

**Act CCXXXVII of 2013**  
**on Credit Institutions and Financial Enterprises<sup>1</sup>**

*Chapter I*

*General Provisions*

1. Scope

*Section 1*

(1) This Act applies to:

*a)* financial services, financial auxiliary services, bank representation activities and voluntary institutional protection performed, and to deposit insurance arrangements provided in the territory of Hungary in accordance with this Act;

*b)* the supervision under Paragraph *c)* hereof of bank representation activities, financial services and financial auxiliary services provided - in accordance with the provisions of this Act - by credit institutions and financial enterprises established abroad by credit institutions registered in Hungary;

*c)* the supervisory activities performed by the competent Hungarian authority as provided for in this Act;

*d)* mixed-activity holding companies and companies other than financial institutions with which a financial holding company or credit institution subject to supervision on a consolidated basis has close links; and

*e)* the supervision of outsourcing service providers under the provisions of this Act.

(2) This Act applies to:

*a)* the foundation, establishment and operation of financial institutions in the territory of Hungary;

*b)* the foundation of subsidiaries and branches abroad by financial institutions established in Hungary and to their acquisition of any holding in a foreign financial institution;

*c)* the supervision - under Paragraph *c)* of Subsection (1) - of financial service, financial auxiliary service and bank representation activities performed according to the provisions of this Act by subsidiaries or branches established abroad by financial institutions incorporated in Hungary;

*d)* the supervision - under Paragraph *c)* of Subsection (1) - of financial service and financial auxiliary service activities performed abroad by financial institutions established in Hungary; and

*e)* cross-border financial services and financial auxiliary services performed in the territory of Hungary by foreign financial institutions.

*Section 2*

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<sup>1</sup> Adopted by Parliament on 17 December 2013.

(1) This Act shall not apply to:

a) the activities of international financial institutions enumerated in Schedule No. 1 performed in the territory of Hungary;

b) the taking of repayable funds - other than deposits - from the public by the State and by municipal authorities, as governed by law;

c) the business of management of cash deposits, if falling under the scope of specific legislation;

d) the provision of customs bonds by bodies other than financial institutions, as well as the financial services provided by indirect representatives for the settlement of customs charges in customs procedures;

e) credit tokens that may be granted in accordance with the relevant legislation subject to tax charged to the payer, or tax exempt, to be used to acquire a limited range of goods or services; and

f) the activities of the Magyar Vállalkozásfejlesztési Alapítvány (*Hungarian Foundation for Small Businesses*) for providing loans from the Országos Mikrohitel Alap (*National Micro-Loan Fund*) and the lending operations to the extent providing micro-loans of county and Budapest foundations for the development of small businesses.

(2) This Act shall not apply to:

a) extra-budgetary funds;

b) the Magyar Nemzeti Vagyonkezelő Zrt. (*Hungarian National Asset Management Zrt.*); and

c) the Student Loan Company provided for in the Government Decree on the Student Loan System.

(3) This Act shall apply to the Magyar Nemzeti Bank (*National Bank of Hungary*) (hereinafter referred to as "MNB") only to the extent pertaining to its licensing, supervisory and macro-prudential activities, and in connection with the rules for handling business secrets and bank secrets, and with the regulations where this Act makes an express reference to the MNB.

## 2. Financial services and financial auxiliary services

### *Section 3*

(1) Financial services shall mean the pursuit of the following activities of a financial nature on a commercial scale, in Hungarian Forints and other currencies:

a) taking deposits and receiving other repayable funds from the public;

b) credit and loan operations;

c) financial leasing;

d) money transmission services;

e) issuance of electronic money;

f) issuance of paper-based cash-substitute payment instruments (for example traveler's checks and bills printed on paper) and the provision of the services related thereto, which are not recognized as money transmission services;

g) providing surety facilities and guarantees, as well as other forms of banker's obligations;

h) commercial activities in foreign currency, foreign exchange - other than currency exchange services -, bills and checks on own account or as commission agents;

i) financial intermediation services;

j) safe custody services, safety deposit box services;

k) credit reference services; and

*l)* purchasing receivables.

(2) Financial auxiliary services shall mean the pursuit of the following services of a financial nature on a commercial scale, in Hungarian Forints and other currencies:

- a)* currency exchange activities;
- b)* operation of payment systems;
- c)* money processing activities;
- d)* financial brokering on the interbank market;
- e)* activities for the issue of negotiable credit tokens.

(3) Unless otherwise provided for by law, the financial services defined in Subsection (1) and financial auxiliary services defined in Subsection (2) may be performed subject to authorization issued under this Act by the MNB acting exclusively within its function as supervisory authority of the financial intermediary system (hereinafter referred to as “Authority”).

(4) The Act on Payment Service Providers shall apply to:

- a)* activities of money transmission services performed by payment institutions, including credit and loan operations they provide in connection with money transmission services, and safe custody services;
- b)* the issuance of electronic money by electronic money institutions and the institution operating the Posta Elszámoló Központ (*Postal Clearing Center*), including their activities of money transmission services, credit and loan operations they provide in connection with money transmission services, and safe custody services;
- c)* the activities of the Treasury relating to money transmission services provided and the issuance of electronic money to persons other than those falling under the sphere of the Treasury pursuant to the Act on Public Finances, and other than the account holders falling outside the sphere of the Treasury;
- d)* issuers of credit tokens.

#### *Section 4*

(1) A foreign company may provide financial services or engage in financial auxiliary service activities solely by way of its Hungarian branch - subject to the exceptions set out in Subsections (3) and (4).

(2) It is not necessary to apply Subsection (2) of Section 18, Paragraph *c)* of Subsection (2) of Section 20, Sections 23-24, Sections 26-28, Subsection (5) of Section 79, Section 82, Subsections (1) and (4) of Section 83, Sections 125-140, Subparagraph *bf)* of Paragraph *b)* of Subsection (2) of Section 185, Subparagraphs *ca)*, *cc)* and *cd)* of Paragraph *c)* of Subsection (2) of Section 185, Sections 190-192, and Section 206 to the branches of third-country financial institutions.

(3) A foreign financial institution established in a Member State 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 been authorized to engage in such activities by the competent supervisory authority of the State where established.

(4) Credit institutions established in any EEA Member State and financial enterprises that comply with the conditions provided for in Subsection (4) of Section 15 may engage in cross-border services as well.

#### *Section 5*

(1) Credit institutions established in any EEA Member State and financial enterprises that comply with the conditions provided for in Subsection (4) of Section 15 need not obtain the authorization referred to in Subsection (3) of Section 3 for activities pertaining to cross-border services, and for activities that are carried out by their Hungarian branches and authorized by the competent supervisory authority of their home State.

(2) Authorization by the Authority is not required for enterprises other than financial institutions to engage in group financing.

### 3. Definitions

#### *Section 6*

(1) For the purposes of this Act and other legislation implemented by authorization of this Act:

1. ‘basic remuneration’ shall mean remuneration paid by the credit institution to a senior executive or member of staff under contract between the credit institution and the senior executive or member of staff on a regular basis in the form of wages, which should appropriately reflect relevant professional experience and responsibility as set out in an employee’s job description as part of the terms of employment, including other benefits which are paid to other employees as well;

2. ‘countercyclical capital buffer rate’ shall mean the rate applied for determining the margining requirements to limit procyclicality connected to the credit institution’s activity, that the credit institution must apply in the jurisdictions where the relevant credit risk exposures of the credit institution are located;

3. ‘parent company’ shall mean any company which effectively exercises a controlling influence over another company;

4. ‘commercial transaction in gold’ shall mean 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;

5. ‘investment’ shall mean real estate property and movable tangible property, rights, or interests in a company (stocks, partnership shares, membership, etc.), or a subordinated loan capital provided to other financial enterprises;

6. ‘qualifying holding’ shall have the same meaning as defined in Regulation (EU) No. 575/2013 of the European Parliament and of the Council (hereinafter referred to as “Regulation 575/2013/EU”);

7. ‘internal approach’ shall mean the internal ratings based approach defined in Regulation 575/2013/EU;

8.<sup>2</sup> ‘deposit’ shall mean an obligation created by virtue of a deposit contract within the meaning of Act V of 2013 on the Civil Code (hereinafter referred to as “Civil Code”) or a savings deposit contract within the meaning of Law-Decree No. 2 of 1989 on Savings Deposits, including any positive credit balance which results from funds left in a payment account maintained under contract by a credit institution;

9. ‘taking deposits and other repayable funds from the public’ shall mean the taking of funds from non-specified persons by institutions whose business is to receive such deposits and funds

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<sup>2</sup> Established by Subsection (1) of Section 306 of this Act, effective as of 15 March 2014.

for its own account and hence to exercise control over these funds as its own, under obligation to repay the same - with interest or with some other gain, or without such;

10. 'group' shall mean a group of companies which consists of a parent company, its subsidiaries and the entities in which the parent company or its subsidiaries exercise controlling influence or hold a participating interest;

11. 'group financing' shall mean a financial arrangement between a parent company and its subsidiary or between subsidiaries, that are carried out collectively to ensure liquidity;

12. 'endowment capital' shall mean the capital provided by the founder permanently and without restrictions or encumbrances for the foundation and operation of a branch;

13. 'EEA Member State' shall mean any Member State of the European Union and any State that is a party to the Agreement on the European Economic Area;

14. 'other systemically important credit institution' shall mean any systemically important credit institution the failure or malfunction of which could lead to systemic risk at the EEA or national level;

15. 'capital buffer requirement relating to other systemically important credit institutions' shall mean the own funds that a Hungarian or EEA credit institution that is subject to significant risks is required to maintain in order to reduce the probability of insolvency and potential risk exposure;

16. 'electronic money' shall mean electronically, including magnetically, stored monetary value as represented by a claim on the issuer of the electronic money which is issued on receipt of funds for the purpose of making payment transactions as defined in the Act on the Pursuit of the Business of Payment Services, and which is accepted by a natural or legal person, unincorporated business association or private entrepreneur other than the electronic money issuer, excluding the monetary value stored on instruments provided for in Paragraph *k*) of Subsection (4) or used for the payment transaction defined in Paragraph *l*) of Subsection (4);

17. 'controlled company' shall have the same meaning as defined in Act CXX of 2001 on the Capital Market (hereinafter referred to as "CMA");

18. 'controlling influence' shall mean the dominant influence referred to under the definition of parent company in Act C of 2000 on Accounting (hereinafter referred to as "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 marketing policies,

*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 articles of association (charter document) of the company or in another written contract,

*c*) under which common management is exercised through the management bodies, supervisory boards of the companies 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;

19. 'Common Equity Tier 1 capital, Additional Tier 1 capital and Tier 2 capital' shall have the same meaning as defined in Regulation 575/2013/EU;

20. 'capital maintenance index' shall mean a ratio expressed in percentage, the numerator of which consists the total of the funds held in Hungary of a financial institution incorporated as a branch, the market value of 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 undertaken in Hungary;

21. 'EU parent company, EU financial holding company and EU parent mixed financial holding company' shall have the same meaning as defined in Regulation 575/2013/EU;

22. 'securitization' shall have the same meaning as defined in Regulation 575/2013/EU;

23. 'securitization position' shall have the same meaning as defined in Regulation 575/2013/EU;

24. 'supervisory authority' shall mean the foreign authorities supervising the activities of foreign financial institutions;

25. 'management body in its supervisory function' shall mean the management body defined in the charter document or articles of association acting in its role of overseeing and monitoring decision-making by the management body in its managerial function;

26. 'payment transaction, payment account and payment service provider' shall mean the payment transaction, payment account and payment service provider defined in the Act on the Pursuit of the Business of Payment Services;

27. 'payment system' shall mean a funds transfer system with formal and standardized arrangements and common rules for the processing, clearing or settlement of payment transactions;

28. 'consumer' shall mean any natural person who is acting for purposes which are outside his trade, business or profession;

29. 'negotiable credit token' shall mean transferable and reusable, paper-based means of payment, embodying pecuniary claims against the issuer - other than banknotes, cash-substitute payment instruments provided for in Point 55 and securities - which are to be used as payment for goods or services supplied;

30. 'activity for the issuance of negotiable credit tokens' shall mean the supply of negotiable credit tokens in exchange for money by the issuer of credit tokens to users directly or through a distributor;

31. 'head office' shall mean the place where the financial institution conducts its principal activity and where ultimate decision-making takes place;

32. 'global systemically important credit institution' shall mean a systemically important credit institution, the failure or malfunction of which could lead to a global systemic risk, and which does not have:

- a) an EU parent credit institution,
- b) an EU parent financial holding company,
- c) an EU parent mixed financial holding company;

33. 'capital buffer requirement relating to global systemically important credit institutions' shall mean the own funds that a global credit institution that is subject to potential risks is required to maintain in order to reduce the probability of insolvency and potential risk exposure;

34. 'third country' shall mean any country that is not an EEA Member State;

35. 'third-country credit institution' shall mean a credit institution that is authorized under the national laws of the State where established for the pursuit of activities that conform to the provisions of Paragraphs *a*), *b*), *d*), *e*) or *f*) of Subsection (1) of Section 3, the registered office of which is in a third country;

36. 'third-country financial institution' shall mean a third-country credit institution or a third-country financial enterprise;

37. 'third-country financial enterprise' shall mean a financial enterprise that is authorized under the national laws of the State where established for the pursuit of one or more activities that

conform to the provisions of Paragraphs *b)-c)* and *g)-l)* of Subsection (1) as well as the provisions of Paragraphs *a)-d)* of Subsection (2) of Section 3, and the registered office of which is in a third country;

38. 'cross-border services' shall mean the supply of financial services or financial auxiliary services in a country other than the country where the registered office, place of business, head office, or branch of the financial institution providing the service is located, and the place of business and permanent residence (home address) of the client 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;

39. 'recovery plan' shall mean a plan laying down potential courses of action in the case of adverse developments which constitute a serious threat to liquidity or solvency designed to restore the credit institution's financial stability without any State financial aid and without requesting special liquidity facilities from the MNB acting within its central banking duties;

40. credit and loan operations:

*a)* 'credit-granting' shall mean a commitment fixed in writing in a credit agreement between the creditor and the debtor for the availability of a specific line of credit in return for a commission, as well as the creditor's commitment, subject to specific contractual conditions, to conclude a loan agreement or conduct other credit operations,

*b)* 'lending money' shall mean:

*ba)* the provision of money under a credit or loan agreement 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,

*bb)* 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 where, during the time of the transaction, they may be neither disposed of nor encumbered in another transaction,

*bc)* an operation involving the buying and selling of independent liens under the Act on Mortgage Loan Companies and Mortgage Bonds,

*bd)* the provision of secured loan, and

*be)* group financing,

*c)* financial services incidental to credit and loan operations covering inter alia the activities in connection with checking the creditworthiness of borrowers, drafting credit and loan agreements, keeping records on, monitoring and controlling outstanding loans, and including recovery operations;

41. 'credit risk mitigation' shall mean a technique used by a credit institution to reduce the credit risk associated with the exposures which the credit institution continues to hold;

42. 'credit reference services' shall mean:

*a)* the provision of bank information for a fee, without violating bank secrets, or

*b)* data processing by the financial enterprise operating the central credit information system defined by the Act on the Central Credit Information System;

43. 'competent supervisory authority' shall mean the competent authority defined in Regulation 575/2013/EU;

44. 'initial capital' shall mean the combined total of the subscribed capital - excluding the nominal value of dividend preference shares subscribed and paid, that entitles to receive dividends, but where the dividends remained unpaid from previous year(s) in the year in which there is profit -, and capital and profit reserves; furthermore, the capital provided by the founder

permanently and without restrictions or encumbrances for the financial enterprise set up as a foundation and provided with a view to carrying out the foundation's objective;

45. 'institution-specific countercyclical capital buffer requirement' shall mean the own funds that a credit institution is required to maintain in order to reduce the potential for pro-cyclicality connected to the business of credit institutions, in an amount equivalent to the risk exposure calculated in accordance with the position of the client of the exposure;

46. 'management body in its managerial function' shall mean the management body defined in the charter document or articles of association acting in its role of decision-making;

47. 'remuneration' shall mean any reward or recompense granted by a credit institution to its senior executive or member of staff under contract of employment, directly or indirectly, in money or in kind, in the form of a right or any other form of benefits;

48. 'ancillary services company' shall mean a company the principal activity of which consists in managing property, managing data-processing services, transport of money, and security and communication services, or any other similar activity which is ancillary to the principal activity of one or more credit institutions;

49. 'subscribed capital' shall mean the capital defined in Subsection (3) of Section 35 of the Accounting Act;

50. 'mortgage loan' shall mean a credit or loan granted to a consumer secured against a real estate property, including if the mortgage is filed in the form of an independent lien;

51. 'good business reputation' shall mean all of the requisites to be possessed by the executive officers of the financial institution or mixed financial holding company and by its members with a qualifying holding for the prudent and sound management of the financial institution or mixed financial holding company;

52. 'interest' shall mean the sum of money or other gain to be paid (settled) by the debtor to the lender (deposit-holder) for the use of and risks associated with his deposit or loan determined in a percentage of the deposit or loan amount calculated on a time basis;

53. 'trading book' shall have the same meaning as defined in Regulation 575/2013/EU;

54. 'money remittance' shall mean a payment service where funds are received from a payer, without any payment accounts being created, for the sole purpose of transferring a corresponding amount to a payee or to another money transmission service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;

55. 'cash-substitute payment instrument' shall mean:

a) checks,

b) electronic money,

c) any personalized device(s) and/or set of procedures agreed between the money transmission service user and the money transmission service provider and used by the money transmission service user in order to initiate a payment order;

56. 'issuance of cash-substitute payment instrument' shall mean when a cash-substitute payment instrument is supplied to the client under contract;

57. 'services provided in connection with the issuance of a cash-substitute payment instrument' shall mean all of the services provided pursuant to the regulations on the issue, administration and use of cash-substitute payment instruments, or all of the services the issuer has agreed to provide under contract concluded with the client, or with vendors or service providers, excluding the clearing transactions made in relation to the use of cash-substitute payment instruments in connection with a service related to cash-substitute payment instruments;

58.<sup>3</sup> ‘outsourcing’ shall mean an arrangement where a financial institution enters into an exclusive agreement with an independent service provider, by which that service provider performs continuously or regularly financial services, financial auxiliary service activities or the activities prescribed by law, such as the management, processing and storage of data, which would otherwise be undertaken by the financial institution itself;

59. ‘risk and exposure’ shall mean:

- a) the granting of loans, including the purchasing of debt securities issued on a debt,
- b) the discounting of bills, checks and other debentures,
- c) a guarantee, surety and other collateral provided by a credit institution, including any of the credit institution’s other future or contingent liabilities, assumed guarantees, surety facilities, and other banker’s obligations provided therefor,
- d) all liabilities assumed by a credit institution whereby the credit institution guarantees the fulfillment of pecuniary claims for a consideration or agrees to repurchase such upon demand of the buyer,
- e) a participating interest of the credit institution acquired in any of its company, irrespective of the duration of holding such participating interest,
- f) pecuniary claims purchased by a credit institution,
- g) financial leasing, and
- h) deposits placed in other credit institutions, excluding the sums of minimum reserves placed by the credit institution through a correspondent bank to comply with the minimum reserve requirement prescribed by the central bank;

60. ‘receivables purchase program’ shall mean purchasing (with or without assuming the obligor’s risk), advancing (inclusive of factoring and forfeiting) and discounting receivables, regardless of who keeps the records of the receivables’ in terms of their maturity and who collects the accounts receivable;

61. ‘close relative’ shall mean the close relative defined in the Civil Code;

62. ‘public-interest credit institution’ shall mean any credit institution that operates in the form of a public limited company, and any credit institution whose balance sheet total for the preceding financial year exceeded five hundred billion forints;

63. ‘jointly controlled entity’ shall mean a jointly controlled entity defined in the Accounting Act;

64. ‘credit institutions permanently affiliated to a central body’ shall mean a credit institution exempted under Article 10 of Regulation 575/2013/EU;

65. ‘central counterparty’ shall have the same meaning as defined in Regulation 575/2013/EU;

66. ‘indirect holding’ shall mean when equity holdings in an enterprise are held or controlled, or voting rights are exercised through the equity holdings or voting rights held by another company in that company (for the purposes of Schedule No. 3 hereinafter referred to as “intermediary company”);

67. ‘referral fee’ shall mean all consideration provided to the intermediary in money or anything of value by the client or the person providing the financial service in exchange for his services for brokering a valid contract between the client and the provider of financial services, and in specific cases for the execution of such contract, or if the contract is maintained for a designated period of time;

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<sup>3</sup> Amended by Paragraph a) Subsection (2) of Section 308 of this Act.

