution must maintain liquidity (hereinafter referred to as "liquidity") at all times. It shall execute the collection of resources and placement of assets so as to maintain continuous liquidity.

(2) A credit institution shall provide for its obligations described in Subsection (1) by close approximation of the dates of maturity and the sums of its receivables and payables, with due consideration of the type, extent and risks of the activities it performs.

(3) A credit institution shall prepare internal rules and regulations and a plan to ensure the liquidity described in Subsection (1).

(4) Branch offices of third-country credit institutions must maintain a capital maintenance ratio of at least one hundred per cent at all times.

## Chapter XIV

### Supervision on a Consolidated Basis

#### **Supervision on a Consolidated Basis of Credit Institutions**

*Section 90.*

(1) Every credit institution

a) that has at least one credit institution, financial institution or investment company as a subsidiary or that holds a participation in such an institution or

b) whose parent company is a financial holding company  
shall be subject to supervision on a consolidated basis.

(2) Supervision on a consolidated basis shall apply to any credit institution that is subject to supervision on a consolidated basis and

a) to any credit institution, financial institution, investment company and associated company specified under Paragraph a) of Subsection (1) in which the aforementioned credit institution has a dominant influence or participation,

b) to any financial holding company under Paragraph a) of Subsection (1) and to any credit institution, financial institution, investment company and associated company in which it has a dominant influence or participation.

(3) The provisions of the CMA concerning supervision on a consolidated basis shall apply if an investment company is the parent company of a credit institution or if an investment company holds a participating interest in a credit institution and the credit institution is not subject to supervision on a consolidated basis as specified in Subsection (1).

*Section 91.*

(1) The Commission shall have competence pursuant to Subsection (1) of Section 90 to exercise supervision of Hungarian-registered credit institutions on the basis of their consolidated financial situation.

(2) The Commission shall not be required to examine, analyze or evaluate, on an individual basis, the prudent operation of financial holding companies, mixed-activity holding companies, foreign credit institutions, financial holding companies and mixed-activity holding companies.

(3) The Commission may decide at the request of the credit institution referred to in Subsection (1) of Section 90 that a credit institution, financial institution, investment company or associated company need not be included in the consolidation

a) if it is situated in a third country where there are legal impediments to the transfer of the necessary information,

b) if it would be inappropriate or misleading (in particular if the dominant influence or participation is likely to be held for less than one year),

c) if it is of negligible interest as far as the objectives of the consolidated supervision of credit institutions are concerned if the balance-sheet total and the sum of off-balance sheet items - calculated according to Subsection (4) of Section 79 - of the company that should be included is less than the smaller of the following two amounts: 1 per

cent of the balance-sheet total of the parent company or the company that holds the participation or two billion five hundred million forints.

(4) If several companies together reach the smaller of the two amounts specified in Paragraph c) of Subsection (3), they shall no longer be treated as of negligible interest and shall be included in supervision on a consolidated basis exercised by the Commission.

(5) If the Commission finds any evidence in documents or in the course of on-site inspections to substantiate close link, it may declare any credit institution registered in Hungary subject to supervision on a consolidated basis or may decide to extend consolidated supervision over any enterprise.

(6) The Commission may authorize a credit institution that is not subject to supervision on a consolidated basis under Subsection (1) of Section 90 to comply with the risk exposure and capital adequacy regulations in compliance with the provisions of this Chapter, even on a consolidated basis, with a subsidiary of the credit institution's parent company that is registered in Hungary and under the dominant influence of the parent company or in which the parent company has a participation.

## **Prudent Operation of Credit Institutions Subject to Supervision on a Consolidated Basis**

### *Section 92.*

(1) Credit institutions subject to supervision on a consolidated basis [Paragraph a) of Subsection (1) of Section 90] and financial holding companies [Paragraph b) of Subsection (1) of Section 90] shall be responsible for ensuring the prudent operation of the companies they control, including compliance with the risk exposure and capital adequacy regulations.

(2) The boards of directors of credit institutions or financial holding companies that are subject to supervision on a consolidated basis may instruct the boards of directors of credit institutions, financial institutions, investment companies and associated companies in which they have a dominant influence to observe and enforce the regulations pertaining to supervision on a consolidated basis, and the boards of directors must follow these instructions.

(3) The board of directors of a credit institution that is subject to supervision on a consolidated basis must indicate which of its executive members are responsible for the prudent operation of the credit institutions, financial institutions, investment companies and associated companies in which it has a dominant influence.

(4) The supervisory board of a credit institution that is subject to supervision on a consolidated basis shall provide for the proper operation of the internal control system of any credit institution, financial enterprise and investment enterprise it controls.

## **Risk Exposure and Capital Adequacy of Credit Institutions Subject to Supervision on a Consolidated Basis**

### *Section 93.*

(1) Credit institutions subject to supervision on a consolidated basis shall comply, on a consolidated basis, together with the companies referred to in Subsection (2) of Section 90, with the restrictions stipulated in Sections 79-81 concerning large exposures, in Subsections (1) and (3) of Section 83 concerning investments and in Subsection (1) of Section 84 concerning real estate investments.

(2) Credit institutions that are subject to supervision on a consolidated basis shall continuously maintain a solvency ratio of at least eight percentage points, as calculated on a consolidated basis by the formula prescribed by law, for the companies referred to in Subsection (2) of Section 90 and shall have enough capital, calculated on a consolidated basis, to cover the positions and exposures recorded in the trading book, exposure to a single client, large exposures, and the commodity risks and foreign exchange risks extant in the whole of the authorized activities. The formula for the calculation of solvency margin on a consolidated basis is contained in specific other legislation.

(3) Calculations for meeting the risk exposure and capital adequacy requirements on a consolidated basis shall be made by credit institutions and financial holding companies that are subject to supervision on a consolidated basis. Financial holding companies must furnish calculations to credit institutions subject to supervision on a consolidated basis. Subsidiary credit institutions of financial holding companies that are subject to supervision on a consolidated

basis shall separate the records of data used for the calculations on a consolidated basis and shall not use them for any other purpose.

(4) If a credit institution is under a dominant influence or a company holds a participation in a credit institution that has a dominant influence or participation in another credit institution or in a financial institution, investment company or associated company (hereinafter referred to as "multiple dominant influence or participation"), calculations on a consolidated basis concerning the requirements for a solvency rating and for the control of large exposures must be made separately by each credit institution and financial holding company that is subject to supervision on a consolidated basis.

(5) In the case of multiple dominant influences or participations, the Commission may authorize that calculations on a consolidated basis concerning the capital adequacy and risk exposure requirements are made only by the credit institution or financial holding company that is subject to supervision on a consolidated basis.

(6) The Commission shall grant the authorization referred to in Subsection (5) if all of the following conditions are satisfied:

a) the highest level Hungarian-registered credit institution or financial holding company has a dominant influence or participation in the Hungarian-registered credit institution that is to be exempted,

b) the highest level credit institution or financial holding company includes the credit institution to be exempted in the capital adequacy and risk exposure calculations on a consolidated basis,

c) the solvency margin of companies under multiple dominant influences or participations is properly distributed among the companies involved.

## **Methods that can be Used in Calculating Consolidated Compliance with the Regulations on Prudent Operations**

### *Section 94.*

(1) Calculations for consolidated compliance with the capital adequacy and risk exposure requirements shall be made by the methods set out in the Accounting Act. With respect to records and the definition of data and to methods of inclusion Subsection (4) of Section 10 of the Accounting Act shall be disregarded.

(2) The Commission may authorize a parent company to include any of its subsidiaries in the calculation for consolidated compliance with the capital adequacy and risk exposure requirements according to the regulations contained in the Accounting Act on the consolidation of companies controlled by the same persons - whether natural or legal - in the ratio of their capital share if a contract guarantees that the parent company's liability is limited to its ownership share and if the financial position of the co-owners is satisfactory.

(3) A credit institution, financial institution, investment company or associated company that holds a participation shall be included in the calculation for consolidated compliance with the capital adequacy and risk exposure requirements according to the regulations contained in the Accounting Act on the consolidation of companies controlled by a credit institution that is subject to supervision on a consolidated basis jointly with one or more other companies that are not subject to supervision on a consolidated basis and if its liability is limited to its ownership share.

(4) Credit institutions, financial institutions, investment companies or associated companies that hold participations shall be included in the calculation for consolidated compliance with the capital adequacy and risk exposure requirements according to the regulations contained in the Accounting Act on the consolidation of associated companies with the deviations Set forth in Subsections (2)-(3).

(5) Where dominant influence is exercised without any capital involvement, the method of consolidation shall be determined by the Commission.

(6) When calculating the solvency margin on a consolidated basis, the book value of the participation in a company exempted under Subsection (3) of Section 91 shall be deducted as well as the book value of any core loan capital, subsidiary loan capital or subordinated loan capital provided to such a company.

### *Section 95.*

(1) A credit institution, financial institution, investment company or associated company in which a credit institution or financial holding company that is subject to supervision on a consolidated basis has a dominant influence or participation shall be required to supply to the credit institution or financial holding company that is subject to supervision on a consolidated basis all of the data and information necessary for consolidated supervision.

Credit institutions and financial holding companies that are subject to supervision on a consolidated basis must manage such data and information separately, in compliance with the regulations on data protection.

(2) Unless otherwise prescribed by legal regulation, the Commission shall be authorized to request data and information about credit institutions, financial institutions, investment companies or associated companies in which a credit institution or financial holding company that is subject to supervision on a consolidated basis has a dominant influence or participation as it may be necessary to exercise supervision on a consolidated basis.

(3) In connection with its duties relating to supervision on a consolidated basis, the Commission shall be authorized to request information from the persons indicated below - directly or through the credit institution that is subject to supervision on a consolidated basis - and such persons shall be compelled to supply such information unless otherwise prescribed by legal regulation:

- a) persons with close link to the credit institution that is subject to supervision on a consolidated basis,
- b) persons with close link to the parent company of the credit institution that is subject to supervision on a consolidated basis or with other persons having a participation in the credit institution, and
- c) credit institutions, financial institutions, investment companies and associated companies exempted under Subsection (3) of Section 91.

(4) Credit institutions and financial holding companies that are subject to supervision on a consolidated basis shall have sufficient information systems for providing the data and information required for exercising supervision on a consolidated basis and internal control systems that ensure the reliability of the disclosed data and information.

(5) If the parent company of a credit institution that is subject to supervision on a consolidated basis is a mixed-activity holding company, the transactions between this mixed-activity holding company and the companies to which supervision on a consolidated basis also applies shall be supervised by the Commission. The credit institution that is subject to supervision on a consolidated basis shall have adequate risk management processes and internal control mechanisms, including accounting and reporting procedures, in order to identify, measure, monitor and control transactions as provided for above, which shall be subject to overview by the Commission. If the transactions are a threat to the financial position of the credit institution that is subject to supervision on a consolidated basis, the Commission shall take the necessary measures in order to rectify the situation.

## **Notification Requirement**

### *Section 96.*

(1) Credit institutions and financial holding companies shall be required to notify the Commission forthwith concerning the close link referred to in Subsection (2) of Section 90 and Subsection (3) of Section 95, including all changes therein.

(2) The notification requirement under Subsection (1) may be satisfied by the foreign financial holding parent company of a Hungarian credit institution through its credit institution that is subject to supervision on a consolidated basis.

## **Supervisory Control**

### *Section 96/A.*

(1) The Commission shall be authorized to conduct inspections, on site or otherwise, at the companies referred to in Subsections (1) and (2) of Section 90 for compliance with the provisions set out in Sections 90-96.

(2) The Commission shall be authorized to conduct inspections, on site or otherwise, at the persons referred to in Subsection (3) of Section 95 to check the authenticity of the reports, data and information disclosed in connection with supervision on a consolidated basis.

## **The Commission's International Cooperation with the Regulatory Agencies of Other Countries Regarding Supervision on a Consolidated Basis**

### *Section 96/B.*



(1) At the request of the supervisory authority of a third country, the Commission, having considered the availability of reciprocity or on the basis of a valid supervision cooperation agreement, may supply reports, data and information that may be necessary for exercising supervision on a consolidated basis to the third-country supervisory authority if it is able to guarantee legal protection for the processing of such information that is equivalent to or better than the protection afforded under Hungarian law.

(2) At the request of the supervisory authority of a third country, the Commission, having considered the availability of reciprocity, may conduct the inspections specified in Section 96/A, or, if there is a valid supervision cooperation agreement, it may give its consent to the supervisory authority of the third country requesting consent, to an auditor or to another expert designated by it to conduct the inspections.

(3) If the parent company of a credit institution is a third-country credit institution or financial holding company, the Commission shall examine - with a view to exercising supervision on a consolidated basis - as to whether the laws of that third country are in conformity with the provisions laid down in Directive 2000/12/EC of the European Parliament and of the Council concerning supervision on a consolidated basis. The Commission shall consult with Banking Advisory Committee, following which it shall make a decision regarding conformity.

(4) If the laws of a third country are not in conformity with the provisions laid down in Directive 2000/12/EC of the European Parliament and of the Council concerning supervision on a consolidated basis, the Commission shall take over supervision on a consolidated basis, and shall take all appropriate measures at its disposal.

#### *Section 96/C.*

(1) A credit institution that is a parent company shall be supervised on a consolidated basis by the supervisory authority of the Member State in which the credit institution is established.

(2) If the parent company of a credit institution is a financial holding company, supervision on a consolidated basis shall be exercised by the competent supervisory authority of the Member State in which the credit institution is established.

(3) If a Hungarian-registered credit institution and a credit institution established in another Member State are subsidiaries of the same financial holding company, supervision on a consolidated basis shall be exercised - with the exception set out in Subsection (4) - by the supervisory authority of the Member State in which the financial holding company is established.

(4) If a Hungarian credit institution and a credit institution established in another Member State are subsidiaries of the same financial holding company and neither is authorized in the Member State in which the financial holding company is registered, supervision on a consolidated basis shall be exercised on the basis of the agreement between the supervisory authorities of the Member States concerned, including the one in which the financial holding company is registered. In the absence of an agreement, supervision shall be exercised by the supervisory authority supervising the credit institution with the largest balance sheet total or, if the balance sheet total is the same, by the supervisory authority supervising the credit institution first authorized.

(5) Supervisory authorities may depart from the provisions of Subsections (2) and (3) subject to an agreement between them.

(6) An agreement concluded under Subsections (4) and (5) must ensure the flow of information for the objectives of supervision on a consolidated basis as well as collaboration between the agencies involved.

(7) Where supervision on a consolidated basis is not exercised by the supervisory authority of the financial institution that is a parent company, the supervisory authority of the parent company shall supply the supervisory authority exercising supervision on a consolidated basis with information necessary for the objectives of supervision on a consolidated basis.

(8) The Commission shall cooperate with the supervisory authorities of other Member States in exercising supervision on a consolidated basis.

(9) The Commission may supply reports, data and information to the supervisory authorities of other Member States as they are necessary for the objectives of supervision on a consolidated basis.

(10) At the request of the supervisory authority of another Member State, the Commission may conduct the inspections specified in Section 96/A, and it may give its consent for the supervisory authority requesting consent or an auditor or other expert designated by it to conduct the inspections.

## Chapter XIV/A

### SUPPLEMENTARY SUPERVISION

## Financial Conglomerates

### *Section 96/D.*

(1) According to this Act, a financial conglomerate is a group [Schedule No. 2, Chapter II, Point 13] that meets the following conditions:

*a)* at the head of the group:

1. is a credit institution; or

2. is a non-regulated entity, and the group's activities mainly occur in the financial sector within the meaning of Subsection (3); and

*b)* at least one of the entities in the group is within the insurance sector and at least one is within the banking or investment services sector; and

*c)* the consolidated and/or aggregated activities of the entities in the group within the insurance sector and the consolidated and/or aggregated activities of the entities within the banking and investment services sector are both significant within the meaning of Subsection (4) or (5).

(2) The entity at the head of the financial conglomerate:

*a)* is a parent company in which none of the entities in the same financial conglomerate exercises a dominant influence or holds a participating share;

*b)* is a parent company with the largest balance sheet total if the financial conglomerate contains several parent companies that meet the criteria set out in Paragraph *a)*;

*c)* is an entity with the largest balance sheet total of the entities in which none of the entities in the same financial conglomerate exercises a dominant influence or holds a participating share, and if none of the entities in the financial conglomerate qualifies as a parent company that meets the criteria set out in Paragraph *a)*;

*d)* is an entity with the largest balance sheet total if none of the entities in the financial conglomerate meets the requirements set out in Paragraphs *a)*-*c)*.

(3) The activities of a group in different financial sectors shall be deemed significant if the balance sheet total of the regulated and non-regulated financial sector entities in the group as a whole exceeds forty per cent of the combined balance sheet total of the group.

(4) Activities within a financial sector shall be deemed significant, if:

*a)* the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and

*b)* the average of the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group

exceeds ten per cent within the insurance sector and within the banking and investment services sector as well. For the purposes of these calculations the banking sector and the investment services sector shall be treated as a single sector.

(5) Cross-sectoral activities within the financial sector shall be deemed significant within the meaning of Subsection (4) if the balance sheet total of the smallest financial sector in the group exceeds one thousand six hundred billion forints.

(6) The Commission, in its capacity as the appointed coordinator, may - in agreement with the competent authorities concerned - regard a group as a financial conglomerate, and may apply the provisions contained in Sections 96/I-96/J, if:

*a)* the size of its smallest financial sector exceeds five per cent:

1. relative to the average ratio calculated under Subsection (4); or

2. relative to the ratio of the balance sheet total of that sector to the balance sheet total of the financial sector as a whole; or

3. relative to the ratio of solvency requirements of that sector to the total solvency requirements of the financial sector as a whole; or

*b)* the market share exceeds five per cent in Hungary, measured in terms of the balance sheet total in the banking or investment services sectors and in terms of gross premiums written in the insurance services sector.

(7) If the ratios referred to in Subsections (3)-(5) fall below the thresholds specified therein, however, the limit specified in Subsection (3) reaches thirty-five per cent, the limit specified in Subsection (4) reaches eight per cent, and the limit specified in Subsection (5) reaches one thousand three hundred billion forints, then the group shall remain to be regarded a financial conglomerate for three consecutive years.

(8) If the Commission functions as the coordinator, it may decide - with the agreement of the competent authorities concerned - to terminate the supplementary supervision anytime during the three-year period referred to in Subsection (7).

(9) The calculations regarding the balance sheet shall be made on the basis of the aggregated balance sheet total of the entities of the group. For the purposes of this calculation, the entities of the group in which a participating share is held by another entity of the group shall be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the group. In the case of dominant influence the consolidated accounts shall be used.

(10) For the purposes of this Chapter:

*a)* capital requirements of a credit institution shall cover:

1. the solvency margin if the solvency ratio level is defined at eight per cent, or the amount sufficient to achieve the solvency ratio under Point 9 of Subsection (2) of Section 153;

2. the amount by which the limits are exceeded as specified in Point 16 of Schedule No. 5 and the capital requirements for country risks;

3. the positions and exposures recorded in the trading book and the capital requirement for the exchange rate and commodities risk applied for the entirety of activities;

*b)* investment firms shall be subject to the capital requirement defined in Subsection (2) of Section 175 of the CMA;

*c)* the capital requirement of insurance companies shall be the minimum solvency margin referred to in Subsection (3) of Section 121 of the Insurance Act or the minimum guarantee fund referred to in Section 126 of the Insurance Act, whichever is higher;

*d)* the capital requirements of third-country regulated entities shall cover the minimum subscribed capital prescribed for authorization according to the laws of their home country.

(11) Where a financial conglomerate is a subgroup of another financial conglomerate, the provisions of this Chapter shall not apply to the financial conglomerate that is a subgroup.

## **Supplementary Supervision**

### *Section 96/E.*

(1) The objective of supplementary supervision is to exercise prudential supervision of entities at the level of the financial conglomerate. Accordingly, the Commission, in exercising supplementary supervision, shall oversee the exposures, intra-group transactions, solvency position, internal control mechanisms and risk management processes of financial conglomerates at the group level.

(2) Supplementary supervision shall apply to every credit institution that is at the head of a financial conglomerate:

*a)* if it exercises dominant influence or holds a participating share in any of the regulated entities, at least one of which is an insurance company; or

*b)* the parent company of which is a mixed financial holding company which has its head office in the European Union; or

*c)* if it exercises dominant influence in an entity of the insurance services sector.

(3) Supplementary supervision shall include:

*a)* every entity in the financial conglomerate;

*b)* every credit institution in the financial conglomerate, the parent company of which is a regulated entity that has its head office in a third country;

*c)* every credit institution in the financial conglomerate, the parent company of which is a mixed financial holding company that has its head office in a third country.

### *Section 96/F.*

(1) If in accordance with this Chapter the Commission identifies a credit institution it has authorized as being an entity or member of a group which may be a financial conglomerate, supplementary supervision shall apply to this entity and group.

(2) In the interest of identifying a group as a financial conglomerate in accordance with Subsection (1), the Commission shall:

- a) routinely examine the credit institutions it has authorized to establish whether they are a member of a group which may be a financial conglomerate;
- b) cooperate closely with the supervisory authorities of the regulated entities in the group;
- c) inform the competent authorities concerned, if it is of the opinion that a regulated entity that has a registered office in Hungary is a member of a group which may be a financial conglomerate.

*Section 96/G.*

(1) The Commission shall provide for the supplementary supervision of the credit institutions referred to in Subsection (2) of Section 96/E and Paragraphs *b*) and *c*) of Subsection (3) of Section 96/E, that have a registered office Hungary.

(2) The Commission is not required to play a supervisory role in relation to mixed financial holding companies, third-country regulated entities in a financial conglomerate or unregulated entities not belonging to the financial sector, on a stand-alone basis.

(3) Where the Commission discovers the existence of a close link, whether on its own accord or in cooperation with the competent authorities concerned on the basis of documents or inspections, it may subject a credit institution that is registered in Hungary to supplementary supervision, or may extend supplementary supervision to an entity.

(4) The Commission may, by common agreement with the competent authorities concerned:

a) exclude an entity - that has been exempted by the coordinator under Subsection (5) of Section 96/I - from the calculations specified under Subsections (3)-(5) of Section 96/D at the request of the coordinator;

b) take into account compliance with the thresholds envisaged in Subsections (3) and (4) of Section 96/D, at the request of the coordinator, for three consecutive years, and may disregard compliance with the thresholds if there are significant changes in the group's structure; or

c) for the application of Subsections (3) and (4) of Section 96/D, may, in exceptional cases, replace the criterion based on the balance sheet total with parameters based on the income structure or off-balance-sheet activities or add one or both of these parameters, if it is of the opinion that these parameters are of particular relevance for the purposes of supplementary supervision.

## **Prudential Operation of Credit Institutions Subject to Supplementary Supervision**

*Section 96/H.*

(1) Credit institutions subject to supplementary supervision and mixed financial holding companies shall be responsible for ensuring the prudent operation of the entities they control, including compliance with the provisions on exposures and capital requirements.

(2) Credit institutions subject to supplementary supervision and mixed financial holding companies may instruct the entities in the financial sector in which they have a dominant influence to observe and enforce the regulations pertaining to supplementary supervision, and they must follow these instructions.

(3) The board of directors of a credit institution that is subject to supplementary supervision shall indicate the name of its member appointed to oversee the prudential operation of the entities in the financial sector in which it has a dominant influence.

## **Concentration of Exposures, Intra-Group Transactions and Capital Adequacy of Credit Institutions Subject to Supplementary Supervision at the Level of the Financial Conglomerate**

*Section 96/I.*

(1) Credit institutions subject to supplementary supervision are required to ensure that own funds are available at the level of the financial conglomerate which are always at least equal to the capital adequacy requirements and to have adequate capital adequacy policies at the level of the financial conglomerate.

(2) The type of data and information required under Subsection (9) for risk concentration and intra-group transactions shall be defined and calculations for supplementary capital adequacy requirements shall be carried out at

least once a year, either by the credit institution subject to supplementary supervision or by the mixed financial holding company. The results of the calculation and the relevant data for the calculation shall be submitted to the coordinator by the credit institution which is at the head of the financial conglomerate or by the mixed financial holding company.

(3) Where the financial conglomerate is not headed by a regulated entity, or by a mixed financial holding company, the results of the calculation and the relevant data for the calculation referred to in Subsection (2) shall be submitted to the coordinator by the credit institution in the financial conglomerate identified by the Commission, in its capacity as the appointed coordinator, after consultation with the other relevant competent authorities and with the financial conglomerate.

(4) The mixed financial holding company shall hand over the calculations to the credit institution subject to supplementary supervision. Any credit institution that is subject to supplementary supervision and is a subsidiary of a mixed financial holding company shall be required to process the data necessary for the calculations separately, and may not use them for any other purpose.

(5) The Commission, in its capacity as the appointed coordinator, may decide not to include a particular entity in the scope of its supervision when calculating the supplementary capital adequacy requirements in the following cases:

*a)* if the entity is situated in a third country where there are legal impediments to the transfer of the necessary information; or

*b)* if the inclusion of the entity would be misleading with respect to the objectives of supplementary supervision; or

*c)* if the entity is of negligible interest with respect to the objectives of the supplementary supervision.

(6) Prior to the decision of exclusion under Paragraph *b)* of Subsection (5) the Commission, in its capacity as the appointed coordinator, shall - with the exception of urgent cases - consult the competent authorities concerned.

(7) If several entities are to be excluded pursuant to Paragraph *c)* of Subsection (5), they must nevertheless be included in the calculation of supplementary capital adequacy requirements when collectively they are of non-negligible interest.

(8) In the case of a credit institution excluded under Paragraphs *b)* and *c)* of Subsection (5), the competent authorities of the Member State in which that credit institution is situated may ask the entity which is at the head of the financial conglomerate for information which may facilitate their supervision of the credit institution.

(9) The Commission, in its capacity as the appointed coordinator, after consultation with the other relevant competent authorities, shall identify the type of intra-group transactions and risk concentration to take into account for the calculations under Subsections (2)-(4). In these consultations they shall take into account the specific group and risk management structure of the financial conglomerate. In order to identify significant intra-group transactions and significant risk concentration, the Commission, in its capacity as the appointed coordinator, after consultation with the other relevant competent authorities and the conglomerate itself, shall define appropriate thresholds based on regulatory own funds and/or technical provisions.

(10) Insofar as no definition of the thresholds referred to in Subsection (9) has been drawn up, an intra-group transaction shall be presumed to be significant if its amount exceeds at least five per cent of the total amount of capital adequacy requirements at the level of a financial conglomerate.

(11) The formulas for calculations of capital adequacy requirements at the level of a financial conglomerate are contained in specific other legislation.

## **Risk Management Processes and Internal Control Mechanisms of Credit Institutions Subject to Supplementary Supervision at the Level of the Financial Conglomerate**

### *Section 96/J.*

(1) Credit institutions subject to supplementary supervision shall be required to have adequate risk management processes and internal control mechanisms in place at the level of the financial conglomerate.