68. 'service provider specializing in bank services' shall mean a company 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/or production, or security services;

69. 'critical function' shall mean the activities, services and operating procedures which, if discontinued, are likely to affect the functioning of the economy or the financial markets in Hungary or any other EEA Member State;

70. 'foreign credit institution' shall mean a credit institution that is established outside of Hungary;

71. 'foreign financial institution' shall mean foreign credit institutions and foreign financial enterprises;

72. 'foreign financial enterprise' shall mean a financial enterprise that is established outside of Hungary;

73. 'foreign company' shall have the same meaning as defined in Paragraph *a*) of Section 2 of Act CXXXII of 1997 on Hungarian Branches and Commercial Representative Offices of Foreign-Registered Companies (hereinafter referred to as "FCA");

74. 'securitization special purpose entity' shall have the same meaning as defined in Regulation 575/2013/EU;

75. 'external credit assessment institution' shall have the same meaning as defined in Regulation 575/2013/EU;

76. 'residential loan or credit agreement' shall mean any loan or credit agreement secured by mortgage on a real estate property, including if filed in the form of an independent lien:

*a*) entered into for the purpose - as fixed by the parties in a document - of purchasing, building, enlarging, remodeling or renovating a residential property, or

*b*) entered into for the - verified - purpose of refinancing a loan borrowed for the purposes defined in Paragraph *a*), where the loan amount may exceed the original debt outstanding at the time of refinancing only by the substantiated fees and charges stemming from the variations in exchange rates between the lenders and those incurred in connection with the closure of the original loan and with the disbursement of the new loan;

77. 'residential financial leasing agreement' shall mean any financial leasing agreement entered into for the purpose - as fixed by the parties in a document - of obtaining ownership title to a residential property from a third party, the seller, by the lessee;

78. 'subsidiary' shall mean any company over which a parent company effectively exercises a controlling influence; all subsidiaries of subsidiary companies shall also be considered subsidiaries of the parent company;

79. 'safe custody services (management of cash deposits)' shall mean the placement and management of funds on behalf of the client in interest bearing or non-interest bearing individual deposit accounts in compliance with the conditions provided for by law;

80. 'liquid assets' shall mean cash and any other assets that are readily convertible into cash;

81. 'balance sheet total' shall mean the sum total described as such by accounting regulations;

82. 'model risk' shall mean the potential loss an institution may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models;

83. 'operational risk' shall have the same meaning as defined in Regulation 575/2013/EU;

84. 'discretionary pension benefits' shall mean enhanced pension benefits granted on a discretionary basis by a credit institution to a senior executive or member of staff as part of that

employee's variable remuneration package, which do not include accrued benefits granted to an employee under the terms of the company pension scheme;

85. 'money processing activities' shall mean the sorting and counting of banknotes and coins, checking their genuineness and condition for fitness, and creating bundles of banknotes and rolls of coins to be placed back into circulation;

86. 'payment institution' shall have the same meaning as defined in the Act on Payment Service Providers;

87. 'money transmission service' shall mean:

a) services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account,

b) services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account,

c) execution of payment transactions between payment accounts,

d) execution of the payment transactions referred to in Paragraph c), where the funds are covered by a credit line for a payment service user,

e) issuing cash-substitute payment instruments, excluding checks and electronic money,

f) money remittance,

g) execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services;

88. 'financial holding company' shall have the same meaning as defined in Regulation 575/2013/EU;

89. 'financial leasing' shall mean an operation where the lessee acquires title of use on the ownership of a movable tangible property or a real estate property, or a right, from the lessor for a specified period of time, upon which the lessee:

a) shall bear all risks stemming from the passing of risk,

b) becomes entitled to collect proceeds,

c) shall bear direct costs (including maintenance and depreciation costs or amortization charges),

d) gains 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, the possession of the leased property shall revert to the lessor. Parties shall stipulate the principal - which equals the contract price of the leased tangible property or leased right - and the interest amount of lease payments and the due dates of such payments;

90. financial intermediation:

a) 'supply of special services by intermediaries' shall mean activities pursued under contract concluded with a financial institution for professional services facilitating the pursuit of providing financial services and/or financial auxiliary services in the name of the financial institution, for it and on its behalf, as well as making pre-contractual arrangements, covering also the liability arrangements and conclusion of contracts made in the name of the financial institution, for it and on its behalf;

b) 'agency activities' shall mean activities pursued under contract concluded with a financial institution for professional services facilitating the pursuit of providing financial services and/or financial auxiliary services and making pre-contractual arrangements, in the course of which no

commitments are made and no contracts are signed on the financial institution's behalf independently;

c) 'supply of payment services by intermediaries' shall have the same meaning as defined in the Act on Payment Service Providers;

d) 'brokering activities' shall mean activities pursued under contract for professional services concluded with a potential client for financial services in his name for the selection and facilitating the conclusion of a contract for financial services, however, without the right to undertake commitments in the name and on behalf of the client;

91. 'financial brokering on the interbank market' shall mean 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;

92. 'money exchange service' shall mean the buying and/or selling of foreign currencies for legal tender, and the buying and/or selling of foreign currencies for other foreign currencies. The exchange of currencies by payment service providers in connection with money transmission services, and the sale of coins and banknotes of a foreign currency which are in circulation or which can be exchanged for such for numismatic purposes shall not be construed as currency exchange services, nor the performance of payments for transactions in connection with the supply of goods or services on the internal market;

93. 'reference interest rate' shall mean the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source, and that cannot be influenced by the creditor;

94. 'emergency action plan' shall mean a plan worked out by the financial institution containing clearly defined procedures and arrangements and the relevant deadlines and officers, so as to ensure lawful operation;

95. 'systemic risk' shall mean a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the economy;

96. 'systemic risk buffer requirement' shall mean the own funds that an institution is required to maintain in order to prevent and mitigate systemic risks;

97. 'systemically important credit institution' shall mean:

- a) credit institutions, including EU parent credit institutions,
- b) EU parent financial holding companies, or
- c) EU parent mixed financial holding companies,

the failure or malfunction of which could lead to systemic risk;

98. 'systemically important institution' shall mean an EU parent credit institution, an EU parent financial holding company, an EU parent mixed financial holding company or a financial institution the failure or malfunction of which could lead to systemic risk;

99. 'participating interest' shall mean a relationship between a natural person and a company, other than a controlling influence, that constitutes either directly or indirectly at least 20 per cent of the voting rights or of equity holdings of the company. Having regard 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;

100. 'regulated market' shall have the same meaning as defined in Regulation 575/2013/EU;

101. 'own funds' shall have the same meaning as defined in Regulation 575/2013/EU;

102. 'safety deposit box services' shall mean the provision of a safety deposit box under contract to the client in a place that is guarded around the clock for the client to deposit or remove his valuables in private;

103. 'person' shall mean a natural person, a legal entity and unincorporated business association;

104. 'close links' shall have the same meaning as defined in Regulation 575/2013/EU;

105. 'sponsor' shall have the same meaning as defined in Regulation 575/2013/EU;

106. 'sub-consolidated basis' shall have the same meaning as defined in Regulation 575/2013/EU;

107. 'parent institution in a Member State, financial holding company in a Member State, mixed financial holding company in a Member State' shall have the same meaning as defined in Regulation 575/2013/EU;

108. 'durable medium' shall mean any instrument which enables the client to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

109. 'annual percentage rate of charge' shall have the same meaning defined in the Act on Consumer Credit;

110. 'pay-for-performance principle' shall mean variable remuneration paid by the credit institution to a senior executive or member of staff above and beyond the basic remuneration for performance exceeding the functions laid down in the employment contract, or for carrying out job functions not fixed therein;

111. 'total risk exposure' shall have the same meaning as defined in Regulation 575/2013/EU;

112. 'leverage' shall have the same meaning as defined in Regulation 575/2013/EU;

113. 'capital conservation buffer requirement' shall mean the own funds that a credit institution is required to maintain so as to enhance its ability to absorb losses;

114. 'risk of excessive leverage' shall have the same meaning as defined in Regulation 575/2013/EU;

115. 'managing director' shall mean the president of a financial institution elected by the management body in its managerial function 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;

116. 'business activity' shall mean gainful (for-profit) economic activities performed on a regular basis for compensation, involving the conclusion of deals which has not been individually negotiated;

117.<sup>4</sup> 'enterprise' shall mean a legal person, a sole proprietorship or a private entrepreneur that is engaged in economic activity;

118. 'mixed financial holding company' shall have the same meaning as defined in Regulation 575/2013/EU;

119. 'mixed-activity holding company' shall have the same meaning as defined in Regulation 575/2013/EU;

120. 'competing services' shall mean:

*a)* credit and loan provided for a minimum term of five years or more and secured by mortgage on real estate property (including independent lien), as well as financial leasing on real estate properties,

*b)* credit and loan provided for a maximum term of five years and secured by mortgage on real estate property (including independent lien), as well as financial leasing, including any other

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<sup>4</sup> Amended by Paragraph a) Subsection (8) of Section 306 of this Act.

credit and loan arrangements which are not secured by mortgage on real estate property, including lines of credit linked to payment accounts (bank accounts) and credit cards, or

*c)* deposit and payment accounts (bank accounts), with the proviso that the granting of loan secured by possessory lien shall not be treated as a competing service;

121. 'loss reduction measures' shall mean all non-business activities of a credit institution which are performed for the purpose to attenuate prevailing losses relating to exposures;

122. 'senior executive' shall mean:

*a)* in the case of banks and specialized credit institutions incorporated as limited companies, the chair and the members of the executive board and the supervisory board, and the managing director;

*b)* in the case of credit institutions set up as cooperative societies, the chair of the executive board, the chair of the supervisory board, and the managing director;

*c)* in the case of financial enterprises incorporated as limited companies or set up as cooperative societies, the chair of the executive board, the chair of the supervisory board, and the managing director;

*d)* in the case of branches, the person appointed by the foreign financial institution to lead the branch, and his direct deputy;

*e)*<sup>5</sup> in the case of financial enterprises set up as foundations, members of the board of trustees, the chair of the supervisory board, and the managing director; and

*f)* in the case of independent intermediaries, the person in control of the intermediation of financial services, including all deputies;

123. 'management body' shall mean the executive board and supervisory board of the financial institution, including their members and directors, covering also the senior executives of financial institutions incorporated as branches.

(2) In the application of Chapter X:

1. 'deposit' shall mean the deposit provided for in Subsection (1), 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 the relevant legislation,

*c)* subordinated loan capital, core loan capital, subsidiary loan capital,

*d)* junior subordinated loan capital, and

*e)* contributions by cooperative members to credit institutions set up as cooperative societies;

2. 'depositor' shall mean the person under whose name the account was opened, or - solely in respect of bearer deposits - who presents the deposit certificate;

3. 'person entitled to compensation' shall mean the depositor, not including:

*a)* depositors whose contract terms and conditions stipulate an agreement to the contrary,

*b)* any person - irrespective of the effective time of his right of disposition - who, on the basis of the depositor's authorization, has the right to dispose of the account on the day previous to the date of the opening of compensation specified in Subsection (1) of Section 217, but who is, however, neither the owner nor the beneficiary of the account;

4. 'beneficiary' shall mean the depositor or the person designated as such by the depositor to the credit institution in writing;

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<sup>5</sup> Amended by Paragraph b) Subsection (8) of Section 306 of this Act.

5. 'joint account' shall mean an account, other than a group account, that has more than one depositor (opened under the name of more than one person);

6. 'group account' shall mean the accounts of condominiums, housing cooperatives, school savings associations and building societies;

7. 'registered deposit' shall mean a deposit whose owner can be clearly identified on the basis of the identification data contained in the deposit contract, savings deposit contract or bank account contract;

8. 'authorized signatory' shall mean the depositor and a person duly authorized by the depositor to dispose of the account with or without restrictions.

(3) The following shall not be construed as taking of deposits and other repayable funds from the public:

*a)* the issue of debt securities under the conditions and restrictions laid down in the relevant legislation;

*b)* the carrying of funds received by a payment institution or an electronic money institution on a payment account;

*c)* funds received in exchange of electronic money and held by electronic money institutions.

(4) The following shall not be recognized as money transmission services:

*a)* payment transactions made exclusively in banknotes and coins (hereinafter referred to as "cash") directly from the payer to the payee, without any intermediary intervention;

*b)* payment transactions from the payer to the payee through a commercial agent under personal service contract, where the agent is authorized to negotiate and to conclude the contract on behalf of the payer or the payee;

*c)* professional physical transport of banknotes and coins;

*d)* non-professional cash collection within the framework of a non-profit or charitable activity;

*e)* services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services (cash-back service);

*f)* currency exchange business, that is to say, cash-to-cash operations, where the funds are not held on a payment account;

*g)* payment transactions based on checks, bills, paper-based vouchers, paper-based traveler's checks and paper-based international postal money orders as defined by the Universal Postal Union (UPU);

*h)* payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers;

*i)* payment transactions related to securities asset servicing under Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (hereinafter referred to as "IRA");

*j)* services provided by technical service providers, which support the provision of money transmission services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for money transmission services;

*k)* services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;

*l)* payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;

*m)* payment transactions carried out between payment service providers, their intermediaries or branches for their own account;

*n)* payment transactions between a parent company and its subsidiary or between subsidiaries of the same parent company, without any intermediary intervention by a payment service provider other than a company belonging to the same group; and

*o)* services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not a party to the framework contract with the client or micro-enterprise withdrawing money from a payment account, on condition that these providers do not conduct other money transmission services.

(5) The following shall not be recognized as loan operations:

*a)* loans given - on an ad hoc basis - by an employer to an employee for social purposes;

*b)* deferred payment facilities or advances given by natural persons or companies engaged under contract for the supply of goods and/or services (commercial loan), except where such transactions are concluded by financial institutions;

*c)* debenture loans provided to the owner of a life insurance policy by an insurance company;

*d)* loans provided by a voluntary mutual insurance fund to its members; and

*e)* social loans or residential loans given by a municipal government.

(6) Leasing conducted between a parent company and its subsidiary shall not be considered financial leasing, except where such transactions are concluded by financial institutions.

## 4. Financial institutions

### *Section 7*

(1) Credit institutions and financial enterprises are recognized as financial institutions.

(2) Unless otherwise provided for by law, the financial services defined in Subsection (1) of Section 3 may be provided only by financial institutions.

(3) Unless otherwise provided for by law, financial institutions may only pursue the following activities in addition to financial services by way of business:

*a)* financial auxiliary service activities provided for in Paragraphs *a)-d)* of Subsection (2) of Section 3;

*b)* insurance mediation services under the conditions set out in Act LX of 2003 on Insurance Institutions and the Insurance Business (hereinafter referred to as “Insurance Act”);

*c)* securities lending and securities borrowing under the conditions laid down in the CMA, nominee services for shareholders, investment service activities and services auxiliary to investment service activities under the conditions laid down in the IRA, as well as intermediary services according to Sections 111-116 of the IRA, and commodity exchange services;

*d)* transactions in gold;

*e)* keeping registers of shareholders;

*f)* services defined in Subsection (1) of Section 6 of Act XXXV of 2001 on Electronic Signatures;

g) activities to facilitate the loan operations of the Student Loan Company provided for in the Government Decree on the Student Loan System;

h) recruitment services under the conditions set out in Section 11/A of Act XCVI of 1993 on Voluntary Mutual Insurance Funds;

i) activities relating to the management, or to participation in the sale, of collateral or any other form of security with a view to reducing or avoiding losses from financial services;

j) activities for the management and recovery of receivables under contract;

k) supply of data and information relating to financial instruments for consideration;

l) intermediation of Community assistance as defined by the relevant legislation;

m) activities relating to the acquisition of road use rights under Act LXVII of 2013 on the Fees Charged for the Use of Tolloed Motorways, Main Highways and Regular Highways Based on the Distance Traveled; and

n) services relating to the management of cash deposits, other than those provided for in Paragraph j) of Subsection (1) of Section 3.

(4) In addition to what is contained in Subsection (3), financial enterprises operating payment systems may also engage in the pursuit of business activities other than financial services, if such activities do not have an adverse effect on their principal activity of the operation of payment systems.

## 5. Credit institutions and the legal form of credit institutions

### *Section 8*

(1) 'Credit institution' means a financial institution whose business inter alia includes - from among the financial services defined under Section 3 - to take deposits or other repayable funds from the public (not including the issue of bonds to the public as specified in the relevant legislation), and to grant credits and loans.

(2) The following activities may be pursued by credit institutions only:

a) taking deposits and other repayable funds from the public in excess of their own funds, without a guarantee or without any surety facilities provided by a credit institution or the State for guaranteeing repayment;

b) currency exchange services.

(3) Credit institutions may be banks, specialized credit institutions or credit institutions incorporated as private limited companies or set up as cooperatives. A credit institution set up as a cooperative society may operate in the form of a savings and loan, or credit union.

(4) Banks are credit institutions the business of which is to carry out the activities defined in Paragraphs a), b) and d) of Subsection (1) of Section 3. Only banks shall be authorized to perform all of the activities enumerated under Subsection (1) of Section 3.

(5) Specialized credit institutions shall operate in accordance with the relevant provisions of specific other legislation, however, they shall not be authorized to perform the full spectrum of the activities enumerated under Subsection (1) of Section 3.

(6) Apart from what is contained in Subsections (1) and (2) of Section 3 and in the above provisions, a credit institution set up as a cooperative society may only pursue the ancillary activity specified in Subsection (3) of Section 7.

(7) Other regulations relating to credit institutions set up as cooperative societies in derogation from, or in addition to, the provisions of this Act shall be laid down in specific other act.

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

(9) A third-country credit institution may perform the activities described in Subsection (1) of Section 3, and/or in Paragraphs *a)-d)* of Subsection (2) of Section 3 through its Hungarian branch, if it has been authorized to engage in such activities by the competent supervisory authority of the State of establishment.

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

## 6. Financial enterprises

### *Section 9*

(1) 'Financial enterprise' means:

*a)* a financial institution authorized to perform one or more financial services, with the exception of the activities specified in Paragraphs *d)* and *e)* of Subsection (1) of Section 3 and in Subsection (2) of Section 8, and to engage in the operation of payment systems; and

*b)* a financial holding company.

(2) A financial enterprise may perform financial brokering on the interbank market only as an exclusive activity.

(3) A foreign financial enterprise may perform the activities described in Paragraphs *b)-c)*, *g)-l)* of Subsection (1) of Section 3, and/or in Paragraphs *a)-d)* of Subsection (2) of Section 3 through its Hungarian branch, if it has been authorized to engage in such activities by the competent supervisory authority of the State of establishment.

(4) Within the framework of its business operations, a financial enterprise set up as a foundation may only engage in the following:

*a)* financial services activities defined in Paragraph *g)* of Subsection (1) of Section 3, and

*b)* agency activities from among the intermediation of financial services under Paragraph *i)* of Subsection (1) of Section 3.

## 7. Intermediaries

### *Section 10*

(1) 'Intermediary' means any person who carries on - in accordance with this Act - the activity of:

*a)* intermediation of financial services

*aa)* within the framework of supply of special intermediary services for and on behalf of a financial institution - including groups of financial institutions -, or more than one financial institution in respect of their non-competing financial services (hereinafter referred to as "special services intermediary"), or

*ab)* within the framework of agency activities for and on behalf of a financial institution - including groups of financial institutions -, or more than one financial institution in respect of their non-competing financial services (hereinafter referred to as "tied agent"), or

*ac)* as a payment services intermediary, (hereinafter referred to collectively as "tied intermediary"); or

*b)* intermediation of financial services

*ba*) within the framework of supply of special intermediary services for and on behalf of several financial institutions in respect of competing financial services (hereinafter referred to as “multiple special services intermediary”), or

*bb*) within the framework of agency activities for and on behalf of several financial institutions in respect of competing financial services (hereinafter referred to as “multiple agent”), or

*bc*) in the form of brokering activities (hereinafter referred to as “broker”) (hereinafter referred to collectively as “independent intermediary”).

(2) Supply of payment services by intermediaries may be performed as defined in the Act on Payment Service Providers.

(3)<sup>6</sup> Any legal person, sole proprietorship or private entrepreneur (hereinafter referred to as “intermediary subcontractor”) engaged under contract with an intermediary - other than financial institutions and insurance companies - for the intermediation of financial services shall not be authorized to enter into further contracts for the execution of these transactions. Intermediary subcontractors engaged under contract with an intermediary may not enter into other contracts for the pursuit of financial service activities with any other financial institution or intermediary.

(4) Independent intermediaries may engage in the intermediation of financial services solely in possession of the authorization granted by the Authority under this Act.

## ***Chapter II***

### ***General Rules of Authorization Procedures***

#### **8. Organizational regulations**

##### ***Section 11***

(1) Banks and specialized credit institutions may only operate in the form of limited companies or branches, credit institutions set up as cooperative societies in the form of cooperatives or private limited companies, and financial enterprises in the form of limited companies, cooperatives, foundations or branches.

(2)<sup>7</sup> In respect of financial institutions the provisions of the Civil Code on legal persons, and in respect of financial institutions incorporated as branches the provisions of the FCA shall apply, subject to the exceptions set out in this Act.

(3) Any financial institution that is established in Hungary shall be required to have its head office in the territory of Hungary.

(4)<sup>8</sup> Subject to the exception set out in Subsection (5), intermediation of financial services may be carried out by any legal person and private entrepreneur.

(5) Multiple special services intermediaries may operate in the form of limited companies, private limited-liability companies or cooperative societies.

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<sup>6</sup> Amended by Paragraph c) Subsection (8) of Section 306 of this Act.

<sup>7</sup> Established by Subsection (2) of Section 306 of this Act, effective as of 15 March 2014.

<sup>8</sup> Amended by Paragraph c) Subsection (8) of Section 306 of this Act.

(6)<sup>9</sup> Limited companies, private limited-liability companies, cooperative societies and branches, other than financial institutions, may also engage in money processing activities.

## 9. Initial capital requirements

### *Section 12*

(1) Subject to the exception set out in Subsection (2):

a) a bank may be established with a minimum initial capital of two billion forints,

b) a credit institution set up as a cooperative society may be established - set up as a cooperative society exclusively - with a minimum initial capital of three hundred million forints.

(2) The requirements laid down in this Act relating to initial capital shall not apply to credit institutions permanently affiliated to a central body.

(3) The amount of initial capital for the foundation of specialized credit institutions is prescribed in relevant other legislation.

(4) Financial enterprises - with the exception of financial holding companies and financial enterprises operating payment systems - may be established with a minimum initial capital of fifty million forints.

(5) Unless otherwise prescribed by law, the Hungarian branch of a third-country credit institution may be established with a minimum of two billion forints in endowment capital.

(6) In respect of financial institutions incorporated as branches, initial capital shall be construed as the endowment capital.

(7) Financial holding companies may be established with at least two billion forints in initial capital.

(8) Subject to the exception set out in Subsection (9), financial enterprises operating payment systems may be established with a minimum initial capital of five hundred million forints.

(9) Where a financial enterprise operating a payment system provides financial auxiliary services having regard solely to payment transaction executed by means of cash-substitute payment instruments, it may be established with a minimum initial capital of one hundred and fifty million forints.

(10) Multiple special services intermediaries shall have at least fifty million forints in initial capital.

### *Section 13*

(1) The initial capital of a financial institution must be paid up in cash. The initial capital may only be paid up or deposited into a payment account, and/or shall be held until the time of taking up of operations on a payment account carried by a credit institution that is not involved in the foundation, in which the founder has no ownership share or which has no ownership share in the founder. Insofar as the authorization is issued, the initial capital of the credit institution may only be used to finance the establishment of the conditions specified in this Act for foundation and operation.

(2) An increase in the share capital of financial institutions operating in the form of limited companies - not including financial holding companies - through the issue of new shares, an

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<sup>9</sup> Amended by Paragraph d) Subsection (8) of Section 306 of this Act.

increase in the endowment capital in respect of financial institutions incorporated as branches and an increase in the share capital of credit institutions set up as cooperative societies may only be carried out with cash contributions.

(3) If the 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 jeopardize 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 State intervention.

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

## 10. Procedure for granting authorization

### *Section 14*

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

- a)* the foundation of a credit institution;
- b)* the transformation, merger (merger by the formation of a new company or merger by acquisition), division of a credit institution;
- c)* the amendment of the articles of association of a credit institution as provided for in this Act;
- d)* the acquisition of a qualifying holding in a credit institution and for escalating the qualifying holding up to the limit prescribed in this Act;
- e)* the election or appointment of senior executives of a credit institution;
- f)* the taking up of business of a credit institution;
- g)* the amendment of the scope of activities of a credit institution;
- h)* the performance of financial services by a credit institution through a special services intermediary or a multiple special services intermediary;
- i)* the establishment of representation offices, branches or subsidiaries (credit institutions, financial enterprises or other companies) by a credit institution in a third country;
- j)* the acquisition of a qualifying holding by a credit institution in a nonresident enterprise;
- k)* the transfer of the account portfolio and the contracts for repayment of funds (hereinafter referred to as "assignment of client accounts") of a credit institution;
- l)* the termination of operations of a credit institution; and
- m)* the mortgage lending value assessment regulations of credit institutions, drafted according to legislation, having regard to the provisions of the legislation on the methodological principles for establishing mortgage lending value.

(2) The Authority's authorization is required for:

- a)* the foundation of a credit institution incorporated as a branch;
- b)* the taking up of business of a credit institution incorporated as a branch;
- c)* the amendment of the scope of activities of a credit institution incorporated as a branch;
- d)* the performance of financial services by a credit institution incorporated as a branch through a special services intermediary or a multiple special services intermediary;
- e)* the appointment of a senior executive of a credit institution incorporated as a branch;
- f)* the assignment of client accounts of a credit institution incorporated as a branch; and
- g)* the termination of operations of a credit institution incorporated as a branch.

(3) The Authority's authorization referred to in Subsection (1) is not required for a credit institution for setting up a branch in another EEA Member State.

(4) The authorization referred to in Subsection (2) is not required for the branches of credit institutions that are established in another EEA Member State.

(5) Prior to granting the authorization referred to in Paragraphs *b*) and *d*) of Subsection (1), and before the amendment of the articles of association introducing changes in the powers of the executive board, the Authority - if deemed necessary for exercising supervision on a consolidated basis - shall consult the competent authority of the EEA Member State where a credit institution to which supervision on a consolidated basis applies jointly with the credit institution requesting the authorization is established.

### *Section 15*

(1) The Authority's authorization is required, subject to the exception specified in Subsection (2), for:

- a*) the foundation of a financial enterprise;
- b*) the amendment of the scope of activities of a financial enterprise;
- c*) the transformation, merger (merger by the formation of a new company or merger by acquisition), division of a financial enterprise;
- d*) the election or appointment of senior executives of a financial enterprise;
- e*) the acquisition of a qualifying holding in a financial enterprise and for escalating the qualifying holding up to the limit prescribed in this Act;
- f*) the performance of financial services by a financial enterprise through a special services intermediary or a multiple special services intermediary; and
- g*) the termination of operations of a financial enterprise.

(2) The Authority's authorization is required for:

- a*) the foundation of a financial enterprise incorporated as a branch;
- b*) the amendment of the scope of activities of a financial enterprise incorporated as a branch;
- c*) the appointment of a senior executive of a financial enterprise incorporated as a branch;
- d*) the performance of financial services by a financial enterprise incorporated as a branch through a special services intermediary or a multiple special services intermediary; and
- e*) the termination of operations of a financial enterprise incorporated as a branch.

(3) The authorization granted for the foundation of a financial enterprise also constitutes permission for establishing its scope of activities and for the taking up of business operations.

(4) The authorization provided for in Subsection (2) is not required if the financial enterprise is established in an EEA Member State, and

- a*) the financial enterprise:
  - aa*) is the subsidiary, or a jointly controlled entity, of a credit institution that is established in the same EEA Member State as the financial enterprise, or
  - ab*) is the subsidiary, or a jointly controlled entity, of a financial enterprise that meets the condition set out in Subparagraph *aa*) and is established in the same EEA Member State as its subsidiary; and
- b*) performs its activities in the EEA Member State in which it is established;
- c*) the parent company controls at least ninety per cent of the voting rights;
- d*) the parent company provides the Authority with a certificate from the competent supervisory authority of the EEA Member State in which it is established that the financial enterprise is managed in a prudent and circumspect manner;

e) the parent company - 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.

(5) An application for authorization for the taking up of operations as a financial enterprise engaged exclusively in group financing may be submitted by companies other than financial institutions after their foundation, with the exception that a statement on joining a central credit information system provided for in the Act on the Central Credit Information System is not required for the authorization.

### *Section 16*

The Authority shall grant the authorizations provided for in this Act, for specific activities, for a predetermined period of time, subject to specific conditions or territorial limitations and, within financial service activities, limited to certain business lines or products.

### *Section 17*

(1)<sup>10</sup> Client accounts and other repayable funds may - pursuant to the agreement between the transferring and receiving credit institutions - be transferred subject to authorization by the Authority. In the process of transferring such accounts, the provisions of the Civil Code on transfers of contract shall apply with the exception that in the case of transfer the guarantees of the contract shall not cease to exist and the transfer shall not be subject to the legal statement of the party affected. The Authority's authorization shall not be a substitute for the permission of the Gazdasági Versenyhivatal (*Hungarian Competition Authority*) prescribed in Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition.

(2) The application for authorization for the transfer of client accounts shall contain:

a) the contract between the transferor and the transferee for the transfer of the accounts;

b) an 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 own funds required for the accounts received in addition to the own funds for its own accounts.

(3) The credit institution to which the contracts are transferred shall notify all contracting parties concerned on the transfer - within thirty days of receipt of the resolution on authorization - in writing. In the case of bearer deposits or securities, the notice must be published in the form of a public notice in at least two national daily newspapers.

(4) The Authority shall refuse to authorize the transfer of accounts if it is deemed to jeopardize the fulfillment of liabilities assumed in the deposit contract by the receiving or the transferring credit institution.

## 11. Application for authorization of establishment

### *Section 18*

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<sup>10</sup> Amended by Paragraph e) Subsection (8) of Section 306 of this Act.

(1) The application of a financial institution for authorization of establishment shall have enclosed:

*a)* the charter document which clearly defines the type and scope of activities of the financial institution to be established;

*b)* the document which defines the proposed area of operation (nationwide or limited to a specific region);

*c)* proof of having fifty per cent of the initial capital for credit institutions, or the full amount of the initial capital for financial enterprises deposited and paid up by the founders;

*d)* drafts of the financial institution's organizational and management structure, decision-making and control mechanisms, and its organizational and operational procedures, if they are not contained in the charter document in sufficient detail;

*e)* if the applicant is established 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)* proof of compliance of the financial institution with personnel and infrastructure requirements for providing financial services, and - in the case of financial enterprises - the documents set out in Paragraphs *d*)-*f*), *h*) and *k*) of Subsection (2) of section 20;

*g)* in the case of credit institutions that are subject to supervision on a consolidated basis or supplementary supervision under the Act on the Supplementary Supervision of Financial Conglomerates, 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 Authority 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 under the Act on the Supplementary Supervision of Financial Conglomerates, a statement from each natural person with close links to the credit institution containing his consent to have the personal data he has disclosed to the credit institution processed and disclosed for the purposes of supervision on a consolidated basis or supplementary supervision; and

*i)* a statement on having a main office in Hungary from which governance of the financial institution takes place.

(2) If the founder wishes to acquire a qualifying holding in the financial institution, in addition to the requirements set out in Subsection (1) the following shall also be enclosed with the application for authorization:

*a)* the applicant's identification data specified in Schedule No. 2;

*b)* evidence concerning the legitimacy of the financial means for acquiring qualifying holding;

*c)* documents issued within thirty days to date in proof of having no outstanding debts owed to the tax authority, customs authority, health insurance administration agency or pension insurance administration agency of competence under the applicant's national law;

*d)* a statement declaring that other holdings and business activities of the applicant are not harmful to the prudent management of the financial institution;

*e)* for natural persons, an official certificate from the body operating the penal register for the purpose of verification of having no prior criminal record, or a similar document that is deemed equivalent under the applicant's national law;

*f)* if other than a natural person, the applicant's consolidated instrument of constitution in effect on the date of application, a certificate issued within thirty days to date in proof that the applicant

was established (registered) in compliance with the relevant national regulations and is not adjudicated in bankruptcy, liquidation or dissolution proceedings, and its senior executives are not subject to any disqualifying factors;

*g)* if other than a natural person, a detailed description of the applicant's ownership structure, and if the applicant is subject to supervision on a consolidated basis a detailed description of these circumstances, furthermore the consolidated annual account for the previous year of the credit institution or investment firm subject to supervision on a consolidated basis, if they are required to prepare a consolidated annual account;

*h)* a statement declaring any and all contingent liabilities and commitments, by definition of the Accounting Act; and

*i)* a statement of the applicant executed in a private document representing conclusive evidence giving consent to having the authenticity of the documents attached to the application for authorization checked by the Authority by way of the agencies it has contacted.

(3) If the taxpayer is listed in the register of taxpayers free of tax debt obligations it shall be recognized as equivalent to the tax certificate that may be obtained from the state tax authority.

(4) If there is a foreign financial institution, insurance company or investment firm among the founders who proposes to acquire a qualifying holding, in addition to the requirements set out in Subsections (1)-(2), a statement or certificate from the competent supervisory authority of the country of establishment stating that the enterprise conducts its activities in compliance with prudential regulations shall also be attached to the application for authorization.

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

*a)* the documents specified in Paragraphs *a)* and *c)-e)* of Subsection (1), and in Subsection (2) hereof;

*b)* a medium-term business plan, for the first three years;

*c)* a statement on the proposed date for taking up operations;

*d)* a statement in which to specify the state of preparation to comply with data disclosure obligations as prescribed in or on the basis of the relevant legislation, as well as the results of live tests of the computer programs used for such disclosure of data;

*e)* a statement that the financial institution belonging to the holding company will provide the Authority with the necessary data, facts, information, and conclusions for the purpose of supervision.

(6) Upon receipt of the authorization of establishment credit institutions may engage in activities related to the setting up of banking operations.

### *Section 19*

(1) As regards the establishment of a financial institution incorporated as a branch, the financial institution shall enclose the following with the application for authorization of establishment in addition to the documents prescribed in Subsection (1) of Section 18:

*a)* the foreign financial institution's charter document;

*b)* the foreign financial institution's certificate of incorporation or a certificate issued within three months to date in proof of the foreign financial institution being registered in the companies (trade) register;

*c)* a copy of the authorization issued by the competent supervisory authority of the State where the foreign financial institution is established;

*d)* a certificate issued within thirty days to date proving that the foreign financial institution participating in the foundation has no outstanding debts owed to the tax or customs authorities or

the health insurance administration agency or pension insurance administration agency of competence in Hungary or in the State where the said foreign financial institution is established;

*e)* a certificate from the competent supervisory authority of the State where established stating that the financial institution's head office from which its operations are directed is in that State;

*f)* in the case of a credit institution or a financial enterprise, the audited and approved balance sheet and the profit and loss account of the founder, respectively, for the previous three fiscal years or for the previous fiscal year;

*g)* a statement concerning 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 belong to the group of persons being affiliated with, furthermore the leading company's consolidated annual account for the previous year if the leading company is required to prepare a consolidated annual account;

*i)* a statement executed in a private document representing conclusive evidence 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 Authority by way of the agencies it has contacted;

*j)* an indication of the financial services, financial auxiliary services performed by the applicant as authorized by the competent supervisory authority of the place where established, and the locations where such activities are performed;

*k)* description of the scope of authority of the senior executive of the branch, and a description of the applicant's bodies the approval of which is expressly required for passing certain decisions; and

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

(2) If the taxpayer is listed in the register of taxpayers free of tax debt obligations it shall be recognized as equivalent to the tax certificate that may be obtained from the state tax authority.

(3) The Authority shall grant authorization of establishment for a financial institution incorporated as a branch if the conditions described in Subsection (1) of this Section and in Subsection (1) of Section 18 are satisfied, and 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 branches, between the Authority and the supervisory authority of the place where the applying financial institution is established;

*b)* the State where the applicant financial institution is established has regulations on money laundering and terrorist financing that conform to the requirements set out in Hungarian law;

*c)* the applying financial institution has data management regulations which satisfies the requirements of Hungarian law;

*d)* the applying financial institution provides a statement declaring that it shall honor without limitation the liabilities incurred by its branch under its corporate name;

*e)* the applying financial institution has submitted the authorization for the foundation of a branch issued by the competent supervisory authority of the place where established, or its declaration of approval or acknowledgment; and

*f)* the laws of the State where the applicant is established guarantee the prudent and safe operation of financial institutions.

## 12. Application for activity (operating) license

## Section 20

(1) A credit institution that is to engage in financial services and financial auxiliary services may take up operations in possession of the Authority's activity license.

(2) Credit institutions shall enclose the following with the application submitted to the Authority for activity license:

- a) proof of having the initial capital paid up in full;
- b) if all or part of the assets specified in Paragraph a) is spent, evidence or a statement 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 per cent share or voting right;
- d) a medium-term business plan, for the first three years, excluding credit institutions permanently affiliated to a central body, and the facts regarding compliance with personnel and infrastructure requirements prescribed for operations;
- e) one or more standard service agreements, containing inter alia the standard contract terms and conditions, pertaining to the activities planned to be performed;
- f) a statement in which to specify the date proposed for the commencement of operations;
- g) a copy of the letter of intent of admission sent to the Országos Betétbiztosítási Alap (*National Deposit Insurance Fund*) (hereinafter referred to as "OBA"), with the exception of credit institutions incorporated as a branch, which are not required under this Act to join the OBA;
- h) a statement on having the necessary facilities in place to comply with data disclosure obligations as prescribed by the relevant legislation, as well as the results of live tests of the computer programs used for such disclosure of data;
- i) the draft of the accounting policy and detailed accounting system;
- j) a statement concerning direct connection to any payment system 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) a statement on joining the central credit information system defined by the Act on the Central Credit Information System;
- l) the rules 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, and a recovery plan drawn up according to Section 114;
- m) the organizational structure, system of management, decision-making and control procedures as well as the organizational and operational regulations, if such are not contained in detail in the charter document;
- n) in the case of credit institutions set up as cooperative societies, a statement of admission submitted to the Integration Organization provided for in the Act on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy (hereinafter referred to as "ICCI"); and
- o) as regards the Hungarian branches of third-country credit institutions, if, under the Authority's permission granted under this Act, they are not required to join the OBA:
  - oa) their commitment for providing clients with information in Hungarian relating to the forms of insured deposits,
  - ob) the third-country credit institution's commitment pertaining to the indemnification of deposit holders in Hungary, and

*oc*) the conditions and method of indemnification, the manner in which procedures are carried out, and agreements ensuring payments of indemnification.

(3) The application of an existing financial institution for adding financial services to the scope of its activities shall be accompanied by a certificate in proof of having satisfied the personnel and infrastructure requirements prescribed for such activities as well as the documents defined in Paragraphs *d)-f), h), k)-m)* of Section (2), if these have not been submitted previously.

### 13. Authorization, notification of tied intermediaries and independent intermediaries

#### *Section 21*

(1) Tied agents may pursue agency activities without the authorization of the Authority.

(2) Financial institutions shall disclose the particulars of tied agents, multiple agents and intermediary subcontractors, and brokers shall disclose the particulars of intermediary subcontractors in their employ to the Authority with the frequency and in the manner prescribed by the Authority.

(3)<sup>11</sup> Any legal person, sole proprietorship and private entrepreneur wishing to pursue the activities of independent intermediaries:

*a)* shall have a senior executive - including the private entrepreneur himself -

*aa)* with no prior criminal record,

*ab)* with at least three years of experience in the relevant field, and - with the exception set out in Subsection (5) - who is able to satisfy the professional requirements set out in Section 74;

*b)* shall - at all times - carry professional indemnity insurance covering liability in connection with their activities - with the exception set out in Subsection (5) -, representing at least five million forints applying to each claim and in aggregate fifty million forints per year for all claims.

(4) In addition to what is contained in Subsection (3), multiple special services intermediaries and brokers shall have in place regulations and internal control mechanisms implemented to comply with obligations in relation to money laundering and terrorist financing.