(2) The risk management processes shall include:

*a)* sound governance and management based on the policies and strategies at the level of the financial conglomerate with respect to all risks they assume;

*b)* adequate capital adequacy policies in order to anticipate the impact of their business strategy on risk profile and capital requirements;

c) adequate procedures to ensure that their risk monitoring systems are well integrated into their organization and that all measures are taken to ensure that the systems are consistent so that the risks can be measured, monitored and controlled at the level of the financial conglomerate.

(3) The internal control mechanisms shall include:

a) adequate mechanisms as regards capital adequacy to identify and measure all significant risks incurred and to appropriately relate own funds to risks;

b) procedures to identify, measure, monitor and control the intra-group transactions and the risk concentration.

(4) All credit institutions included in the scope of supplementary supervision shall have adequate facilities for the production of any data and information which would be relevant for the purposes of the supplementary supervision, as well as means of security and internal control mechanisms to protect such facilities.

## **The Coordinator**

### *Section 96/K.*

(1) The Commission, as the competent authority, shall cooperate with the competent authorities of other Member States of the European Union in selecting a competent supervisory authority to coordinate and exercise supplementary supervision of entities of financial conglomerates (hereinafter referred to as “coordinator”).

(2) The Commission shall exercise the tasks of the coordinator if authorization to the credit institution that is at the head of the financial conglomerate was granted by the Commission.

(3) The Commission shall exercise the tasks of the coordinator if the financial conglomerate is not headed by a regulated entity and:

a) the parent company of the credit institution authorized by the Commission is a mixed financial holding company; or

b) where more than one regulated entity with a head office in the Community have as their parent the same mixed financial holding company with a head office in Hungary, and one of the credit institutions in the financial conglomerate has its head office in Hungary; or

c) the financial conglomerate does not include a credit institution that has been authorized in the Member State where the head office of the mixed financial holding company is located, the most important financial sector in the financial conglomerate is the banking sector and the investment services sector considered together, and the credit institution with a head office in Hungary has the largest balance sheet total.

(4) The Commission shall exercise the tasks of the coordinator, if:

a) the financial conglomerate is headed by more than one mixed financial holding company with a head office in different Member States of the European Union and there is a regulated entity of the financial conglomerate in each of these States; or

b) the financial conglomerate is not headed by a parent company, the most important financial sector in the financial conglomerate is the banking sector and the investment services sector considered together, and the credit institution with a head office in Hungary has the largest balance sheet total within the financial conglomerate.

(5) By way of derogation from Subsections (2)-(4) above, the Commission may exercise the tasks of the coordinator by common agreement with the competent authorities concerned, and appoint a different competent authority as coordinator, taking into account the structure of the conglomerate and the relative importance of its activities in different countries. Before taking its decision, the Commission shall give the conglomerate an opportunity to state its opinion on that decision.

## **Tasks of the Coordinator**

### *Section 96/L.*

(1) The tasks to be carried out by the Commission in the capacity of the coordinator shall include:

a) supervisory overview and assessment of the financial situation of a financial conglomerate;

b) gathering of data and information pertaining to the entities in a financial conglomerate and forwarding them to the competent authorities concerned;

c) assessment of compliance with the rules on capital adequacy and of risk concentration and intra-group transactions within the financial conglomerate as set out in Section 96/I;

*d)* assessment of the financial conglomerate's structure, organization and internal control system as set out in Section 96/J;

*e)* planning and coordination of supervisory activities in cooperation with the relevant competent authorities involved;

*f)* other tasks, measures and decisions assigned to the coordinator and which are necessary in order to achieve the objectives of supervision;

*g)* notification of the entity that is at the head of the financial conglomerate, the competent authorities concerned, the supervisory authority of the Member State where the mixed financial holding company is established and the European Commission when identifying a group as a financial conglomerate and of the appointment of a coordinator.

(2) In order to facilitate and establish supplementary supervision, the Commission, in its capacity as the coordinator, and the other relevant competent authorities, and where necessary other competent authorities concerned, shall have coordination arrangements in place.

## **Cooperation between Competent Authorities**

### *Section 96/M.*

(1) The Commission shall cooperate closely with the competent authorities concerned for supplementary supervision of entities in a financial conglomerate. The Commission shall provide data and information which is essential or relevant for the exercise of supplementary supervision to the other competent authorities.

(2) Cooperation with the competent authorities concerned shall cover the following items:

*a)* identification of the group structure of the financial conglomerate, as well as of the competent authority exercising supervision of the regulated entities in the group;

*b)* monitoring the financial conglomerate's strategic policies and objectives;

*c)* monitoring the financial situation of the financial conglomerate, in particular on capital adequacy, intra-group transactions, risk concentration and profitability;

*d)* identification of the major shareholders with qualifying participation and executive employees of the entities in the financial conglomerate;

*e)* monitoring the organization of the financial conglomerate, risk management and internal control systems at the financial conglomerate level;

*f)* procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;

*g)* monitoring adverse developments in regulated entities of the financial conglomerate which could seriously affect the regulated entities;

*h)* information on major sanctions and exceptional measures taken by the competent authorities.

(3) The Commission may also exchange information as may be needed for the performance of supplementary supervision with the central banks of Member States of the European Union, the European Central Bank and the European System of Central Banks.

(4) The Commission shall, prior to its decision, consult the competent authorities concerned with regard to the following items, where these decisions are of importance for other competent authorities' supervisory tasks:

*a)* changes in the shareholders and/or executive employees, which require the authorization of the Commission;

*b)* major sanctions or exceptional measures.

(5) By way of derogation from what is contained in Subsection (4), the Commission may decide not to consult in cases of urgency or where such consultation may jeopardize the effectiveness of the decisions. In this case, the Commission shall, without delay, inform the other competent authorities concerned.

(6) The Commission, in its capacity as the coordinator, may contact the competent authority of the country where the entity that is at the head of the financial conglomerate is established to exchange data and information concerning such entity.

## **Disclosure of Information**

### *Section 96/N.*

(1) Regulated and non-regulated entities within a financial conglomerate, and the natural persons involved shall supply all data and information which would be relevant for the purposes of calculations in the interest of supplementary supervision to the entity at the head of the financial conglomerate. The entity at the head of the financial conglomerate shall process such data and information separately, with due observation of data protection regulations.

(2) The Commission may approach the competent authorities concerned for data and information which would be relevant for the purposes of supplementary supervision.

## **Verification**

### *Section 96/O.*

(1) The Commission may verify, on site or otherwise, the data and information supplied by the entities in a financial conglomerate to the extent necessary for the purposes of supplementary supervision.

(2) The Commission may ask the competent authorities of other Member States of the European Union to have the verification carried out.

### *Section 96/P.*

(1) If the financial conglomerate includes a credit institution referred to in Paragraphs *b*) and *c*) of Subsection (3) of Section 96/E, the competent authorities shall appoint the coordinator disregarding the third country parent company that is at the head of the financial conglomerate.

(2) The Commission, if serving as coordinator according to Subsection (1), shall examine as to whether the laws of that third country are in conformity with the provisions laid down in Directive 2002/87/EC of the European Parliament and of the Council. The Commission shall consult the competent authorities concerned, taking into account any applicable guidance prepared by the Financial Conglomerates Committee. Following consultations the Commission, in its capacity as the coordinator, shall make a decision regarding conformity.

(3) If the laws of the third country are in conformity with the provisions laid down in Directive 2002/87/EC of the European Parliament and of the Council, supplementary supervision of the financial conglomerate that is headed by the third country parent company of a credit institution referred to in Paragraphs *b*) and *c*) of Subsection (3) of Section 96/E shall not be exercised by the Commission.

(4) If the laws of a third country are not in conformity with the provisions laid down in Directive 2002/87/EC of the European Parliament and of the Council, the Commission, in its capacity as the appointed coordinator, shall take over to exercise supplementary supervision, and shall take all appropriate measures at its disposal.

## ***PART IV***

# ***DEPOSIT INSURANCE AND INSTITUTIONAL PROTECTION***

## **Chapter XV**

### **The National Deposit Insurance Fund**

#### *Section 97.*

(1) Credit institutions - with the exceptions specified in Subsection (3) - must join the National Deposit Insurance Fund (hereinafter referred to as "Fund").

(2) Foreign branch offices of credit institutions that have their registered offices in the territory of the Republic of Hungary shall be covered by deposit insurance services provided by the Fund, except where the laws of the country in which the branch office is established do not permit it. Foreign branch offices of credit institutions that have their registered offices in the territory of the Republic of Hungary may voluntarily join the deposit insurance scheme of the given country. Credit institutions shall notify the Fund when joining the deposit insurance scheme of the host



country, whether compulsorily or voluntarily, including the conditions for joining, immediately upon gaining knowledge or when the application is lodged.

(3) Branch offices of credit institutions registered in other Member States of the European Union are not required to join the Fund if they are covered by a deposit-guarantee scheme under Directive 94/19/EC of the European Parliament and of the Council. If the Commission gives its permission, branch offices of third-country credit institutions shall not be required to join the Fund if the Commission determines that they have deposit insurance that is the equivalent of the deposit-guarantee scheme prescribed under Directive 94/19/EC of the European Parliament and of the Council.

(4) When judging the equivalence of a deposit-guarantee scheme within the meaning of Subsection (3), the Commission shall consider:

- a) the deposits that are covered by the deposit insurance;
- b) the clientele that is affected by the deposit insurance;
- c) the amount of deposit insurance;
- d) the expected time requirement for deposit payment on the basis of the deposit insurance procedures;
- e) the possibility of filing deposit claims;
- f) the opinion of the Fund.

(5) If a branch office is not required to join the Fund pursuant to Subsection (3), it may voluntarily join the Fund in order to obtain the supplementary cover referred to in Subsection (7) if it is able to meet the Fund's requirements for membership.

(6) Any branch office of a credit institution established in another Member State of the European Union that is not covered by a deposit-guarantee scheme prescribed under Directive 94/19/EC of the European Parliament and of the Council must join the Fund in order to obtain the supplementary cover referred to in Subsection (7). If, in the opinion of the Commission, the branch office of a third-country credit institution does not have deposit insurance that is the equivalent of the deposit-guarantee scheme prescribed under Directive 94/19/EC of the European Parliament and of the Council, it shall join the Fund in order to obtain the full range of insurance coverage.

(7) If the maximum amount of compensation provided by the Fund or the scope of deposits covered exceeds the maximum amount guaranteed, the extent of cover or the scope of deposits covered by a deposit-guarantee scheme for branch offices, the Fund shall, at the request of the branch office, provide supplementary cover upon the branch office joining the Fund. Supplementary compensation may be claimed if the competent authority of the country in which the head office of the branch is located notifies the Fund about frozen deposits. Other aspects of supplementary compensation claims shall be governed by the provisions of Section 105.

(8) The Fund may enter into cooperation agreements with foreign deposit-guarantee schemes and with foreign supervisory authorities, and may exchange information from the records on deposit holders covered by the deposit-guarantee schemes and on the insured accounts, and for the settlement of compensation claims. The various deposit-guarantee schemes shall inform each other of the amount of compensation they are liable to pay to any given deposit holder.

#### *Section 97/A.*

Compensation for deposits collected by branch offices of third-country credit institutions may be paid only up to the amount insured by the Fund.

#### *Section 98.*

(1) The Fund shall be responsible to

- a)
- b) to pay compensation in the amount specified in Section 101 to a deposit-holder whose account held at a member credit institution is frozen, as well as
- c) to perform the tasks, related to guarantees provided on certain deposits or to the fulfillment of a given insurance, for a consideration, based on an order under a separate agreement entered into with the Government,
- d) providing depositors with information in Hungarian or, in the case of foreign branch offices of Hungarian-registered credit institutions, the language of the country in which the branch office has been established.

(2) Based on an order received from the deposit-holder and other creditors, the Fund shall carry out representation within its scope of responsibilities defined in Subsection (1) at composition negotiations and during liquidation proceedings.

## **Deposits Insured by the Fund**

### *Section 99.*

- (1) The insurance provided by the Fund applies to registered accounts only.
- (2) The insurance provided by the Fund - with the exceptions set out in Section 100 - shall apply to all deposits regardless of the number and currency of deposits which have been placed
  - a) without any state guarantee or state surety assumed according to law until 30 June 1993, and
  - b) without any state guarantee after the 30th June, 1993at credit institutions which are members of the Fund.
- (3) The insurance provided by the Fund shall apply to deposit documents issued or offered in series similar to securities until 30 June 1993, irrespective of its denomination.
- (4)

### *Section 100.*

- (1) The insurance of the Guarantee Fund shall not cover the deposit accounts of
  - a) budgetary organs,
  - b) business associations in exclusive state ownership,
  - c) local governments,
  - d) insurance companies, voluntary mutual insurance funds and private pension funds,
  - e) investment funds,
  - f) the Pension Insurance Fund and the Health Insurance Fund and their management and administration bodies,
  - g) appropriated state funds,
  - h) financial institutions,
  - i) the NBH,
  - j) investment companies, members of the stock exchange and commodities brokers,
  - k) compulsory or voluntary deposit insurance, institution and investor protection funds, Pension Guarantee Funds,
  - l) credit institution executives, a credit institution's appointed auditor, persons who own at least a five per cent interest in the credit institution, and the close relatives of any of the above who share a common household with them,
  - m) economic organizations [Paragraph c) of Section 685 of the Civil Code] in which the person described in Paragraph l) holds a qualifying participation,
  - n) venture capital companies and venture funds,nor the foreign equivalents of such deposits.
- (2) The insurance provided by the Fund shall not apply furthermore to
  - a) deposits on which the deposit-holder receives significantly higher interests or other pecuniary benefits according to the contract as compared to the deposits of the same amount and for the same fixed period at the time of execution of the contract, and
  - b) deposits in respect of which it has been determined by a definitive court decision that the sum deposited therein originates from money laundering.
  - c) deposits placed in a currency other than the euro or the legal tender of the Member States of the European Union or the Organization for Economic Cooperation and Development.

## **Indemnity Paid by the Fund**

### *Section 101.*

- (1) The Fund shall compensate persons entitled to compensation for the principal and interest on frozen deposits up to a maximum amount of six million forints per person and per credit institution. In the case of deposits in foreign exchange, the amount of compensation and the amount limit specified in this Subsection shall be determined based on the official foreign exchange rate effective on the day on which the deposit was frozen, regardless of the time of payment. The amount of compensation paid by the Fund is 100 per cent up to one million forints, and for amounts over the one-million forints limit, one million forints and ninety per cent of the amount over one million forints.

(2) The Fund shall compensate persons entitled to compensation for uncapitalized and unpaid interest due on frozen principal prior to the initial date of paying compensation specified in Subsection (1) of Section 105 up to the limit specified in Subsection (1) of this Section by calculating with the interest rate specified in the contract, but by no more than the average central bank prime rate (time-weighted) used during the period of interest payment.

(3) In the case of foreign exchange deposits, the Fund shall pay contractual interests but not more than an interest calculated at the mathematical average rate of interests quoted by the five largest Hungarian credit institutions - based on the previous year's balance sheet total - in the same currency for the same fixed period of currency deposits at the time of execution of the contract.

(4) In the case of premium deposits, contractual interests shall mean the interests at which the credit institution accepting the deposit has created the prize base since the drawing date preceding date of payment. As for the calculation of interests, the date of drawing preceding the date of payment shall be considered as the date of fixing.

(5) The deposit holder may not, upon any grounds, demand any payment from the Fund over and above the compensation amount defined in Subsections (1)-(4).

(6) In the case of joint deposits, the amount limit of compensation defined in Subsection (1) shall be taken into account separately in respect of each person entitled to compensation. From the point of view of calculating the compensation amount - unless otherwise stipulated in a contract -, the deposit-holders shall be entitled to the deposit amount in equal proportions.

(7) In the case of merger of credit institutions, the deposits - with the exception of home savings deposits - of the same depositor that were put in the merging or combining credit institutions shall continue to be considered as separate deposits in terms of the amount limit specified in Subsection (1) for a maximum period of five years.

(8) In the case of assignment of customer accounts, in terms of the amount limit specified in Subsection (1), the regulations on mergers under Subsection (7) shall duly apply.

(9) No compensation shall be paid on deposits in connection with which a criminal action is in progress due to money laundering allegations until the definitive conclusion of such proceedings.

(10) The amount limit of compensation defined under Subsection (1) for deposits placed in group accounts shall be taken into account separately for each depositor irrespective of the date on which the deposit was made.

#### *Section 102.*

(1) In the case of deposits insured by the Fund, any set-offs may be made between the credit institution and the deposit-holder if the deposit-holder has overdue debts or debts falling due until the repayment of the deposit towards the credit institution relating to loans or other transactions. The credit institution shall inform the Fund about its set-off claims and provide sufficient evidence to substantiate such claims. The credit institution shall produce documents in proof of having notified the deposit-holder (debtor) of its set-off claim. The Fund shall suspend payment on the deposit in question until evidence is produced. If the set-off is executed, the Fund shall pay the deposit-holder the amount remaining after deduction of the amount specified in Section 101 due and transferred to the credit institution.

(2) In the course of determining the amount of compensation, all frozen receivables due to the client from a member of the Fund are to be added up. If a member of the Fund has overdue receivables or receivables falling due by the time the compensation is paid to the client, it shall be included in the client's receivables when determining the compensation amount.

(3) In the case of deposits serving as collateral, the Fund shall effect any payment only if the title to receiving the compensation amount can be determined beyond doubt based on the parties' agreement or on the definitive resolution of a court or authority.

#### *Section 103.*

(1) The Fund may assume insurance of deposits intended to be insured by the state following 30 June 1993 for a fee agreed upon.

(2) If deposits of a credit institution authorized to accept deposits covered by a state guarantee (joint and several guarantee) are frozen, the central budget shall begin to pay the funds required for honoring the guarantee to the Fund within thirty days following the freezing of the deposit concurrently with making payments to the deposit-holders. The Fund may only use these funds for fulfilling payment obligations deriving from honoring the state guarantee, which payments may be supervised by a representative of the Ministry of Finance in the premises of the credit institution.

(3) The Fund may execute the tasks described in Subsections (1) and (2) according to a written agreement with the state.

(4) Receivables due to the deposit-holders from the credit institution shall pass to the state up to the amounts paid on the grounds of honoring the state guarantee. By passing of the receivables, the state shall succeed the formerly entitled party. The state is entitled to enforce its receivables in course of the liquidation proceedings. In the course of liquidation of the credit institution, the state is entitled to declare itself as a creditor also in respect of the deposits from which the rights have not yet been passed on the state if the state is otherwise required to effect payments under a guarantee.

## Chapter XVI

### Compensation

#### *Section 104.*

### **Payments from the Fund**

#### *Section 105.*

(1) The Fund shall begin to compensate the depositors within fifteen days of the day on which the deposits were frozen or, if in the case of a Commission decision under Paragraph c) of Subsection (1) of Section 30 or if liquidation proceedings have been initiated, within fifteen days of the publication of the court order on liquidation, whichever of the three occurs first. Such compensation payments shall be completed within three months. The Fund may make no more than two requests to the Commission to extend the payment deadline by up to three months each time.

(2) The Fund shall publish the first day of enforcement of claims, the name of the credit institution entrusted with effecting payments, and the place(s) and method of enforcement of claims in at least two daily newspapers of nationwide circulation.

(3) If the person entitled to compensation provides the necessary data for proving his entitlement and these data are consistent with the data on record specified in Subsection (4), the Fund shall have due compensation paid to such person or to another person authorized by that person in a private document with full probative force.

(4) In the case of registered deposits, the deposit collecting credit institution must record two further identification data - from among those listed in Schedule No. 3 as prescribed by the Fund - in addition to the deposit-holder's name for the purposes of clear determination of the entitlement to compensation.

(5) Payments shall be made through orders given to credit institutions, by means of depositing the sum of compensation in another credit institution, postal transfer, check or direct cash payment in the legal tender of the country where the deposit is placed. Compensation shall be paid out only if above the equivalent of five hundred forints.

#### *Section 106.*

An insolvent credit institution shall, when requested by the Fund, enter into an agreement with the Fund to receive the compensation claims (claim applications) that are due on the deposits covered by the Fund and perform settlement-related duties. For these services, the credit institution shall be entitled to a fee as stipulated in its last standard service agreement to be in effect while it was operating or in accordance with the item in its last standard service agreement that is most similar in content.

### **Assignment of Paid Deposit Receivables**

#### *Section 107.*

(1) In the event the Fund has paid compensation to the deposit-holder, the receivables due from the credit institution shall be assigned - up to the amount paid - from the deposit-holder to the Fund. With such assignment, the

Fund shall take the place of the formerly entitled party. The Fund shall be entitled to enforce the assigned receivables in the liquidation proceedings.

(2) The credit institution concerned shall repay or reimburse the Fund the amounts paid and the costs incurred by the Fund in relation to the payments in the case of any payments made from the Fund to the person entitled to compensation. This provision shall also be observed if the credit institution's membership in the Fund has been terminated.

(3) In the course of liquidation of a credit institution, the Fund shall also be entitled to declare itself as a creditor in respect of the deposits from which the rights have not yet been assigned to the Fund but in respect of which it has a payment obligation according to Section 101, including the costs incurring in relation to effecting of the payments.

(4) For the purposes of Subsection (2), the paying credit institution's fee, the costs of transfers, printing costs, and communications costs shall be considered as costs incurred by the Fund in connection with making compensation payments.

## Chapter XVII

### Legal Status and Organization of the Fund

#### Legal Status of the Fund

##### *Section 108.*

(1) The Fund is a legal entity.

(2) The Fund is seated in Budapest.

(3) The Fund may not be obliged to pay any corporate taxes, local taxes or duties on its assets, revenues and proceeds.

(4) The Fund's monetary assets may not be diversified and may not be used for purposes other than those specified in Section 98.

(5) The Fund's equity capital may not be distributed.

##### *Section 109.*

The Fund's financial and accounting audit shall be performed by the State Audit Office.

##### *Section 109/A.*

(1) The Fund shall appoint an auditor.

(2) The Fund's auditor shall be selected from among persons entitled to audit financial institutions.

(3) The term of appointment for an auditor who is a natural person shall be limited to five years. The same auditor may be contracted once again three years after the original term expires. An auditor employed by an auditing firm (employee, executive officer, working member) may audit the books of the Fund for a maximum period of five years and may be contracted once again three years after the original term expires.

(4) It is the auditor's responsibility to audit the Fund's accounting records and annual report and to comment on the authenticity of the material submitted to the board of directors in connection with the management of the Fund and the management and use of assets.

#### Organization of the Fund

##### *Section 110.*

(1) The Fund's governing body is the board of directors.

(2) Members of board of directors of the Fund are:

- a) the Secretary of State for Public Administration of the Ministry of Finance,
- b) the Vice President of the NBH,

- c) the Chairman of the Commission,
- d) two persons appointed by the interest representation organizations of credit institutions, and
- e) the managing director of the Fund.

(3) Members of the board of directors - with the approval of the board of directors - shall appoint a permanent proxy who shall attend the meetings of the board of directors in the absence of the member with full rights of making decisions.

(4) Meetings of the board of directors shall have a quorum if more than half of the members are present. Resolutions of the board of directors shall be passed by a simple majority of votes. In the case of a tie vote, the chairman's vote shall be decisive.

(5) The board of directors shall elect a chairman and a deputy chairman annually from among its members. The managing director may not be elected as chairman or deputy chairman.

## **Duties of the Board of Directors**

### *Section 111.*

- (1) The board of directors shall
- a) govern and control the financial management and other activities of the Fund,
  - b) approve the rules and regulations of the Fund,
  - c) determine the tasks and remuneration of the managing director and representatives of the Fund,
  - d) decide on the composition of special ad-hoc committees created for the performance of certain tasks,
  - e) determine the time, location and agenda of meetings of the board of directors,
  - f) determine the application of special symbols, information and other instruments for credit institutions based on which it can be determined that the deposits placed with the credit institution are insured,
  - g) decide on actions to be taken in respect of performance of the Fund's tasks,
  - h) determine the order of payments to be effected by the Fund under this Act,
  - i) decide on the Fund's budget, including its operating costs,
  - j) approve the Fund's annual account and auditor's report, determine the Fund's financial position once a year on or before 30 May of the year following the end of the financial year, and it shall submit its report thereupon to the State Audit Office and send the same to the credit institutions,
  - k) establish once a year the Fund's fee policy within the framework of this Act and shall notify the credit institutions on this policy; shall determine the members' annual payment obligations based on the fee policy,
  - l) decide on any exclusions,
  - m) determine any obligation to pay increased and extraordinary fees as described in Subsections (6)-(8) of Section 121,
  - n)-o)
  - p) make recommendations to the Commission for the control of credit institutions in terms of compliance with the requirements regarding deposit insurance,
  - q) perform other tasks described in this Act.
- (2) When performing its tasks, the board of directors may use the services of the Commission.

### *Section 112.*

(1) The board of directors shall appoint and recall managing directors as well as exercise employer's rights in respect of them. The board of directors may transfer this right - with the exception of appointment and dismissal - to the chairman of the board of directors.

(2) The board of directors shall control the activities of the Fund's managing director.

## **Managing Director and Labor Organization of the Fund**

### *Section 113.*

(1) The Fund has an independent labor organization.

(2) The managing director shall perform the operative management of the Fund's activities. The managing director shall exercise employer's rights in respect of the employees.

(3) The managing director - with the consent of the board of directors - may issue orders beyond employment or sign cooperation agreements for the performance of certain tasks.

(4) In respect of the Fund's manager and employees, the provisions of Act XXII of 1992 on the Labor Code shall be applied.

#### *Section 114.*

When acting within the scope of its responsibilities, the board of directors shall issue the orders by duly applying the rules of conflict of interests described in this Act.

### **Disclosure of Information to the Fund**

#### *Section 115.*

(1) The Fund may only request information from the credit institutions which are necessary for its activities and which are not available to the NBH or the Commission.

(2) Upon the Fund's request,

a) the credit institution shall be required to provide information from the data described by the Fund in compliance with this Act,

b) the Commission and the NBH shall be required to provide information from the data available to them.

(3) The executive officer of the branch office that has joined the Fund shall immediately notify the Fund in writing if the parent credit institution or any of its branch offices in any country has become insolvent.

(4) The Fund may use the information described in Subsection (2) only to the extent required for the performance of its duties.

(5) The Commission shall have powers to conduct inspections at member institutions to examine compliance with the requirements pertaining to deposit insurance. The Commission shall set up its annual control plan in consideration of the Fund's opinion.

(6)-(7)

#### *Section 116.*

(1) All bank secrets and business secrets as well as data, facts or circumstances, obtained by the persons employed by the Fund, or being in other legal relationship for the performance of work or appointed by the Fund, as well as the members of the executive board, and all data, facts or circumstances which are not required to be disclosed by the Fund to other authorities or to the public shall be kept thereby as professional secrets.

(2) In course of any inspection carried out by the Fund, the persons referred to in Subsection (1) shall be treated as official persons.

#### *Section 117.*

Any claims against the Fund for damages caused unlawfully may be enforced only if properly evidenced that the Fund's action or negligence violates any law and the incurred damages have been caused thereby.

### **Keeping of the Accounts and Cash Management of the Fund**

#### *Section 118.*

(1) The Fund's bank account is operated by the NBH.

(2) All of the Fund's revenues, including those from its operation, shall be credited to the Fund's current account; on the other hand, operating expenses and payments in connection with insurance activities and payments relating to the prevention of the freezing of deposits shall be made from this current account.

(3) The Fund's monetary assets - with the exception of petty cash, the liquidity reserve kept on the current account and the amounts transferred to a credit institution for effecting payments or for other purposes necessary for the Fund's operation - shall be kept in government securities or in deposits placed in the MNB.

(4) The Fund's profits, if any, may only be used to increase its equity capital.

## Chapter XVIII

### The Fund's Resources

#### *Section 119.*

(1) The Fund's resources shall be:

- a) affiliation fees,
- b) regular or extraordinary annual payments by the credit institutions,
- c) eighty percent of the fines collected by the Commission from credit institutions, not including credit unions which are members of a voluntary deposit insurance or institutional protection fund,
- d) loans raised by the Fund,
- e) other incomes.

(2) The Fund may raise loans from:

- a) the NBH or
- b) credit institutions

to perform the tasks conferred under Paragraph b) of Subsection (1) Section 98.

(3) Upon the Fund's request, in the case described in Subsection (2), the NBH may grant a loan within eight days and the Government shall assume joint and several guarantee - on the loan borrowed by the Fund in the interest of fulfillment of its obligations described in Paragraph b) Subsection (1) of Section 98 - according to Section 33 Subsection (3) of Act XXXVIII of 1992 on the State Budget.

(4)

### Affiliation Fee

#### *Section 120.*

A credit institution that has been authorized by the Commission to collect deposits shall, upon joining the Fund, pay a one-time affiliation fee equal to half percent of its subscribed capital to the Fund within thirty days of receiving the authorization.

### Annual Fees

#### *Section 121.*

(1) The obligation of the Fund's members to pay annual fees shall be determined by taking into account the total amount of deposits kept - in accordance with Sections 99 and 100 - by the credit institution insured by the Fund on 31 December of the previous year, the credit institution's membership in voluntary deposit insurance and institutional funds, and other aspects stipulated in the Fund's rules and regulations. When providing supplementary cover, the amount of the deposits for which supplementary cover is provided shall be taken into consideration when determining the annual fee, along with the cover afforded by the deposit-guarantee scheme of the country in which the branch office's home office is located. When determining the annual fee, the Fund may consider the ratings determined for the credit institutions and their obligations by the rating organization prescribed by specific other legislation.

(2) The amount of the annual fee to be paid as determined pursuant to Subsection (1) may not be higher than two thousandths of the aggregate total interest holdings indicated under accrued and deferred liabilities on deposits insured by the Fund and kept with the member institution on the 31st of December of the previous year and the



deposits insured by the Fund as stipulated by statutory provisions on credit institutions' obligation to prepare annual reports and to keep books.

(3) The credit institution shall pay the annual fee in quarterly installments, by the fifteenth day of the quarter to which it pertains to the Fund's current account.

(4) The amount of the fee to be paid by the credit institution shall be determined on the basis of the declarations forwarded by the credit institution to the Fund in the form and at the date as described in the regulations of the Fund.

(5) The fee to be paid by the credit institution for the year when receiving authorization for banking operations shall be determined by multiplying 1/365 of the annual fee determined based on the deposit holdings at the end of the year with the number of days insured by the Fund, according to the general rules.

(6) If a credit institution is engaged in high-risk activities justifying an increase in the fee according to the regulations, the Fund may increase the fee to be paid by the credit institution in the course of the year. Prior to increasing the fee, the Fund shall

- a) request an opinion from the Commission and the NBH;
- b) allow the credit institution to submit its comments.

(7) The fee increased as per Subsection (6) may not exceed three thousandths of the credit institution's insured deposit holdings as of 31 December of the previous year.

(8) In the interest of repaying the loan borrowed by the Fund as per Paragraph d) Subsection (1) of Section 119, the Fund may prescribe an extraordinary payment obligation for the credit institutions determined on the basis of uniform principles, and the extent and schedule of such payment obligation must be adjusted to the conditions of loan repayment. The amount of the extraordinary payment obligation may not exceed the amount of the fee determined according to Subsection (2) in respect of any credit institution.

(9) Should the Fund gain any income in connection with the insurance events making necessary for the Fund to raise the loan, it must above all be used to reduce the existing loan debt and thereafter to reduce the extraordinary payment obligation of the credit institutions and to refund the same.

(10) In the initial year of its liquidation (voluntary or compulsory), the credit institution must pay the prorated annual fee in accordance with the provisions described in this Section by the initial day of the liquidation or winding up proceeding. The fee shall be projected on the basis of the average insured deposit holdings in the quarter preceding payment.

## **Accounting of Fees Received**

### *Section 122.*

The credit institution shall show the amount paid to the Fund (including the affiliation fee) under other operating charges.

## **Joining the Fund**

### *Section 123.*

(1) Simultaneously with submitting the application for authorization to engage in the activities governed under Section 18, the credit institution must also send a declaration on joining the Fund and attach a copy of such declaration to the application for authorization to perform business activities, unless the credit institution is a branch office and it is not obligated to join the Fund according to Subsection (3) of Section 97.

(2) The declaration on joining must be prepared in the form as published by the Fund.

## **Chapter XIX**

### **Initiation of Actions and Sanctions, Termination of Membership in the Fund**

#### *Section 124.*

(1) If a credit institution

a) fails to fulfil the payment obligations described in Sections 120 and 121 by due dates,  
b) indicates its membership in the Fund in its standard service agreement or on deposit documents in a deceptive manner or provides third parties with false information on material issues related to the deposits insured by the Fund,  
c) advertises the deposit insurance in an unlawful manner, or  
d) has records from which the deposit-holders' entitlement to indemnity cannot be unambiguously determined,  
e) violates the regulations on deposit insurance,  
the Fund shall call upon the credit institution to discontinue the unlawful conduct and shall simultaneously inform the Commission.

(2) If the credit institution fails to end the unlawful conduct referred to in Subsection (1) within thirty days of the warning, the Fund may request the Commission to take action against the credit institution, impose a fine on it, or, with the assent of the Commission, suspend the credit institution's membership for a minimum of twelve months after issuing a warning about the measures pertaining to this if the credit institution still fails to cease the unlawful conduct during this time. The Fund shall concurrently notify the NBH about the initiation of the regulatory measures.

(3) In the case of initiation of exclusion, the credit institution's membership in the Fund shall be terminated after the date specified in the preliminary call, with the exception if

a) the credit institution has taken the actions aimed at conforming to regulations or terminating an improper conduct;  
b)

#### *Section 125.*

The Fund shall exclude a credit institution with immediate effect, if the credit institution is no longer permitted to collect deposits by decision of the Commission.

#### *Section 126.*

(1) Exclusion of a credit institution or termination of its membership shall not effect the insurance of deposits placed with the credit institution during the period of its membership.

(2) If a credit institution has been excluded from the Fund or its membership has been terminated, it may not request a refund of its earlier payments. The exclusion or the termination of membership shall not effect the obligation of the excluded credit institution to pay the annual fee on the insured deposits as described in Section 121.

(3) A credit institution, when increasing or decreasing its subscribed capital, shall not be required to pay an affiliation fee on the amount of increase, and may not request the prorated portion of the paid affiliation fee to be refunded.

#### *Section 127.*

In the event of an exclusion under Section 124, the Fund shall notify the Commission and the NBH in writing - within twenty four hours - about the exclusion and the reasons therefor. The Fund shall publish the same within forty-eight hours in at least two daily newspapers of nationwide circulation.

## Chapter XX

### Voluntary Deposit and Institution Insurance

#### *Section 128.*

(1) Credit institutions may establish a voluntary deposit insurance and institutional protection fund (hereinafter referred to as "voluntary fund"). The voluntary fund is a legal entity.

(2) The voluntary fund's monetary assets may not be diversified or used for purposes other than those described in its deed of foundation. In the case of resignation from a voluntary fund no payments may be effected.

(3) The voluntary fund's monetary assets - with the exception of petty cash, liquidity reserves kept on current accounts and the amounts transferred to the credit institution for effecting payments or for other purposes necessary for the operation of the Fund - must be held in government securities.

- (4) Credit institutions shall show payments made to the voluntary fund under other operating charges.
- (5) Eighty percent of the fines collected by the Commission from credit unions must be paid into a voluntary fund established by credit unions which are members of a voluntary deposit insurance fund.

## **Establishing Voluntary Funds**

### *Section 128/A.*

- (1) An inaugural general meeting must be convened in order to establish a voluntary fund. This general meeting shall be responsible for making a members' register, authoring a charter document, adopting the internal rules and regulations specified in this Act, and electing the officers.
- (2) The inaugural general meeting shall pass its resolutions with a simple majority. In all other matters, the provisions of this Act shall prevail for passing resolutions.
- (3) Voluntary funds may only be founded for unspecified periods.

### *Section 128/B.*

- (1) Minutes must be taken of the inaugural general meeting. These minutes shall be signed by the chairman elected by the general meeting and the secretary keeping the minutes and witnessed by two members.
- (2) The charter document adopted by the inaugural general meeting must be a duly notarized document signed by all of the members or a document endorsed by a lawyer.

### *Section 128/C.*

- (1) The founding of a voluntary fund must be reported to the Commission by sending
  - a) the duly certified minutes of the inaugural general meeting,
  - b) the charter document, and
  - c) the members' registerwithin fifteen days of the adoption of the charter document in order to be licensed.
- (2) Contrary to Section 194, authorization must be considered granted if the Commission does not reject the application within thirty days of receiving it.
- (3) The Commission may only reject the application for authorization if the submitted documents do not comply with the provisions stipulated in statutory provisions.
- (4) Within thirty days of the day on which the authorization is granted - or, in the case specified in Subsection (2), the day on which the deadline expires - the establishment of a voluntary fund must be reported to the county (or Budapest metropolitan) court in whose jurisdiction the fund's headquarters are located (hereinafter referred to as "court") for the purpose of registration.
- (5) The person authorized to represent the voluntary fund shall submit the application for registration. The court shall immediately decide on registration in a nonlitigious proceeding. The court's resolution on registration shall be delivered to the Commission.
- (6) The registration of a voluntary fund cannot be rejected if the founders have satisfied the conditions stipulated in this Act.
- (7) Once the court has registered the voluntary fund, the establishment of it becomes retroactively effective to the day of the inaugural general meeting.
- (8) In all other matters, the legal regulation on the administrative rules for registering nonprofit organizations shall be duly applied to the registration of voluntary funds.

## **The Charter Document**

### *Section 128/D.*

- (1) The charter document shall contain the means by which the voluntary fund is organized and operated.
- (2) The following must be specified in the charter document:
  - a) the name and registered seat of the voluntary fund,

- b) the founders,
  - c) the procedures for joining, resigning and being expelled from the voluntary fund,
  - d) the organizational structure of the voluntary fund,
  - e) the voting procedure in the general meeting and the members' voting percentages,
  - f) the responsibilities of the voluntary fund and the rights connected thereto,
  - g) the rights and obligations of the members of the voluntary fund,
  - h) the rules and regulations for managing the assets managed by the voluntary fund,
  - i) the procedure by which members pay dues,
  - j) the settlement procedure used when members resign or are expelled.
- (3) The Commission's consent - in due observation of what is contained in Section 128/C - is required for adopting and amending the voluntary fund's charter document as well as for terminating the voluntary fund.

## **The Member's Register**

### *Section 128/E.*

- (1) Voluntary funds must prepare registers of their members and keep them up to date. The board of directors shall maintain the register.
- (2) Registers must contain at least the members' names (corporate names), their registered seats, addresses of the members' branches, and the names of their executive officers.
- (3) Once a member has been entered in the register, membership becomes retroactive to the day of the general meeting's decision.

## **General Meeting**

### *Section 128/F.*

- (1) The general meeting, which consists of all of the members, is the supreme body of the voluntary fund.
- (2) All of the members of the voluntary fund shall be entitled to participate in the activities of the general meeting.
- (3) The jurisdiction of the general meeting shall be defined in the charter document. The following shall be within the exclusive jurisdiction of the general meeting:
- a) authoring and amending the charter document,
  - b) decision on the acceptance and expulsion of members,
  - c) determining the annual budget of the voluntary fund and adopting its annual report,
  - d) electing the members and chairpersons of the board of directors and the supervisory board,
  - e) appointing the auditor,
  - f) making decisions in matters of merger, demerger, and termination, as well as
  - g) other matters conferred upon it by law.
- (4) The general meeting must be convened at the intervals specified in the charter document, but no less than twice a year. The general meeting must be convened if a court so orders or the members - the percentage of members specified in the charter document - have so moved and have indicated the reason and purpose.
- (5) The board of directors must convene the general meeting in writing at least fifteen days prior to the appointed date. The procedures for passing resolutions and conducting elections must be specified in the charter document; the majority of all of the votes of the voluntary fund is required to pass any and all resolutions in due consideration of the provisions stipulated in this Act.
- (6) If it is not otherwise stipulated in the charter document, issues not mentioned in the invitation to the general meeting may only be discussed if at least two-thirds of all of the votes of the voluntary fund agree to discuss the agenda items.

## **Board of Directors**

### *Section 128/G.*

(1) The general meeting shall elect a board of directors consisting of five to eleven members - the number being specified in the charter document - and from among these it shall elect a chairman.

(2) The chairman shall represent the voluntary fund vis-a-vis third parties and the authorities. The charter document shall authorize those members other than the chairman to represent the fund.

*Section 128/H.*

(1) The board of directors shall administer the voluntary fund in accordance with the resolutions of the general meeting and make decisions in all matters that neither the law nor the charter document has entrusted to another body or representative of the voluntary fund.

(2) The board of directors shall meet at a frequency specified in the charter document, which shall be at least once every two months. It shall report to the general meeting about its activities at least once a year.

(3) The board of directors shall have a quorum if at least two-thirds of its members are present. In other matters, it shall determine its own order of business, to which the general meeting shall agree.

(4) The members of the board of directors must proceed with the due care that can be expected of persons in such positions and on the basis of the primacy of the interests of the voluntary fund. They are, in accordance with civil law, jointly and severally liable, without limit, for damages caused to the voluntary fund by the violation of their responsibilities.

(5) Members of the board of directors who voted against a resolution or objected to a measure and reported such objection to the supervisory board shall not be held liable in accordance with Subsection (4).

## **Supervisory Board**

*Section 128/I.*

(1) The general meeting shall elect a supervisory board consisting of three to nine members - the number being specified in the charter document - and from among these it shall elect a chairman.

(2) The supervisory board shall supervise the management of the voluntary fund for the general meeting.

(3) The supervisory board

a) may examine any matter in connection with the operation and management of the voluntary fund's bodies,

b) may request that the board of directors proceed in compliance with the legal regulations, the charter document or any other internal regulation,

c) may initiate the removal of all or certain members of the board of directors, their accountability, and the convocation of an extraordinary general meeting,

d) shall convene the general meeting, simultaneously notifying the Commission, if the board of directors fails to satisfy its obligations to it,

e) shall comment on the annual budget submitted to the general meeting and the annual report, without which no valid resolution can be made on these subjects,

f) shall make recommendations to the general meeting for determining the remuneration of members of the board of directors.

*Section 128/J.*

(1) The supervisory board may temporarily suspend the operation of the board of directors, if it is required by the interests of the members.

(2) When it suspends the board of directors, the supervisory board must simultaneously

a) request that an extraordinary general meeting be convened within thirty days,

b) attend to the affairs of management until the general meeting convenes.

*Section 128/K.*

(1) The supervisory board shall proceed as a body.

(2) The supervisory board shall have a quorum if at least two-thirds of its members are present.

(3) In all other matters, the supervisory board shall determine its own order of business, to which the general meeting shall agree.

(4) The members of the supervisory board shall be held jointly and severally liable, without limit, for damages caused to the voluntary fund by the violation of their supervisory obligations.

## **Auditor**

### *Section 128/L.*

(1) Voluntary funds shall appoint an auditor.

(2) The general meeting shall choose the voluntary fund's auditor from among persons entitled to audit financial institutions.

(3) The term of appointment of the auditor of a voluntary fund, if a natural person, shall be limited to five years. The same auditor may be contracted once again three years after the original term expires. An auditor employed by an auditing firm (employee, executive officer, working member) may audit the books of a voluntary fund for a maximum period of five years and may be contracted once again three years after the original term expires.

(4) It is the auditor's responsibility to audit the voluntary fund's accounting records and annual report and to comment on the authenticity of the material submitted to the general meeting in connection with the management of the voluntary fund and the management and use of assets. No resolution can be passed on any matter without the auditor's opinion and the auditor's obligation to make a report.

## **Legal Remedy Against the Decisions of a Voluntary Fund**

### *Section 128/M.*

(1) Any member may challenge the unlawful resolution of any of the voluntary fund's bodies in court within thirty days of the day on which the member became cognizant of such unlawful resolution, but within ninety days of the date on the resolution at the latest.

(2) Challenging a resolution is no obstacle to implementing the resolution; however, the court may suspend implementation in warranted cases.

### *Section 128/N.*

(1) In the event one of the voluntary fund's resolutions is unlawful, the Commission may - if there is no other way to ensure the legality of operation - go to court. The court may respond to the Commission's case by

- a) nullifying the voluntary fund's unlawful resolution and, if necessary, ordering that a new resolution be passed,
- b) convening the voluntary fund's general meeting in order to restore legality of operation,
- c) suspending the operation of the voluntary fund.

(2) Cases brought by a member of the voluntary fund or the Commission shall be heard in the court in whose jurisdiction the voluntary fund is registered.

### *Section 129.*

(1)-(2)

(3) In order to perform its duties described in its deed of foundation, an institutional protection fund may provide

- a) guarantees,
- b) capital allocations,
- c) loans

to a member institution under promotion agreements entered into with the member institutions or the owners thereof.

(4) Credit institutions, utilizing the voluntary deposit insurance fund, must pay at least the prime interest rate of the central bank as an interest until the borrowed funds are repaid. A resignation from the voluntary deposit insurance fund shall not effect the repayment obligation.

*Section 130.*

The voluntary fund shall inform the Commission on its measures it plans to take in connection with the freezing of deposits or in order to avoid payments.

## Chapter XX/A

### The Central Credit Information System

*Section 130/A.*

(1) The central credit information system (hereinafter referred to as “KHR”) is a closed database designed to provide facilities for better and more reliable credit information, and hence to expand the spectrum of lending, and to help to reduce the credit risk of reference data providers with a view to guaranteeing their prudent and safe operation.

(2) The KHR may contain only the reference data specified in this Act.

(3) The financial enterprise operating the KHR shall be allowed to receive reference data only from reference data providers, and shall be allowed to convey reference data to reference data providers only from this database.

(4) Apart from the reference data indicated in the data request relating to the data subject specified in Point 1 of Chapter V of Schedule No. 2, no other information may be supplied from the KHR to the reference data provider. Data requests for the reference data of natural persons may be used exclusively in connection with a decision for entering into a contract for the financial services referred to in Paragraphs *b)-c)* and *e)-f)* of Subsection (1) of Section 3, or activities auxiliary to investment services under Paragraph *c)* of Subsection (2) of Section 81 of the CMA, or for securities lending and/or borrowing as specified in Point 37 of Subsection (1) of Section 5 of the CMA, or for the provision of information specified in Subsection (3) of Section 130/J.

(5) Apart from what is contained in Subsection (4) of Section 130/J, reference data may not be supplied from the KHR to the Student Loan Center.

(6) The financial enterprise operating the KHR shall keep on record the name, address, permanent establishment, branch and contact person of the reference data provider that provides any reference data.

(7) The financial enterprise operating the KHR and the reference data provider are both required to keep records on any data supplied in either direction, including the date and time and the type of data disclosed. These records shall be processed within the time limit specified in Section 130/I pertaining to records on reference data.

(8) The financial enterprise operating the KHR shall be liable to maintain reference data in a complex system and shall keep them current and updated at all times.

(9) Reference data providers shall disclose reference data they process to the financial enterprise operating the KHR. The obligation of reference data providers to disclose data also applies to changes in the reference data they have provided, of which they have knowledge.

*Section 130/B.*

(1) Authorization to operate the KHR shall be granted to a company that is able to satisfy the conditions specified below in addition to those contained in Section 17:

*a)* must be a financial enterprise operating in the form of a public limited liability company;

*b)* must have at least two hundred million forints in own funds;

*c)* credit reporting service must be the sole activity;

*d)* all shares must be held by financial institutions or investment firms;

*e)* not less than seventy per cent of all reference data providers have expressed their intention to join the credit information system it operates, and these reference data providers control at least eighty per cent of the exposures of all reference data providers as calculated based upon the annual report they have filed for the previous year.

(2) The Commission may withdraw the authorization for the KHR operation where:

*a)* the financial enterprise fails to pay any of its undisputed debts within five days of the date on which they are due or no longer possesses sufficient own funds (assets) for satisfying the known claims of creditors;

*b)* the court has ordered the liquidation of the financial enterprise upon creditors' request.

(3) The Commission may withdraw the authorization for the KHR operation, above and beyond the cases described in Section 29, if:

a) the financial enterprise fails to set up a regulatory regime concerning the security of its information systems as required under Section 13/B;

b) the financial enterprise has repeatedly engaged in any serious violation of data protection regulations laid down in other legislation;

c) the financial enterprise operating the KHR fails to comply with the provisions contained in the Commission's resolution to restore legality of operation.

(4) When the authorization for operating the KHR is withdrawn the Commission shall designate another financial enterprise for operating the KHR, and to appoint a supervisory commissioner inside the time limit indicated in the resolution for withdrawal of the authorization.

(5) Where a supervisory commissioner is appointed according to Subsection (4), the provisions contained in Subsection (3) of Section 163 and in Sections 164-167 shall be observed.

(6) In connection with the appointment defined in Subsection (4) the Commission may designate a financial enterprise to operate the KHR if it undertakes the commitment to comply with the requirements set out in Paragraphs a)-d) of Subsection (1) within one hundred and twenty days.

(7) The financial enterprise from which the Commission has withdrawn the authorization to operate the KHR is required to deliver all reference data it has processed up to the deadline prescribed in the resolution on the withdrawal of the authorization at the time also specified in the resolution on the withdrawal of the authorization, to the financial enterprise the Commission has designated as the new operator of the KHR. The financial enterprise from which the Commission has withdrawn the authorization to operate the KHR shall not be permitted to process any reference data past the deadline prescribed in the resolution on the withdrawal of the authorization.

(8) The standard service agreement of the financial enterprise operating the KHR may be adopted subject to the Commission's approval.

## **Provisions for the Supply of Data to the KHR and for Data Processing in the KHR**

### *Section 130/C.*

(1) The reference data provider shall supply to the financial enterprise operating the KHR the reference data specified in Points 1.1-1.2 of Chapter II of Schedule No. 3 of any natural person who fails to comply with the payment obligation agreed upon in a contract for the financial services referred to in Paragraphs b)-c) and e)-f) of Subsection (1) of Section 3 or in a student loan contract specified in specific other legislation in a manner where the amount of any overdue and unpaid debt for which he is liable exceeds the prevailing monthly minimum wage in effect at the time of default, and this delay in excess of the prevailing minimum wage is sustained for over ninety days.

(2) The simultaneous breach of several contracts as explained under Subsection (1) by the same person shall be taken into consideration separately for each contract.

### *Section 130/D.*

The reference data provider shall supply to the financial enterprise operating the KHR the reference data specified in Points 1.1 and 1.3 of Chapter II of Schedule No. 3 of any natural person who provides any false information when entering into a contract for the financial services referred to in Paragraphs b)-c) and e)-f) of Subsection (1) of Section 3 or a student loan contract specified in specific other legislation, or uses any forged or falsified document for these contracts, and if there is documentary evidence to this effect.

### *Section 130/E.*

The reference data provider shall supply to the financial enterprise operating the KHR the reference data specified in Points 1.1 and 1.4 of Chapter II of Schedule No. 3 of any natural person who:

a) provides notification concerning a cash-substitute payment instrument of having lost possession of the electronic payment instrument, or that an unauthorized third person has obtained knowledge of his personal identification or other code, or any other identification data of the like, and then conducts any transaction with the notified cash-substitute payment instrument;



*b)* uses the personal identification or other code, or any other identification data of the like of another person in connection with using a cash-substitute payment instrument;

*c)* has been found guilty by final court verdict for having committed the criminal act specified in Section 313/C of the Criminal Code in connection with the use of a cash-substitute payment instrument.

*Section 130/F.*

(1) The reference data provider shall supply to the financial enterprise operating the KHR the reference data specified in Points 2.1 and 2.2 of Chapter II of Schedule No. 3 of the companies referred to in Point 4 of Chapter V of Schedule No. 2 in connection with their contracts for the financial services referred to in Paragraphs *b)-c)* and *e)-f)* of Subsection (1) of Section 3.

(2) The reference data provider shall supply to the financial enterprise operating the KHR the reference data specified in Points 2.1 and 2.3 of Chapter II of Schedule No. 3 of the companies whose bank account records indicate any liability queued for more than one million forints for a period exceeding thirty consecutive days owing to lack of coverage.

(3) The reference data provider shall supply to the financial enterprise operating the KHR the reference data specified in Points 2.1 and 2.4 of Chapter II of Schedule No. 3 of the companies engaged in any violation of the obligations fixed in a contract for the acceptance of cash-substitute payment instruments, in consequence of which the reference data provider has terminated or suspended its contract for the acceptance of cash-substitute payment instruments.

*Section 130/G.*

(1) In the application of the provisions contained in Section 130/C, the duration and the amount of any overdue and outstanding debt shall be calculated continuously even if the liability originating from the contract to which the data disclosure pertains is transferred to another reference data provider.

(2) The reference data provider transferring the liability originating from the contract shall also provide all documents and information to the transferee reference data provider to the extent necessary to fulfill its responsibilities.

*Section 130/H.*

The financial enterprise operating the KHR shall affix the note “transfer to reference data provider” upon all reference data it has received, and shall indicate the particulars of the transferee reference data provider if the reference data provider has transferred the liability originating from the contract to which the data disclosure pertains to another reference data provider.

*Section 130/I.*

(1) The financial enterprise operating the KHR - subject to the exceptions set out in Subsections (3)-(4) - shall process reference data for a period of five years from the date referred to in Subsection (2). Upon expiry of the five-year period the financial enterprise operating the KHR shall irretrievably erase the reference data from its records.