(5) A broker shall be authorized if:

*a)* having a senior executive with a college or university degree in the relevant field [Subsection (3) of Section 155]; and

*b)* having - at all times - professional indemnity insurance covering liability in connection with his activities, representing at least ten million forints applying to each claim and in aggregate one hundred million forints per year for all claims.

(6) In the application of Paragraph *a)* of Subsection (3), the requirement of experience in the relevant field may be satisfied by verifying employment at a financial institution or intermediary as an officer or staffer working in the area of financial services or intermediation under contract of employment or other any work-related contractual relationship, or in the capacity of a private entrepreneur. Experience obtained abroad may be recognized if obtained in an institution that is considered the equivalent of a financial institution or intermediary.

(7) Applications for authorization for the pursuit of the activities of independent intermediaries shall have the following enclosed:

*a)* the applicant's identification data specified in Schedule No. 2;

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<sup>11</sup> Amended by Paragraph *c)* Subsection (8) of Section 306 of this Act.

*b)* the applicant's consolidated instrument of constitution in effect on the date of application, a certificate issued within thirty days to date in proof that the applicant was established (registered) in compliance with the relevant national regulations and is not adjudicated in bankruptcy, liquidation or dissolution proceedings, and its senior executives meet the requirements set out in Paragraph *a)* of Subsection (3);

*c)* a statement verifying compliance with personnel and infrastructure requirements for providing the services to which the application pertains;

*d)* a standard service agreement, containing inter alia the standard contract terms and conditions, pertaining to the activities planned to be performed;

*e)* a statement on the proposed date for commencing operations in the capacity of an independent intermediary;

*f)* a statement on having the necessary facilities in place to comply with data disclosure obligations as prescribed in, or on the basis of, the relevant legislation; and

*g)* a statement of the applicant executed in a private document representing conclusive evidence giving consent to having the authenticity of the documents attached to the application for authorization checked by the Authority by way of the agencies it has contacted.

(8) If the applicant wishes to undertake the pursuit of the activities of multiple special services intermediaries, in addition to the requirements set out in Subsection (7) the application shall have enclosed proof that the initial capital is at its disposal in full. If the applicant wishes to undertake the pursuit of the activities of multiple special services intermediaries or brokers, the regulations and internal control mechanisms implemented to comply with obligations in relation to money laundering and terrorist financing shall also be enclosed with the application.

(9) If the applicant fails to verify the data specified in Paragraph *b)* of Subsection (7), the Authority shall launch a data disclosure request to the Hungarian authority or court that has the required information on record.

## *Section 22*

In the case described in Paragraph *h)* of Subsection (1) of Section 14 and in Paragraph *f)* of Subsection (1) of Section 15, the financial institution shall enclose with the application for authorization the written contract which contains a clause to grant unlimited powers to the Authority and the financial institution to check the intermediary's financial management and business records regarding the activity to which the contract pertains.

## 14. Authorization for the amendment of the articles of association

### *Section 23*

The amendment of the articles of association of a credit institution shall be subject to authorization by the Authority in the following cases:

*a)* changing the company's name and registered address;

*b)* amendment of the scope of activities;

*c)* reducing the subscribed capital;

*d)* changing the type of shares, issuing a new types of shares or modifying the type of previously issued shares;

*e)* modifying the powers and authority of the executive board;

- f) issuing convertible or equity bonds or bonds with subscription right, and amendment of the regulations applicable thereto;
- g) establishing and changing preemption rights relating to shares; and
- h) in the case of credit institutions set up as cooperative societies, changing the mandatory minimum amount of capital contribution to be provided by each member, and the amount that may be provided optionally.

## 15. Authorization of transformation, merger and division

### *Section 24*

(1) The regulations governing foundation shall apply to the transformation of a credit institution into a different type of credit institution or into a financial enterprise, as well as that of a financial enterprise into a credit institution. The transformation of a credit institution into an investment firm shall be governed by the provisions of the IRA on authorization procedures, with the derogations set out in Subsection (2).

(2) The provisions of the IRA on authorization procedures shall not apply in connection with authorized investment services, ancillary services and investment activities in which the credit institution that plans to be transformed into an investment firm is already engaged.

(3) A credit institution may be transformed into a financial institution or an investment firm only if all of its client accounts have been assigned prior to the general meeting's resolution on the transformation.

### *Section 25*

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

(2) No merger will be allowed:

a) between a financial institution operating in the form of a limited company with a financial institution set up as a cooperative society;

b)<sup>12</sup> between a financial institution incorporated as a branch with a legal person.

(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) the audited draft statements of assets and liabilities and the stocks of liabilities and receivables;

c) all documents required for authorizing the activities proposed to be performed; and

d) for the merger of credit institutions, the data from which compliance with the condition provided for in Subsection (5) of Section 79 can be ascertained.

### *Section 26*

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<sup>12</sup> Amended by Paragraph b) Subsection (2) of Section 308 of this Act.

The Authority's authorization for the merger of financial institutions shall not be a substitute for the permission of the Gazdasági Versenyhivatal (*Hungarian Competition Authority*).

#### *Section 27*

As regards the transformation, merger (merger by the formation of a new company or merger by acquisition) of financial institutions, the Authority may issue a single resolution for the authorization of establishment and operation.

#### *Section 28*

(1) As regards the division of credit institutions and financial enterprises the provisions on foundation shall apply.

(2) In procedures for the authorization of the amendment of the articles of association the provisions of this Act relating to the authorization of establishment and operation shall apply.

### 16. General rules on authorization procedures

#### *Section 29*

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

(2) The Authority shall request the opinion of the competent supervisory authorities of other EEA Member States concerned prior to issuing the authorization of establishment to a credit institution if the credit institution to be established:

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

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

*c)* has an owner with controlling influence in the credit institution under authorization, whether a natural or legal person, that has also controlling influence in an investment firm, credit institution or insurance company that is established in another EEA Member State.

#### *Section 30*

(1) The Authority shall refuse to grant authorization for establishment if:

*a)* any information provided by the applicant is false or misleading;

*b)* the financial institution proposed to be established by the applicant fails to meet the statutory provisions concerning initial capital, corporate form, company form, ownership and management body;

*c)* the applicant is a nonresident and does not have an agent for service of process; or

*d)* the person who has close links with the credit institution is established in a third country where there are legal impediments liable to prevent the effective exercise of supervision on a consolidated basis.

(2) The Authority shall refuse the application for establishing a branch if either of the conditions provided for in Subsection (1) of Section 18, or in Section 19 is not satisfied.

(3) The Authority shall refuse to authorize an activity if the applicant:

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

## 17. Validity period of the authorization of establishment of a credit institution

### *Section 31*

The resolution granting authorization for the establishment of a credit institution shall become void if the credit institution fails to submit the application for activity license to the Authority within six months of receipt of the resolution. No application for continuation will be accepted upon failure to meet this time limit.

## 18. Withdrawal and giving up of authorization

### *Section 32*

(1) The Authority shall have powers to withdraw the authorization of establishment or the activity license if:

- a) it was obtained by deceiving the Authority or by any other unlawful means;
- b) the financial institution is engaged in activities prohibited by law;
- c) in the event of failure to commence operation within twelve months of receipt of the authorization of establishment having regard to all types of financial institutions, and within twelve months of receipt of the activity license having regard to credit institutions;
- d) the financial institution is not engaged in providing financial services for a period of six months;
- e) the financial institution no longer complies with the provisions of this Act or other regulations relating to 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 regulations on prudential requirements, and the regulations set out in the Authority's resolutions;
- g) under the prevailing circumstances the financial institution's operation seriously jeopardizes or harms the interests of clients, may obstruct the free circulation of money or the proper functioning of the money and capital market;
- h) either of the conditions, in connection with the authorization of the branch, is no longer satisfied; or
- i) the conveyance of information provided for in Paragraph g) Subsection (1) of Section 18 is not satisfied.

(2) The Authority shall withdraw the authorization of establishment or the activity license if the financial institution gives up its authorization of establishment or activity license in accordance with this Act.

(3) The Authority shall withdraw the authorization of the branch if the authorization of the foreign financial institution has been withdrawn by the competent supervisory authority of the place where established.

(4) The Authority may withdraw the authorization of economic operators, other than financial institutions, by applying the provisions of Subsection (1) *mutatis mutandis*.

### *Section 33*

(1) The Authority may withdraw the credit institution's activity license, if the credit institution:

- a) can no longer be relied on to fulfill its obligations;
- b) fails to pay any of its undisputed debts within five days of the date on which they are due or no longer has sufficient own funds (assets) for satisfying the known claims of creditors.

(2) The Authority shall withdraw a credit institution's activity license if:

- a) the court has ordered the liquidation of the credit institution;
- b) the credit institution's membership in the OBA has been terminated by way of exclusion;
- c) the credit institution is a member of the Integration Organization provided for in the ICCI, and the condition for withdrawal of the authorization set out therein has been met.

(3) The consent of the minister in charge of the money, capital and insurance markets is required for the Authority to withdraw a credit institution's activity license.

### *Section 34*

(1) The Authority shall withdraw the activity license of an independent intermediary:

- a) who no longer satisfies either of the requirements prescribed in this Act for operation;
- b) whose records or annual account is incorrect or inaccurate;
- c) who fails to take up operations within one year of receipt of the authorization, or whose activities are suspended for a period of over six months; or
- d) if the measures imposed by the Authority during the suspension of the intermediary's activities did not eliminate the infringement for which they were issued.

(2) The independent intermediary may have his activity license withdrawn by the Authority if:

- a) his conduct seriously or repeatedly breaches the interests of clients;
- b) he violates any relevant statutory provision repeatedly or seriously.

### *Section 35*

(1) A financial institution - other than a financial enterprise engaged exclusively in group financing - may give up its activity license to the Authority only upon providing evidence of having no liabilities remaining in connection with its financial services and financial auxiliary services. The Authority 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 time as the said conditions and regulations are fulfilled.

(2) A financial holding company may give up its authorization to the Authority upon providing evidence that, apart from liabilities remaining in connection with its financial services and financial auxiliary services, it has no outstanding obligations of any kind relating to its former subsidiaries.

(3) A financial enterprise shall have its activity license withdrawn by the Authority if 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 has sufficient own funds (assets) for satisfying the known claims of creditors.

### *Chapter III*

#### *Freedom to Provide Services*

#### 19. Rules for setting up a branch in another EEA Member State

##### *Section 36*

(1) A credit institution wishing to establish a branch in another EEA Member State shall inform the Authority thereof.

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

*a)* an indication of the EEA Member State in which the credit institution intends to establish a branch;

*b)* documents pertaining to the structural organization, management, and control mechanisms of the branch;

*c)* description of the proposed activities;

*d)* the business plan;

*e)* the name(s) of the person(s) responsible for managing the branch; and

*f)* the address of the branch.

(3) If, according to the information provided to the Authority, the management structure of the reporting credit institution and its financial situation are in accord with the relevant statutory provisions, the Authority shall inform, in writing, the competent supervisory authority of the other EEA 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 notification specified in Subsection (3), the Authority shall inform the competent supervisory authority of the other EEA Member State of the amount of own funds and the capital requirements of the credit institution setting up the branch, and the deposit insurance regulations pertaining to the deposits taken by the branch.

(5) If the Authority refuses to submit the information specified in Subsection (3), it shall inform the credit institution concerned at the latest within three months following the time of notification by means of a resolution.

(6) The branch may be established and commence operations after the information specified in Subsection (3) has been received or the two-month disclosure period has passed.

(7) If in the course of operations any change occurs in the information specified in Paragraphs *b)-f)* of Subsection (2) or in the deposit insurance conditions pertaining to the deposits taken by the branch, the credit institution shall inform, in writing, the Authority and the competent supervisory authority of the other EEA Member State thereof at least one month in advance.

(8) The Authority shall inform the supervisory authority of the other EEA Member State if it has withdrawn the activity license of a credit institution that has a branch in that EEA Member State.

(9) In the application of this Section a credit institution permanently affiliated to a central body shall be construed as a single credit institution together with the central body.

##### *Section 37*

(1) A financial enterprise established in Hungary, that operates in conformity with the conditions set out in Subsection (4) of Section 15, shall inform the Authority if wishing to establish a branch in another EEA Member State.

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

*a)* an indication of the EEA Member State in which the financial enterprise intends to establish a branch;

*b)* documents pertaining to the structural organization, management, and control mechanisms of the branch;

*c)* description of the proposed activities;

*d)* the business plan;

*e)* the name(s) of the person(s) responsible for managing the branch; and

*f)* the address of the branch.

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

(4) In the information specified in Subsection (3), the Authority shall inform the competent supervisory authority of the other EEA Member State of the combined capital requirement of the financial enterprise setting up the branch and its parent company. The Authority shall attach a certificate on compliance with the conditions specified in Subsection (4) of Section 15 to the information.

(5) If the Authority refuses to submit the information specified in Subsection (3), it shall inform the financial enterprise concerned at the latest within three months of the date of receipt of the notification by means of a resolution.

(6) The branch may be established and commence operations upon receipt of the information from the competent supervisory authority of the other EEA Member State concerned on the conditions relating to the activities envisaged, after the two-month disclosure period has passed.

(7) If in the course of operations any change occurs in the information specified in Paragraphs *b)-f)* of Subsection (2), the financial enterprise shall inform, in writing, the Authority and the competent supervisory authority of the other EEA Member State thereof at least one month in advance.

(8) The Authority shall inform the competent supervisory authority of the other EEA Member State:

*a)* if the financial enterprise that has a branch in that EEA Member State no longer complies with the conditions set out in Subsection (4) of Section 15, or

*b)* if it has withdrawn the activity license of the financial enterprise that has a branch in that EEA Member State.

## 20. Systemically significant branches

### *Section 38*

(1) If a credit institution that is established in Hungary has established a branch in another EEA Member State or if the Authority functions as the consolidating supervisor of the credit institution setting up the branch, the Authority may - if so requested by the competent supervisory authority

of the other EEA Member State - designate the branch systemically significant jointly with the requesting supervisory authority.

(2) The Authority may request - based on the reasons referred to in Subsection (3) which can be considered as substantial grounds - the competent supervisory authority of another EEA Member State functioning as the consolidating supervisor, or failing this the competent supervisory authority of the EEA Member State where the credit institution is established, to designate the Hungarian branch of the credit institution established in that other EEA Member State as systemically significant by joint decision.

(3) That request shall provide reasons for considering the branch to be systemically significant with particular regard to the following:

*a)* whether the market share of the branch in terms of deposit exceeds two per cent in the given EEA Member State;

*b)* the likely impact of a suspension or closure of the operations of the branch on market liquidity and the payment and clearing and settlement systems in the given EEA Member State; and

*c)* the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the given EEA Member State.

(4) The Authority shall take measures to reach a joint decision with the competent supervisory authority of the other EEA Member State on the designation of a branch as being systemically significant within the framework of multi-party proceedings.

(5) If the branch is established in Hungary and if no joint decision is reached within two months of receipt of the request with the framework of multi-party proceedings, the Authority shall take its own decision within a further period of two months on whether the branch is to be considered systemically significant taking into account any views and reservations of the competent supervisory authorities of other EEA Member States involved expressed during said multi-party proceedings for reaching a joint decision.

(6) The Authority shall send a copy of its resolution referred to in Subsection (5) to the competent supervisory authorities of the EEA Member States concerned.

(7) The joint decision referred to in Subsection (4) and - if the branch is established in another EEA Member State - the decision of the competent supervisory authority of this other EEA Member State declaring a branch as systemically significant - shall be binding in its entirety and directly applicable in Hungary.

### *Section 39*

If a credit institution that is established in Hungary has established a systemically significant branch in another EEA Member State, the Authority shall notify the competent supervisory authority of that EEA Member State:

*a)* if it receives information concerning adverse developments in the credit institution or in other entities of a group to which supervision on a consolidated basis applies jointly with the credit institution, which could seriously affect the credit institution, or

*b)* upon taking exceptional measures against the credit institution.

## 21. Rules on cross-border services

### *Section 40*

(1) If a credit institution intends to take up the supply of cross-border financial services or financial auxiliary services in another EEA Member State for the first time, it shall notify the Authority in advance of the activities it proposes to pursue in that other EEA Member State.

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

(3) The credit institution may begin to supply such services in the other EEA Member State upon having received the Authority's notice.

#### *Section 41*

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

(2) If a financial enterprise intends to take up the supply of cross-border financial services or financial auxiliary services in another EEA Member State for the first time, it shall notify the Authority in advance of the services it proposes to provide in that other EEA Member State.

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

(4) The Authority shall attach a certificate on compliance with the conditions specified in Subsection (4) of Section 15 to the information.

(5) The financial enterprise may begin to supply such services in the other EEA Member State upon having received the Authority's notice.

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

(7) If the Authority refuses to submit the information specified in Subsection (3), it shall inform the financial enterprise concerned at the latest within one month of the date of receipt of the notification by means of a resolution. The Authority may refuse to disclose the above-specified information only in the event of non-compliance with the conditions provided for in Subsection (4) of Section 15.

#### *Section 42*

If the competent supervisory authority of another EEA Member State informs the Authority that a financial institution registered in its jurisdiction is opening a branch in Hungary or intends to provide cross-border services in Hungary, the Authority shall inform the financial institution regarding the regulations pertaining to consumer protection, particularly, having regard to:

- a)* requirements to provide information to clients;
- b)* requirements for the standard service agreement; and
- c)* regulations on the supply of financial services.

## 22. Special regulations relating to bank representative offices

#### *Section 43*

(1) Bank representative offices are set up to maintain relations with persons and organizations, to provide data and information on the represented credit institution within the framework of law and to promote the services and client relations of such, without being engaged in any business operations.

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

#### *Section 44*

When establishing a bank representative office in Hungary, foreign credit institutions shall notify the Authority accordingly. The Authority's authorization is required for Hungarian credit institutions to establish bank representative offices abroad and for such bank representative offices to take up operations.

#### *Section 45*

(1) Credit institutions established in Hungary shall enclose the following with the application for authorization to establish a foreign representation 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 proposed duration of operation;
- d)* number of prominent administrators and their credentials; and
- e)* the name and credentials of the head of the bank representative office.

(2) In addition to the requirements set out under Subsection (1) the following shall be enclosed with the notification submitted for the establishment of a Hungarian bank representative office for a foreign credit institution:

- a)* the authorization, statement of consent or acknowledgement from the notifier's competent supervisory authority relating to the establishment of the bank representative office,
- b)* a statement from the notifier's competent supervisory authority to evidence of having established no grounds for disqualification concerning the head of the bank representative office.

#### *Section 46*

(1) The head of the bank representative office shall be responsible for compliance with the provisions of this Act pertaining to bank representative offices.

(2) The bank representative office shall be required to notify the Authority within five working days if relocated or terminated, or if the person in charge of representative functions is replaced.

(3) If a bank representative office fails to comply with the provisions contained in Subsection (1) of Section 43, the Authority shall remove such from its register and shall simultaneously prohibit it to pursue bank representation activities.

### ***Chapter IV***

## ***Termination of Financial Institutions Without Succession***

### **23. General provisions**

## *Section 47*

(1)<sup>13</sup> The provisions of Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (hereinafter referred to as “Bankruptcy Act”), Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (hereinafter referred to as “CRA”) and the provisions of the Civil Code on legal persons shall apply to the dissolution and liquidation of financial institutions operating in the form of limited companies or set up as cooperatives - other than financial enterprises engaged exclusively in group financing -, and the provisions of the FCA shall apply to the dissolution and liquidation of financial institutions incorporated as branches, subject to the exceptions set out in this Act.

(2) Only the nonprofit business association established for the liquidation of organizations covered by Act CXXXIX of 2013 on the National Bank of Hungary (hereinafter referred to as “MNB Act”) shall be appointed as the liquidator or receiver of a financial institution.

(3) Unless otherwise provided for by law, the nonprofit business association provided for in Subsection (2) may only be appointed for the liquidation or dissolution of financial institutions.

(4) If the court of registry, acting within its judicial oversight capacity, declares a financial institution wound up, instead of ordering involuntary de-registration it shall contact the Authority in the interest of ordering the opening of dissolution proceedings according to this Act.

(5) If the activity license of a financial institution is withdrawn, it shall continue to perform its obligations stemming from contracts for the supply of financial services, including other statutory obligations existing in connection with financial services, until such time as they are brought to an end or until the time of portfolio transfer.

(6) The Authority shall oversee the financial institution’s fulfillment of its obligations provided for in Subsection (5) and shall monitor compliance with the provisions of this Act and other legislation relating to financial service activities.

## 24. Dissolution

### *Section 48*

(1) The Authority shall have exclusive powers to adopt resolutions for ordering the dissolution of financial institutions.

(2) The Authority shall adopt a resolution for ordering the dissolution of a financial institution:

*a)* if it withdraws the financial institution’s activity license - excluding the transformation of a credit institution into a financial enterprise or investment firm -, except where it is withdrawn pursuant to Paragraph *b)* of Subsection (1) of Section 33 or Subsection (3) of Section 35, or

*b)* if it learns that the foreign financial institution’s authorization of establishment, activity (operating) license or authorization of a financial institution for the establishment of a branch, which had been issued by the competent supervisory authority of the place where the financial institution is established, has been withdrawn.

(3) The prior consent provided for in Subsection (3) of Section 94 of the CRA need not be obtained for the Authority to pass a resolution declaring termination by dissolution.

(4) In its resolution of dissolution the Authority shall delegate a receiver and set the date for the opening of dissolution proceedings, which may not antedate the resolution.

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<sup>13</sup> Amended by Paragraph f) Subsection (8) of Section 306 of this Act.

(5) The Authority may appoint a supervisory commissioner - if the dissolution procedure opens after the date of the resolution - at the same time it passes the resolution of dissolution (if this has not happened earlier). The commissioner's assignment shall end at the time when the receiver takes over, and he shall have powers to stop all payments until the time of the opening of the dissolution procedure.

(6) The completion of the dissolution procedure is contingent on proof that the portfolio of client accounts with active balance have been transferred.

(7) Section 105 of the CRA shall not apply to the dissolution of financial institutions.

#### *Section 49*

(1) Claims against a credit institution, assigned after the credit institution's activity license has been withdrawn under Paragraph *a*) of Subsection (1) of Section 33, shall not be taken into consideration in the course of dissolution proceedings.

(2) Where this Act or other legislation allows the offsetting of assigned claims during the dissolution or liquidation of a credit institution, the holder of such claim shall be able to exercise that right only if having notified the credit institution at the latest within eight working days after the credit institution's activity license was withdrawn.

#### *Section 50*

(1) The court of registry shall adopt a ruling immediately after receiving the resolution of dissolution and shall order the publication thereof in the Cégközlöny (*Companies Gazette*).

(2) The fee of the receiver may not exceed one-half per cent of the book value of the assets shown in the financial institution's annual account provided for in Paragraph *a*) of Subsection (3) of Section 98 of the CRA.

(3) During the dissolution of a financial institution the creditors are required to present their claims within sixty days of the publication of the dissolution.

## 25. Liquidation proceedings

#### *Section 51*

(1) The Fővárosi Törvényszék (*Budapest Metropolitan Court*) has exclusive jurisdiction in conducting proceedings in connection with the liquidation of financial institutions.

(2) If liquidation of a financial institution is initiated not by the Authority, and if the court refused the request without any examination of its merits, it shall send its ruling thereof to the Authority.

#### *Section 52*

(1) Chapter II of the Bankruptcy Act shall not apply to financial institutions.

(2) In the case of financial institutions, liquidation proceedings may not be suspended.

(3) The provisions of Subsection (7) of Section 46 of the Bankruptcy Act shall not apply in respect of claims against financial institutions.

#### *Section 53*

(1) The Authority has exclusive competence to initiate liquidation proceedings against a financial institution or the branch of a third-country financial institution.

(2) The Authority shall initiate liquidation proceedings:

*a)* if the financial institution's activity license is withdrawn pursuant to Paragraph *b)* of Subsection (1) of Section 33 or Subsection (3) of Section 35;

*b)* upon receipt of notice from the receiver in which he concludes on the basis of the adjusted opening balance sheet for dissolution that the assets of the financial institution undergoing dissolution are insufficient to cover creditors' claims, and the members, owners failed to procure the funds lacking within thirty days; or

*c)* in the case of branches, if insolvency proceedings have been opened against the foreign financial institution that is operating a branch in Hungary.

(3) The court shall order liquidation, without having to establish the insolvency:

*a)* of a financial institution incorporated as a limited company or set up as a cooperative society;

*b)* of a foreign financial institution operating a branch.

#### *Section 54*

(1) The court shall adopt a decision concerning a request for the opening of liquidation proceedings within eight days of the date of submission thereof. The decision ordering the liquidation shall be enforceable notwithstanding any appeal.

(2) The prior consent provided for in Subsection (1) of Section 23 of the Bankruptcy Act shall not be required for the submission of a request for the opening of liquidation proceedings.

#### *Section 55*

(1) If the Authority appoints a supervisory commissioner before the request for liquidation proceedings is submitted, the appointment shall remain in effect until such time as the opening of liquidation proceedings.

(2) The Authority shall have powers to stop all payments from submission of the application for liquidation until the ruling on liquidation is published in the *Cégközlöny (Companies Gazette)*.

(3) During the liquidation of a financial institution, creditors shall present their claims within sixty days of the publication of the court ruling ordering liquidation.

#### *Section 56*

(1) The liquidator's fee may not exceed 1.25 per cent of the aggregate amount of proceeds from sold assets and the receivables recovered. In the case of a composition, the liquidator's fee may not exceed 1.25 per cent of the 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 57*

(1) During the liquidation of a credit institution, any claims arising from the placement of deposits shall be classified under Paragraph *d)* of Subsection (1) Section 57 of the Bankruptcy Act; these claims shall be satisfied in proportion of claims.

(2) As regards the liquidation of a credit institution, debts from the subordinated loan capital provided for in Regulation 575/2013/EU shall be satisfied after the debt referred to in Paragraph *h*) of Subsection (1) of Section 57 of the Bankruptcy Act has been satisfied.

(3) The representatives of the State and the OBA shall participate in composition negotiations held in the course of liquidation - in connection with and in the value of the deposits insured by them - as creditors and they shall be entitled to make concessions as deemed necessary for reaching the composition.

(4) In the process of liquidation of a credit institution, the funds deposited on behalf of clients within the framework of safe custody services shall not comprise part of the assets of liquidation.

(5) In case of liquidation of a correspondent bank the minimum reserve placed by the credit institution through this correspondent bank to comply with the minimum reserve requirement shall, by way of derogation from the provisions of the Bankruptcy Act, not comprise a part of the assets which are subject to liquidation.

#### *Section 58*

(1) In the course of liquidation proceedings, upon the liquidator's or the OBA's reasoned request, the Authority may grant - to the financial institution in liquidation - temporary authorization to engage in the pursuit of specific financial services.

(2) In the course of a financial institution's liquidation the Authority's permission shall be required for approval of any composition during the composition process if the composition is conditional upon the further operation of the financial institution as a credit institution or as a financial enterprise.

### 26. Special provisions on the dissolution or liquidation of credit institutions

#### *Section 59*

The special provisions on the dissolution or liquidation of credit institutions shall apply:

*a)* to credit institutions that operate branches or provide cross-border services in other EEA Member States, and

*b)* to the branches of third-country credit institutions with respect to Section 66 if the credit institution has branches in at least two EEA Member States.

#### *Section 60*

As regards the legal effects of insolvency proceedings opened against a credit institution established in another EEA Member State and of dissolution without succession of a credit institution for reasons other than insolvency the law of the State where the credit institution is established shall apply. The decisions adopted in such proceedings shall be recognized without any further proceeding.

#### *Section 61*

The Hungarian branch of a credit institution established in another EEA Member State shall not be dissolved or liquidated under Hungary law.

#### *Section 62*

As regards the legal effects of any contract pertaining to real estate property that is involved in the dissolution without succession of a credit institution for reasons other than insolvency, or in insolvency proceedings the laws of the State in which the property is located shall apply.

### *Section 63*

The rights attached to securities that are to be registered or kept in an account as a prerequisite for establishing or for the transfer of such right shall be subject to the laws of the EEA Member State in which the register or account is kept.

### *Section 64*

(1) With respect to dissolution or liquidation proceedings and the practical consequences thereof, the Authority shall - without any delay - inform the competent supervisory authorities of the EEA Member States where the credit institution undergoing dissolution or liquidation operates any branches or provides cross-border services.

(2) Following publication of the resolution of dissolution or the court ruling ordering liquidation in the *Cégközlöny (Companies Gazette)* (hereinafter referred to as “court ruling”), the Authority shall forthwith publish the contents of the ruling - in Hungarian on the forms referred to in Subsection (4) of Section 65 - in the Official Journal of the European Communities and also in two national daily newspapers in the EEA Member State where the branch is set up or where cross-border services are provided.

(3) Any creditor whose permanent residence (home address) or registered office or place of business is located in another EEA Member State shall file its claim within sixty days following publication in the Official Journal of the European Communities as specified in Subsection (2). Regarding such creditors, the legal effects attached to publication as set out in Section 28 of the Bankruptcy Act shall apply to the publication referred to in Subsection (2).

(4) The effect of the court ruling shall apply to the entire territory of the EEA.

(5) The regulations of the Bankruptcy Act on the avoidance of contracts shall not apply in cases where 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 EEA Member State and such law does not allow for avoidance of the contract.

### *Section 65*

(1) Receivers and liquidators shall have authority to exercise the rights conferred by this Act and the Bankruptcy Act in all EEA Member States in due observation of the laws of the EEA Member State where such rights are in fact exercised.

(2) In order to carry out their duties more effectively, receivers and liquidators shall have powers to delegate representatives in the territory of the EEA Member States affected to provide assistance to local creditors.

(3) The receiver or liquidator shall be required to inform each known creditor whose registered office, place of business or normal place of residence (home address) is located in another EEA Member State immediately upon receiving the court ruling concerning the contents of such ruling and the legal consequences attached to specific deadlines.

(4) The receiver or liquidator shall provide the information specified in Subsection (3) in Hungarian, using the prescribed form titled “Felhívás követelés benyújtására. Betartandó

határidők” (*Invitation to lodge a claim. Time limits to be observed*) showing the entries in all official languages of the European Union.

(5) Each creditor whose permanent residence (home address) or registered office or place of business is located in another EEA Member State shall file its claim in Hungarian. Additionally, creditors may also submit the claim in the official language of their home Member State on condition that the title “Követelés benyújtása” (*Lodgement of claim*) is indicated in Hungarian.

(6) The receiver or liquidator shall be required to regularly inform the Authority and the creditors on the status of the dissolution or liquidation procedure.

(7) At the request of the competent supervisory authorities of other EEA Member States, the Authority shall provide information concerning the status of the dissolution or liquidation procedure.

### *Section 66*

(1) Where a liquidation proceeding is opened against a branch of a third-country credit institution, the Authority shall notify the competent supervisory authorities of the EEA Member States in which the credit institution whose branch is undergoing liquidation has any branches that are listed in the register published annually in the Official Journal of the European Communities.

(2) The Authority, the court hearing the liquidation proceedings and the receiver or liquidator shall collaborate with the competent authorities of the EEA Member States concerned in order to coordinate their actions.

## *Chapter V*

### *Provisions Relating to Activities and Operations*

#### **27. Personnel and infrastructure requirements**

##### *Section 67*

(1) Financial service activities may only be taken up and pursued in compliance with:

- a)* requirements for having in place statutory accounting and records systems;
  - b)* requirements for having in place internal rules in accordance with prudential requirements;
  - c)* personnel requirements defined by legislation for providing financial services;
  - d)* requirements relating to infrastructure, information technology, technical and security, and to premises suitable for carrying out the activities;
  - e)* requirements relating to control procedures and systems, and - with the exception of financial enterprises engaged exclusively in group financing - to property insurance;
  - f)* requirements relating to information and control systems for reducing operational risks, and a plan for handling emergency situations; and
  - g)* requirements relating to clear organizational structure;
- (hereinafter referred to collectively as “personnel and infrastructure requirements”).

(2) Financial institutions - with the exception of financial holding companies and financial enterprises engaged exclusively in group financing - may only operate in premises that meet the security requirements prescribed in the relevant legislation.

(3) Providers of financial services shall meet the requirements specified in Subsections (1) and (2) in the case of any changes in the registered address or business location and when amending the scope of financial service activities.

## 28. Outsourcing

### *Section 68*

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

(2) The outsourcing service provider shall meet - to a degree corresponding to the risk - the personnel, infrastructure 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 Authority within two days:

*a)* of the conclusion of such contract,

*b)* the name and the registered address or residence (home address) of the outsourcing service provider,

*c)* the duration of outsourcing.

(4) The outsourcing contract shall contain:

*a)* a demonstration relating to the enforcement of data protection regulations;

*b)* the outsourcing service provider's consent for the supervision of the outsourced activities by the credit institution's department of internal control or its external auditor, and for on-site and off-site inspections performed by the Authority;

*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; and

*e)* the rules to be applied in order to avoid insider trading on the part of the outsourcing service provider.

(5) Credit institutions shall have in place an action plan drafted and adopted to manage emergency situations arising from non-compliance with the outsourcing contract.

(6) At least once a year, the credit institution's department of internal control shall inspect the performance of the outsourced activity in respect of 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 relevant legislation and with due care and attention. The credit institution must forthwith notify the Authority if the outsourced activity is performed in violation of the law or the contract.

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

(9) Any outsourcing service provider who contemporaneously performs services for several credit institutions shall, 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 - to be approved by the credit institution - contains clauses that permit the Authority and the credit institution's department of 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 shall 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 Authority; however, if the outsourced activity involves any bank secrets, the provisions laid down in Subsections (1)-(12) shall apply.

## 29. Independent intermediaries

### *Section 69*

(1) Any damage caused by an independent intermediary or any other person in the employ of the independent intermediary under contract or any other form of employment relationship while engaged in such activities shall be the liability of the intermediary.

(2) The employer of the multiple special services intermediary and of the multiple agent shall ensure that the contract for professional services contains clear and accurate information as to the functions of the intermediary and the requirements for providing information to clients, as well as for making available to the intermediary all information that may be necessary for discharging the contract for professional services.

(3) Independent intermediaries are allowed to accept the referral fee for the intermediation of financial services only from the employer. This provision shall not effect the right of independent intermediaries to charge a fee to the clients to whom they have mediated the said financial services for the supply of services outside the scope of intermediation of financial services.

(4) Payment of the referral fee - exclusive of the referral fees charged by brokers - shall be proportionate to the term of the financial service mediated, including performance in accordance with the contract.

(5) Independent intermediaries are required to keep records of their contracts with clients for mediation services and on the financial services contracts mediated. The records shall contain the names of the parties to such mediated contracts, the date of signature, the subject-matter and other material terms of the contract. Independent intermediaries shall retain the documents relating to their intermediation services for a period of three years. This obligation shall have no bearing relating to the provisions on the safeguarding of accounting documents.

(6) Apart from brokering activities, brokers may not engage in the provision of financial services and financial auxiliary services.

(7) The provisions contained in Paragraph *b*) of Subsection (3) of Section 21, Paragraph *d*) of Subsection (7) of Section 21, Section 73, Section 74, and in Subsection (1) of Section 208 shall not apply to multiple agents engaged in the intermediation of retail credit and loans solely to private individuals for purchasing durable consumer goods (other than motor vehicles) primarily used for personal, family or household purposes.

(8) Independent intermediaries shall report when their liability insurance policy expires, and shall present the new liability insurance policies within five working days from the time of termination and the time of taking out the new policy.

#### *Section 70*

(1) Independent intermediaries shall make available the following information in writing, in a language that is clear and easy to understand to potential clients before the intermediation of financial services:

- a)* their corporate name and address, and the name of its competent supervisory authority;
- b)* the register of intermediaries in which registered, including an indication as to how the register can be accessed;
- c)* the person to be held liable for any damage caused to clients in his capacity as an intermediary;
- d)* an indication if acting in the capacity of a multiple special services intermediary or a multiple agent on behalf of a financial institution, or as a broker on behalf of clients seeking financial services; and
- e)* an indication of being restricted to receive a referral fee for the mediation of financial services solely from the employer.

(2) The provisions of Subsection (1) shall not apply where the requirement for providing information is prescribed by the Act on Consumer Credit.

#### *Section 71*

(1) Independent intermediaries shall, with a view to facilitating the supply of financial services, present to the client sufficient analyzed offers from at least three different service providers competing on the market, if available. If the intermediary is mediating only two competing products, these two offers shall be analyzed and presented.

(2) Prior to conclusion of the financial services contract, the independent intermediary shall interview the client so as to ascertain his needs and requirements, as well as the reasons underlying the advice given by the independent intermediary in connection with his activities.

(3) In the process of facilitating the supply of financial services, brokers shall seek out and analyze all potential offers deemed suitable for the client's purposes.

(4) Multiple agents and brokers shall be held liable for any wrong or misleading advice they have provided, and for any delay in forwarding documents and statements.

### 30. Tied intermediaries

#### *Section 72*

(1) Any damage caused by a special services intermediary, or any other person in his employ under contract or any other form of employment relationship while engaged in such activities shall be the liability of the employer financial institution.

(2) Tied intermediaries are allowed to accept a referral fee for the intermediation of financial services only from the employer financial institution. This provision shall not effect the right of tied intermediaries to charge a fee to the clients to whom they have mediated the said financial services for the supply of services outside the scope of intermediation of financial services.

(3) Payment of the referral fee shall be proportionate to the term of the financial service mediated, including performance in accordance with the contract.

(4) Tied intermediaries shall make available the following information to their clients before the intermediation of financial services:

*a)* their corporate name and address, and the name of its competent supervisory authority;

*b)* the register of intermediaries in which registered, including an indication as to how the register can be accessed;

*c)* an indication of acting in the capacity of a tied intermediary in the name and on behalf of a financial institution, representing the employer's interest;

*d)* an indication of being remunerated for the intermediation of financial services.

(5) The provisions of Subsection (4) shall not apply where the requirement for providing information is prescribed by the Act on the Pursuit of the Business of Payment Services and by the Act on Consumer Credit.

(6) The provisions contained in Section 74 shall not apply to tied agents engaged in the intermediation of retail credit and loans solely to private individuals for purchasing durable consumer goods (other than motor vehicles) primarily used for personal, family or household purposes.

### 31. Professional requirements relating to tied intermediaries and independent intermediaries

#### *Section 73*

(1) Intermediaries are not authorized to take money from financial institutions on their clients' behalf.

(2) Intermediaries shall maintain separate accounts for handling funds paid by the client to the order of financial institutions. These funds may under no circumstances be used to satisfy the intermediary's other creditors in the event of enforcement or liquidation proceedings.

(3) The discretionary accounts referred to in Subsection (2) shall include deposit accounts, which the intermediary may use solely for funds paid by the client to the order of financial institutions.

#### *Section 74*

(1) Subject to the exception set out in Subsection (3), the natural persons employed by an intermediary or an intermediary subcontractor - in that field - under contract of employment, under contract for professional services or any other form of employment relationship:

*a)* shall have a university-level degree in the relevant field, or

*b)* shall be a secondary school graduate and:

*ba)* have the skills and credentials for the function of trained bank officer,

*bb)* have the skills and credentials for the function of bank sales and investments,

*bc)* have the skills and credentials for the function of investment advisory services,

*bd)* have the skills and credentials for the function of specialized banking services,

*be)* have the skills and credentials for the function of specialized financial services,

*bf)* have the skills and credentials for the function of specialized securities services,

*bg)* have the skills and credentials to serve as a chartered accountant certified for financial institutions,

- bh*) have the skills and credentials for the function of stock exchange services,
- bi*) have an appraiser's certificate (exclusively for the intermediation of cash credit secured by possessory lien),
- bj*) have a currency desk operator certificate (exclusively for the intermediation of currency exchange services),
- bk*) have a High Bankers' Certificate issued by the Magyar Bankszövetség (*Hungarian Banking Association*),
- bl*) have qualifications which are recognized as the equivalent of the requirements set out in Subparagraphs *ba*)-*bk*); or
- c*) have a certificate of intermediary examination issued by the Authority according to the relevant legislation.

(2) For the purposes of Paragraph *a*) of Subsection (1), university-level degree in a relevant field shall mean:

- a*) the degrees referred to in Subsection (3) of Section 155;
- b*) engineer's degree in agricultural economics of university or college level, or masters training, or technical manager in basic faculty training, or engineer's degree in agricultural economics and rural development in basic faculty training; and
- c*) in possession of an university-level degree, special banker's training or training in economics in continuous professional development or specialized further training in tertiary education in the field of public administration.