(2) The time limit referred to in Subsection (1) shall commence:

*a)* at the time when the overdue debt is satisfied in the case specified in Section 130/C;

*b)* on the date of transfer of data in the cases specified in Sections 130/D and 130/E and in Subsection (3) of Section 130/F;

*c)* at the time when the queued liability is no longer held in abeyance in the case specified in Subsection (2) of Section 130/F;

*d)* on the date of termination of the contract in the case specified in Subsection (1) of Section 130/F.

(3) The financial enterprise operating the KHR shall irretrievably and without delay erase the reference data from its records received from a reference data provider that has terminated its corporate existence without succession and if the liability originating from the contract to which the data disclosure pertains had not been transferred to another reference data provider, or the reference data provider transferred the liability originating from the contract to which the data disclosure pertains to a person other than a reference data provider.

(4) The financial enterprise operating the KHR shall irretrievably and without delay erase any reference data that was supplied to the KHR illegally.

## Client Protection

### *Section 130/J.*

(1) The reference data provider shall supply information in writing to natural persons indicating the purpose of disclosure, the type of data that may be disclosed, the legal remedy available, and indicating, furthermore, that the financial enterprise operating the KHR has the right - following the transmission of data to the KHR - to disclose the reference data to other reference data providers for the reasons specified in Subsection (4) of Section 130/A:

*a)* prior to the conclusion of the contract, the data subject shall be notified that his data may be recorded in the KHR in the case specified in Section 130/D;

*b)* prior to the conclusion of the contract, the data subject shall be notified that his data may be recorded in the KHR in the cases specified in Sections 130/C and 130/E, also indicating the specific reasons;

*c)* thirty days before the planned transmission of data, the data subject shall be notified that his data may be recorded in the KHR in the case specified in Section 130/C in the event of his failure to satisfy his contractual obligations; and

*d)* within eight days from the date of transmission of data, the data subject shall be notified that the transmission has been completed.

(2) The reference data provider shall supply information in writing to companies indicating the purpose of disclosure and the type of data that may be disclosed, and indicating, furthermore, that the financial enterprise operating the KHR has the right - following the transmission of data to the KHR - to disclose the reference data to other reference data providers for the reasons specified in Subsection (4) of Section 130/A, prior to the conclusion of the contract that their reference data may be recorded in the KHR in the case specified in Section 130/F.

(3) Any person may request information from any reference data provider inquiring as to his data that are recorded in the KHR, and about the reference data provider that has supplied such data.

(4) The reference data provider shall forward the request for information to the financial enterprise operating the KHR without delay, not to exceed two working days, whereupon the financial enterprise operating the KHR shall supply the requested data by secure delivery within five days to the reference data provider to be forwarded, also by secure delivery, to the requesting person without delay, not to exceed two working days, with a certificate of delivery attached.

(5) Information shall be provided to the requesting person free of charge once a year. Any additional information shall be subject to payment of a fee covering only the related expenses.

(6) The charges paid as illustrated above shall be refunded to the data subject if the reference data has been provided unlawfully, by the reference data provider, or by the financial enterprise operating the KHR in the case specified in Subsection (6) of Section 130/K, if the reference data is processed without legal grounds, or if the data is to be corrected or erased in consequence of the objection lodged in accordance with Subsection (1) of Section 130/K.

### *Section 130/K.*

(1) The data subject may lodge an objection against the transmission of his reference data to the financial enterprise operating the KHR and against them being processed by the financial enterprise operating the KHR, and may request his reference data to be corrected or erased.

(2) The data subject shall submit the objection referred to in Subsection (1):

*a)* to the reference data provider having supplied the reference data to which the objection pertains to the financial enterprise operating the KHR; or

*b)* to the financial enterprise operating the KHR.

(3) The financial enterprise operating the KHR shall forward the objection - and shall simultaneously notify the data subject - without delay, not to exceed two working days, to the reference data provider having supplied the reference data to which the objection pertains to the financial enterprise operating the KHR, unless the reference data provider has been terminated without succession and the liability originating from the contract to which the data disclosure pertains had not been transferred to another reference data provider, or if the reference data provider cannot be identified.

(4) The reference data provider or the financial enterprise operating the KHR shall investigate the objection within fifteen days from the date when received, and shall convey its findings to the data subject in writing without delay, not to exceed two working days, in a document with a certificate of delivery attached.

(5) The reference data provider, if the objection is found substantiated, shall transmit the corrected reference data or the reference data to be erased to the financial enterprise operating the KHR without delay, not to exceed two working days, to have the change registered and the records updated accordingly without delay, not to exceed two working days, of which the data subject must be simultaneously notified.

(6) The financial enterprise operating the KHR shall also be required to have the change registered and the records updated accordingly - and to simultaneously notify the data subject - without delay, not to exceed two working days, if the reference data provider has been terminated without succession and the liability originating from the contract to which the data disclosure pertains had not been transferred to another reference data provider, or if the reference data provider cannot be identified, because of which the financial enterprise operating the KHR has conducted the investigation concerning the objection and found it to be substantiated.

(7) The financial enterprise operating the KHR shall notify without delay, not to exceed two working days, all reference data providers that have requested any reference data in connection with the data subject within a period of one year prior to the correction or erasure, concerning the correction or erasure of reference data.

#### *Section 130/L.*

(1) The data subject may file charges against the reference data provider and the financial enterprise operating the KHR in connection with the transmission and/or processing of his reference data, or for their correction or erasure. The plaint note may be submitted at or sent by certified mail to the local court of jurisdiction by reference to the data subject's residence within thirty days from the date of receipt of the information referred to in Subsection (4) of Section 130/K. An application for extension may be submitted upon failure to meet this deadline.

(2) The data subject shall have the right to file charges according to Subsection (1) against the reference data provider and/or the financial enterprise operating the KHR for any failure on their part to comply with the requirement of providing information according to Subsection (4) of Section 130/J, or of Subsection (4) of Section 130/K. The time limit for filing shall, in this case, be reckoned from the date of expiry of the deadline for the provision of information.

(3) The lawsuits referred to in Subsections (1)-(2) shall be governed by the provisions of Act III of 1952 on the Code of Civil Procedure (hereinafter referred to as "CPC"), subject to the exceptions set out in this Act.

(4) The court shall review the case without delay in terms of what is contained in Subsection (1) of Section 124 of the CPC, or within fifteen days from the date when the plaint note was received and shall set the date of hearing if the plaint note is suitable for having a hearing conducted. The hearing shall be arranged so as to obtain to permit the first session to take place within thirty days from the date when the relevant documents are delivered to the court. Where any court action is required to render the plaint note suitable for having a hearing conducted (CPC, Section 124) the time limit for having the first hearing scheduled shall be calculated from this date. If the hearing is adjourned, the next session shall be held within thirty days.

#### *Section 130/M.*

(1) The financial enterprise operating the KHR shall enter the lawsuit in its records by the reference data to which it pertains until the lawsuit is concluded by final verdict.

(2) The court may adopt a ruling in the preliminary stages of the lawsuit to order the suspension of further processing of the reference data in question if the plaintiff's claim appears substantiated in light of the information available. This ruling may be subject to preliminary execution irrespective of any appeal.

(3) If the court has ordered the suspension of further processing of the reference data in question, this reference data must be blocked immediately upon receipt of the resolution, not to exceed two working days, in accordance with Point 13 of Section 2 of Act LXIII of 1992 on the Protection of Personal Data and Access to Information of Public Interest.

(4) The lawsuits specified above may not be held in conjunction with other cases or under joinder with other lawsuits, and no counterclaim may be filed.

(5) Suspension of the above-specified lawsuit shall be authorized only in the cases described in Paragraphs *c*) and *d*) of Subsection (1) of Section 137 of the CPC.

#### *Section 130/N.*

(1) The burden of proof to show that the transmission of reference data to the KHR and processing in the KHR took place in observation of the conditions laid down in this Act lies with the reference data provider and/or the

financial enterprise operating the KHR. Failure to provide sufficient evidence in this respect shall be weighed in the judgment against the reference data provider and/or the financial enterprise operating the KHR.

(2) Until the judgment is elevated to binding status, processing of the reference data in question shall be suspended even if the ruling of the first instance ordered the erasure of the reference data.

(3) Suspension of the processing of reference data, lifting the suspension of processing and the correction or erasure of reference data must be carried out immediately upon receipt of the court's final judgment, not to exceed two working days.

(4) The court shall send its final ruling ordering the correction or erasure of reference data to the Commission as well.

*Section 130/O.*

The provisions contained in Sections 130/L-130/N shall apply *mutatis mutandis* to proceedings in the second instance.

**PART V**

**ACCOUNTANCY AND AUDIT OF FINANCIAL INSTITUTIONS**

**Chapter XXI**

**Accountancy**

*Section 131.*

(1) Financial institutions shall keep all records relating to business activities in the Hungarian language - in compliance with the provisions of Hungarian law on accountancy - and in a manner containing sufficient facilities for control and supervision by the Commission and the NBH.

(2) The above-specified business records shall satisfy the following requirements:

a) must have facilities to enable the internal control of financial institutions,

b) must have facilities to ensure prudent and reliable direction and management - including an assessment of the activities of persons in executive positions - as well as inspections conducted by the owners, the auditor, the Commission, and the NBH and, furthermore, to assist the financial institution in fulfilling its statutory and contractual obligations.

*Section 132.*

(1) Financial institutions must send their annual report - including the auditor's report - approved by the duly authorized body as well as the resolution on the appropriation of after-tax profits to the Commission within fifteen working days of the day on which they are adopted, on or before 31 May of the year following the financial year at the latest, and the consolidated annual report within fifteen working days of the day on which they are adopted, on or before 30 June of the year following the financial year at the latest.

(2) The provisions of Sections 131-137 shall not apply to the accountancy and auditing of legal entities engaged in the activities auxiliary to financial services specified in Paragraphs a) and c) of Subsection (2) of Section 3.

(3) Third-country financial institutions that have a branch office in Hungary shall publish the official Hungarian translation of their balance sheets and profit and loss statements prepared according to the laws of their home countries and approved by an auditor in two national daily papers within thirty days of approval.

**Chapter XXII**

**Audit**

*Section 133.*

(1) In the case of financial institutions - in addition to the requirements prescribed in the Companies Act pertaining to auditors - the auditor commissioned for auditing services must be a certified auditor or registered auditor (auditing firm) and

- a)
- b) the auditor must be registered by the Commission in its register of auditors certified for financial institutions,
- c) the auditor shall not have any, direct or indirect, ownership interest in the credit institution,
- d) the auditor shall not have any loan debt towards the credit institution,
- e) neither of the owners with a qualifying participation shall have any, direct or indirect, ownership interest in the auditing firm.

(2) The restrictions laid down in Paragraphs c) and d) of Subsection (1) shall also apply to the auditor's close relatives.

(3) The term of appointment of the auditor of a credit institution who is a natural person shall be limited to five years. The same auditor may be contracted once again three years after the original term expires. An auditor employed by an auditing firm (employee, executive officer, working member) may audit the books of a credit institution for a maximum period of five years and may be contracted once again three years after the original term expires.

(4) In addition to the requirements stipulated in Subsection (1), the following provisions shall also apply to (natural person) auditors of credit institutions:

- a) he shall be permitted to audit the books of maximum five credit institutions - not including credit unions - at any given time,
- b) he shall be permitted to audit the books of maximum ten credit unions at any given time,
- c) the income (revenue) of an auditor from any one credit institution may not be greater than thirty per cent of his annual income,
- d) the income (revenue) of an auditor from financial institutions, investment enterprises, investment fund managers, exchanges or clearing corporations controlled by the same group or holding, or from an investment fund managed by an investment fund manager controlled by the same group or holding cannot exceed sixty per cent of his annual income (revenue).

(5) In addition to the requirements stipulated in Subsection (1), the following provisions shall also apply to (corporate) auditors of credit institutions:

- a) any auditor in the employ of an auditing firm - who satisfies the requirements set forth in Subsection (1) - shall be permitted to audit the books of maximum five credit institutions - not including credit unions - at any given time,
- b) any auditor in the employ of an auditing firm - who satisfies the requirements set forth in Subsection (1) - shall be permitted to audit the books of maximum ten credit unions at any given time,
- c) the income (revenue) of an auditing firm from any one credit institution cannot exceed ten per cent of its annual net revenues,
- d) the income (revenue) of an auditing firm from financial institutions, investment firms, investment fund managers, exchanges or clearing houses controlled by the same group or holding, or from an investment fund managed by an investment fund manager controlled by the same group or holding cannot exceed thirty per cent of its annual net revenues.

(6) Financial institutions may not commission the services of employees of the Commission or close relatives of employees of the Commission for auditing.

*Section 133/A.*

(1) The Commission shall enter an auditor in the register of auditors certified to audit financial institutions if

- a) the auditor has worked for at least three years in accounting and control at a financial institution, bank supervision and auditing at the Commission, auditing at the NBH, or auditing at a voluntary institutional fund and has at least two years of experience as an auditor or
- b) has worked in auditing for at least three years and, in addition to being an auditor certified to audit financial institutions, has worked as an assistant auditor for at least two years.

(2) The Commission shall pass a resolution to remove an auditor from the register of auditors certified to audit financial institutions if

- a) the auditor fails to comply with the requirements for registration,
- b) the auditor fails to fulfill the obligations specified in legal regulations.

(3) If the Commission removes an auditor from the register, the Hungarian Association of Auditors shall initiate ethics proceedings against the auditor.

(4) If the Hungarian Association of Auditors initiates ethics proceedings against an auditor certified to audit financial institutions, it shall simultaneously notify the Commission thereof.

#### *Section 134.*

(1) The auditor commissioned by the financial institution shall forthwith notify the Commission - in writing - at the same time that he notifies the audited financial institution of the results of his audit if he finds facts on the basis of which

- a) the books cannot be endorsed or endorsement can only be granted subject to certain conditions,
- b) he detects circumstances indicating criminal acts or any severe violation of the financial institution's internal rules and regulations or the imminent danger thereof,
- c) he detects circumstances indicating any serious violation of this Act or other legal regulations, or the stipulations of the regulations issued by the NBH,
- d) he does not find the fulfillment of the financial institution's obligations and the safekeeping of the assets entrusted to it to be ensured, or
- e) he ascertains that there are serious deficiencies or insufficiencies in the financial institution's internal control systems,
- f) a considerable difference of opinion has emerged between the auditor and the management of the financial institution regarding issues affecting the credit institution's solvency, income, data disclosure or accounting and significantly affecting the operation of the financial institution.

(2) The auditor inspecting the consolidated annual report of a financial institution shall notify the Commission in writing concerning any findings with respect to a company with close link to the financial institution that adversely affect the continuous functioning of the financial institution or that indicate the occurrence of what is contained in Paragraphs a) and c) of Subsection (1).

(3) Over and above the cases defined under Subsection (1),

- a) the auditor shall have the right
  - 1) to consult with the Commission, and
  - 2) to convey the findings of his audit to the Commission,
- b) the Commission is entitled to demand and receive information from the auditor on the findings thereof.

#### *Section 135.*

In the case described in Paragraph k) of Subsection (3) of Section 151 the Commission shall have powers to compel the credit institution to replace its auditor and to remove the auditor from the register.

#### *Section 136.*

(1) When auditing the annual account of a credit institution the auditor shall also examine the following:

- a) the accuracy of evaluations by professional standards,
- b) whether the prescribed and necessary adjustments and readjustments have been made,
- c) whether the prescribed and necessary provisions have been set aside,
- d) compliance with the provisions on solvency margin, capital adequacy, financial stability and liquidity, and also the regulation pertaining to the various financial services,
- e) compliance with the legal provisions on prudential management for effective, reliable and independent operations as well as the NBH Act, the provisions of law on financial transactions and on foreign exchange as well as the resolutions of the Commission and the central bank,
- f) the operation of adequate controlling systems.

(2) Upon conclusion of the audit, the auditor must record his findings on the issues specified in Subsection (1) in a separate supplementary report and send it to the board of directors, the managing director, the chairman of the supervisory board, the Commission and the NBH by 31 May of the following year.

#### *Section 137.*

(1) Financial institutions must send to the Commission the contract concluded with the auditor - for auditing the annual report - and all of the reports prepared by the auditor regarding the annual report.

(2) Prior to the approval of the annual report, the Commission is entitled, on the basis of the auditor's report, to instruct the financial institution to re-examine the annual report that contains incorrect or inaccurate data, implement the necessary corrections and have the corrected data verified by an auditor.

(3) If, after the annual report has been approved, the Commission discovers that the annual report contains any substantial error, the Commission may compel the financial institution to have the figures revised and verified by an auditor. The financial institution must present the revised data verified by an auditor to the Commission.

## ***PART VI***

### ***SUPERVISION OF THE ACTIVITIES OF FINANCIAL INSTITUTIONS***

#### **Chapter XXIII**

#### **The Commission**

##### *Section 138.*

(1) The powers and legal status of the Commission is governed in a separate act.

(2) The duties of the Commission shall be:

- a) evaluation of applications for authorizations and other petitions,
- b) keeping the records stipulated in this Act, controlling the financial institutions' system of information supply and data disclosure,
- c) controlling and overseeing the enforcement of regulations defining financial services and activities auxiliary to financial services,
- d) examining, analyzing and evaluating the prudent operation of financial institutions, the security of deposits and other repayable resources, and the circumstances which may endanger the independent and professional guidance, control and management,
- e) taking measures to terminate any contravention of rules when detected,
- f) taking extraordinary measures to terminate severe contravention of rules,
- g) imposing fines on revealed contravention of rules,
- h) assisting the operation of the Fund's board of directors as well as preparation and execution of decisions,
- i) to resolve disputed matters as to whether an activity shall be regarded as financial service or an activity auxiliary to financial services within the meaning of this Act,
- j) cooperation with foreign authorities, in particular with the supervisory authorities of Member States of the European Union.

#### **Revenues of the Commission**

##### *Section 139.*

(1) Revenues of the Commission shall consist of:

- a) administration fees,
- b) supervision fees,
- c) regulatory fines,
- d) other receipts.

(2) Financial institutions; the legal entities referred to in Subsection (3) of Section 8, which are not treated as financial institutions; as well as credit institutions and financial enterprises established in other Member States of the European Union shall pay a supervision fee for their branch offices, and this fee shall be recorded in their accounts under other expenditures.

(3) The annual supervision fee payable by financial institutions shall be 0.00025 of the financial institution's balance-sheet total; the annual supervision fee paid by enterprises engaged in activities auxiliary to financial services

- other than financial institutions - shall be sixty thousand forints; and the annual supervision fee of companies engaged in the agency activities defined under Paragraph *h*) of Subsection (1) of Section 3 and referred to in Point 12. *a*) of Chapter I of Schedule No. 2 shall be one hundred thousand forints. The annual supervision fee is payable in quarterly installments by bank transfer to the Commission's account by the twentieth business day of the month following the quarter to which the fee pertains. The annual supervision fee paid for the branch offices of credit institutions and financial enterprises established in other Member States of the European Union shall be thirty per cent of the amounts specified above, which shall be calculated on the basis of the branch office's balance-sheet total. Supervision fees payable for branch offices shall be remitted by transfer to the Commission's account in the manner and within the time limit specified above.

(4) The Commission may only use the fees described in Paragraphs a) and b) of Subsection (1) to cover operating costs.

(5) The proceeds from fines imposed by the Commission must be used exclusively for the following purposes:

- a) training banking experts;
- b) promoting the preparation and publication of studies on supervisory activities; and
- c) providing information for deposit-holders and other customers;
- d) contributions to the Fund and/or the voluntary fund;
- e) assistance to compensate the losses of the non-profit organization conducting the liquidation of financial institutions.

(6) Eighty percent of the revenue from the regulatory fines imposed by the Commission on credit institutions under this Act, not including the credit unions that are members of a voluntary deposit insurance fund, must be paid into the Fund. Eighty percent of the revenue from the regulatory fines imposed on credit unions that are members of a voluntary deposit insurance fund must be paid into the voluntary fund.

(7) The definition of administrative procedures and services to be rendered by the Commission and the amount of fees payable for such services shall be decreed by the Minister of Finance.

(8) If a credit institution is also engaged in investment services and activities auxiliary to investment services, and is paying supervision fees on such services as described in the CMA, the value of the assets indicated in the balance sheet on the accounting date on which such fees had been paid in accordance with the CMA shall be deducted from the balance sheet total, and the annual fee described in Subsection (3) shall be calculated on the remaining amount.

(9) Any delay in the payment of supervision fees shall be subject to late charges from the due date specified in Subsection (3) until paid in full.

(10) Late charges shall be assessed for each day in default computed as twice the current central bank base rate divided by three hundred and sixty-five.

## Chapter XXIV

### Instruments of Performance of Supervisory Activities

#### Authorization

##### *Section 140.*

The Commission shall grant the authorizations described in Sections 3 and 14-16, for specific activities, for a predetermined period of time, subject to specific conditions and territorial limitations and, within the financial service activities, with a limitation of business branches or products.

##### *Section 141.*

#### Disclosure of Data

##### *Section 142.*

(1) The board of directors of a credit institution shall immediately notify the Commission and the NBH in writing, if



- a) the danger of financial failure (illiquidity) is imminent,
  - b) there is any dangerous situation in the credit institution's everyday operations, such as insolvency,
  - c) its solvency margin has diminished by twenty five percent or more,
  - d) it has suspended payments, or
  - e) it has stopped its operations, financial service activities.
- (2) The board of directors of a credit institution shall notify the Commission within two business days in writing if
- a)
  - b) the subscribed capital is increased or reduced,
  - c) any financial service is suspended, restricted, or terminated.
- (3) In respect of a credit institution operating as a branch office, the executive officer of the branch office shall file the notification described in Subsections (1) and (2) and shall also report the following to the NBH and the Commission in writing and without delay:
- a) if its capital maintenance ratio has fallen below one hundred per cent,
  - b) if the foreign credit institution or any of its branch office in any country has become insolvent,
  - c) if the supervisory authority competent for the main office or registered office of the foreign credit institution has imposed measures or sanctions against the credit institution or its branch office in any country.

#### *Section 143.*

Financial institutions and other legal entities engaged in activities auxiliary to financial services shall supply data to the NBH and the Commission regularly and with the content, in the manner and form as described by legal regulation.

#### *Section 144.*

The Commission may instruct the financial institution to supply (extraordinary) information - for a specific period of time - with the content and regularity determined thereby as it deems necessary to regularly monitor

- a) liquidity,
- b) solvency,
- c) exposures,
- d) observance of rules of financial services and activities auxiliary to financial services,
- e) the organization's operation, and
- f) the internal control mechanism

for the purposes of the performance of its supervisory powers and responsibilities.

#### *Section 144/A.*

Any credit institution registered in Hungary shall report if its parent company is transformed into a mixed-activity holding company or a mixed financial holding company, or if such relation is altered or terminated.

#### *Section 145.*

The Commission may request to present interim reports, statements in a prescribed form and sections, and audit reports by financial institutions and other legal entities not qualifying as financial institutions engaged in activities auxiliary to financial services, and furthermore, may request information from a financial institution and its organizations on all of their business affairs.

## **Inspection**

#### *Section 146.*

- (1)-(4)
- (5) The Commission may contract the services of an expert, in accordance with its tendering regulations, to examine the operation of a financial institution. The expert must be registered in the Commission's register of

experts. Any expert may be entered into the list of experts who (or which is a member of at least one economic association or law firm, or the employee of the voluntary deposit and institutional protection fund) is an auditor registered in the register of auditors for credit institutions and can present at least one credit institution as a reference.

(6) The provisions of Subsections (2)-(6) and (8)-(11) of Section 10 and the provisions of Section 11 of Act CXXIV of 1999 on Government Control of Financial Institutions shall be duly applied to auditors and experts. The Commission shall conduct an inquiry in connection with the appointment of an auditor or an expert concerning any involvement with the employer during the previous three calendar years in the form of membership or in an executive position. The auditor and the expert must have the qualification that is required from the head of the audited company and must have adequate liability insurance.

(7) Auditors and experts must have sufficient facilities for the safekeeping of documents (duplicates). Auditors and experts may not retain possession of any document or data incidental to the audit following the conclusion of an on-site inspection.

(8) Any person holding a letter of appointment from the Commission shall be considered an official when acting in that capacity.

(9) The Commission may only examine the data of the customers of persons providing financial services or engaged in activities auxiliary to financial services to the extent required for its supervisory duties.

(10) At the request of the Commission, financial institutions, bank representations and those engaged in providing financial services or in activities auxiliary to financial services shall furnish to the Commission in the Hungarian language any data, report, statement, and other inspection documents specified in legal regulation to the extent that pertains to their activities: their accounting records, regulations, documents of transactions, the proposals of their executive and supervisory board and the general meeting, including the relevant minutes, internal control reports and records; and the written statements of the auditor, the audit report, and the reports and records of their internal control procedures.

#### *Section 147.*

(1) The fees and costs of experts, employed by the Commission for regular - scheduled - on-site inspections, shall be borne by the Commission.

(2)

#### *Section 148.*

#### *Section 148/A.*

#### *Section 149.*

The inspector or person, carrying out the inspection in the name of the Commission, may initiate to take supervisory measures, to impose a fine and to apply special measures by the Commission in order to terminate any violations of law or deficiencies.

#### *Section 149/A.*

The Commission may conduct inspections at the request of the supervisory authority of another Member State of the European Union or a third country, and it may, on the basis of reciprocity or a valid supervision cooperation agreement, give its consent to the supervisory authority requesting consent, to an auditor or to another expert designated by it to conduct the inspections. The competent authority which made the request may, if it so wishes, participate in the inspections insofar as it does not carry out the inspections itself.

## **Common Rules for the Application of Regular and Extraordinary Measures and Penalties**

#### *Section 150.*

In the event of taking measures and extraordinary measures and imposing fines upon financial institutions the Commission shall notify the MNB simultaneously with adopting the resolution therefor.

*Section 151.*

(1) The Commission must consider the need for measures if a financial institution, a non-financial business association engaged in activities auxiliary to financial services, or an executive officer or owner thereof violates this Act; the legal provisions on effective, reliable and independent ownership and prudent operation; as well as the provisions of the NBH Act, the legal regulations on financial transactions, and obviously conducts its activities without due care; thus, for example,

- a) their decision-making system and rules of procedure do not comply with regulations, or they fail to observe them during their operation,
- b) their accounting, recording and auditing system fails to meet the requirements of legal provisions in effect,
- c) they fail to comply with their obligation to disclose data, to report or to provide information to the Commission, the NBH, the shareholders or the Fund by the prescribed deadline,
- d) the activity of their auditors is not in compliance with legal regulations, or they inform the board of directors, the supervisory board or the Commission delayed and inaccurately about violations of law, deficiencies and their other problems - endangering their prudent operation - found at the financial institution,
- e) its solvency ratio or its solvency margin are less than what is prescribed in this Act or a Commission resolution,
- f) they violate any of the regulations on exposures, on the determination, analysis, evaluation and definition of exposures, on the management of exposures, on the management and reduction of risks,
- g) they fail to inform the general meeting about the measures of the Commission, and if a credit institution
- h) fails to comply with regulations on ensuring liquidity and approximation of maturities of assets and liabilities,
- i) fails to fulfil its obligation to create reserves,
- j) the financial institution does not fulfill the obligations stipulated in the Act on the Prevention of Money Laundering.