(3) Natural persons who are employed by credit institutions, insurance companies or the institution operating the Postal Clearing Center that are engaged in the business of intermediary services may engage in the activities of intermediaries only if they have been properly trained with regard to the financial services they mediate. The responsibility for verifying compliance with the professional requirements lies with the employer.

(4) The intermediary, when acting as the principal or employer, shall be liable to ensure that the natural person in his employ - in that field - under contract of employment or under contract for professional services has all information in connection with the services intermediated.

(5) The intermediary, when acting as the principal or employer, shall keep records on the requirements referred to in Subsections (1)-(3).

(6) Independent intermediaries shall be liable to check the natural persons in their employ - in that field - under contract of employment, under contract for professional services or any other form of employment relationship as regards their compliance with the professional requirements prescribed.

(7) Persons providing financial services shall be liable to check the tied intermediaries and natural persons in their employ - in that field - under contract of employment, under contract for professional services or any other form of employment relationship as regards their compliance with the professional requirements prescribed.

## 32. Special provisions relating to financial auxiliary services

### *Section 75*

(1) Only special services intermediaries shall be authorized for the pursuit of the intermediation of currency exchange services.

(2) The following persons may not be elected or appointed as a senior executive of a currency exchange service provider, may not be directly involved in the management of currency exchange services and may not directly engage in such operations:

*a)* any person who has been found guilty by a court verdict:

*aa)* for any infringement of certain provisions of Act IV of 1978 on the Criminal Code in force until 30 June 2013, such as, misuse of information classified as top secret information and secret information, misuse of information classified as confidential, misuse of information classified as restricted, false accusation, misleading of authorities, perjury, subornation of perjury, suppressing extenuating circumstances, harboring a criminal or complicity, for any crime against the integrity of public life, participation in a criminal organization and private justice under Title VII of Chapter XV, for any crime against public confidence under Title III of Chapter XVI, any economic crime under Chapter XVII, or for any crime against property under Chapter XVIII,

*ab)* for any infringement of certain provisions of Act C of 2012 on the Criminal Code (hereinafter referred to as “Criminal Code”), such as, misuse of classified information, false accusation, misleading of authorities, perjury, subornation of perjury, suppressing extenuating circumstances, harboring a criminal or complicity, for any crime of corruption or for participation in a criminal organization under Chapter XXVII, any crime against public confidence under Chapter XXXIII, or for any crime under Chapters XXXV-XLIII, until exonerated from the detrimental consequences of having a criminal record;

*b)* any person who has been restrained by court order from the pursuit of such activities; and

*c)* any person who has been indicted on any of the offenses provided for in Paragraph *a)*, until the conclusion of such criminal proceedings.

(3) The Authority shall have powers to consult the penal register in order to enforce the employment criteria defined in Subsection (2) before the employment contract is concluded, or before the activity license is issued or extended, and also during the life of the employment contract. The Authority shall be entitled to process the personal data obtained in this fashion until the final conclusion of the proceedings.

#### *Section 76*

(1) Authorization for the operation of payment systems shall be granted to a financial enterprise upon providing proof:

*a)* that the initial capital had been paid up in full;

*b)* that the operation of payment systems, in the case of financial enterprises, constitutes its principal activity - as recorded by the court of registry -, its other activities complement the principal activity and/or do not have a negative impact on the manner in which the principal activity is performed; and

*c)* of operating in the form of a limited company or incorporated as a branch of a limited company.

(2) Participating interest in financial enterprises operating payment systems may be acquired only by the Authority, by credit institutions, financial enterprises operating payment systems, payment institutions, electronic money institutions, interest representation bodies of credit institutions, and by bodies providing clearing or settlement services under the CMA.

(3) A legal person or a branch may be granted authorization for the pursuit of money processing activities upon providing proof:

*a)* of having a minimum subscribed capital of twenty million forints; and

*b)* of having professional indemnity insurance representing at least fifty million forints applying to each claim.

(4) A financial enterprise may be granted authorization to perform financial brokering on the interbank market upon providing proof:

- a)* of having a minimum subscribed capital of fifty million forints paid up in cash;
- b)* of operating in the form of a limited company or incorporated as a branch; and
- c)* of compliance with the personnel and infrastructure requirements prescribed in the relevant legislation.

### 33. Access to payment systems

#### *Section 77*

(1) The conditions laid down in the regulations on access to payment systems by operators of payment systems shall be objective, non-discriminatory and proportionate.

(2) Operators of payment systems shall not inhibit access to the payment systems more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

(3) Operators of payment systems shall impose on payment service providers, on payment service users or on other payment systems none of the following requirements relating to access:

- a)* any restrictive rule on effective participation in other payment systems;
- b)* any rule which discriminates between participating payment service providers in relation to the rights, obligations and entitlements of participants; and
- c)* any restriction on the basis of institutional status.

(4) The provisions contained in Subsections (1)-(3) shall not apply to:

*a)* payment systems designated under Act XXIII of 2003 on Settlement Finality in Payment and Securities Settlement Systems (hereinafter referred to as “SFA”);

*b)* payment systems composed exclusively of payment service providers belonging to a group composed of entities linked by capital where one of the linked entities enjoys effective control over the other linked entities by way of controlling influence or participating interest; and

*c)* payment systems where the payment service provider (whether as a single entity or as a group):

*ca)* acts as the payment service provider for both the payer and the payee and is exclusively responsible for the management of the payment system, and

*cb)* licenses other payment service providers to participate in the payment system and the latter have no right to negotiate fees between or amongst themselves in relation to the payment system although they may establish their own pricing in relation to payers and payees.

### 34. Money processing activities

#### *Section 78*

(1) The senior executives of legal persons and branches engaged in money processing activities, and the persons placed directly in charge of money processing operations and all employees directly involved in money processing activities:

- a)* shall have no prior criminal record; or

*b)* shall have no prior record of any violation of financial and commercial regulations or any offense against property within the two-year period preceding the date when the application was submitted.

(2) The senior executives of legal persons and branches engaged in money processing activities shall have a degree in higher education, and the person placed directly 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 in this field.

(3) In the application of Subsection (2), the criteria of experience may be satisfied by employment at the Authority or a credit institution in the position of a prominent administrator or higher, or in a position connected to money processing, or by employment at a financial enterprise or a legal person or branch engaged in money processing in a position connected to money processing.

(4) The Authority shall have powers to consult the penal register in order to enforce the employment criteria defined in Paragraph *b)* of Subsection (1) before the employment contract is concluded, or before the activity license is issued or extended, and also during the life of the employment contract. The Authority shall be entitled to process the personal data obtained in this fashion until the final conclusion of the proceedings.

## ***Chapter VI***

### ***Requirements Relating to Prudent Operation***

#### **35. General provisions**

##### *Section 79*

(1) Credit institutions, in compliance with the provisions on prudent operation, shall manage the funds placed in their custody as well as its own resources so as to maintain liquidity and solvency at all times.

(2) Credit institutions - for the purpose of maintaining solvency and the ability to fulfill liabilities - shall have sufficient own funds at all times to cover the risks of its activities, covering at least:

- a)* the minimum capital requirement defined in Article 92 of Regulation 575/2013/EU;
- b)* the extra capital requirement prescribed in the framework of a supervisory review; and
- c)* the combined buffer requirement under Sections 86-96;

with the proviso that it may not be less than the minimum amount of subscribed capital prescribed as a precondition for authorization.

(3) In taking funds and in the placement of assets credit institutions shall maintain liquidity at all times.

(4) The credit institution shall provide for its obligations described in Subsection (3) by close coordination of the dates of maturity and the sums of its receivables and payables, and through compliance with regulations relating to the system of governance and the assessment of risks, having regard to the nature, scale and risks of the activities it performs.

(5) As regards the merger of credit institutions, the own funds of the general successor or the credit institution taking over the other institution shall not be less than the amount of the own funds of the merging credit institutions prior to the merger.

(6) Branches of third-country credit institutions shall maintain a capital maintenance ratio of at least one hundred per cent at all times.

## 36. Equity capital

### *Section 80*

(1) The amount of a financial institution's equity capital may not be less than the minimum amount of subscribed capital prescribed in this Act as a precondition for authorization.

(2) If the amount of a financial institution's equity capital falls below the threshold prescribed in Subsection (1), the Authority shall have powers to give the financial institution a maximum of eighteen months to bring its equity capital to compliance.

### *Section 81*

(1) If the amount of a financial institution's equity capital falls below the amount of the subscribed capital, the Authority shall have powers to instruct the financial institution's executive board to convene the general meeting.

(2) In the case provided for in Subsection (1), the general meeting shall decide whether the financial institution is to reduce the subscribed capital or the members with a qualifying holding are to provide for the financial institution's equity capital to be restored to at least the amount of the prescribed subscribed capital.

## 37. Reduction of the subscribed capital

### *Section 82*

(1)<sup>14</sup> In respect of the reduction of the subscribed capital of a credit institution, if the credit institution's capital adequacy reaches or exceeds the amount prescribed in Subsection (2) of Section 79, and the limit prescribed in this Act, following reduction of the subscribed capital, the receivables due therefrom shall be considered secured according to the provisions of the Civil Code on legal persons.

(2) In the case provided for in Subsection (1), the resolution of the general meeting on the reduction of the credit institution's subscribed capital shall be made public by the executive board by way of the means set out in the articles of association on two consecutive occasions at least fifteen days apart. 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)<sup>15</sup> In the case of reduction of the subscribed capital of a credit institution, if the credit institution's capital adequacy ratio drops below the limit prescribed in this Act for the initial capital, but the general meeting ordering the reduction also resolved to have the capital increased in result of which the credit institution's capital adequacy ratio reaches or exceeds the limit prescribed in this Act for the initial capital, the credit institution's liabilities shall be considered

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<sup>14</sup> Established by Subsection (3) of Section 306 of this Act, effective as of 15 March 2014.

<sup>15</sup> Established by Subsection (4) of Section 306 of this Act, effective as of 15 March 2014.

secured according to the provisions of the Civil Code on legal persons and the provisions set out in Sections 3:312-3:313 of the Civil Code shall not apply.

(4) The increase and reduction of the subscribed capital as provided for 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 subscribed capital of the credit institution would reach or exceed the limit prescribed in Subsection (2) of Section 79.

(5) If there is any negative item among the components of a financial institution's equity capital, priority must be given to eliminate the negative value by reclassifying the components of equity capital that are over the subscribed capital - pursuant to the Accounting Act - and, in order to consolidating losses, by reducing the capital so as to increase the other components of equity capital, and only with regard to the remaining subscribed capital may the members reduce capital for the purpose of withdrawal of equity.

## 38. General reserve

### *Section 83*

(1) Credit institutions shall allocate funds from their net profit, prior to paying dividends and shares, into a reserve account.

(2) Credit institutions shall place ten per cent of the after-tax profit of the year into general reserve.

(3) Upon request, a credit institution may be exempted by the Authority from the obligation to maintain general reserves if its own funds are at least one and half times over the capital requirements specified in Subsection (2) of Section 79, and the balance of its retained earnings is not negative.

(4) A credit institution may pay dividends and shares from the profit only if it has set aside general reserves in the given calendar year as provided for in Subsection (2), or if the Authority has granted exemption from the obligation to maintain general reserves according to Subsection (3).

(5) Credit institutions are allowed to use general reserves only to cover operating losses arising from their activities.

(6) Credit institutions may regroup their available profit reserves in whole or in part into general reserves.

## 39. Risk provisions

### *Section 84*

(1) In order to compensate for any lending and investment risk and country risks that may arise in connection with assets, credit institutions shall apply value adjustments and readjustments, and shall maintain risk provisions to cover interest rate or currency risk incurred, as well as risks connected to off-balance sheet liabilities and all other exposures.

(2) Credit institutions shall create risk provisions by showing them under expenditures. Risks provisions, and general risk provisions set aside before the time of this Act entering into force shall primarily be used for losses arising from exposures.

## 40. Classification of assets

### *Section 85*

(1) Credit institutions are required to evaluate and appraise their assets (financial investments, receivables, securities, liquid assets and inventories), assumed liabilities as well as other placements on a regular basis.

(2) Credit institutions shall proceed to take all legal actions within their powers to recover their due and outstanding receivables in default.

## 41. Capital conservation buffer

### *Section 86*

(1) Credit institutions are required to maintain in addition to the capital requirement imposed by Article 92 of Regulation 575/2013/EU a capital conservation buffer.

(2) Credit institutions are required to maintain a capital conservation buffer calculated on an individual or consolidated basis - as provided for in Part One, Title II of Regulation 575/2013/EU - comprised of Common Equity Tier 1 capital equal to 2.5 per cent of their total risk exposure amount.

(3) The capital conservation buffer shall not be used to meet any extra capital requirement imposed in the framework of a supervisory review.

## 42. Countercyclical capital buffer

### *Section 87*

(1) Credit institutions are required to maintain an institution-specific countercyclical capital buffer in addition to the capital requirement imposed by Article 92 of Regulation 575/2013/EU, and to the capital conservation buffer and the extra capital requirement imposed in the framework of a supervisory review.

(2) Credit institutions are required to maintain an institution-specific countercyclical capital buffer calculated on an individual and consolidated basis - as provided for in Part One, Title II of Regulation 575/2013/EU - comprised of Common Equity Tier 1 capital equal to their total risk exposure amount multiplied by the countercyclical capital buffer rate.

(3) The countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit risk exposures of the credit institution are located.

(4) In calculating the weighted average referred to in Subsection (3), the credit institution shall apply to each applicable countercyclical buffer rate its total capital requirements for credit risk that relates to the material credit exposures in the territory in question, divided by its total capital requirements for credit risk that relates to all of its relevant credit exposures.

(5) The material credit exposures referred to in Subsection (4) shall include all those exposure classes referred to in Points *g*-*q*) of Article 112 of Regulation 575/2013/EU, that are subject to:

- a*) own funds requirements for credit risk;
- b*) where the exposure is held in the trading book, capital requirements for specific position risk or incremental default and migration risk; or
- c*) capital requirements for securitization.

(6) The countercyclical buffer rate may be set by the MNB acting within its macro-prudential function up to 2.5 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation 575/2013/EU for credit institutions established in Hungary, having regard to the exposures of such credit institutions to counterparties located in Hungary, where such rate shall be:

- a) 0 per cent, or
- b) 0.25 per cent of multiples of 0.25 percentage points.

(7) By way of derogation from Subsection (6), the MNB acting within its macro-prudential function may set a countercyclical buffer rate in excess of 2.5 per cent of the total risk exposure amount for credit institutions, if the loan-to-deposit ratio is significant or the macroeconomic environment is showing negative signs in addition to unfavorable developments in the loan-to-GDP ratio.

### *Section 88*

(1) If the designated authority of the EEA Member State where the credit institution operates has set a countercyclical buffer rate not exceeding 2.5 per cent of the total risk exposure amount, the credit institution in question shall apply - in determining the institution-specific countercyclical capital buffer - the countercyclical capital buffer rate set by the designated authority of the EEA Member State in respect of its exposures to counterparties located in that EEA Member State.

(2) If the designated authority of a third country where the credit institution operates has set a countercyclical buffer rate or an equivalent capital requirement not exceeding 2.5 per cent of the total risk exposure amount, the MNB, acting within its macro-prudential function, may order the credit institution in question to apply - in determining the institution-specific countercyclical capital buffer - the countercyclical capital buffer rate set by the designated authority of the third country in respect of its exposures to counterparties located in that third country.

(3) If the designated authority of a third country where the credit institution operates has set a countercyclical buffer rate not exceeding 2.5 per cent of the total risk exposure amount, however, the MNB, acting within its macro-prudential function, considers that such rate is not sufficient to protect the credit institution appropriately from the risks of excessive credit growth in that country, the MNB, acting within its macro-prudential function, may set a higher countercyclical capital buffer rate. The MNB, acting within its macro-prudential function, may order the credit institution to apply - in determining the institution-specific countercyclical capital buffer - the higher countercyclical capital buffer rate it has set in respect of its exposures to counterparties located in the third country in question.

(4) If the designated authority of an EEA Member State or a third country where the credit institution operates has set a countercyclical buffer rate in excess of 2.5 per cent of the total risk exposure amount, the MNB, acting within its macro-prudential function, may order the credit institution in question to apply the countercyclical capital buffer:

- a) at the rate established by the designated authority of the Member State or the third country where pursuing lending activities, or
- b) at the rate of 2.5 per cent,

in determining the institution-specific countercyclical capital buffer in respect of its exposures to counterparties located in that EEA Member State or third country.

(5) If the designated authority of a third country where the credit institution operates has not set a countercyclical buffer rate, the MNB, acting within its macro-prudential function, may set the

countercyclical capital buffer rate in respect of the credit institution's exposures to counterparties located in that third country.

### 43. Capital buffers for global and other systemically important credit institutions

#### *Section 89*

(1) The MNB, acting within its macro-prudential function, shall identify, in accordance with Subsection (1) of Section 35 of the MNB Act, global systemically important credit institutions which have been authorized in Hungary.

(2) The MNB, acting within its macro-prudential function, shall identify global systemically important credit institutions based on the following categories, where each category shall receive an equal weighting and shall consist of quantifiable indicators:

- a)* size of the group;
- b)* interconnectedness of the group with the financial intermediary system;
- c)* substitutability of the services or of the financial infrastructure provided by the group;
- d)* complexity of the group;
- e)* cross-border activity of the group, including cross border activity between EEA Member States and between an EEA Member State and a third country.

(3) The MNB, acting within its macro-prudential function, shall determine and annually review the group of other systemically important credit institution established in Hungary on an individual, sub-consolidated or consolidated basis, and the Authority shall monitor their operations on an ongoing basis.

(4) The MNB, acting within its macro-prudential function, shall identify other systemically important credit institutions based on at least one of the following criteria:

- a)* size;
- b)* importance for the economy of the European Union or of Hungary;
- c)* significance of cross-border activities; or
- d)* interconnectedness of the credit institution or group with the financial intermediary system.

(5) The information pertaining to the identification methodology for global and other systemically important credit institutions is confidential.

(6) Before setting or resetting capital buffers under Subsection (1) in respect of other systemically important credit institutions, the MNB, acting within its macro-prudential function, shall notify the competent and designated authorities of the Member States concerned one month before the publication of the resolution thereof, describing in detail:

- a)* the justification for why the capital buffer is considered likely to be effective and proportionate to mitigate the systemic risks of other systemically important credit institutions;
- b)* an assessment of the likely impact of the capital buffer on the internal market;
- c)* the capital buffer rate for other systemically important credit institutions.

(7) Global systemically important credit institutions are required to maintain capital buffer for a credit institution that is considered a global systemically important institution on a consolidated basis in addition to the capital requirement imposed by Article 92 of Regulation 575/2013/EU, and to the capital conservation buffer, institution-specific countercyclical capital buffer and the extra capital requirement imposed in the framework of a supervisory review.

(8) Credit institutions shall maintain the capital buffers referred to in Subsection (7) comprised of Common Equity Tier 1 capital, in an amount corresponding to the sub-category to which the global systemically important credit institution is allocated in accordance with Subsection (9).

(9) The MNB, acting within its macro-prudential function, shall allocate global systemically important credit institutions in at least five sub-categories. The cut-off scores between adjacent sub-categories shall be defined clearly. The lowest sub-category shall contain the credit institutions which are considered the least important systemically, with the proviso that there is a constant linear increase of systemic significance in the sub-categories. The MNB, acting within its macro-prudential function, shall review the sub-categories of credit institutions annually.

(10) Credit institutions allocated to the lowest sub-category shall maintain a capital buffer of 1 per cent of the total risk exposure amount calculated in accordance with Article 92 of Regulation 575/2013/EU for global systemically important credit institutions. The buffer assigned to each sub-category shall increase in gradients of 0.5 percentage points up to and including the fourth sub-category, with the proviso that the credit institutions allocated to the highest sub-category shall be subject to a buffer of 3.5 per cent.

(11) Without prejudice to the exercise of sound supervisory judgment, the MNB, acting within its macro-prudential function:

*a)* may re-allocate a global systemically important credit institution from a lower sub-category to a higher sub-category; and

*b)* may allocate a credit institution that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a global systemically important credit institution.

#### *Section 90*

(1) Other systemically important credit institutions are required to maintain capital buffer - as provided for in the MNB Act - for an other systemically important credit institution on an individual, sub-consolidated or consolidated basis in addition to the capital requirement imposed by Article 92 of Regulation 575/2013/EU, and to the capital conservation buffer, countercyclical capital buffer and the extra capital requirement imposed in the framework of a supervisory review.

(2) The capital buffer referred to in Subsection (1) shall consist of Common Equity Tier 1 capital, the rate of which shall be determined by the MNB, acting within its macro-prudential function, in accordance with what is contained in Subsection (3).

(3) The capital buffer referred to in Subsection (1) shall be maintained up to 2 per cent of the total risk exposure amount calculated in accordance with Article 92 of Regulation 575/2013/EU, with the proviso that:

*a)* the capital buffer must not entail disproportionate adverse effects on the whole or parts of the financial intermediary system of other EEA Member States or of the EEA Member States as a whole; and

*b)* the capital buffer rate must be reviewed by the MNB, acting within its macro-prudential function, at least annually.

#### *Section 91*

Where an other systemically important credit institution is a subsidiary of either a global systemically important credit institution or an other systemically important credit institution which is subject to a capital buffer requirement relating to other systemically important credit institutions on a consolidated basis, the buffer that applies at individual or sub-consolidated level for the other systemically important credit institution shall not exceed the higher of:

a) 1 per cent of the total risk exposure amount calculated in accordance with Article 92 of Regulation 575/2013/EU; or

b) the capital buffer requirement relating to other systemically important credit institutions or the capital buffer requirement relating to global systemically important credit institutions applicable to the global or other systemically important credit institution at consolidated level.

#### 44. Systemic risk buffer

##### *Section 92*

(1) By decision of the MNB acting within its macro-prudential function, credit institutions shall maintain systemic risk buffer, subject to the exception set out in Subsection (6), on an individual, consolidated, or sub-consolidated basis, in respect of:

a) exposures to counterparties located in Hungary;

b) exposures to counterparties located in an EEA Member State; and

c) exposures to counterparties located in a third country.

(2) When requiring a systemic risk buffer to be maintained under Subsection (1) of Section 35/A of the MNB Act, the MNB, acting within its macro-prudential function, shall comply with the following:

a) the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial intermediary system of other EEA Member States or of the EEA Member States as a whole; and

b) the capital buffer rate must be reviewed by the MNB at least every second year.

(3) Credit institutions shall maintain the systemic risk buffer comprised of Common Equity Tier 1 capital in addition to the capital requirement imposed by Article 92 of Regulation 575/2013/EU, the capital conservation buffer, the institution-specific countercyclical capital buffer and the extra capital requirement imposed in the framework of a supervisory review.

(4) The systemic risk buffer rate shall be set by the MNB, acting within its macro-prudential function, as provided for in Subsection (5).

(5) The systemic risk buffer rate shall be at least 1 per cent, with the proviso that it shall be set in gradual or accelerated steps of adjustment of 0.5 percentage point or multiples of 0.5 percentage point.

(6) Credit institutions which are subject to supervision on a consolidated basis under Regulation 575/2013/EU may be required by the Authority to maintain a systemic risk buffer on an individual and on a consolidated level.

#### 45. Common provisions relating to capital buffers

##### *Section 93*

(1) Combined buffer requirement means the total of the capital conservation buffer combined under Subsection (2), (3), (4), (5), (6) or (7) with the following:

a) an institution-specific countercyclical capital buffer requirement;

b) capital buffer requirement relating to global systemically important credit institutions;

c) the capital buffer requirement for other systemically important credit institutions; and

d) the systemic risk buffer requirement.

(2) Where a credit institution, on a consolidated basis is subject to capital buffer requirement relating to global systemically important credit institutions and to capital buffer requirement relating to other systemically important credit institutions alike, the higher of the two shall apply.

(3) Where a credit institution, on a consolidated basis is subject to capital buffer requirement relating to global systemically important credit institutions and to capital buffer requirement relating to other systemically important credit institutions, and also to a systemic risk buffer, the highest of the three shall apply.

(4) Where a credit institution, on an individual or sub-consolidated basis is subject to capital buffer requirement relating to other systemically important credit institutions and to a systemic risk buffer, the higher of the two shall apply.

(5) By way of derogation from Subsections (3) and (4), where the systemic risk buffer does not apply to exposures to counterparties located outside of Hungary, the combined buffer requirement shall be the sum of the systemic risk buffer and the capital buffer requirement relating to global systemically important credit institutions or of the systemic risk buffer and the capital buffer requirement relating to other systemically important credit institutions.

(6) Where a credit institution is part of a group subject to supervision on a consolidated basis to which a global systemically important credit institution or an other systemically important credit institution belongs, the individual combined buffer requirement of that credit institution may not be lower than:

- a) the sum of the capital conservation buffer,
- b) the institution-specific countercyclical capital buffer, and
- c) the higher of the capital buffer requirement relating to global systemically important credit institutions or the capital buffer requirement relating to other systemically important credit institutions applicable to it on an individual basis.

(7) In the case provided for in Subsection (5), where a credit institution is part of a group subject to supervision on a consolidated basis to which a global systemically important credit institution or an other systemically important credit institution belongs, the individual combined buffer requirement of that credit institution may not be lower than the sum total of:

- a) the sum of the capital conservation buffer,
- b) the institution-specific countercyclical capital buffer,
- c) the capital buffer requirement relating to global systemically important credit institutions and to other systemically important credit institutions, and
- d) the systemic risk buffer requirement.

(8) Credit institutions permanently affiliated to a central body shall comply with the provisions relating to capital buffers together with the central body.

#### *Section 94*

(1) Where a credit institution fails to meet the requirements under Section 86, 87 or 92, it shall be subject to the restrictions on distributions in connection with Common Equity Tier 1 capital.

(2) The restrictions on distributions shall only apply to payments that would result in a reduction of the credit institution's:

- a) Common Equity Tier 1 capital, or
- b) profits,

and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of liquidation proceedings applicable to the credit institution.

(3) Where a credit institution fails to meet the combined buffer requirement, the credit institution:

*a)* shall restrict distributions in connection with Common Equity Tier 1 capital and Additional Tier 1 capital;

*b)* may not create an obligation to pay variable remuneration or discretionary pension benefits; and

*c)* may not pay variable remuneration if the obligation to pay was created at a time when the credit institution failed to meet the combined buffer requirements.

(4) For the purposes of Paragraph *a)* of Subsection (3), a distribution in connection with Common Equity Tier 1 capital shall include the following:

*a)* a payment of cash dividends;

*b)* a distribution of fully or partly paid bonus shares or other capital instruments;

*c)* a distribution, redemption or purchase of capital instruments referred to in Article 26(1)*a)* of Regulation 575/2013/EU, or a repayment of amounts paid up in connection with such capital instruments;

*d)* a redemption by an institution of its own shares, including capital contributions provided to a cooperative society, or repurchase of own shares; and

*e)* a distribution of items referred to in Points *b)-e)* of Article 26(1) of Regulation 575/2013/EU.

(5) Credit institutions that fail to meet the combined buffer requirement are required to calculate the maximum distributable amount, in excess of which it shall not be allowed to make any payments insofar as its Common Equity Tier 1 capital reaches the minimum level covering also the combined buffer requirement.

(6) The maximum distributable amount may be calculated by multiplying the sum of the interim profits and year-end profits determined according to Subsection (7) by the factor determined in accordance with Schedule No. 4, reduced by any of the actions referred to in Subsection (3).

(7) In determining the maximum distributable amount the credit institution shall establish the amount consisting of interim profits and year-end profits not included in the Common Equity Tier 1 capital, that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in Subsection (3), that equals the sum minus the amounts which would be payable by tax if the profits were to be retained.

### *Section 95*

(1) Where a credit institution fails to meet the combined buffer requirement, it shall inform the Authority of the following:

*a)* the maximum distributable amount it has calculated;

*b)* the amount of distributable profits it intends to allocate; and

*c)* the restriction referred to in Subsection (3) of Section 94.

(2) In the frame of information as provided for in Subsection (1) the credit institution shall provide to the Authority the information deemed necessary relating to:

*a)* the amount of own funds, broken down according to Common Equity Tier 1 capital, Additional Tier 1 capital and Tier 2 capital;

*b)* the amount of its interim and year-end profits;

*c)* the maximum distributable amount; and

*d)* the amount of distributable profits it intends to allocate between the following:

*da)* dividend payments,

*db*) share buybacks,  
*dc*) payments on Additional Tier 1 instruments, or  
*dd*) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the credit institution failed to meet its combined buffer requirements.

(3) Credit institutions shall maintain reliable arrangements to ensure that the amount of distributable profits and the maximum distributable amount are calculated accurately, and shall be able to demonstrate that accuracy to the Authority on request.

#### *Section 96*

(1) Where a credit institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and submit it to the Authority for approval no later than five working days after it identified that it was failing to meet that requirement.

(2) By way of derogation from Subsection (1), the Authority may authorize a longer delay up to ten working days for the completion and submission of the capital conservation plan on the basis of the individual situation of the credit institution and taking into account the scale and complexity of the credit institution's activities.

(3) The credit institution's capital conservation plan shall include the following:

*a*) estimates of income and expenditure;

*b*) a forecast balance sheet;

*c*) measures to increase the capital ratios provided for in Article 92 of Regulation 575/2013/EU;

*d*) a plan for the increase of own funds; and

*e*) a timeframe for meeting fully the combined buffer requirement.

(4) The Authority shall approve the credit institution's capital conservation plan if it considers that the plan, if implemented, would be reasonably likely to enable the credit institution to meet its combined buffer requirements within the time limit prescribed by the Authority.

(5) If the Authority does not approve the capital conservation plan, it shall:

*a*) require the credit institution to increase its own funds to specified levels within specified periods;

*b*) impose more stringent restrictions on distributions than those required by Section 94.

### 46. Internal capital adequacy assessment process

#### *Section 97*

(1) Credit institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed.

(2) The strategies and processes referred to in Subsection (1) shall be subject to regular internal review - conducted at least once a year - to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the credit institution concerned.

(3) EU parent credit institutions, EU financial holding companies and EU parent mixed financial holding companies shall comply with the conditions set out under Subsections (1) and

(2) of this Section on a consolidated basis together with the companies referred to in Regulation 575/2013/EU.

(4) If a credit institution is subject to controlling influence or if a company holds any participating interest in such credit institution and this credit institution, or the credit institution's parent financial holding company or mixed parent financial holding company maintains controlling influence or holds any participating interest in a credit institution, financial enterprise, investment firm, investment fund management company or ancillary services company that is established in a third country, this credit institution shall comply with the conditions set out under Subsections (1)-(2) of this Section also on a consolidated basis together with the companies provided for in Regulation 575/2013/EU.

(5) Credit institutions permanently affiliated to a central body shall comply with the provisions relating to internal capital adequacy assessment processes together with the central body.

## 47. Limitation of exposures, regulations on transactions

### *Section 98*

(1) Financial institutions, other than financial holding companies, shall adopt and apply internal rules and regulations, subject to approval by the executive board, 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 mitigate them.

(2) Financial institutions shall execute transactions that involve any degree of exposure in writing. Transactions made in the money and capital markets orally shall be confirmed by the financial institution in writing.

### *Section 99*

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

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

- a) self-issued securities representing membership rights, including shares in cooperatives;
- b) securities representing membership rights that have been issued by an enterprise with close links to the credit institution, including shares in cooperatives;
- c)<sup>16</sup> the shares of a limited company that is controlled by an enterprise - holding a qualified majority as defined in the Civil Code - with close links to a credit institution that is subject to supervision on a consolidated basis.

(3) 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 client's financial and economic standing and the conditions described in Subsection (1).

## 48. Limitation of exposures related to acquisition of ownership

### *Section 100*

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<sup>16</sup> Established by Subsection (5) of Section 306 of this Act, effective as of 15 March 2014.

(1) A credit institution may not assume risks for transactions whose purpose is for a client to purchase securities representing membership rights that has been issued by the credit institution or another company with close links to the credit institution, or shares in cooperatives.

(2) If a credit institution provides a loan for the purchase of securities 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.

## 49. Restrictions on real estate investments

### *Section 101*

(1) The total amount of a credit institution's real estate investment portfolio, not to include the real estate properties used exclusively for banking purposes and notwithstanding the properties provided for in Subsections (2) and (3), may not exceed five per cent of its own funds.

(2) A credit institution shall, within six years, alienate the real estate properties acquired:

a) through loan-real estate trade-off;

b) on the basis of Subsection (2) of Section 56 of the Bankruptcy Act; and

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

(3) For the purposes of Subsection (1), the real estate property or part of a real estate property 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 separate records shall be construed as being used for banking purposes.

## 50. Other restrictions relating to investments

### *Section 102*

(1) The total - net - amount of a credit institution's direct and indirect investments may not exceed one hundred per cent of its own funds.

(2) As regards 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 *Garantiqa Hitelgarancia Részvénytársaság (Garantiqa Credit Guarantee Company)* during its foundation and thereafter;

c) debt securities; and

d) the item the equivalent of which has been deducted from the capital when calculating own funds, if recorded and administered separately from other investments.

(3) With the exception set out in Subsection (4), a credit institution may not acquire any ownership share in and may not be a member of any company for the debts of which the credit institution could be subject to bear unlimited responsibility as a member regardless of its percentage of ownership.

(4) A credit institution may join a European economic interest grouping if so authorized by the Authority.

(5) The Authority shall grant the authorization referred to in Subsection (4) if all of the following conditions are satisfied:

a) all members of the European economic interest grouping are included in the same consolidation as the credit institution;

b) neither of the activities pursued according to the contract for the formation of the European economic interest grouping has the capacity to compromise the prudent operation of the credit institution;

c) the contract for the formation of the European economic interest grouping contains a clause guaranteeing that the agreement of the other members is not required for the credit institution's withdrawal if continued participation would constitute an infringement of the relevant regulations or if so ordered by the Authority.

(6) The Authority shall order the credit institution to withdraw from the European economic interest grouping within eight days upon the occurrence of any changes after the granting of authorization in consequence of which the conditions for granting the authorization under Subsection (5) are no longer fulfilled, or in consequence of which continued participation in the grouping would compromise the operation of the credit institution in compliance with prudential requirements.

## 51. Financial enterprise equivalent to credit institutions under prudential requirements

### *Section 103*

Where a financial enterprise applies the provisions on own funds and capital adequacy of credit institutions, on exposure and investment limits, on the evaluation of assets, on internal control mechanisms and risk management, on governance and control, and on the obligation of public disclosure and has at least two billion forints in own funds, such financial enterprise shall be treated - subject to the Authority's resolution - as equivalent to credit institutions under prudential requirements having regard to Regulation 575/2013/EU.

### *Section 104*

(1) If a financial enterprise is able to verify to the Authority that it meets the conditions set out in Section 103, the Authority shall adopt a resolution thereof within two months from the day following the date of receipt of the request. The Authority shall publish a list of financial enterprises treated as equivalent to credit institutions under prudential requirements on its official website.

(2) Financial enterprises treated as equivalent to credit institutions under prudential requirements shall promptly inform the Authority if they no longer satisfy the conditions set out in Section 103.

### *Section 105*

The Authority may withdraw its resolution referred to in Subsection (1) of Section 104 in the case of any financial enterprise that fails to satisfy the requirements set out in Section 103 within the time limit fixed in the Authority's sanctions and exceptional measures.

## 52. Internal credit

## *Section 106*

(1) Subject to the exceptions set out in Subsections (2)-(3), a credit institution (other than credit unions) may not undertake any risk for:

- a)* any member of the management body or the auditor of the credit institution or of an enterprise that have close links with the credit institution;
- b)* close relatives of the persons referred to in Paragraph *a)*;
- c)* an enterprise controlled by either of the persons referred to in Paragraphs *a)*-*b)*; or
- d)* the sale of an enterprise controlled by either of the persons referred to in Paragraphs *a)*-*b)* to a third party.

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

- a)* lines of credit connected to payment accounts carried by credit institutions, and
- b)* salary advances made by employers, residential loans or other loans for social purposes, up to the amount specified in the internal policy.

(3) In addition to what is contained in Subsection (2), a credit institution may grant only consumer loans to the person referred to in Subsection (1) based on a decision made by two-thirds majority of the members of the management body in its managerial function in attendance and in compliance with the regulations approved by the management body in its managerial function, and shall keep separate records thereon. As regards credit institutions incorporated as branches, a unanimous decision of the senior executives is required for granting a consumer loan that is recognized as internal credit. The decision passed by the management body in its managerial function of the credit institution or by the senior executives of the branch shall also include the interest rates and the terms of installments.

## 53. Governance arrangements - risk management

### *Section 107*

(1) Credit institutions are required to have comprehensive, sound and robust governance arrangements with respect to the principle of proportionality, having regard in particular to the diversity in size and scale of operations and to the range of financial services and financial auxiliary services, and to the applied business model, comprising also the internal control functions provided for in Subsection (2), which shall include:

- a)* the investment firm's organizational structure clearly documented in the internal policies;
- b)* well defined, transparent and consistent lines of responsibilities and functions;
- c)* adequate internal control mechanisms to monitor, prevent and avoid conflicts of interest;
- d)* effective processes to identify, measure, manage, monitor and report the risks the credit institution is or might be exposed to;
- e)* adequate internal control mechanisms, including sound administrative and accounting procedures in compliance with the relevant legislation;
- f)* remuneration policies and practices that are consistent with and promote sound and effective risk management in accordance with the principles laid down in Sections 117-121;
- g)* functions to promote the smooth and effective operation of the organization, to maintain confidence in the institution, and protect the economic interests and social goals of the owners and clients relating to the institution.

(2) With a view to implementing the provisions set out in Paragraphs *d)* and *e)* of Subsection (1), hence carrying out the internal control functions, credit institutions shall in their internal

policies clearly define the business unit or units responsible for carrying out the internal control functions.

(3) In the interest of credit risk management credit institutions shall:

*a)* carry out the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems;

*b)* ensure that diversification of credit portfolios is adequate given the institution's target markets and overall credit strategy; and

*c)* have in place sound and effective internal methodologies that enable them to assess the credit risk of securities or securitization positions and credit risk at the portfolio level, with the proviso that such internal methodologies shall not rely solely on external credit ratings.

### *Section 108*

(1) The credit institution's management body in its managerial function shall approve, periodically review and evaluate the strategies and policies for the segregation of duties in the organization and the prevention of conflicts of interest, for taking up, managing, monitoring and mitigating the risks the credit institution is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

(2) The management body in its managerial function shall have responsibility for the implementation of the strategies and policies provided for in Subsection (1).

(3) The management body in its managerial function, if it finds any discrepancies in carrying out the review provided for in Subsection (1), shall take the measures necessary to eliminate and remedy such discrepancies, and shall take the decisions required.

(4) The management body in its managerial function shall be responsible:

*a)* to ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards; and

*b)* to oversee the process of data disclosure and communications.

(5) Credit institutions shall have in place effective written procedures and policies:

*a)* for addressing risks that the recognized credit risk mitigation techniques the credit institution uses prove less effective than expected;

*b)* for addressing concentration risk arising from exposures to clients, groups of connected clients (including central counterparties), and counterparties, clients in the same economic sector, geographic region or from the same activity, and from the application of credit risk mitigation techniques;

*c)* for the measurement and management of all material sources and effects of market risks, and for taking measures against the risk of a shortage of liquidity where the short position falls due before the long position;

*d)* for the evaluation, measurement and management of the risk arising from potential changes in interest rates as they affect the credit institution's non-trading activities;

*e)* for the evaluation and management of the exposure to operational risk, and model risk, including contingency and business continuity plans to ensure the credit institution's ability to operate on an ongoing basis and limit losses in the event of severe business disruption;

*f)* for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, tailored to business lines, currencies and legal entities of the group, including adequate allocation mechanisms of liquidity costs, benefits and risks;

*g)* for the evaluation and management of risks arising from securitization transactions in relation to which the credit institutions are acting as the investor, originator or sponsor, including reputational risks (such as arise in relation to complex structures or products), so as to ensure in particular that the economic substance of the transaction is fully reflected in the risk assessment and management decisions;

*h)* for the identification, management and monitoring of the risk of excessive leverage, in particular in order to ensure that credit institutions address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the credit institution's own funds through expected or realized losses, hence to be able to withstand a range of different stress events with respect to the risk of excessive leverage; and

*i)* for the process for approving, amending, renewing, re-financing and monitoring credit and loan operations.