(2) In the event that the provisions of this Act, the legal regulations pertaining to prudent operation, the NBH Act; the legal regulations on financial transactions are violated, the Commission shall weigh the available data and information and take the necessary measures - (Sections 153, 155 and 156), if a financial institution

- a) performs any activities prohibited by law or for which it is not authorized,
- b) is unable to continuously satisfy the requirements for authorization described in this Act during its operation,
- c) has a solvency ratio that is less than seventy-five per cent of the value specified for it by this Act or Commission resolution, 4
- d) wishes to pay or pays dividends in a situation when its solvency ratio is below the prescribed limit, or has failed to set aside general reserves during the year,
- e) does not have sufficient provisions and the valuation of its assets is inadequate, as a consequence of which its solvency margin must be reduced by the amount of unaccounted accumulation of provisions and adjustments,
- f) regularly or severely violates regulations on exposures (such as to undertake any exposure without due care and diligence),
- g) employs an auditor whose activities are not in compliance with statutory provisions and who fails to inform the board of directors and the supervisory board of the credit institution and the Commission about any violation of law, deficiencies and other problems found at the credit institution endangering the prudent operation of the credit institution,
- h) is unable to fulfil or - repeatedly - fails to fulfil by the deadline its obligation to disclose data, to report or to provide information to the Commission, the NBH, its shareholders or the Fund,
- i) hinders the Commission or the auditor in performing their tasks,
- j) operates without the stipulated and necessary regulations, records, information technology and controlling systems,
- k) fails to comply with supervisory measures taken in respect of its non-compliance with the regulations,
- l) repeatedly infringes the regulations specified in Subsection (1) within two years of the operative date of the measure taken by the Commission or the resolution imposing a penalty,
- m) can only comply with the relevant capital adequacy requirement in such a way that it cannot repay a junior subordinated loan on time.

(3) In the event that the provisions of this Act, the legal regulations pertaining to prudent operation, the NBH Act; the legal regulations on financial transactions and foreign exchange are seriously violated, the Commission shall

weigh the available data and information and take the necessary measures - regular and extraordinary - (Sections 157-160), if a credit institution

a) has a solvency ratio that is less than fifty per cent of the value specified for it by this Act or Commission resolution,

b) wishes to pay or pays dividends in a situation in which its solvency ratio is below four percent,

c) fails to meet its obligation to create provisions or the obligation of value adjustment, has insufficient provisions and inadequate value adjustments, meaning that the evaluation of off-balance sheet items and assets was incorrect, as a consequence of which its solvency ratio falls below four per cent because the solvency margin were reduced by the amount of unaccounted accumulation of provisions and value adjustments,

d) by non-observance of the regulations for ensuring liquidity and the approximation of maturities of assets and liabilities, severely endangers the maintenance of the liquidity of the credit institution,

e) regularly or substantially violates the regulations on exposures and thus severely endangers the credit institution's liquidity, solvency or ability to produce income,

f) regularly performs activities prohibited by law or for which it is not authorized,

g) is unable to satisfy the requirements for authorization described in this Act during its operation,

h) operates without the necessary accounting, management information or internal control system, or these systems are inefficient to indicate the credit institution's actual financial position,

i) in the course of its resource collecting activities, determines an interest value significantly differing from the market value representing increased risks for the credit institution or the deposit-holders,

j) enters into illicit or bogus contracts in order to gain pecuniary benefits or alters its balance-sheet result or solvency index,

k) employs an auditor who fails to inform the Commission, the board of directors and the supervisory board of the credit institution about any severe violation of law, deficiencies and other problems found at the credit institution and endangering the prudent operation of the credit institution,

l) repeatedly infringes the regulations specified in Subsection (1) within five years of the operative date of the measure taken by the Commission under Subsection (2) or the resolution imposing a penalty,

m) fails to fulfil the provisions of the supervisory measures taken for any severe violation of regulations.

(4) The Commission shall, in addition to the provisions set forth in Subsection (3), take the necessary regular or extraordinary measures (Sections 157-160), also if

a) the capital maintenance ratio of a branch office of a third-country credit institution falls below one-hundred per cent,

b) a branch office of the foreign credit institution in another country has become insolvent.

(5) The Commission may also take measures if the supervisory authority with jurisdiction over the registered office of the third-country credit institution has taken measures against or penalized the given credit institution or one of its branch offices operating in any country for a reason that affects the safe operation of the branch office.

#### *Section 152.*

### **Measures**

#### *Section 153.*

(1) In the event if any violation of regulations or deficiencies are established - if these do not severely endanger the prudent operation of the financial institution -, the Commission shall take the following measures:

a) it may call upon the financial institution within the framework of negotiations held with an executive officer to take the necessary steps

1) in order to eliminate the revealed deficiencies to comply with the regulations of this Act and the provisions of legal regulations on prudent operation,

2) to maintain or improve its financial position;

b) it may advise the financial institution

1) to provide further training to its employees (managers) or to hire employees (managers) with the appropriate professional skills,

2) to draw up its standard service agreement and/or internal rules and regulations before the prescribed deadline, or to adapt it according to specific criteria,

3) to change its business management concept;

- c) it may stipulate the fulfillment of obligation for extraordinary supply of data;
  - d) it may oblige the financial institution to draw up and execute an action plan;
  - e) issue a disciplinary warning to the executive officer of the financial institution.
- (2) In the cases listed in Subsection (2) of Section 151, the Commission shall apply the following measures:
- a) delegate - one or more - on-site inspectors to the financial institution;
  - b) oblige the financial institution
    - 1) to adopt internal rules and regulations, or to adapt and apply these regulations according to specific criteria,
    - 2) to provide professional training for employees (managers) or to hire employees (managers) with the appropriate professional skills,
    - 3) to conduct an investigation in the interest of determining responsibilities for the damages caused and to initiate proceedings against the responsible person,
    - 4) to reduce operating costs,
    - 5) to accumulate sufficient reserves,
    - 6) to convene the board of directors or the supervisory board and advise these bodies to discuss specific items on the agenda and to the necessity of making specific decisions,
    - 7) to draw up and implement a restoration plan,
    - 8) to elect another auditor;
    - 9) to achieve and maintain a solvency ratio that is greater than eight per cent but no more than twice the statutory requirement,
  - c) it may prohibit, limit or make subject to conditions
    - 1) payment of dividends,
    - 2) payment of remuneration of executive officers,
    - 3) raising of loans by the owners of financial institutions, or rendering services to them by credit institutions which involve any exposure,
    - 4) extension of loans by financial institutions to enterprises belonging to the sphere of interests of the owners or executive officers,
    - 5) extension (prolongation) of deadlines specified in loan or credit agreements,
    - 6) performing certain financial service activities or activities auxiliary to financial services,
    - 7) opening new branches, starting new financial services as well as starting up new activities (business lines) within a financial service.
- (3) If the asset retention index of a credit institution operating as a branch office falls below one hundred per cent, the Commission shall order the parent foreign credit institution to bring the branch office into compliance with the provisions on capital maintenance ratio.

*Section 154.*

The on-site inspector delegated by the Commission under Paragraph a) Subsection (2) of Section 153 shall have powers

- a) to perform any supervisory activity in accordance with Subsection (3) of Section 146;
- b) to participate and make comments as an observer at the meetings of the management, the board of directors, the supervisory board or at the general meeting;
- c) to consult with the financial institution's auditor.

*Section 155.*

(1) If the Commission finds it is necessary to approve a restoration plan as well, it may allow a maximum period of thirty days for the elaboration of such.

(2) Where it is necessary to increase the capital, an additional period of thirty days may be allowed for convening the extraordinary general meeting. If the general meeting has decided on a capital increase or on providing of subordinated loan capital, not more than an additional fifteen days may be allowed of the date of the resolution for payment of the capital.

*Section 156.*

For the purposes of implementation of the restoration plan, the Commission may exempt the financial institution from the obligations set forth in Sections 76, 79-81 and 83-85 for a specific period but not more than for a period of one year. The Commission may extend this exemption on one occasion for a maximum period of six months.

## **Extraordinary Measures**

### *Section 157.*

(1) In the cases described in Subsection (3) of Section 151, the Commission shall apply the following extraordinary measures - in addition to those set forth in Subsections (2)-(3) of Section 153 - in lieu of bankruptcy proceedings:

- a) it may stipulate
  - 1) to sell the credit institution's assets used for purposes other than banking operations,
  - 2) for the credit institution to settle its capital structure within the deadline and in compliance with the requirements prescribed by the Commission,
  - 3) reaching or maintaining the solvency ratio over and above the provisions set forth in Section 76 in respect of the financial services performed by the credit institution and the exposures of the credit institution;
- b) it may limit or prohibit the credit institution
  - 1) to conclude transactions between the owners and the credit institution,
  - 2) to effect payment of deposits and other repayable resources,
  - 3) to undertake commitments;
- c) it may determine the highest rate of interest that may be charged by the credit institution;
- d) it may compel the board of directors to convene the general meeting, and furthermore, it may advise these bodies to discuss specific items on the agenda and to the necessity of making specific decisions; as well as
- e) it may delegate a supervisory commissioner to the credit institution.

(2) In addition to the extraordinary measures described in Subsection (1), the Commission may simultaneously call upon the owner of the credit institution

- a) entered into the register of shareholders - in the case of credit unions, into the register of members - having a direct ownership interest reaching or exceeding five percent,
- b) having a qualifying participation  
to take the necessary measures.

(3) In the case of a branch office of a third-country credit institution, the Commission shall notify the third-country credit institution and its supervisory authority at the same time that it takes the extraordinary measures specified in Subsection (1).

(4) Simultaneously with the notice described in Subsection (2), the Commission shall notify the credit institution's board of directors, supervisory board and auditor and shall call upon the board of directors to immediately take the measures listed in Paragraph b) Subsection (2) of Section 153. If the board of directors fails to do so, the Commission shall effect these steps in a resolution.

(5) The extraordinary measures described in Paragraphs b), c) and e) of Subsection (1) - with the exception of Point 2 of Paragraph b) - may be taken by the Commission for a specific period of time but not more than one year. The Commission may extend this time limit on one occasion for a maximum period of six months.

(6) The Commission may order the measure specified in point 2 of Paragraph b) of Subsection (1) for a maximum period of ninety days.

(7) Upon taking the extraordinary measures specified in Points 1 and 2 of Paragraph b) of Subsection (1), the Commission shall forthwith notify the supervisory authorities of the Member States in which the credit institution affected by the measure operates any branch offices or provides cross-border services.

### *Section 158.*

(1) Upon receiving the notification described in Subsection (1) of Section 157, the credit institution's board of directors shall take an immediate action to ensure that

- a) the deposits and other receivables of the owners due from the credit institution are blocked,
- b) the lending to companies in their sphere of interests of the owners is suspended,
- c) no financial services involving exposures to the owners are rendered.

(2) If the measures listed in Subsection (1) have been implemented, the owners [Subsection (2) of Section 157] may not claim set-offs from the credit institution.

(3) The owners shall be exempted from the legal consequences related to the notification governed in Subsection (2) of Section 157 only if they announced to the Commission the sale of their shares in writing at least sixty days prior to receiving the notification.

(4) The board of directors of the credit institution shall keep the restrictions listed in Subsections (1) and (2) in effect until the owners terminate the cause for taking the measures or the liquidation of the credit institution is ordered by the court.

#### *Section 159.*

(1) If the credit institution fails to fulfil the supervisory measures described in Paragraph d) of Subsection (1) of Section 157, the Commission may initiate the convening of the credit institution's general meeting at the court of registry.

(2) In the request referred to in Subsection (1), the Commission shall make a proposal on the time, location and items on the agenda of the general meeting.

(3) The court of registry shall issue a resolution within eight days for calling the general meeting.

#### *Section 160.*

In addition to the measures listed in Subsection (1) of Section 157, the Commission may suspend the voting rights of the owners of the financial institutions belonging into its sphere of authority for a specific period of time, but not more than for a period of one year if the owner's activity or influence exercised on the financial institution, based on the available facts, endangers the financial institution's reliable and prudent operation; in such cases, when determining the quorum, the votes effected by such restriction must be ignored.

#### *Section 161.*

(1) Customer accounts and other repayable funds may - pursuant to the agreement between the transferring and receiving credit institutions - be transferred with the permission of the Commission. While transferring the holdings, the provisions of the Civil Code on the substitution of debt must be applied with the exception that the consent of the contracting parties is not necessary to transfer the holdings. The Commission's permission shall not replace the permission of the Economic Competition Office specified in Act LVII of 1996 on the Prohibition of Unfair Market Practices and Restraint of Trade.

(2) The application for authorization for the transfer of customer accounts shall contain

a) the contract between the transferor and the transferee for the conveyance of the accounts,

b) indication of the assets and collaterals attached to the accounts to be transferred,

c) the date and value of transfer of the accounts,

d) the certification that the receiving credit institution has the minimum solvency margin required for the accounts received in addition to the solvency margin for its own accounts.

(3) The credit institution taking the contracts over shall notify all contracting parties concerned on the transfer - within thirty days of receipt of the authorization - in writing. In respect of bearer deposits or securities, the notice must be published as an announcement in at least two national daily newspapers.

(4) The Commission shall refuse to authorize the transfer of accounts if it endangers the fulfillment of liabilities assumed in the deposit contract by the transferee and the transferor.

#### *Section 162.*

If necessary, the Commission may take the measures (regular and extraordinary) described in Sections 153 and 157-160 separately or jointly, and repeatedly as well.

#### *Section 163.*

(1) The Commission may delegate one or more supervisory commissioners particularly if

- a) suspension of payments is imminent,
- b) the credit institution falls in a situation to impose potential and imminent jeopardy for the credit institution's failure to fulfil its obligations,
- c) the credit institution's board of directors is unable to perform its tasks and thus the interests of the deposit-holders are endangered,
- d) the deficiencies revealed in respect of the credit institution's accounting or internal control system are of the extent that it has become impossible to evaluate the credit institution's actual financial position.

(2) The situation described in Paragraph b) of Subsection (1) exists particularly if the credit institution's solvency ratio falls below two percent and

a) despite the extraordinary measures of the Commission, the board of directors fails to convene the general meeting, or

b) the owner or the third-country credit institution is incapable or unwilling to increase the credit institution's own funds or solvency ratio to the level prescribed by law or Commission resolution, or

c) the restoration plan approved by the Commission is not executed, or executed with a considerable delay or with divergences.

(3) Natural persons who satisfy the requirements specified in Section 68 for credit institution managers may be appointed to serve as regulatory commissioners.

#### *Section 164.*

(1) Until receipt of the resolution on the delegation of the supervisory commissioner, the responsibilities of the members of the credit institution's board of directors described in Section 30 of the Companies Act, Section 71 of the Accounting Act and Section 38 of the NewCoop shall remain in effect.

(2) If it is not possible to take the credit institution's affairs over, the supervisory commissioner may have recourse to the collaboration of a notary public or the police.

#### *Section 165.*

(1) During the period of delegated term of the supervisory commissioner, no executive officers may perform their tasks and exercise their signatory rights as described in the Companies Act, the Accounting Act, the NewCoop and the bylaws. For the period of delegation, the supervisory commissioner shall exercise the rights of the executive officer described by law and the bylaws.

(2) The Commission may set the supervisory commissioner other tasks as well.

#### *Section 166.*

The supervisory commissioner shall be held responsible for damages caused in his such capacity according to Section 348 of the Civil Code if he is employed by the Commission, and according to Section 350 of the Civil Code if he is appointed thereby.

#### *Section 167.*

The name and address of the supervisory commissioner shall be conveyed to the court of registry for registration and publication purposes.

#### *Section 168.*

(1) For the purposes of this Act, receivables described in Paragraph b) of Subsection (1) of Section 157 and Paragraph a) of Subsection (1) of Section 158 due from the credit institution shall not qualify as frozen deposits. Deposits that cannot be paid out because of the Commission's prohibition on payments ordered pursuant to Subsection (5) of Section 176/B shall not be considered frozen deposits for fifteen days from the day on which the resolution declaring liquidation was passed.

(2) The Commission shall notify the Fund without delay on the notification specified in Section 48 and on the necessity of the taking of the extraordinary measures specified in Section 157.



## Supervision of Branch Offices and Cross-border Services

### *Section 168/A.*

(1) If a branch office of a financial institution authorized in another Member State of the European Union or the cross-border services provided in Hungary by such financial institution violates the regulations in force in Hungary or if insufficiencies are detected in the operation of the branch office or the financial institution, the Commission shall call upon the branch office or the financial institution to rectify the situation that is in contravention of the rules.

(2) In the event of the failure of the branch office or financial institution to comply with the above-specified request, the Commission shall notify the supervisory authority of the other Member State of the European Union with regard to the anomalous situation and request that the supervisory authority take appropriate action.

(3) The Commission may act directly if it determines that the continuance of the anomalous situation presents a serious threat to the stability of the financial system or the interests of customers. The European Commission shall review the measures of this type that are taken by the Commission and subsequently determine their legality.

## Chapter XXV

### Penalties

#### *Section 169.*

(1) The Commission may impose fines and penalties for any violation of the provisions stipulated in the legal regulations pertaining to financial services and activities auxiliary to financial services.

(2)-(3)

#### *Section 170.*

(1)

(2) Penalties may be imposed on credit institutions or executive officers failing to fulfil the provisions of this Act and of the Commission's resolution, and for partial or late compliance with the said provisions.

(3) The amount of the penalty, which may be imposed on the credit institution in the cases described in Section 151 or in the case of a fine which may be imposed when taking the measures described in Subsection (1) of Section 153, may vary from 0.1 to 1 per cent of the mandatory minimum subscribed capital prescribed for the type of credit institutions in this Act, and from 0.5 per cent to 2 per cent in the case of penalties that may be imposed when taking the measures listed under Subsections (2) and (3) of Section 153.

(4) The amount of the penalty, that may be imposed on the credit institution when taking the measures listed under Subsection (1) of Section 157 as well as in the case of a failure of fulfillment of the obligations described in Subsection (1) of Section 158 may be between one and three per cent of the mandatory minimum subscribed capital described for the type of credit institutions in this Act.

(5) In the cases described in Subsection (4) or in the event of any infringement by the credit institution, the Commission may impose a penalty computed as of the date of default and multiplied by the number of days in default (with a maximum of one hundred days). The penalty shall be fifty thousand forints per day.

#### *Section 171.*

The penalties imposed on an executive officer - including the director of a bank representation office - may be from ten to fifty percent of his net income earned through the office, whether under employment or contract, in the previous year. If no such income is available, the amount of the penalty shall be between one hundred thousand and one million forints.

#### *Sections 172-173.*

*Section 174.*

In the case of any breach of duties described in this Act and in other legal regulations issued under authorization by this Act, the Commission shall apply the provisions contained in Sections 169-171 subject to the exceptions set forth in Section 175 in respect of financial enterprises and other legal entities engaged in activities auxiliary to financial services.

*Section 175.*

(1) Penalties imposed on financial enterprises and other business associations other than financial institutions engaged in activities auxiliary to financial services may be between two hundred thousand and two million forints.

(2) In the case of any infringement by a financial enterprise or other business association other than a financial institution engaged in activities auxiliary to financial services, a penalty may be imposed as of the date of default and computed by multiplying the same by the number of days of delay. The penalty shall be between two thousand and twenty thousand forints per day.

(3) The fine computed according to Subsection (2) may be imposed on financial enterprises and other business associations other than financial institutions engaged in activities auxiliary to financial services for non-compliance with the provisions of the Commission's resolutions, and for partial or late compliance with the said provisions.

(4) When determining any accountable conduct of a natural person acting in relation to preparing and making decisions on the operation of financial enterprises and other business associations other than financial institutions engaged in activities auxiliary to financial services, the penalty may be not more than thirty five percent of the penalized person's net income obtained deriving from the office of the person concerned in the previous year. If no such income is available, the amount of the penalty shall be between one hundred thousand and one million forints.

*Section 175/A.*

If the person or organization that is being investigated according to Subsection (1) of Section 141 fails to comply with the Commission's request or impedes the supervisory proceedings, such person or organization may be subject to a penalty of between five thousand and ten million forints.

*Section 176.*

The NBH may initiate the imposing of a penalty if a financial institution or another business association other than a financial institutions engaged in activities auxiliary to financial services violates the NBH Act, the legal regulations on financial transactions, the statutory provisions on the conditions for the provision of financial services and carrying out activities auxiliary to financial services subject to licensing by the NBH.

## Chapter XXVI

### Termination of Financial Institutions Without a Legal Successor

*Section 176/A.*

(1) The provisions of the Bankruptcy Act and the Companies Act shall be applied to the winding up and liquidation of financial institutions operating as joint-stock companies or cooperatives, while the provisions of the FCA shall be applied to the winding up and liquidation of financial institutions operating as branch offices, with the exceptions set out in this Act.

(2) The winding up and liquidation proceeding of financial institutions may be conducted only by the Commission's nonprofit company.

(3) If not otherwise stipulated by law, the nonprofit company specified in Subsection (2) may only engage in the winding up and liquidation of financial institutions.

### **Winding Up of Financial Institutions**

*Section 176/B.*

- (1) The Commission shall have powers to order the winding up of financial institutions.
- (2) The Commission shall order the winding up of a financial institution if
  - a) it revokes the financial institution's authorization, except where it is revoked pursuant to Paragraph c) of Subsection (1) of Section 30 or
  - b) it learns that a foreign financial institution's foundation permit, activity (operating) permit or authorization of a financial institution for the foundation of a branch office, which had been issued by the supervisory authority of the country where the financial institution is registered, has been revoked.
- (3) The prior agreement specified in Subsection (1) of Section 8 of the Bankruptcy Act need not be obtained for the Commission to pass a resolution declaring termination by winding up.
- (4) The Commission's resolution for winding up shall indicate the appointed receiver and set the date for beginning of the proceeding, which may not antedate the resolution.
- (5) The Commission shall appoint a commissioner - if the winding up procedure begins after the date of the resolution - at the same time it passes the resolution for winding up (if this has not happened earlier). The commissioner's assignment shall last until the beginning of the winding up procedure, and he may order a prohibition on all payments until the starting date of the procedure.
- (6) The completion of the winding up procedure is contingent on proof that the unpaid deposit holdings have been transferred to the entitled persons.

*Section 176/C.*

- (1) The court of registry shall issue an order immediately after receiving the resolution for dissolution by winding up and it shall order this published in the Companies Gazette.
- (2) The fee of the receiver may not exceed one-half per cent of the book value of the assets stated in the financial institution's annual report pursuant to Paragraph a) of Section 70 of the Bankruptcy Act.
- (3) During the winding up of a financial institution the creditors must present their claims within sixty days of the publication of the dissolution.

## **Liquidation Proceedings**

*Section 177.*

- (1)
- (2) The Budapest Metropolitan Court has exclusive jurisdiction in conducting proceedings in connection with the compulsory liquidation of financial institutions.
- (3) The court shall promptly notify the Commission of the commencement of any liquidation proceedings that were not initiated by the Commission.
- (4)

*Section 178.*

- (1) Chapter II of the Bankruptcy Act may not be applied in respect of credit institutions.
- (2) In respect of credit institutions, the liquidation proceedings may not be suspended.
- (3) The provisions of Subsection (7) of Section 46 of the Bankruptcy Act may not be applied in respect of claims against financial institutions.

*Section 179.*

- (1) The Commission may initiate liquidation proceedings against a financial institution or the branch office of a third-country financial institution in the cases described in Subsection (2).
- (2) The Commission shall initiate liquidation proceedings
  - a) if the financial institution's authorization is revoked pursuant to Paragraph c) of Subsection (1) of Section 30 or

b) in the case of a branch office, if insolvency proceedings have been initiated against a foreign financial institution that is operating a branch office in Hungary.

(3) The court shall order liquidation - if initiated by the Commission - without having to establish the insolvency

a) of a financial institution operating as a joint-stock company or cooperative,

b) of a foreign financial institution operating a branch office.

#### *Section 180.*

(1) The court shall process a request for liquidation within eight days of the submission thereof. The decision ordering the liquidation shall be executable irrespective of any appeal.

(2) If the court institutes the liquidation proceeding upon the request of the Commission, the preliminary approval described in Subsection (1) of Section 8 of the Bankruptcy Act shall not be required.

#### *Section 181.*

(1) If the Commission appoints a supervisory commissioner before the request for liquidation proceedings is submitted, the appointment shall remain in effect until the court appoints the liquidator in its decision to order liquidation.

(2) The Commission may order a full ban of payments from submission of the application for liquidation until the decision on liquidation is published in the Companies Gazette.

(3) During the liquidation of a financial institution, the creditors must present their claims within sixty days of the publication of the court order calling for liquidation.

#### *Section 182.*

(1) The amount of the liquidation fee must not exceed 1.25 per cent of the aggregate amount of proceeds from sold assets and the receivables actually received. In the case of a composition, the liquidator's fee may not exceed 1.25 per cent of net value of the assets.

(2) The provisions of Section 59 and Subsections (4)-(6) of Section 60 of the Bankruptcy Act shall not apply to liquidators.

#### *Section 183.*

(1) During the liquidation of a credit institution, any claims deriving from placement of deposits must be listed according to Paragraph d) of Subsection (1) Section 57 of the Bankruptcy Act; these claims have equal status.

(2) In the case of liquidation of a credit institution, debts from the core loan capital, subsidiary loan capital or subordinated loan capital defined in Schedule No. 5 and from the junior subordinated loan capital shall be satisfied after the liability referred to in Paragraph g) of Subsection (1) of Section 57 of the Bankruptcy Act has been satisfied.

(3) The representatives of the state and the Fund shall participate in the composition negotiations held in the course of the liquidation - in connection with and in the interest of the deposits insured by them - as creditors and they shall be entitled to make the allowances required for reaching the composition.

(4) In the process of winding up a credit institution, the funds deposited on behalf of clients within the framework of safe custody services shall not comprise part of the assets to be liquidated.

#### *Section 184.*

(1) In the course of liquidation proceedings, the liquidator or, upon the Fund's justified request, the Commission may grant - the financial institution in liquidation - temporary authorization to engage in specific financial services.

(2) In the course of a financial institution's liquidation, the Commission's permission shall be required for approval of any composition during the composition process if it is conditional upon the further operation of the financial institution as a credit institution or a financial enterprise.

(3)

#### *Section 185.*

- (1)
- (2)

## **Special Provisions on the Winding Up or Liquidation of Credit Institutions**

### *Section 185/A.*

The special provisions on the winding up or liquidation of credit institutions shall apply

- a) to the credit institutions that operate branch offices in other Member States of the European Union or provide cross-border services,
- b) to the branch offices of third-country credit institutions with respect to Section 185/H if the credit institution has branch offices in at least two Member States of the European Union.

### *Section 185/B.*

As regards the legal ramifications of any bankruptcy proceeding, liquidation or winding up of a credit institution with headquarters in another Member State of the European Union, the laws of the country in which the credit institution is established shall apply. The decisions adopted in such proceedings shall be recognized without any further proceeding.

### *Section 185/C.*

The Hungarian branch office of a credit institution established in another Member State of the European Union shall not be liquidated or wound up under Hungary law.

### *Section 185/D.*

As regards the legal aspects of any contract pertaining to real estate involved in liquidation or similar proceedings, the laws of the country in which the property is located shall apply.

### *Section 185/E.*

The rights attached to securities that are to be registered or kept in an account as a prerequisite for transfer shall be subject to the laws of the Member State in which the register or account is kept.

### *Section 185/F.*

(1) With respect to any winding up or liquidation proceedings and the ramifications of these proceedings, the Commission shall inform the supervisory authorities of the Member States of the European Union where the credit institution under liquidation or winding up proceedings operates any branch offices or provides cross-border services.

(2) Following publication of the court ruling ordering liquidation or winding up in the Companies Gazette (hereinafter referred to as "court ruling"), the Commission shall forthwith publish the contents of the ruling - in Hungarian on the forms referred to in Subsection (4) of Section 185/G - in the Official Journal of the European Communities and also in two national daily newspapers in the country where the branch office is operated or where cross-border services are provided.

(3) Any creditor whose permanent residence or corporate domicile is located in another Member State of the European Union shall file its claim within 60 days following the publication in the Official Journal of the European Communities as specified in Subsection (2). Regarding such creditors, the legal ramifications attached to publication as set out in Section 28 of the Bankruptcy Act shall be contingent upon the publication referred to in Subsection (2).

(4) The effect of the court ruling shall apply to the entire territory of the European Union.

(5) The regulations contained in the Bankruptcy Act on the avoidance of contracts shall not apply in cases in which the party acquiring any right through a contract is able to verify that the contract in question falls within the

scope of the law of another Member State of the European Union and such law does not allow the contract to be contested.

*Section 185/G.*

(1) Receivers and liquidators shall have powers to exercise the rights conferred by this Act and the Bankruptcy Act in all Member States in due observation of the laws of the respective Member State.

(2) In order to carry out their duties more effectively, receivers and liquidators shall have powers to delegate representatives in the territory of the Member States affected to provide assistance to local creditors.

(3) The receiver or liquidator shall be required to inform the known creditors whose head office, domicile or normal place of residence is located in another Member State of the European Union immediately upon receiving the court ruling concerning the contents of such ruling and the legal consequences attached to specific deadlines.

(4) The information specified in Subsection (3) shall be provided in Hungarian. A form with the title "Invitation to lodge a claim. Time limits to be observed" in all the official languages of the European Union shall be used for this purpose.

(5) Any creditor who has his domicile, normal place of residence or head office in another Member State of the European Union may lodge his claim in Hungarian. In addition, he may submit the claim in the official language of his home Member State on condition that the title "Lodgement of claim" [Követelés benyújtása] is indicated in Hungarian.

(6) The receiver or liquidator shall be required to regularly inform the Commission and the creditors on the status of the liquidation or winding up procedure.

(7) At the request of the supervisory authorities of other Member States of the European Union, the Commission shall be required to provide information concerning the status of the liquidation or winding up procedure.

*Section 185/H.*

(1) Where a liquidation proceeding is initiated against a branch office of a third country, the Commission shall notify the supervisory authorities of the Member States in which the credit institution whose branch office is undergoing liquidation has any branch offices that are listed in the register published annually in the Official Journal of the European Communities.

(2) The Commission, the court ordering liquidation and the liquidator shall collaborate with the competent authorities of the countries concerned in order to coordinate their actions.

## Chapter XXVII

### Data Processing by the Commission

*Section 186.*

(1) The Commission may manage data to the extent required to carry out the responsibilities conferred upon it by law, including personal data processed within the meaning of this Act.

(2) The Commission shall register the following data of financial institutions:

- a) name, registered office;
- b) sphere of activities;
- c) exact date of foundation;
- d) amount of subscribed capital;
- e) owners having qualifying participation;
- f) names of executive officers;
- g) date of commencement of financial services;
- h) names of the executive officers of a credit institution with a branch office in Hungary;
- i) date and place of foundation of the credit institution's subsidiary, foreign bank representations or foreign branch offices;
- j) names of the persons in charge of management of the offices listed in Paragraph i);
- k) the agents specified in Subsections (9) and (10) of Section 3;

- l) any changes in the data listed in Paragraphs a)-k).
- (3) The Commission shall keep records:
  - a) of the data of persons with a close link to any credit institution that is subject to supervision on a consolidated basis or supplementary supervision;
  - b) of the data of persons with a close link to any parent company of any credit institution that is subject to supervision on a consolidated basis or supplementary supervision;
  - c) of those data of the parent company - if it is a mixed-activity holding company or a mixed financial holding company - of a credit institution that are necessary for the supervision of that credit institution.

*Section 187.*

The Commission shall register under a resolution the following data of bank representations of foreign credit institutions:

- a) name, registered address, sphere of activities of the represented credit institution, and the place where it performs the activities,
- b) date of foundation of the bank representation and date of its authorization;
- c) address of the bank representation;
- d) name of the manager of the bank representation,
- e) date of opening of the bank representation;
- f) any changes in the data listed in Paragraphs a)-d).

*Section 188.*

*Section 189.*

The Commission may only disclose - to the agencies listed in Subsections (2) and (3) of Section 51 - bank secrets, business secrets and other data or information that are used to fulfill its own responsibilities, to the extent required to fulfill the responsibilities stipulated by law and in accordance with the provisions of international cooperation agreements. The Commission may not disclose to third persons any data or information received from foreign supervisory authorities that is classified as a bank or business secret; it may only process such data and information in accordance with the cooperation agreement with the foreign supervisory authority and may only disclose or impart such with the consent of the foreign supervisory authority concerned.

*Section 190.*

(1) In order to perform its duties conferred in this Act, based on the provisions of Sections 186 and 187 and the disclosure of data ordered thereby, the Commission shall keep records on:

- a) financial institutions, bank representations and associated companies,
  - b) the enterprises engaged in activities auxiliary to financial services,
  - c) the owners of financial institutions,
  - d) the executive officers of financial institutions,
  - e) the auditors,
  - f) the applicants.
- (2) In addition to the identification data listed in Schedule No. 3, such records shall include:
- a) in relation to dominant influences, the percentage of the holding and the contract in which the dominant influence is stipulated,
  - b) the extent of close link referred to in Paragraphs a) and b) of Subsection (3) of Section 186, and the contract in which such close link is stipulated,
  - c) the office of executive employees and their positions, subject of the appointment, type of legal relationship, credentials, as well as all measures taken by the Commission in regard to the registered person,
  - d) contents of the application for the issue or return of the authorization as well as the data of the document attached for evaluation of the application,
  - e) internal rules and regulations of the credit institution, particularly the bylaws, the standard service agreement, the regulations for rating debtors or credit, the regulations for ensuring solvency, and the internal credit regulations,

- f) the annual report of the financial institution, and the resolution on the allocation of profits,
  - g) the minutes of the credit institution's general meeting, the meetings of the board of directors and supervisory board,
  - h) in the case of complaints or public announcements, the personal data of the complaining party, and the event and financial institution giving rise to the complaint,
  - i) documentation of computation of the solvency margin and capital adequacy,
  - j) the data required for controlling large exposures, internal loans, follow-up loans, investment limitations and creation of special risk provisions,
  - k) in respect of a credit institution operating as a branch office, above and beyond what is contained in Paragraphs a)-j), the data necessary for the inspection of the capital maintenance ratio.
- (3) In order to achieve the goals set forth in Subsection (2), the Commission may handle the following personal data of the financial institution's customers in addition to those listed in Schedule No. 3:
- a) the customer's loan data,
  - b) the customer's other risk data,
  - c) the customer's deposit data,
  - d) other data of the customer on receivables due from the financial institution.
- (4) The Commission's authorization shall also serve as proof of registration.
- (5) The Commission shall register the agents of financial enterprises and credit institutions.

*Section 190/A.*

(1) The Commission shall have powers - in the course of market surveillance proceedings (Section 11/Q of Act CXXIV of 1999 on Government Control of Financial Institutions) - to obtain and process to the extent necessary to discharge its duties the personal data of clients (surname and forename, birth name, place and date of birth, mother's birth name, nationality, residence address, place of abode) relating to:

- a) securities account, client account and bank account transactions, the number of the account to be debited and credited, the holder of such account, the purpose of crediting and debiting, and the code for the identification of the financial transaction; and
- b) the telephone number or other identifier of the subscriber terminal specified in the Act on Electronic Communications, calling and called subscriber numbers, and the date of call or other services provided.

(2) When requesting the data referred to in Subsection (1) the Commission shall provide sufficient evidence to prove that the data requested is essential for clearing up the facts to the fullest extent.

(3) The data specified in Paragraph b) of Subsection (1) shall be made available subject to the district attorney's prior consent. The district attorney shall refuse to consent if the Commission is unable to provide sufficient evidence as required in Subsection (2), or if other legal requirements for data processing are not satisfied.

*Section 191.*

The Commission may process the personal data obtained pursuant to this Act for five years.

## Chapter XXVIII

### Procedure of the Commission

### Decisions of the Commission

*Section 192.*

(1) The Commission shall pass its decisions based on submitted written application and the documents attached thereto as well as the facts made known thereto when approaching other organizations and performing its own duties in accordance with the provisions of this Act.

(2)



*Section 193.*

The resolution on the limitation of exercising of ownership rights shall be entered by the court of registry, based on the Commission's notification, within eight days into the last row of the incorporation certificate.

**Time Limits**

*Section 194-195.*

*Section 196.*

*Section 197.*

**Disclosure of Information**

*Section 198.*

(1) The Commission shall immediately send to the court of registry its resolutions on the permits and authorizations it issues, amends and revokes, including the authorization referred to in Paragraph c) of Subsection (1) of Section 14.

(2) The Commission shall send its final resolution on rejection of an application for authorization to the court of registry.

*Section 198/A.*

The Commission shall publish the list of agents specified in Subsections (9) and (10) of Section 3 on its official web site every six months.

***PART VII***

***MISCELLANEOUS AND CLOSING PROVISIONS***

**Chapter XXIX**

**Consumer Protection**

**Protection of Designation**

*Section 199.*

(1) The designation "credit institution", "bank", "savings", "savings cooperative" or "credit union", any combination or attributive forms or the foreign equivalent thereof and any other terms of identical, similar or synonymous meaning may only be used in the corporate name, advertisement, or in any other correspondence of credit institutions or bank representations that have been authorized according to provisions of this Act. These restrictions shall not apply to the NBH, as well as to professional and interest representation organizations of financial institutions, and to credit institutions founded and authorized prior to the entry into force of this Act.

(2) The provisions of Subsection (1) shall not apply where the designation "bank" is used by an entity in its corporate name, advertisements or in any other form in a context that does not convey the impression of being engaged in financial service activities.

*Section 200.*

Any dispute concerning a company's entitlement to use a designation under Section 199 shall be resolved by the Commission.

## **Advertisements**

*Section 201.*

(1) Credit institutions, with the exceptions set forth in Subsection (2), may perform any advertisement activities inviting persons of minor age for placing money on deposit, borrowing or using other financial services only in a public manner, through at least two national daily newspapers.

(2) Cooperative credit institutions may perform the advertisement activity described in Subsection (1) in a public manner, in at least two daily newspapers, one of which is a national daily newspaper.

(3) Advertisements published by credit institutions must clearly indicate the amount of interest or yield for one year (calculated in a manner prescribed by law) on deposits and debt securities issued by the credit institution.

(4) The financial institution may not advertise any drawings - except premium deposits - in its advertisements.

(5) A financial institution shall not send any publicity material to its customers through the postal service or via electronic mail if it has been expressly prohibited by the customer.

(6) For the purposes of this Chapter, 'advertisement' shall mean any attempt to focus attention on a particular financial institution, bank representation, financial service or auxiliary financial service by commercial means, irrespective of whether it is done through printed matter published in the country or by mail; by the distribution of labels, cards, stickers, fliers, sound recordings, catalogues, price lists or other printed materials; by screening movies or airing television or radio programs transmitted in the territory of the country and broadcast on behalf of domestic program providers; or in any other form, including advertisements that appear in articles or programs whose primary purpose is not the advertisement if the article or the section of the program was created at the request or under the sponsorship of a specific financial institution.

(7) Advertisements may be published only by financial institutions that are registered in Hungary and are authorized to conduct financial services and activities auxiliary to financial services, by the agent engaged in the activity specified in Paragraph *h*) of Subsection (1) of Section 3, by credit institutions established in the European Union and by the financial enterprise that is able to comply with the requirements set out in Subsection (4) of Section 15.

(8) If an agent as specified in Point 12 of Chapter I of Schedule No. 2 publishes any advertisement, he shall indicate the financial institution on whose behalf he is performing the activity as specified in Paragraph *h*) of Subsection (1) of Section 3.

## **Prohibited Advertisements**

*Section 202.*

It is prohibited to use any information regarding deposit insurance, the Fund or the voluntary deposit and institutional protection fund in advertisements, for the purpose of increasing deposit holdings.

## **Information to Customers**

*Section 203.*

(1) A financial institution shall unambiguously and clearly inform its present and future customers on the conditions of using the services provided by the financial institution as well as on any amendments of these conditions.

(2) A financial institution shall post the information described in Subsection (1) at an easily accessible place in the customer area of its premises, and shall make it available to customers free of charge when requested. Furthermore, where services are also provided in electronic commerce, the aforementioned information shall be made available to customers continuously by way of electronic communications in easily accessible format.

(3) The financial institution must publish the following in the form of announcement in the customer area of its premises, and where services are also provided by electronic commerce, by way of electronic communications in easily accessible format:

- a) standard service agreement, also containing the standard contract conditions,
- b) the contract terms and conditions for financial services and auxiliary financial services (transactions) offered for customers,
- c) rates of interest, service fees, and other costs charged to the customers, default interests and the method of computation of interests.

(4) The financial institution shall make available upon a customer's request

- a) its standard service agreement, and
- b) the data to be published under the provisions of legal regulations free of charge.

(5) Prior to entering into a contract, the financial institutions shall - unless otherwise prescribed by law - inform prospective clients if some law other than Hungarian law is to be used for settling legal disputes in connection with the contract or if Hungarian courts are not vested with exclusive jurisdiction.

(6) In the case of personal loan contracts denominated in a foreign currency and that involve a real property with an option to buy, the financial institution shall expressly specify in the contract the risks to which the client is exposed, and the client shall verify acknowledgement by his signature.

(7) The statement of risk acknowledgement referred to in Subsection (6) shall illustrate:

a) the risks in any fluctuation of exchange rates, if the contract is denominated in a foreign currency, and its effect on the installment payments;

b) that it involves a real property with an option to buy, the procedure and the legal aspects for exercising the option, the procedure for establishing the purchase price, for notifying the client and for settling all accounts with the financial institution, and whether the client is allowed a grace period before foreclosure during which to make an attempt to sell the property, and if yes, the length of such period.

(8) Unless otherwise agreed, financial institutions shall supply the information referred to in Subsections (1)-(7) in the Hungarian language.

#### *Section 203/A.*

### **Information to Deposit-holders**

#### *Section 204.*

(1) Credit institutions must provide deposit holders with readily intelligible information concerning the important issues that affect the deposit holders in regard to the Fund and foreign deposit-guarantee institutions and, in the event of participation in such, the voluntary deposit guarantee and institutional protection funds specified in Chapter XX; thus, for example, the types of deposits covered by the Fund; the extent of cover; and - when deposits are frozen or the credit institution has been liquidated - the conditions for compensation payments under Subsection (1) of Section 101 as well as the procedure required for obtaining the cover.

(2) Unless otherwise agreed, credit institutions shall supply the information referred to in Subsection (1) in the Hungarian language.

#### *Section 205.*

(1) A credit institution shall inform its depositors if its membership in the Fund or in a foreign deposit-guarantee institution has been terminated, and it shall remove all mention of the deposit insurance stipulated by this Act in all notices. Such notices shall contain the rights of depositors and the procedure for asserting such rights.

(2) Unless otherwise agreed, credit institutions shall supply the information referred to in Subsection (1) in the Hungarian language.

### **Periodic Information**

*Section 206.*

(1) In the case of continuous contracts (contracts on the repeated fixing of deposit amounts), the financial institution shall send the client a clear, unambiguous and comprehensive written statement (extract)

- a) at least once a year, and
- b) at contract expiration.

(2) The statement sent on the account - unless otherwise stipulated by the standard service agreement or another contract - shall be considered accepted if the customer does not raise any objection in writing within sixty days of receiving the statement; it, however, shall not effect the enforceability of deposit to which it pertains.

(3) The client may request - at his own cost - a statement on individual transactions carried out in the past five years preceding the request. The credit institution is obliged to send such statements in writing to the client within ninety days.

(4) The method and frequency of providing statements on current accounts are regulated as decreed by the President of the NBH.

(5) Unless otherwise agreed, credit institutions shall make out and supply the extract referred to in Subsection (1) and the statement referred to in Subsection (3) in the Hungarian language.

*Section 206/A.*

(1) The Consumer Protection Agency and the county (Budapest) consumer protection offices (hereinafter jointly referred to as "consumer protection agency") shall proceed in accordance with the regulations stipulated in Act LVIII of 1997 on Commercial Advertising.

(2) With regard to Sections 203 and 206, the consumer protection agency shall proceed in accordance with the regulations stipulated in Act CLV of 1997 on Consumer Protection.

## **Standard Service Agreement**

*Section 207.*

Financial institutions are required to adopt lay down the standard general contract terms and conditions for the services they provide under authorization in a standard service agreement.

*Section 208.*

The standard service agreement containing the terms and conditions of deposit transactions shall include, in particular

- a) the full name of the credit institution, the number and date of its authorization,
- b) the method of computation of interests and average interests, and whether the interest rate is fixed or variable,
- c) the minimum amount accepted by the credit institution as a deposit,
- d) the minimum period during which no interests are due on the deposit, or during which the deposit may be withdrawn only when the interest is lost in part or in full,
- e) deductions, if any, by the credit institution from the interest to be paid,
- f) the procedure for the termination of the deposit account and any costs involved,
- g) information on insurance coverage of deposits,
- h) in the case of registered deposits, the personal identification data recorded by the financial institution.

*Section 209.*

The standard service agreement containing the standard contract terms and conditions of bank credit and bank loan operations shall comprise at least

- a) the full name of the credit institution, number and date of its authorization,
- b) whether the interest rate is fixed or variable and, if so, how,
- c) method of computation of interests,
- d) other fees and costs,

- e) additional obligations in security of the contract.
- f) the regulations on data processing in connection with the KHR, and an indication of the legal remedy available.

*Section 210.*

(1) All contracts of financial institutions for financial services and auxiliary financial services must be made in writing or in the form of electronic document executed with a qualified electronic signature. The financial institution must provide original copies of the written contracts to the customer.

(2) The agreement for financial services and auxiliary financial services must clearly indicate the interest rates, fees and all other charges and conditions, including the legal consequences of default payment, and the procedure for the enforcement of collateral obligations made in security of the contract and the legal ramifications involved.

(3) The interests, fees and other contract terms and conditions may be unilaterally modified to the disadvantage of the customer only if it is expressly permitted in a separate section of the agreement for the financial institution under specific conditions or circumstances.

(4) Any changes in the standard service agreement regarding interest rates, fees or other terms and conditions, if to the disadvantage of the customers, shall be published in the form of announcement fifteen days prior to the operative date of such changes. Furthermore, where services are also provided by electronic commerce, the aforementioned changes shall be notified to the customers by way of electronic communications in easily accessible format.

*Section 211.*

(1) Credit institutions may only enter into deposit contracts (release deposit documents) or issue debt securities if the underlying contract contains a reference to the regulations specified under Subsection (1) of Section 100 and Paragraph c) of Subsection (2) of Section 100.

(2) If a credit institution that is a member of the Fund carries out deposit transactions through another legal entity on the basis of Paragraph h) Subsection (1) of Section 14, such legal entity must also indicate the credit institution on behalf of which it is accepting the deposit.

(3) Deposit documents made out in the form of securities must visibly indicate that the contract serving the basis thereof is a savings deposit contract.

## **Consumer Loans**

*Section 212.*

(1) The total cost of credit indicator (annual percentage rate of charge), defined pursuant to specific other legislation, must be contained in all consumer and personal loan contracts.

(2) The total cost of credit is the charge the consumer pays for the loan, which includes the interest, lending commission and all other expenses charged in connection with the use of the loan.

(3) The total cost of credit indicator is the interest rate under which the principal to be repaid by the customer and the total cost of credit are equal to the amount of the loan less the costs paid to the financial institution at the time the loan is disbursed.

*Section 213.*

(1) Consumer and personal loan contracts that do not include the following shall be null and void:

- a) the object of the contract,
- b) the annual cost of credit expressed as a percentage and the definition and amount of any other costs that were not taken into consideration when calculating the cost of credit or, if such costs cannot be precisely defined, an estimate of them,
- c) the whole cost in connection with the contract, including interests, commissions, and the value of these expressed as percentages,
- d) a detailed description of the conditions and circumstances under which the cost of credit may be varied or, if this is not possible, information concerning such,

- e) the number and amount of the installments and the dates of installment payments,
  - f) a description of the requisite security, and
  - g) a description of the security required of the consumer in connection with the contract.
- (2) Any contract clause differing from the rules for consumer loan contracts to the consumer's detriment shall be null and void.
- (3) A contract may only be nullified in the consumer's interest.
- (4) The creditor must inform the consumer, at the time a consumer loan contract is concluded, of all of the contracting conditions that will become part of the contract pursuant to legal regulation.

*Section 214.*

- (1) In the case of consumer loans, the customer - in the interest of termination of the agreement - may in all cases exercise his right of early (premature) repayment (redemption).
- (2) If the consumer exercises the right described in Subsection (1), the creditor is obliged to reduce the cost of credit accordingly.

*Section 214/A.*

- (1) If a consumer obtains a loan in consideration of a prior agreement between the creditor and the vendor of the good or service and according to this agreement the creditor in question has exclusive rights to extend a loan to the consumer for purchasing a good or service from the vendor and
- a) the vendor fails to perform the contract concluded with the consumer in time or in conformity, and
  - b) the vendor has not satisfied the consumer's claims arising from the late performance or lack of conformity before the deadline,
- the consumer may withhold payments coming due on the basis of the consumer loan contract until his demands are met. Interest cannot be charged for this period. The consumer must inform the creditor in writing about the circumstances underlying his decision to exercise his right to withhold payment, and he must send the creditor the relevant documents. The consumer has the right to withhold payment once he has provided the necessary information.
- (2) If the consumer avoids the contract owing to the vendor's breach of contract, he is entitled to avoid the consumer loan contract at the same time. Upon avoidance the creditor is obliged to immediately refund the amount already paid by the consumer. The creditor may only claim repayment of the loan amount from the vendor, unless the purchase price has been refunded to the consumer. Interests, costs, and compensation may not be claimed from the consumer in consideration of the avoidance or the restoration of the original state of affairs.
- (3) The provisions contained in Subsections (1) and (2) shall not apply to
- a) loan agreements for less than sixty thousand forints or for over six million forints,
  - b) loan agreements on the basis of which the consumer must repay the loan within three months, or within twelve months in maximum four installments,
  - c) loan agreements that are put in notarized documents,
  - d) loan agreements secured by mortgage on real property.

*Section 214/B.*

In the case of consumer loan contracts no deviation is permitted from the provisions of Section 329 of the Civil Code to the detriment of the consumer.

*Section 214/C.*

- (1) The consumer cannot be compelled to undertake bill commitments for the creditor's claims arising from the consumer loan contract.
- (2) The creditor may not accept checks from the consumer to cover the claims arising from the consumer loan contract.
- (3) The consumer may request that the creditor return a bill or a check that has been issued contrary to the provisions of Subsections (1) or (2).

(4) The creditor shall be liable for all losses suffered by the consumer in connection with bills or checks issued contrary to the provisions of Subsections (1) or (2).

## **Bank Holidays**

### *Section 215.*

(1) Credit institutions may hold a maximum of two bank holidays a year. Suspension of financial services on specific business days may apply to

- a) accounting (accounting holiday), or
- b) teller services (teller holiday),
- c) accounting and teller services (accounting and teller holiday).

(2) Credit institutions shall announce a bank holiday fifteen days in advance in at least two national daily newspapers, and to the Commission and the NBH.

(3) In addition to what is contained in Subsection (1), upon the request of the credit institution, the Commission may order the holding of a bank holiday with the approval of the NBH. The number of bank holidays thus ordered may not be more than three days in a year.

## **Chapter XXX**

### **Cooperative Credit Institutions**

#### *Section 216.*

(1) Cooperative financial enterprises and cooperative credit institutions may be founded and operated by at least fifteen and two hundred members, respectively.

(2) Cooperative credit institutions may consist of natural and legal persons; however, the number of participating legal persons must not exceed one-third of all of the members.

(3) The share held by any single person in the capital of a cooperative credit institution, direct or indirect, may not exceed fifteen per cent, with the exception of the State of Hungary, the voluntary institutional protection fund acting in its official capacity and the National Deposit Insurance Fund.

(4) The general meeting of a credit institution operating in a cooperative form, if repeated due to lack of quorum, may pass resolutions on any issue on the original agenda.

#### *Section 216/A.*

(1) Upon terminating membership, any member of a cooperative credit institution or his heir (successor in title) shall be entitled to a share of the own capital of the cooperative in the percentage of his proprietary share.

(2) Where membership is terminated due to the member's death or, if a legal person, by dissolution, withdrawal or exclusion, the executive board of the cooperative must prolong payment of a proprietary share up to the thirtieth day reckoned from the date of the general (delegate) meeting adopting the second annual report following the said termination, if payment jeopardized the minimum levels of own capital, solvency margin and the solvency ratio the cooperative credit institution is required to maintain under the provisions of this Act.

(3) In the case described in Subsection (2), proprietary shares shall be paid out inside the said two-year period to the former member or his heir (successor in title) in the proper sequence, when sufficient funds are available.

#### *Section 216/B.*

(1) Where this Act stipulates certain consequences for the reduction of subscribed capital, such consequences shall apply to cooperative credit institutions

- a) when reduction is made to consolidate losses, and
- b) with the exception set out in Subsection (2), in the event of disinvestment made in excess of two per cent of the subscribed capital in the calendar year in question.

(2) With regard to Subsection (5) of Section 73, in cooperative credit institutions priority must be given to resolving the negative value regardless of the extent of disinvestment.

(3) If the share capital is to be used for the consolidation of losses, the general (delegate) meeting shall reduce the value of proprietary shares accordingly.

*Section 216/C.*

In the event of the transformation of a cooperative credit institution, the indivisible funds placed in the tied up reserve shall be transferred to the tied up reserve of the successor.

*Section 217.*

(1) Cooperative credit institutions, whose equity capital is below one hundred million forints, may perform financial service activities as follows:

a) the extent of large exposures as described in Subsection (2) of Section 79 may not exceed twenty percent of its solvency margin;

b) the aggregate amount of large exposures by the cooperative credit institution may not be more than sixfold of the cooperative credit institution's solvency margin.

(2) The restrictions specified in Subsection (1) shall apply only to contractual commitments undertaken after the entry into force of this Act.

## Chapter XXXI

### Issue and Redemption of Electronic Money

*Section 218.*

(1) Electronic money shall be issued on receipt of funds - in cash or by transfer from account - of an amount not less than the value stored on the electronic money.

(2) The issuer may not pay interest on funds received in exchange for electronic money, nor shall provide other forms of privileges.

(3) The standard service agreement of the issuer shall clearly state the conditions of redemption of electronic money, and the validity period for redemption where applicable.

(4) The validity period may not be less than five calendar years.

(5) The validity period for an electronic money instrument that is reloadable by means of electronic money shall begin at the time last reloaded.

(6) An issuer of electronic money shall be obliged, during the period of validity, to redeem it at par value.

(7) Redemption shall be made in coins and bank notes or by a transfer to an account.

(8) Redemption shall be implemented free of charges other than those strictly necessary to carry out that operation.

(9) The issuer shall not be obliged to redeem electronic money stored in value of less than five hundred forints.

*Section 219-220.*

## Chapter XXXII

### Transitory and Closing Provisions

### Entry into Force

*Section 221.*

(1) This Act shall enter into force on 1 January 1997; its provisions shall only be applied in respect of pending cases if they include more favorable regulations for the customer. In the event the Commission imposes a penalty,



the provisions of Act LXIX of 1991 on Financial Institutions and Activities of Financial Institutions (hereinafter referred to as "FIA") must be applied in all cases where the event serving as the basis of the penalty occurred prior to this Act entering into force, and, according to the FIA it falls under a less severe category. In respect of authorization procedures, a procedure shall be considered pending where the application is submitted prior to the entry into force of this Act and in accordance with the formal and content requirements set out in the FIA.

(2) Simultaneously with the entry into force of this Act, the following shall be repealed:

- a) the FIA, with the exception of Sections 103-106,
- b) Act XLVII of 1993 on the amendment of the FIA, Act CXII of 1993, with the exception of Subsections (1)-(3) of Section 43, Act XII of 1996 and Act L of 1995,
- c) Act CI of 1994 on the amendment of Act XXIV of 1993 on the amendment of the FIA and the foundation and rules of operation of the National Deposit Insurance Fund,
- d) Section 80 of Act LXXX of 1992 on the 1993 Budget of the Republic of Hungary,
- e) Sections 24/A, 29-31, and Subsection (2) of Section 32 of Act XLII of 1994 on the Hungarian Export-Import Bank Ltd. and the Hungarian Export Credit Insurance Corporation (hereinafter referred to as "Eximbank Act"),
- f) Subsection (1) of Section 128 of Act XLVIII of 1995 on Amendments made for the Purpose of Economic Stabilization,
- g) Section 109 of Act XXXIV of 1994 on the Police,
- h) Act XXIV of 1993 on the Foundation and Detailed Rules of Operation of the National Deposit Insurance Fund,
- i) Subsection (3) of Section 31 and Subsection (2) of Section 82 of Act XCV of 1995 on Foreign Exchange,
- j) the last sentence of Subsection (3) of Section 18/B. of Act XXXVIII of 1992 on the State Budget,
- k)
- l) Paragraph e) of Section 45 of Act XLVIII of 1996 on Public Warehousing,
- m) the passage "Hungarian Investment and Development Bank Ltd. 25% + 1 vote" in section "The organization exercising ownership rights: Hungarian Privatization and State Holding Co." in the Schedule of Act XXXIX of 1995 on the Sale of State-Owned Entrepreneurial Assets.

(3) On the day of entry into force of this Act, Section 51/B. of Act XI of 1987 on Legislation along with the preceding title, and Act LXVIII of 1991 shall be repealed.

(4) Decree No. 34/1957 (XI. 5.) PM on Mutual Assistance among Savings and Loan Associations, and Decree No. 9/1965 (VI. 15.) PM and Decree No. 16/1966 (X. 30.) PM on its amendment shall be repealed on the 31 December 1997.

## **Transitory Provisions**

### *Section 222.*

(1) Unless otherwise provided by law, the owners having an ownership interest exceeding the limit described in Section 12 at the entry into force of this Act, must sell the ownership interests exceeding the limit by 31 December 1999; and cannot exercise any voting rights related to his such ownership interest as of the 1 January 2000.

(2) The following shall not apply before 31 December 1999:

- a) the restriction specified in Subsection (1) of Section 61 on loans granted to and commitments assumed in respect of an enterprise under the asset management of the Hungarian Privatization and State Holding Co. under a separate act if the State has a qualifying participation in the credit institution, as well as
- b) the provisions specified in Subsection (1)-(3) of Section 79 on exposures secured by the joint and several guarantee of the Hungarian Privatization and State Holding Co.

(3) The Commission shall be required to carry out an official review on the operation licenses of financial institutions, issued prior to the entry into force of this Act, up to 31 December 1997, to ensure that these licenses meet the requirements of this Act.

### *Section 223.*

The credit institution shall gradually create the general special risk provisions described in Subsection (2) of Section 87 at the latest within three years of the entry into force of this Act, as follows:

- a) by 31 December 1997 at least one-third of 1.25% of the adjusted balance sheet total for 1997,
- b) by 31 December 1998 at least two-thirds of 1.25% of the adjusted balance sheet total for 1998,
- c) by 31 December 1999 at least 1.25% of the adjusted balance sheet total for 1999.

*Section 224.*

*Section 225.*

(1) If the appointed manager of a financial institution does not meet the mandatory requirements when this Act comes into force, he may continue to fill this office until his term expires.

(2) Contrary to Subsection (1) of Section 62, within the meaning of Subsection (1), the restriction specified in Subsection (1) of Section 60 shall not be applied in respect of legal persons holding a seat in the board of directors at the latest until the 1998 year's general meeting of the financial institution.

(3) Credit institutions operating at the time of this Act entering into force shall meet the requirements described in Subsections (1)-(2) of Section 63 until 31 December 1997.

*Section 226.*

(1) At least one elected manager of a cooperative credit institution, already existing at the time of this Act entering into force or authorized thereafter according to the provisions of Subsection (1) of Section 221 of the FIA, shall meet the requirements specified in Section 68. This rule - contrary to the provisions of Subsection (1) of Section 225 - shall not be applied to elected managers of a cooperative credit institution until 31 December 1998, if the Commission has not taken any special measures or the measures described in Sections 63 and 88 of the FIA against the cooperative credit institution or an elected manager thereof within two years.

(2) Where the Commission takes the special measures described in Sections 157-168 against the cooperative credit institution or the elected manager thereof, then the exemption rules described in Subsection (1) may no longer be applied.

(3)

*Section 227.*

The bodies described in Paragraph i) of Subsection (2) of section 51 shall adopt - within sixty days of the entry into force of this Act - internal rules and regulations on ordering and recording of requests made to credit institutions and relating to bank secrets, and on the system of data processing. The internal rules and regulations must also indicate which are the tasks to be performed as described in law for which and upon what grounds the data are requested.

*Section 228.*

(1) The equity capital of credit institutions - not having the minimum subscribed capital stipulated in this Act -, operating at the time of this Act entering into force or authorized thereafter according to Subsection (1) of Section 221 in accordance with the provisions of the FIA, must not fall below the sum of its subscribed capital available at the time of entry into force of this Act.

(2) The equity capital of a credit institution described in Subsection (1) must be increased to the mandatory minimum level by 31 December 1998.

(3) The own funds of specialized financial institutions described in Subsection (2) of Section 5 and Section 35 of the FIA shall reach the amount of one billion forints by 31 December 1999 and shall be transformed into a bank, specialized credit institution or financial enterprise by 31 December 2002. Until such transformation, the provisions of this Act regarding banks must be duly applied to its activities and supervision.

(4) The equity capital of cooperative credit institutions shall reach forty million forints by 31 December 1999, sixty million forints by 31 December 2001 and one hundred million forints by 31 December 2003 at the latest.

(5) Contrary to Subsection (3) of Section 9, cooperative credit institutions may be founded with a minimum subscribed capital of fifty million forints until 31 December 1999.

*Section 229.*

If a credit institution fails to comply with the limitations specified in Subsections (2) and (3) of Section 79 owing to contracts signed prior to the entry into force of this Act, the amount exceeding the upper limit must be reduced annually by at least twenty per cent and the prescribed level reached by 31 December 2001 at the latest.

*Section 230.*

(1) Credit institutions, having an ownership interest exceeding the investment limit described in Subsections 83-85 at the time of this Act entering into force shall sell their ownership interest exceeding the prescribed limit by 31 December 1998. If the ownership interest specified in Section 83 is not sold by 1 January 1999, they may not exercise their voting rights in respect of this ownership interest.

(2) The Commission may extend - upon request - the deadline described in Subsection (1), if the proportion of the investments described in Sections 83 and 85 - as compared to the solvency margin - has diminished.

*Section 231.*

Credit institutions shall prepare their internal rules and regulations by 31 December 1997 in accordance with the provisions contained in Section 77.

*Section 232.*

(1) If a financial enterprise has announced the financial institution activities it performs to the Commission in compliance with the legal requirements by the time of entry into force of this Act, the registration - with the exception of issuing cash-substitute payment instruments and rendering the related services - shall be construed a supervisory authorization.

(2) Financial institutions already existing at the time of this Act entering into force or authorized thereafter based on Subsection (1) of Section 221 according to the provisions of the FIA shall meet the requirements for subscribed capital described in Subsection (4) of Section 9 by 31 December 1998.

(3) The enterprises, not having at the time of entry into force of this Act a license issued by the State Banking Commission for performing the financial services or activities auxiliary to financial services described in this Act, shall send their license to the Commission within ninety days of the entry into force of this Act.

(4) Financial institutions already existing at the time of this Act entering into force or authorized thereafter based on Subsection (1) of Section 221 according to the provisions of the FIA shall comply with the requirements on financial enterprises described in this Act, and shall certify the same to the Commission in the stipulated manner. Enterprises, not complying with the legal regulations, may not perform financial service activities as of 1 January 1999.

(5) Private entrepreneurs, holding a currency exchange license at the time of this Act entering into force may continue the currency exchange activities based on their license until 31 December 1997.

(6) If a credit institution exercises its right to perform the financial service activities described in Subsection (1) of Section 3 on a contractual basis - as authorized by the Commission - at the time of this Act entering into force through another financial institution or legal entity not qualifying as a financial institution, it may exercise such right after 31 December 1997 only if the authorized (consignee)

- a) financial institution meets the requirements described in this Act,
- b) legal person not qualifying as a financial institution meets the requirements described in Section 19.

*Section 233.*

(1) New payments made after 30 June 1993 into accounts under deposit contracts signed prior to 30 June 1993 - insured by the state guarantees (sureties) described in specific other legislation - shall be insured - by the Fund - according to the provisions of this Act.

(2) Payments made from the deposit accounts described in Subsection (1) must in all cases be effected from the amount deposited at the earliest.

*Section 234.*

(1) Financial institutions operating as joint-stock companies at the time of this Act entering into force shall transform their shares to registered shares according to the provisions of Section 42 by 30 June 1998.

(2) The board of directors of financial institutions operating as joint-stock companies shall supplement the data of the register of shares according to Section 43 by 30 June 1998.

(3) Credit institutions already existing at the time of this Act entering into force or authorized thereafter based on Subsection (1) of Section 221 according to the provisions of the FIA - with the exception of cooperative credit institutions -, shall comply with the regulations described in Paragraph b) Subsection (5) of Section 44 by 1 January 1998.

(4) Unincorporated business associations, having an authorization at the time of this Act entering into force to engage in activities auxiliary to financial services shall create for the performance of such activities an incorporated business association or transform into such a company form by 31 December 1998.

(5) According to the legal regulation described in Subsection (4) of Section 221, no new contracts may be signed for accepting deposits or for extending loans after the entry into force of this Act, and the repayment of amounts deposited based on already signed contracts shall be commenced within three hundred and sixty five days of the date when this Act enters into force.

#### *Section 235.*

(1) The Government is hereby authorized to decree the detailed regulations on:

a) rendering the services described in Paragraphs *a)-c)* and *e)-n)* of Subsection (1) of Section 3 and in Paragraphs *a)* and *d)* of Subsection (2) of Section 3, including the mandatory formal requirements of contracts concluded in connection with these services;

b) as regards the service specified in Paragraph *d)* of Subsection (1) of Section 3 - including the financial transaction services provided by the NBH - the requirements for opening the account, disposal over the account, and restrictions on disposal, furthermore, the special provisions on transactions between the States who are parties to the Agreement on the European Economic Area, and the mandatory layout of contracts concluded in connection with these services;

c) the computation and publication of interest rates on deposit accounts,

d) the computation and publication of total cost of credit,

e) the personnel and material conditions for rendering financial services and for engaging in the activities auxiliary to financial services described in Subsections (1) of Section 3 and in Paragraphs *a)* and *d)* of Subsection (2) of Section 3,

f) determining the requisite capital requirement for covering exchange rate risks.

(2) The Minister of Finance is hereby authorized to decree the detailed regulations for:

a) the calculation of the solvency index (solvency ratio) and the required amount of solvency margin complying with the exposures deriving from the various financial services,

b) the aspects of qualification and evaluation of receivables, investments, off-balance sheet items and collaterals,

c)

d)-e)

f) internal control systems and procedures,

g) the content and form of regular reports as well as the method and time of making reports to be sent to the Commission,

h)

i)

j) the determination, analysis, evaluation, limitation, management and reduction of risks, and the control and monitoring of exposures,

k)

l) foreign exchange open positions,

m) the compliance with capital adequacy and capital adequacy requirements in a consolidated manner, as well as

n) the administration-service fees,

o) the capital requirement for country risk,

p) the professional and examination requirements for bank sales, securities trader, specialized bank officer, and investment advisor qualifications, and

q)

r) the calculations at the level of the financial conglomerate relating to supplementary supervision, their contents, structure and frequency.

(3)

## **Amendments**

*Section 236.*

*Section 237.*

(1)

(2)

*Section 238.*

*Section 239.*

(1)

(2)

(3)

(4)

(5)

*Section 240.*

In the Schedule of Act XXXIX of 1995 on the Sale of State-Owned Entrepreneurial Assets, the passage "The minister exercising ownership rights: the Minister of Finance" shall be supplemented with "Hungarian Development Bank Ltd. 100%".

*Section 241.*

(1) Simultaneously with the entry into force of this Act, any reference made in legal regulations to "financial institutions" and to "financial institution activities", it shall be understood, as "credit institutions" and "financial service activities".

(2) Any reference made in legal regulations to "legal entity also performing financial institution activities" shall be understood as "financial enterprises" respectively.

(3) Any reference made in legal regulations to specialized credit institutions it shall be construed the specialized credit institutions described in specific other legislation.

(4) Any reference made in legal regulation to the Act on Financial Institutions it shall be construed as the Act on Credit Institutions and Financial Enterprises.

(5) Any reference made in this Act to provisions of law it shall also include to mean the bank supervisory provisions remaining in force after 1 January 1997.

(6)

(7) Where this Act refers to foundation, founder or deed of foundation, it is to be understood as establishment, establisher or instrument of constitution.

*Section 242.*

Within the framework of Act I of 1994 promulgating the Europe Agreement establishing an association between the Republic of Hungary and the European Communities and their Member States, signed on 16 December 1991 in Brussels, this Act contains regulations that may be harmonized with the directives listed in Schedule No. 6.

*Section 243.*

This Act - together with the relevant provisions of Act CXX of 2001 on the Capital Market, Act C of 2000 on Accounting, Act CXXIV of 1999 on Government Control of Financial Institutions, Act CLV of 1997 on Consumer Protection, as well as the legal regulations issued under authorization conferred by these laws - contains regulations within the framework of Section 3 of Act I of 1994 promulgating the Europe Agreement establishing an association between the Republic of Hungary and the European Communities and their Member States, signed in Brussels on 16 December 1991, that may be harmonized with the legal regulations of the European Communities listed in Schedule No. 6.

### Schedule No. 1 to Act CXII of 1996

#### ***International Financial Institutions Exempted from the scope of this Act***

1. African Development Bank
2. Pan American Development Bank
3. Pan American Investment Company
4. Asian Development Bank
5. European Investment Fund
6. European Investment Bank
7. Development Bank of the European Council
8. European Bank for Reconstruction and Development
9. Northern Investment Bank
10. Caribbean Development Bank
11. International Investment Insurance Agency
12. International Finance Corporation
13. International Bank for Reconstruction and Development
14. International Monetary Fund

### Schedule No. 2 to Act CXII of 1996

#### ***Interpretative Provisions***

##### **I. Financial Services**

- 1)
- 2) 'Deposit' means a liability created by virtue of a deposit contract or a savings deposit contract within the meaning of the Civil Code, including any positive balance which results from funds left in an account.
- 3) 'Collection of deposits and other repayable funds received from the general public' means the collection of monetary instruments from non-specified persons so as to allow the collector of such deposits to exercise control over the assets as its own, but under obligation to repay the same - with or without interest or some other gain. In the case of a cooperative, accepting loans from members shall also be treated as collection of deposits if provided in an amount that exceeds the limit specified in the Act on Cooperatives. The issue of notes, cards or other certificates that may be used as payment instruments only when purchasing the issuer's goods or paying for the issuer's services shall not be construed as the collection of deposits. The issue of debt securities under the conditions and restrictions laid down in specific other legislation shall not be construed as the collection of repayable funds from the general public.
- 4) 'Credit reporting services' means:
  - a) the provision of bank information for a fee, without violating bank secrets; and
  - b) data processing by the financial enterprise operating the KHR.
- 5) 1 "Cash-substitute payment instrument" means:
  - a) cheques;
  - b) electronic money instruments;
  - c) any other device that enables its holder to access his/her account at a financial institution, withdraw cash from such account and to effect payment from such account to a payee for goods or services.
- 5) 2 "Electronic money" means monetary value stored on an electronic device issued on receipt of funds - in cash or by transfer from account - that is accepted as means of payment by entities other than the issuer.

5) 3 “Electronic money instrument” means a cash-substitute payment instrument, such as a stored-value card or a computer memory, on which value units are stored electronically, enabling its holder to effect payment transactions directly.

5) 4 “Issue of cash-substitute payment instrument” means when a cash-substitute payment instrument is supplied to the customer under contract.

5) 5 “Services provided in connection with cash-substitute payment instruments” means all of the services provided pursuant to the legal regulations on the issue, administration and use of cash-substitute payment instruments, as well as all of the services the issuer has agreed to provide under contract concluded with the customer, and with vendors and service providers.

Clearing transactions made in connection with the use of cash-substitute payment instruments shall not be considered a service in connection with cash-substitute payment instruments.

6) 'Account management services (management of cash deposits)' means the placement and management of cash assets for the customer's order in interest bearing or non-interest bearing individual deposit accounts in compliance with the provisions set forth in specific other legislation.

7) 'Asset management services for voluntary mutual insurance funds' means the exercising of ownership rights and the fulfillment of obligations incidental to the assets of voluntary mutual insurance funds licensed according to Act XCVI of 1993 on Voluntary Mutual Insurance Funds, as contracted, under the terms and conditions and within the scope stipulated therein, including in particular the operation of certain assets, the sale of invested assets and reinvestment of the proceeds so as to increase the assets of the fund.

'Asset management services for private pension funds' means the exercising of ownership rights and the fulfillment of obligations incidental to the assets of private pension funds licensed according to Act LXXXII of 1997 on Private Pension and Private Pension Funds, as contracted, under the terms and conditions and within the scope stipulated therein, including in particular the operation of certain assets, the sale of invested assets and reinvestment of the proceeds so as to increase the assets of the fund.

8) 'Money processing activities' means the sorting and counting of banknotes and coins, checking their authenticity and condition, and creating bundles of bank note and rolls of coins to be placed back into circulation.

9) 'Financial transaction services' means the entirety of services which involve the transaction of moneys as prescribed in specific other legislation including, among others, the management of current bank accounts, fulfillment of payment orders and handling international clearing transactions.

#### 10) Credit and Loan Operations

10.1) 'Providing credit' means providing the debtor with a specific credit limit on the basis of a written loan contract between the creditor and the debtor and in return for a commission as well as the credit institution's commitment, subject to specific contractual conditions, to conclude a loan contract or conduct other loan operations.

#### 10.2) 'Lending operation' means

a) the supply of money under a credit or loan contract between the creditor and the debtor that is to be repaid by the debtor - with or without interest - at the time specified in the contract;

b) purchasing (with or without assuming the debtor's risk), advancing (inclusive of factoring and forfaiting) and discounting receivables, regardless of who keeps the records of the receivables' in terms of their maturity and who collects the accounts receivable;

c) all agreements that concern the purchase of securities and their reconveyance by a predetermined date, in which the securities to which the contract pertains serve the buyer (creditor) as collateral security for the consideration in such a manner that, during the time of the transaction, they may be neither alienated nor encumbered in another transaction.

d) an operation involving the buying and selling of mortgages under the Act on Mortgage Loan Companies and Mortgage Bonds.

e) the provision of secured loans.

10.3) Financial services aimed at credit and loan operations shall also cover the activities in connection with investigating credit history, preparing credit and loan contracts; recording, monitoring and controlling outstanding loans; and collection.

10.4) The following shall not be considered lending operations:

- a) loans given - occasionally - by an employer to an employee for social purposes,
- b) deferred payment facilities or advances given by natural persons or companies in connection with their relationship for the supply of goods and/or services, excluding such transactions conducted by credit institutions,
- c) policy loans provided to the owner of a life insurance policy by an insurance institution,
- d) social loans or home loans given by a local authority,
- e)

f) financial transactions between a parent company and its subsidiary or between subsidiaries that are carried out jointly in order to ensure liquidity, excluding such transactions concluded by financial institutions.

11) 'Financial leasing' means an activity where the lessor acquires title of ownership of a movable or immovable or an intangible property selected by lessee for the purpose of assigning use of such to lessee for a specified period of time in a manner that it is shown in the lessee's books. The assignment of use constitutes for the lessee

a) to assume all incidental risks of damages,

b) to be entitled to collect proceeds,

c) to bear direct costs (including maintenance and depreciation costs),

d) to gain entitlement for acquiring title of ownership, or to assign such entitlement to another party, of the leased property following expiration of the lease period as stipulated in the contract and upon payment of principal and interests in full and payment of the residual value described in the contract. If the lessee decides not to exercise this right, ownership of the leased property shall revert to the lessor and shall be entered in his books as such. Parties shall stipulate the principal - which equals the contract price of the leased tangible or intangible property - and the interest amount of lease payments and the due dates of such payments.

Leasing conducted between a parent company and its subsidiary shall not be considered financial leasing, excluding such transactions concluded by financial institutions.

12) 'Intermediation of financial services (agency)' means

a) activities pursued for, in the name and behalf of, and at the risk of a financial institution whose purpose is the performance of financial services and/or activities auxiliary to financial services of the financial institution within the scope of an agency contract,

b) activities pursued in order to facilitate a financial institution's financial services and activities auxiliary to financial services without any involvement in handling the customer's money or assets and in the course of which no commitments are made on the financial institution's behalf.

13) 'Financial brokering on the interbank market' means mediating loan and deposit transactions in Forints and foreign currencies as well as buying and selling foreign currencies between actors in the interbank market in order to enable credit institutions and other actors in the interbank market to directly conclude the pertinent transactions with one another.

14) 'Currency exchange activity' means the buying and/or selling of foreign currencies for the Hungarian legal tender and/or for other foreign currencies. The sale of coins and bank notes of a foreign currency which are still in circulation or which can be exchanged for such for numismatic purposes shall not be construed as currency exchange activity, nor the performance of payments for transactions in connection with the domestic supply of goods or services.

15) 'Safety deposit box services' means the provision of a safety deposit box under contract to the customer in a place that is guarded around the clock for the customer to deposit or remove his valuables in private.

16) 'Cash transfer' means the transfer of money, without having to open a bank account, on order of a natural person to another natural person to or from abroad by payment of foreign or domestic currency, where the depositing or disbursement of the money takes place in the licensed premises of the parties participating in the cash transfer system; disbursement is executed upon the payer (member of the system) advancing the sum required being subject to subsequent settlement between the payer and the recipient of order (member of the system) or with the system itself.

17) 'Collective investment' means instruments operated in the interest of investors and publicly or privately created on the basis of the investors' general order for the purpose of investing in investment assets, exchange-traded instruments or real property on the basis of specific rules.

18) 'Clearing transactions' means transaction operations between credit institutions, the NBH and other organizations entitled to participate in the settlement system according to the regulations of settlement systems, whether on their own account or on customers orders, including the checking and forwarding of payment messages through the telecommunications networks, the management of receivables and payables between the participants and the administration of financial exposures.

## II. Definition of Terms in Connection with Supervision on a Consolidated Basis and Supplementary Supervision

1) 'Dominant influence' means the controlling influence referred to under the definition of parent company in the Accounting Act, or a relationship between a person and a company



a) under which the person with control has the capacity to decide on the distribution of the company's profits, the diversification of profit or losses to another company or the company's strategy, business or sales policies, or

b) that permits coordination of the management of the company with that of another company for the purposes of a mutual objective, regardless of whether the agreement is fixed in the bylaws (deed of foundation) of the company or in another written contract, or

c) under which joint management is effected through the board of directors, the supervisory board or the management comprised of all or some of the same persons (who provide the necessary decision-making majority), or

d) under which the person with control is able to exercise substantial influence in the operation of another company without any capital involvement.

2) 'Associated company' means a company whose principal function is to engage in activities auxiliary to the business profile of a credit institution; such auxiliary activities shall, for example, include real estate management, data processing, transport of money, and security and communication services.

3) 'Financial holding company' means a financial institution, other than a mixed financial holding company, whose subsidiary companies are either exclusively or mainly credit institutions, financial institutions or investment firms with at least one of such subsidiaries being a credit institution or an investment firm.

4) 'Participation' means a relationship between a natural person and a company, other than a dominant influence, that constitutes the direct or indirect ownership of 20 per cent or more of the voting rights or capital of the company. With respect to voting rights, the relevant provisions of the Accounting Act shall apply, regardless of whether or not the person in question falls within the scope of the Accounting Act.

5) 'Close link' means a situation in which two or more natural or legal persons are linked by means other than a dominant influence or participation. If a person is linked to another person by way of a dominant influence, which constitutes a dominant influence over a third person, such third person shall also be regarded as closely linked with the person that is on the highest level. A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as a close link between such persons.

6) 'Mixed-activity holding company' means a parent company other than a credit institution, investment firm, a financial holding company or a mixed financial holding company, the subsidiaries of which include at least one credit institution.

7) 'Regulated entity' means a credit institution, an investment firm or an insurance company.

8) 'Financial sector' means the banking sector, the investment services sector, the insurance services sector, and mixed financial holding companies.

9) 'Banking sector' means a sector composed of credit institutions, financial institutions, and associated companies.

10) 'Investment services sector' means a sector composed of investment firms.

11) 'Insurance services sector' means a sector composed of insurance companies, reinsurance companies, and insurance holding companies.

12) 'Mixed financial holding company' means a parent company, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity which has its head office in the European Union, and other entities, constitutes a financial conglomerate.

13) 'Group' means a group of companies which consists of a parent company, its subsidiaries and the entities in which the parent company or its subsidiaries exercise dominant influence or hold a participating share.

14) 'Competent authorities concerned' means:

a) the national authorities of the Member States which are empowered to supervise regulated entities in a financial conglomerate; or

b) the coordinator appointed in accordance with Section 96/K; or

c) other competent authorities concerned designated by the authorities referred to in Paragraph a) and b), if the market share of the regulated entities of the conglomerate in the Member State of the authority concerned reaches five per cent, and the importance in the conglomerate of any regulated entity authorized by this authority is significant.

15) 'Insurance company' means an insurance company within the meaning of Point 10 of Subsection (1) of Section 3 of the Insurance Act and a third-country insurance company within the meaning of Point 23 of Subsection (1) of Section 3 of the Insurance Act.

### III. Other Definitions

1) 'Investment' means a real or movable property, rights of pecuniary value or interests in a company (stocks, business shares, membership etc.), or a subordinated loan capital supplied to other financial companies.

2) 'Qualifying participation' means a direct or indirect holding of a person in a company or a relationship between a person and a company by virtue of which the person

- a) controls ten per cent or more of the capital or of the voting rights on the whole,
- b) has powers to appoint or remove twenty per cent or more of the members of the company's decision-making, management, supervisory and other bodies, or
- c) has powers to exercise significant influence over the management of the company as stipulated in the bylaws, the deed of foundation or in contract.

3-4)

5) 'Consumer loan' means a loan granted to a natural person for the purchasing or repair of consumer goods primarily used for personal, family or household purposes, or for using services, without making such loan attached to a specific purpose of use, and if such loan is borrowed by the natural person not as part of his business activity.

6) 'Subscribed capital' means the capital defined under Subsection (3) of Section 35 of the Accounting Act.

7) 'Interest' means the sum of money or other gain to be paid to the lender (deposit-holder) for the use of and risks associated with his deposit or loan determined in the percentage of the deposit or loan amount for a specific period of time.

8) 'Adjusted balance sheet total' means the sum total of assets and off-balance sheet items computed by compound formulas determined as prescribed in specific other legislation in due consideration of risk factors.

9) 'Enterprise directly serving banking purposes' means an enterprise that provides services which are essential for the functioning and smooth operation of one or more credit institutions or financial enterprises such as development, buying, selling, industrial service and product preparation or security services.

10.1) 'Risk and exposure' means

- a) the extension of loans, including the purchasing of debt securities issued on a debt;
- b) the discounting of bills, checks and other debentures;
- c) a bank guarantee, bank surety and other security provided by a credit institution, including any of the credit institution's other future or pending liabilities, assumed guarantees, suretyship, and other banker's securities provided therefor;
- d) all liabilities assumed by a credit institution whereby the credit institution guarantees the fulfillment of money claims for a consideration or agrees to repurchase such upon demand of the buyer;
- e) a participation of the credit institution acquired in any of its company, irrespective of the duration of holding such participation;
- f) money claims purchased by a credit institution, and
- g) financial leasing;
- h) deposits placed in other credit institutions, excluding the compulsory reserves placed by the credit institution through a correspondent bank to comply with the reserve requirement prescribed by the central bank.

10.2) The following do not constitute exposure for the purposes of Section 79:

- a) all of the items that credit institutions deduct from their solvency margin owing to overstepping the prudence requirement when calculating the solvency margin;
- b) in the case of transactions made in currency, receivables existing for no more than 48 hours after payment;
- c) in the case of buying and selling securities, receivables existing for no more than five business days after payment or delivery of the securities.
- d) short-term (less than one year) exposures to another credit institution registered in a Zone A country if it is not part of the obligor credit institution's solvency margin.

11) 'Close relative' means the person described under Paragraph b) of Section 685 of the Civil Code.

12) 'Indirect holding' means when shares in the capital or the voting rights of a company are held or controlled through the shares or voting rights held by another company in that company (for the purposes of Schedule No. 4 hereinafter referred to as 'intermediary company').

13) 'Personal loan' means a consumer loan or other loan that can be used by a natural person for purchasing, building, renovating, enlarging or remodeling homes, vacation homes or other real property and for upgrading public utilities.

14) 'Liquid assets' means the entirety of cash and other assets that are easily convertible into cash.

15) 'Balance sheet total' means the sum total described as such by accounting laws.

16) 'Net value' means - exclusively for the purposes of Subsections (2) and (7) of Section 79, Subsections (1)-(3) of Section 83 and Subsection (1) of Section 85 - the gross book value of any exposure resulting from the given asset or commitment (the direct cost of the assets or the contractual value of the commitment) less any value adjustment recorded, depreciation and earmarked risk provisions.

17) 'Solvency margin' means the credit institution's own funds as defined by accounting regulations, and other funds, which can be mobilized to settle the liabilities of the credit institution.

18) 'Person' means a natural person, a legal entity and unincorporated business association.

19) 'Solvency index (solvency ratio)' means the solvency coefficient determined by the ratio between the solvency margin (numerator) and the adjusted balance sheet total (denominator).

20) 'Client group (group of connected clients)' means two or more clients in respect of whom a credit institution (or the company that is subject to supervision on a consolidated basis) has assumed a risk and which is construed as a single risk because

a) one of them, directly or indirectly, exercises dominating influence, as specified in Point 1 of Subsection (2) of Section 3 of the Accounting Act, over another one of the group's members,

b) they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties; the following shall be construed, among others, as such relationship:

1) suretyship, joint and several suretyship, guarantees and other securities,

2) unlimited and joint and several liability based on law or contract,

3) direct commercial dependence, which cannot be terminated or substituted by another business relation in the short run,

4) relationship between close relatives living in the same household.

21) 'Managing director' means the president of a financial institution elected by the board of directors and employed by the financial institution, or the chief officer appointed to manage the financial institution, employed by the credit institution or the financial enterprise as well as all deputies of such officer.

22) 'Gainful (for-profit) business activity' means economic activities performed on a regular basis for compensation for the purpose of profit or enrichment, involving the conclusion of non-specific deals.

23) 'Enterprise' means a legal entity or unincorporated business association, or a private entrepreneur engaged in economic activities. When in doubt, it is to be presumed for such operating as enterprises.

24) 'Loss reduction measures' means all activities of a credit institution which are performed for the purpose to attenuate prevailing losses relative to risk assumption rather than for profit.

25) 'Executive officer' means

a) in the case of banks or specialized credit institutions operating as joint-stock companies, the chairman and the members of the executive board and the supervisory board, and the managing director;

b) in the case of cooperative credit institutions, the chairman of the executive board, the chairman of the supervisory board, and the managing director;

c) in the case of financial enterprises operating as joint-stock companies or cooperatives, the chairman of the board of directors, the chairman of the supervisory board, and the managing director;

d) in the case of branch offices, the person appointed by the foreign-registered financial institution to lead the branch office, and his deputy.

26) 'Capital maintenance index' means the ratio expressed in a percentage figure the numerator of which consists the total of the monetary assets of a financial institution operating as a Hungarian branch office, the market value of its securities owned by such institution with liquidity rating of less than thirty days and its problem-free credits and investments along with those requiring special attention, while the denominator consists of the liabilities of the branch office assumed in Hungary.

27) 'Head office' means the place where the financial institution conducts its principal activity and central decision making occurs.

28) 'Endowment capital' means the capital provided by the founder permanently and without restrictions or encumbrances for the foundation and operation of a branch office.

29) 'Commission' means the foreign authorities supervising the activities of foreign financial institutions.

30) 'Trading book' means the register defined in the CMA.

31) 'Foreign credit institution' means a credit institution that is registered outside of Hungary.

32) 'Foreign financial enterprise' means a financial enterprise that is registered outside of Hungary.

33) 'Foreign financial institution' means a foreign credit institution or a foreign financial enterprise.

34) 'Commercial transaction in gold' means the transactions concluded for pure gold (gold, with purity of at least 995/1000), and for gold bars and gold bullion - regardless of their gold content - as well as, gold coins not being in circulation and gold coins being in circulation for numismatic purposes.

35)

36) 'Queuing' means nonperformance (holding in abeyance) of lawful instructions (orders, requests) arriving to a current account or bank account managed by the credit institution owing to lack of coverage and, in accordance with

the effective regulations on money transaction, placing the order in a waiting line (queue) for future performance. This term does not include the process by which, on the basis of a bank account contract, the account-holder gives the credit institution an order for queuing for the purpose of regulating, of his own accord, the performance of incoming orders and scheduling payments.

37) 'Queuing account' means a bank account regarding which the credit institution keeps submitted orders held in abeyance (queued) owing to lack of coverage.

38) 'Parent company' means any company that effectively exercises a dominant influence over another company.

39) 'Subsidiary' means any company over which a parent company effectively exercises a dominant influence. All subsidiaries of subsidiary companies shall also be considered subsidiaries of the parent company.

40) 'Jointly managed company' means a jointly managed company as defined in the Accounting Act.

41) 'Outsourcing' means when a credit institution does not itself perform financial services, activities auxiliary to financial intermediation or the mandatory activities prescribed by law, which include the management, processing and storage of data, but rather entrusts a separate, organizationally independent person or an unincorporated business association with performing these activities on a continuous or regular basis under an exclusive contract.

42) 'Zone A country' means each country that is a full-fledged member of the Organization for Economic Cooperation and Development or the European Union or has concluded a special agreement to provide credits to the International Monetary Fund in accordance with its General Arrangement to Borrow and has neither rescheduled nor suspended its external loan debt in the preceding five years.

43) 'Cross-border services' means providing financial services or auxiliary financial services in a country other than the country where the registered office, place of business, head office, or branch office of the financial institution providing the service is located, and the place of business and permanent residence of the customer using the services are not in the country in which the financial institution providing the service has its registered office, place of business, head office, or branch office.

44) 'Third-country credit institution' means a credit institution that has a license in conformity with the legal regulations of the country in which it is registered for conducting activities that conform to the provisions of Paragraphs a), b), d), or e) of Subsection (1) of Section 3 and whose registered seat is not in a European Union Member State.

45) 'Third-country financial enterprise' means a financial enterprise that has a license in conformity with the legal regulations of the country in which it is registered for conducting one or more activities that conform to the provisions of Paragraphs b)-c) and f)-l) of Subsection (1) as well as the provisions of Subsection (2) of Section 3 and whose registered seat is not in a European Union Member State.

46) 'Third-country financial institution' means a third-country credit institution and a third-country financial enterprise.

47) The terms European Union and Member States of the European Union shall be understood as the European Economic Area and Member States of the European Economic Area.

#### IV. Definition of Terms for the Purposes of Part IV only

1) 'Deposit' means the deposits described under Point I/2 of this Schedule and debt securities issued by credit institutions, not including

- a) deposits placed with a credit institution by another credit institution,
- b) mortgage bonds issued by mortgage loan companies in accordance with specific other legislation,
- c) subordinated loan capital, core loan capital, subsidiary loan capital.
- d) junior subordinated loan capital,
- e) contributions by a cooperative member to a cooperative credit institution.

2) 'Deposit-holder' means the person under whose name the account was opened, or - solely in respect of bearer deposits - who presents the deposit certificate.

3) 'Authorized signatory' means the owner of a deposit, or, if he is not the owner of the deposit, the person duly authorized by the account-holder to dispose of the account with or without restrictions.

4) 'Beneficiary' means the account-holder or the person designated as such by the account-holder to the credit institution in writing.

5) 'Joint account' means an account, other than a group account, that has more than one owner or beneficiary (opened on behalf of more than one person).

6) 'Person entitled to indemnity' means the deposit holder. Deposits whose contractual terms and conditions stipulate an agreement to the contrary shall constitute an exception. The person who, on the basis of the deposit

owner's authorization, has powers to dispose of the account at the time the account is frozen but who is, however, neither the owner nor beneficiary of the account shall be deemed the person entitled to indemnity.

7) 'Frozen account' means an account for which the credit institution is unable to make payments within five business days of the due dates stipulated by law or as contracted.

8) 'Registered deposit' means a deposit whose owner can be unmistakably identified on the basis of the identification data contained in the deposit contract, savings deposit contract or bank account contract.

9) 'Group account' means the accounts of condominiums, housing cooperatives, school associations and building societies.

## V. Definition of Terms for the Purposes of Chapter XX/A

1) 'Data subject' means any natural person or company whose reference data is processed by the financial enterprise operating the central credit information system.

2) 'Reference data' means any data, including the personal identification data of the data subject, that the financial enterprise operating the central credit information system is authorized to process under this Act.

3) 'Reference data provider' means a financial institution that is engaged in at least one of the activities specified in Paragraphs *b)-c)* and *e)-f)* of Subsection (1) of Section 3, the Student Loan Center, legal entities engaged exclusively in underwriting guarantees and providing surety facilities, the investment firms engaged in the activity specified in Paragraph *c)* of Subsection (2) of Section 81 of the CMA, and the investment service providers, investment fund managers, organizations providing clearing or settlement services, voluntary mutual insurance funds, private pension funds, financial institutions, and the central depository and insurance companies engaged in the activity specified in Point 37 of Subsection (1) of Section 5 of the CMA.

4) 'Company' means business associations, European public limited-liability companies, cooperatives, housing cooperatives and private entrepreneurs, exclusive of reference data providers.

### Schedule No. 3 to Act CXII of 1996

#### ***I. Identification Data***

1) Personal identification data and address of natural persons: name, birth name, mother's name, date and place of birth, citizenship, residence address, mailing address, identification document (passport) number, number of any other document suitable for identification under Act LXVI of 1992 on Records of the Personal Data and Address of Citizens.

2) Identification data of financial institutions, companies, and acceptors: name, abbreviated name, registered office, addresses of business locations and branch offices, tax number, name and position of persons authorized to represent the company.

3)-5)

#### ***II. Data that may be processed in the central credit information system***

1. Data of natural persons that may be processed:

1.1 identification data:

*a)* name,

*b)* birth name,

*c)* date and place of birth,

*d)* mother's birth name,

*e)* identification document (passport) number or number of any other document suitable for identification under Act LXVI of 1992 on Records of the Personal Data and Address of Citizens,

*f)* residence address,

*g)* mailing address.

1.2 information regarding contracts for the services specified in Paragraphs *b)-c)* and *e)-f)* of Subsection (1) of Section 3 and student loan contracts:

*a)* type and identifier (number) of contract,

*b)* date of signature, expiration and termination of the contract,

- c) contract amount and currency,
  - d) time of occurrence of the criteria referred to in Subsection (1) of Section 130/C,
  - e) amount of debt overdue and outstanding at the time of occurrence of the criteria referred to in Subsection (1) of Section 130/C,
  - f) date and time when the overdue debt is satisfied and the mode of satisfaction,
  - g) an indication if the liability has been transferred to another reference data provider, or to any lawsuit pending.
- 1.3 information relating to contracts for the financial services referred to in Paragraphs *b)-c)* and *e)-f)* of Subsection (1) of Section 3 or student loan contracts specified in specific other legislation:
- a) date and reason for rejection of the request,
  - b) documentary evidence,
  - c) an indication of any lawsuit pending.
- 1.4 information relating to the use of cash-substitute payment instruments:
- a) type and identifier (number) of the cash-substitute payment instruments,
  - b) date and time of cancellation,
  - c) date and time of any transaction conducted with the cancelled cash-substitute payment instruments, number of transactions and the amounts involved,
  - d) number of unauthorized uses,
  - e) amount of damage,
  - f) date of court verdict becoming final,
  - g) an indication of any lawsuit pending.
2. Data of companies that may be processed:
- 2.1 identification data:
- a) corporate name, name,
  - b) address,
  - c) registration number, number of private entrepreneur's license,
  - d) tax number.
- 2.2 information regarding contracts for the services specified in Paragraphs *b)-c)* and *e)-f)* of Subsection (1) of Section 3:
- a) type and identifier (number) of contract,
  - b) date of signature, expiration and termination of the contract,
  - c) manner in which the contract was terminated,
  - d) contract amount and currency,
  - e) amount and due date of debt overdue and outstanding,
  - f) date and time when the overdue debt is satisfied and the mode of satisfaction,
  - g) an indication if the liability has been transferred to another reference data provider, or to any lawsuit pending.
- 2.3 information on bank accounts regarding which any submitted orders are held in abeyance (queued) owing to lack of coverage:
- a) type and identifier (number) of contract,
  - b) bank account number,
  - c) date of signature, expiration and termination of the contract,
  - d) amount and currency of liabilities held in abeyance,
  - e) date of commencement and termination of queuing,
  - f) an indication of any lawsuit pending,
- 2.4 information relating to contracts for the acceptance of cash-substitute payment instruments:
- a) date of signature, expiration, termination and suspension of the contract,
  - b) an indication of any lawsuit pending.

#### Schedule No. 4 to Act CXII of 1996

### **Computation of Indirect Ownership**

For the purposes of this Act, rules of computation of indirect ownership shall be:

- 1) The extent of an indirect holding shall be determined by multiplying the share or voting right held in the intermediary company (Schedule No. 2, Point III/12) by the share or voting right - whichever is greater - held by the

intermediary company in the target company. If the share or voting right in the intermediary company is greater than fifty per cent, it shall be treated as a whole.

2) In the case of natural persons, the ownership interests or voting rights jointly owned or exercised by the natural person's close relatives must be calculated cumulatively.

3) Voting rights shall be taken into account in the same manner as ownership interests.

4)-5)

6)

## Schedule No. 5 to Act CXII of 1996

### ***Computation of Solvency Margin***

1) The solvency margin of a credit institution shall consist of core, subsidiary and supplementary capital components.

2) The core capital is calculated from the positive and negative items specified in Points 3 and 4, taking into account the contents of Points 5-7.

3) Positive components of the core capital, based on the accounting records, are

a) subscribed capital,

b) capital reserve,

c) the indivisible cooperative share from the tied-up reserve,

d) general reserve,

e) general risk provision, up to 1.25% of the adjusted balance sheet total,

f) profit reserve, if positive,

g) balance sheet profit endorsed by audit,

h) core loan capital.

4) Negative components of the core capital shown in the accounting records:

a) the unpaid amount of the subscribed capital,

b) intangible assets other than those included in the tied-up reserve,

c) dividend preference shares subscribed and paid, also paying dividends unpaid from previous year(s) in the year in which there is profit,

d) reserve for losses,

e) balance sheet profit endorsed by audit, if negative, or the interim negative result for determining the interim solvency margin,

f) risk provision - excluding the general risk provision - and any shortfall in value adjustment, meaning the amount of risk provision and value adjustments left unrecorded because the evaluation of off-balance sheet items and assets was incorrect (including any shortfall in provisions and unrecorded value adjustments uncovered during an auditor's or a Commission audit).

5) In the event of a credit institution increasing its subscribed capital, the increased capital amount may be included in the solvency margin after the document in evidence of payment of the extra capital is presented to the Commission.

6) In the event of a credit institution reducing its subscribed capital, the reduced amount of the subscribed capital shall be taken into consideration for determining the solvency margin.

7) In the solvency margin the general risk provision shall be taken into account less any prevailing corporate tax liability.

7A) For the purposes of this Act, all loans that satisfy the following conditions shall be considered core loan capital:

a) it is actually available and immediately accessible for the user credit institution without legal dispute or seniority requirement and is indicated in the balance sheet of the user credit institution;

b) the contract for providing the loan contains the lender's agreement that the loan given by it may be used for settling the credit institution's debts and the lender's claim shall take the last place before the shareholders in the order of repayment;

c) the loan term - including debt securities - covers an indeterminate duration and it may be cancelled only upon the Commission's consent;

d) no repayment of principal may be made prior to the notice period stipulated in the agreement, unless it is authorized by the Commission;

e) the loan contract or the securities sales agreement contains no clause to increase the incidental interest and loan charges, with the exception of an increase in interest due to an increase in the reference rate in an escalator agreement;

f) any interest or payment under any other title in connection with the loan - other than the repayment of principal - may be made solely from the credit institution's profit after tax, as shown in the annual report on the financial year in question, plus any available profit reserve, after having tied up the provisions referred to in Section 75, and before the payment of dividends (proceeds);

g) if during any given year interest or payment under any other title cannot be made in accordance with Paragraph f), the lender may not subsequently demand such sums in any year thereafter;

h) if the credit institution falls in default with any payment obligation on account of the loan, the lender shall not be entitled to initiate - on these grounds - the liquidation of the credit institution;

i) the lender of the loan capital shall not be permitted any setoff right against the borrower in connection with the loan.

7B) the ratio of core loan capital to be taken into account may not surpass 15% of the total of all core capital components.

8) Positive components of the subsidiary capital, on the basis of the accounting records, are

a) dividend preference shares subscribed and paid and also paying unpaid dividends from previous year(s) in the year in which there is profit,

b) evaluation reserve,

c) subordinated loan capital,

d) subsidiary loan capital.

9) The negative component of the subsidiary capital is

the part of the subordinated loan capital that cannot be taken into account.

9A) For the purposes of this Act, all loans that satisfy the following conditions shall be considered subsidiary loan capital:

a) it is in conformity with the conditions set out in Paragraphs a)-f) and h)-i) of Point 7A; and

b) if during any given year interest or payment under any other title cannot be made in accordance with Paragraph f) of Point 7A, the lender may subsequently demand such sums in any year thereafter only if permissible by virtue of the provisions laid down in Paragraph f) of Point 7A. The lender may not demand any default interest.

10) For the purposes of this Act, all loans that satisfy the following conditions shall be considered subordinated loan capital:

a) it is actually available and immediately accessible for the user credit institution without legal dispute or seniority requirement and is indicated in the balance sheet of the user credit institution;

b) the contract for providing subordinated loan capital contains the lender's agreement that the loan given by it may be used for settling the credit institution's debts and the lender's claim shall take the last place before the shareholders in the order of repayment;

c) the original term of the loan - including debt securities - exceeds five years and it is to be repaid after a minimum of five years or, if the loan is for an indeterminate term, it may be repaid at a date stipulated in an agreement but five years from the date of cancellation at the earliest, unless the Commission authorizes an earlier repayment;

d) the loan contract or the securities sales agreement contains no clause to increase the incidental interest and loan charges, excepting an increase in interest due to an increase in the reference rate in an escalator agreement,

e) no repayment of principal may be made prior to the original maturity or the notice period stipulated in the agreement, unless it is authorized by the Commission,

f) the lender of the subordinated loan capital shall not be permitted any setoff right against the borrower.

11) The setoff of the amount of the subordinated loan capital against the solvency margin must be decreased - gradually and annually - during the five years preceding the repayment deadline.

12) Convertible bonds may be included in the solvency margin if they satisfy the requirements prescribed for subordinated loan capital. In other cases, convertible bonds shall not be recognized as components of the solvency margin.

13) Subsidiary capital may be included in the solvency margin subject to the following restrictions:

a) the amount of subsidiary capital may not surpass 100% of the core capital,

b) the ratio of subordinated loan capital to be taken into account as subsidiary capital may not surpass 50% of the core capital.

14) The following must be deducted from the core and supplementary components of the solvency margin determined in consideration of the restrictions under Point 13:



a) the book value of interests in other financial institutions, investment firms, insurance and reinsurance companies - if the credit institution has a qualifying participation at the time they are being enumerated - as well as the book value of subordinated loan capital provided to the above-specified companies;

b) the book value of interests not treated as qualifying participations in other financial institutions, investment firms, insurance and reinsurance companies, as well as the part exceeding ten per cent of the solvency margin calculated in consideration of Points 1-13 from the total amount of the book value of subordinated loan capital provided to the above-specified companies.

15) The restrictions specified in Sections 79-85 that are contingent on the extent of the solvency margin shall be based on the core and subsidiary capital components of the solvency margin that remain after the deductions specified in Point 14.

16) The following shall be deducted from the core and subsidiary capital components of the solvency margin that remain after the deductions specified in Point 14:

a) the amount by which the limits specified in Sections 79 and 83 are exceeded,

b) the capital requirement for country risk determined as prescribed in specific other legislation.

The restrictions stipulated in Point 13 must be observed when making deductions.

17) The solvency margin remaining after the deductions specified in Point 16 constitute the numerator in the solvency index.

18) To cover the positions and exposures recorded in the trading book and the capital requirement for the exchange rate and commodities risk applied for entire activities, supplementary capital may be used in addition to subsidiary capital. The core and subsidiary capital components shall comprise the deductions under Point 16, eight per cent of the adjusted balance sheet total as specified in specific other legislation and the higher solvency index prescribed by a Commission resolution multiplied by the adjusted balance sheet total that remains after being isolated from the capital. The supplementary capital shall comprise the parts of the junior subordinated loan capital and the subsidiary capital that cannot be used due to the restrictions contained in Point 13.

19) For the purposes of this Act, all loans that satisfy the following conditions shall be considered junior subordinated loan capital:

a) the conditions specified in Paragraphs a), b), d), e) and f) of Point 10,

b) the original loan term is at least two years,

c) the loan contract contains a clause that it can be repaid upon or after maturity only if the financial institution maintaining the trading book meets the capital requirement pertaining to it.

20) The solvency margin covering the positions and exposures recorded in the trading book and the capital requirement for the exchange rate and commodities risk applied for entire activities may contain junior subordinated loan capital and subsidiary capital components only to the extent at which their aggregate amount does not exceed two hundred per cent of the core capital covering the same risks.

## Schedule No. 6 to Act CXII of 1996

### ***Conformity with the Laws of the European Union***

This Act contains regulations that may be approximated with the following legal regulations of the European Communities:

1. Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions.

2. Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

3. Directive 94/19/EEC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes.

4. Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions.

5. Council Directive 86/635/EEC of 18 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions.

6. Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the member states concerning consumer credit, and Council Directive 90/88/EEC and Council Directive 98/7/EC on its amendment.

7. European Parliament and Council Directive 95/26/EC of 18 July 1995 amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Council Directive 93/22/EEC on investment services in the securities field and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (UCITS), with a view to reinforcing prudential supervision.

8. Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganization and winding up of credit institutions.

9. Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.