(6) With a view to compliance with Paragraph *f)* of Subsection (5):

*a)* the credit institution's management body in its managerial function shall adopt an adequate strategy and communicate risk tolerance to all relevant business lines;

*b)* the strategies and policies shall be proportionate to the complexity, risk profile, scope of operation of the credit institution and risk tolerance set by the management body in its managerial function and reflect the credit institution's systemic importance in each EEA Member State, in which it carries out financial service activities and financial auxiliary service activities;

*c)* credit institutions shall develop methodologies for the identification, measurement, management and monitoring of funding positions, covering the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk;

*d)* credit institutions shall distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They shall also take into account:

*da)* the person or organization holding assets,

*db)* the country where assets are legally recorded either in a register or in an account,

*dc)* as well as their eligibility to be used as extra liquidity buffers and shall monitor how assets can be mobilized in a timely manner,

*dd)* existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within the EEA Member States and in third countries;

*e)* credit institutions shall consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources; those arrangements shall be reviewed regularly, at least once a year;

*f)* alternative scenarios on liquidity positions and on risk mitigants shall be considered and the assumptions underlying decisions concerning the funding position shall be reviewed at least once a year by the credit institution's management body in its managerial function, with the proviso that for these purposes, alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of other special purpose entities, in relation to which the credit institution acts as sponsor or provides material liquidity support;

*g)* credit institutions shall consider the potential impact of institution-specific, market-wide and combined alternative scenarios; different time horizons and varying degrees of stressed conditions shall be considered;

*h)* credit institutions shall adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in Paragraph *f)*;

*i)* in order to deal with liquidity crises, credit institutions shall have in place contingency plans - approved by the management body in its managerial function - setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another EEA Member State; those plans shall be tested at least once a year, updated on the basis of the outcome of the alternative scenarios set out in Paragraph *f)*; and

*j)* credit institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. Such operational steps shall include holding collateral immediately available for central bank funding, where this includes holding collateral where necessary in the currency in which the credit institution has exposures.

(7) As regards the securitizations of revolving exposures with early amortization provisions, the originator credit institution shall have an appropriate liquidity plan in place to address the implications of both scheduled and early amortization.

(8) Credit institutions shall develop their liquidity risk profile taking into account the nature, scale and complexity of their activities, and shall proceed accordingly.

(9) The Authority shall monitor developments in relation to liquidity risk profiles of credit institutions developed in accordance with Subsection (8). Where developments referred to above effect the safe operation of the credit institution or may lead to instability in the financial intermediary system, the Authority shall take effective action.

(10) In carrying out the provisions of Paragraph *h)* of Subsection (5), credit institutions shall pay particular attention to the leverage ratio determined in accordance with Article 429 of Regulation 575/2013/EU and mismatches between assets and obligations.

(11) Credit institutions shall have internal capital that, having regard to the risks which are not covered by capital requirements under Regulation 575/2013/EU, is adequate in quantity.

#### *Section 109*

(1) The credit institution's management body in its managerial function shall be responsible for the credit institution's risk exposures.

(2) The management body in its managerial function shall devote sufficient time to learn about risks and to consideration of risk issues, and shall ensure that adequate resources are allocated to the management of all material risks as well as in the valuation of assets, the use of external credit ratings and internal models relating to those risks so as to ensure that the relevant strategic decisions are fully prepared and properly substantiated.

(3) The credit institution shall set up and operate an appropriate information system so as to establish reporting lines to the management body that cover all material risks the credit institution is or might be exposed to, and to supply up-to-date information through the management information system on risk management policies and changes thereof.

#### *Section 110*

(1) Credit institutions with a market share of at least 5 per cent in respect of their balance-sheet total are required to establish a risk exposure and management committee that shall monitor on an ongoing basis the risk strategy and the risk appetite of the credit institution.

(2) The members of the risk exposure and management committee shall be members of the management body in its managerial function whom are not engaged under employment contract with the credit institution concerned. If the management body in its managerial function of the credit institution does not have at least three members whom are not engaged under employment contract with the credit institution concerned, independent members of the management body in its supervisory function may participate in the risk exposure and management committee.

(3) Members of the risk exposure and management committee shall have appropriate knowledge and expertise to carry out the functions provided for in Subsection (4).

(4) The tasks of the risk exposure and management committee shall inter alia include the following:

*a)* advise the senior executives on the credit institution's overall current and future risk appetite and risk strategy,

*b)* assist the management body in its managerial function in overseeing the implementation of the risk strategy,

*c)* review whether prices of financial services and financial auxiliary services offered to clients take fully into account the credit institution's business model and risk strategy, and

*d)* examine the remuneration policy as to whether incentives provided by the remuneration system take into consideration the credit institution's risk, capital, liquidity and the likelihood and timing of earnings.

(5) If the risk exposure and management committee finds in carrying out the functions provided for in Paragraph *c)* of Subsection (4) that the prices do not properly reflect risks in accordance with the business model and risk strategy, the risk exposure and management committee shall present a remedy plan for pricing to the management body in its managerial function.

(6) The credit institution shall provide access for the risk exposure and management committee and the management body in its supervisory function, in the performance of their duties, to the risk management function and to external expert advice.

### *Section 111*

(1) Credit institutions with a market share of at least 5 per cent in respect of their balance-sheet total are required to set up and operate an effective, comprehensive and independent business unit responsible for the risk management function covering all material risks of the credit institution.

(2) Credit institutions that are significant in terms of their size, and the nature, scope and complexity of their activities shall establish a business unit responsible for the risk management function composed of members with appropriate knowledge, skills and expertise, which shall have sufficient resources, authority, and access to information necessary for carrying out such duties.

(3) The business unit responsible for the risk management function shall:

*a)* ensure that all material risks are identified, measured and properly reported;

*b)* be actively involved in elaborating the risk strategy and in all material risk management decisions; and

*c)* deliver a complete view of the whole range of risks of the credit institution.

(4) The business unit responsible for the risk management function may report directly to the management body in its supervisory function, and can raise concerns and warn that body, where appropriate, where specific risk developments affect or may affect the credit institution's operations.

(5) Taking into account the regulations of this Act on conflicts of interest, the credit institution shall appoint an independent senior manager with sufficient knowledge and expertise, vested with distinct responsibility for exercising and directing the risk management function, where the nature, scale and complexity of the activities of the credit institution so justify. The prior approval of the management body in its supervisory function is required to terminate the employment of the head of the risk management function with or without notice.

### *Section 112*

(1) Credit institutions with a market share of at least 5 per cent in respect of their balance-sheet total are required to establish a nomination committee.

(2) The members of the nomination committee shall be members of the management body whom are not engaged under employment contract with the credit institution concerned. If the management body in its managerial function of the credit institution does not have at least three members whom are not engaged under employment contract with the credit institution concerned, independent members of the management body in its supervisory function may participate in the nomination committee.

(3) The nomination committee shall:

- a)* identify and recommend candidates to fill management body vacancies;
- b)* prepare a description of the roles and capabilities for a particular appointment to the management body, and assess the time commitment expected;
- c)* evaluate the balance of knowledge, skills and experience of individual members of the management body;
- d)* evaluate the balance of knowledge, skills and experience of the management body collectively at least annually, and report to the management body accordingly;
- e)* periodically, and at least annually, assess the structure, size, composition and performance of the management body and make recommendations with regard to any discrepancies;
- f)* decide on a target for the representation of genders in the management body and prepare a policy on how to meet that target;
- g)* periodically review the policy of the management body for selection and appointment of senior management of the credit institution and make recommendations to the management body in its managerial function based on its findings; and
- h)* take account, periodically, to ensure that the management body's decision making is not unduly influenced.

(4) In recommending candidates for the management body in its managerial function the credit institution shall take account to ensure that the person recommended has the highest qualification possible, and to this end it shall develop internal policies.

(5) The Authority shall prepare analyses and comparisons relying on the policies referred to in Subsection (4) on the practices of credit institutions, and shall send them to the European Banking Authority (hereinafter referred to as "EBA").

(6) Credit institutions shall make public the ratio of genders provided for in Paragraph *f)* of Subsection (3), and the strategy used to determine such ratio and the means used for the implementation of that strategy.

(7) Credit institutions shall make available to the nomination committee the resources that it considers to be appropriate for carrying out the tasks provided for in Subsection (3), access to data and information, including external advice where deemed necessary.

### *Section 113*

(1) All members of the management body in its managerial function shall commit sufficient time to perform their functions in the credit institution.

(2) Credit institutions shall devote adequate human and financial resources to the induction and training of members of the management body in its managerial function.

### *Section 114*

(1) Credit institutions are required to have in place a recovery plan with respect to the principle of proportionality, having regard in particular to the diversity in size and scale of operations and to the range of financial services and financial auxiliary services, and the applied business model.

(2) The recovery plan shall, having regard to the potential impact the credit institution's insolvency may have on the financial markets stemming from its ties to other credit institutions and to the financial intermediary system, inter alia contain the following:

*a)* a summary of the key components of the plan and any significant changes relative to the previous plan;

*b)* a communication and information plan for addressing adverse reactions in the market;

*c)* definition of the credit institution's critical functions;

*d)* arrangements designed to ensure a service level of the credit institution's critical functions having regard to liquidity and solvency;

*e)* an estimated time frame for each and every major action set out in the plan;

*f)* description of circumstances which may constitute hindrances for the implementation of the plan, including the impact they may have on counterparties, contractual partners and, if the credit institution is subject to supervision on a consolidated basis, on other members of the group;

*g)* procedures for determining the value, and the marketability of the credit institution's main business lines, processes and assets, including the measures required for their marketing and an estimated time frame for the implementation thereof;

*h)* description of the articulation of the recovery plan with the credit institution's governance arrangements, including the lines of responsibilities related to the development and implementation of the plan;

*i)* policies and measures proposed for compliance with the capital requirements provided for in Section 79;

*j)* rules and measures designed to ensure that the credit institution has adequate access to sources of funding in case of crises;

*k)* rules and measures for restructuring the credit institution's liabilities;

*l)* rules and measures for restructuring the credit institution's main business lines;

*m)* rules and measures for maintaining access to payment and settlement systems and other infrastructures;

*n)* preparatory steps taken or proposed by the credit institution with a view to promoting the implementation of the recovery plan, including the measures taken for the recapitalization of the credit institution in due time.

(3) The credit institution shall review the recovery plan at least once a year, and after every legal or organizational changes in the credit institution, including changes in its activities or financial situation, that may substantially affect the implementation of the recovery plan.

(4) The credit institution shall cooperate with the resolution authority provided for by law, so as to ensure that the resolution authority has alternative scenarios in the interest of mitigating the

potential impact the credit institution's insolvency may have on the financial markets stemming from its ties to other credit institutions and to the financial intermediary system for restructuring the credit institution and to ensure the continuity of its basic functions, with a view to preserving financial stability and to restoring the viability of the credit institution in whole or in part.

#### *Section 115*

(1) Credit institutions shall, on an individual basis, meet the requirements laid down in this Act for risk management and governance arrangements, unless the Authority exempted the credit institution under Article 7 of Regulation 575/2013/EU from the application of prudential requirements on an individual basis.

(2) EU parent credit institutions and their subsidiaries, EU parent financial holding companies and their subsidiaries, and EU parent mixed financial holding companies and their subsidiaries shall comply with requirements relating to risk management and governance arrangements on a consolidated or sub-consolidated basis, so as to ensure that their risk management and governance arrangements are consistent, coherent and coordinated and that any data and information to be supplied to the Authority for the purpose of supervision can be produced.

(3) Application of consistent and coordinated risk management and governance arrangements provided for in Subsection (2) shall be ensured also for the subsidiaries not subject to this Act, except if the EU parent credit institution, EU parent financial holding company or EU parent mixed financial holding company can demonstrate that the application of such requirement is unlawful under the laws of the third country where the subsidiary is established.

(4) Credit institutions permanently affiliated to a central body shall comply with the provisions of this subtitle together with the central body.

### 54. Reporting of breaches

#### *Section 116*

(1) Credit institutions shall establish effective and reliable mechanisms to encourage reporting of potential or actual breaches of the provisions of this Act, regulations pertaining to prudent operation, including Regulation 575/2013/EU, by executive officers and employees.

(2) The mechanisms referred to in Subsection (1) shall include:

- a)* procedures for the receipt of reports on breaches and their follow-up;
- b)* appropriate protection for employees who report breaches committed within the credit institution against discrimination or other types of unfair treatment; and
- c)* protection of personal data concerning both the person who reports the breaches committed within the credit institution and the natural person who is allegedly responsible for a breach.

(3) Credit institutions are required to have in place appropriate procedures for their employees to report breaches internally through a specific and independent channel.

### 55. Remuneration policy

#### *Section 117*

(1) Credit institutions shall have in place internal remuneration policies with respect to the principle of proportionality, having regard in particular to exposures, the diversity in size and

scale of operations and to the range of financial services and financial auxiliary services and the applied business model.

(2) The remuneration policy shall apply to the credit institution's senior executives, the staff of risk takers and the staff engaged in control as defined in internal policies - including the employees carrying out the internal control functions -, and any employee of the same remuneration category as the previous categories of staff whose professional activities have a material impact on the credit institution's risk profile.

(3) The remuneration policy shall be consistent with and shall promote sound and effective risk management and shall not encourage risk-taking that exceeds the level of tolerated risk of the credit institution. The remuneration policy shall be in line with the business strategy, objectives, values and long-term interests of the credit institution, and shall incorporate measures to avoid conflicts of interest.

(4) The credit institution shall apply on a consolidated basis the provisions on remuneration policy to all entities to which supervision on a consolidated basis applies jointly with the credit institution.

(5) The management body in its supervisory function shall adopt, implement and periodically review the general principles of the remuneration policy and the management body in its managerial function shall be responsible for overseeing its implementation, furthermore, the implementation of the remuneration policy is, at least annually, subject to review by the credit institution's department of internal control.

(6) Credit institutions with a market share of at least 5 per cent in respect of their balance-sheet total are required to establish a remuneration committee that shall be responsible for overseeing the remuneration of the senior officers in the risk management and compliance functions - including the employees carrying out internal control functions -, and for the preparation of decisions regarding remuneration, taking into account the long-term interests of shareholders, investors and other stakeholders in the credit institution.

(7) The chair and the members of the remuneration committee shall be members of the management body in its managerial function whom are not engaged under employment contract with the credit institution concerned. If the management body in its managerial function of the credit institution does not have at least three members whom are not engaged under employment contract with the credit institution concerned, independent members of the management body in its supervisory function may participate in the remuneration committee.

### *Section 118*

(1) Credit institutions shall distinguish between basic remuneration and variable remuneration, and shall fix in their internal policy the ratio that basic remuneration represent within the total remuneration, where the variable component shall not exceed 100 per cent of the basic remuneration for each senior executive or employee, save where Subsection (2) applies.

(2) Credit institutions may provide variable remuneration up to 200 per cent of the basic remuneration:

- a) if so authorized by the credit institution's general meeting;
- b) if the motion tabled in the general meeting provides a detailed explanation for the higher bonus based on performance;
- c) provided that in the general meeting members of the credit institution act:
  - ca) by a majority of at least 66 per cent provided that at least 50 per cent of the shares or equivalent ownership rights are represented, or

*cb)* by a majority of 75 per cent of the ownership rights represented; and  
*d)* the credit institution notifies the Authority in advance of the motion before the general meeting, and of the resolution adopted under Paragraph *c)*.

(3) The motion provided for in Paragraph *b)* of Subsection (2) shall contain:

*a)* the reasons for the higher basic remuneration - performance pay ratio;  
*b)* the maximum percentage recommended;  
*c)* information relating to the number and positions of the senior executives and other employees affected; and  
*d)* the impact on the maintenance of the credit institution's sound capital base.

(4) The persons referred to in Paragraph *c)* of Subsection (3) shall not, directly or indirectly, exercise their proprietary or membership rights in passing the resolution provided for in Paragraph *c)* of Subsection (2).

(5) Credit institutions shall verify to the Authority that the increased basic remuneration - performance pay ratio proposed does not violate the provisions of this Act, prudential requirements and the provisions of Regulation 575/2013/EU.

(6) Credit institutions shall apply the discount rate provided for in the Authority's decree for determining the amount to a maximum of 25 per cent of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

(7) Having regard to the limits set out in Subsections (1) and (2), the basic remuneration and variable remuneration shall be appropriately balanced, and the basic remuneration should be of an amount to allow the operation of fully flexible remuneration policy, including the possibility to pay no variable remuneration, but a fixed basic remuneration only.

(8) Where remuneration is performance related, the performance of the senior executive or other staff member and of the business unit concerned, as well as the overall results of the credit institution shall be assessed simultaneously, with financial and non-financial criteria taken into account. The assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance, and guaranteed variable remuneration occurs only when hiring new staff and is limited to the first year of employment. In determining the total amount of variable remuneration to be paid the credit institution shall take into account the business cycles, all types of current and future risks, the cost of the capital and the liquidity required.

(9) Guaranteed variable remuneration is not permitted, and shall not be a part of prospective remuneration plans.

(10) Variable remuneration can be paid or vests upon the senior executive or other staff member only if:

*a)* it is sustainable according to the financial situation of the credit institution, and  
*b)* it is justified on the basis of the performance of the credit institution, the business unit and the senior executive or other staff member concerned.

(11) At least 50 per cent of any variable remuneration shall consist of the following:

*a)* shares or equivalent ownership interests of the credit institution concerned, subject to the legal structure of the credit institution concerned and taking into account the resulting unique characteristics, or share-linked instruments or equivalent non-cash instruments, in case of a non-listed credit institution, and

*b)* where appropriate, Additional Tier 1 instruments, Tier 2 instruments or other instruments, and

*ba)* which can be fully converted to Common Equity Tier 1 instruments, or

*bb)* which can be written down from the said instruments, and

that in each case adequately reflect the credit quality of the credit institution as a going concern and are appropriate to be used for the purposes of variable remuneration. with the proviso that the instruments referred to in this Subsection shall be subject to an appropriate retention policy.

(12) At least 40 per cent - or at least 60 per cent in the case of a variable remuneration component of an amount above the limit specified in the internal policy - of the variable remuneration component shall be deferred aligned with the nature of the business, its risks and the activities of the senior executive or member of staff in question, and paid at the time the employment is terminated if employed for less than three years, or over a period which is not less than three to five years in other cases.

(13) Up to 100 per cent of the total variable remuneration shall be subject to malus or clawback arrangements. Credit institutions shall set specific criteria in the internal policy for the application of malus and clawback. Such criteria shall in particular cover situations where the senior executive or the staff member:

*a)* participated in or was responsible for conduct which resulted in significant losses to the credit institution; and

*b)* failed to meet appropriate standards of fitness and propriety.

(14) Where the financial performance of a credit institution is subdued to an extent defined by the internal policy due to the excessive risk-taking behavior of any senior executive or member of staff, the variable remuneration of this senior executive or member of staff shall be reduced.

(15) Payment of variable remuneration must not limit the ability of the credit institution to strengthen its capital base to the extent necessary, and may not employ any vehicles or methods which are not consistent with the implementation of the principles of the remuneration policy.

(16) Payment of variable remuneration must not result in non-compliance with the provisions of this Act, prudential requirements and the provisions of Regulation 575/2013/EU.

### *Section 119*

(1) Payments related to the termination of an employment contract shall reflect performance achieved over time and are designed in a way that does not reward failure.

(2) Remuneration packages relating to full compensation for remuneration or buy out from contracts in previous employment must align with the long-term interests of the credit institution including retention, deferral, performance and clawback arrangements.

(3) If the credit institution has a pension policy, it shall be in line with the business strategy, objectives, values and long-term interests of the credit institution. If, according to the pension policy, pension benefits are granted on a discretionary basis by a credit institution to a senior executive or staff member as part of his variable remuneration package, such discretionary pension benefits shall be paid by the credit institution in the form of instruments referred to in Subsection (11) of Section 118 subject to a five-year retention period following the termination of employment.

### *Section 120*

(1) The remuneration of staff members carrying out supervisory functions - including the employees carrying out internal control functions - shall be independent from the business units they oversee, and are calculated in accordance with the achievement of the objectives linked to their functions.

(2) Subject to the exception set out in Subsection (3), the remuneration of the staff members carrying out supervisory functions and risk management functions - including the employees carrying out internal control functions - shall be directly overseen by the supervisory board.

(3) If the credit institution has a remuneration committee, the remuneration committee shall be responsible to oversee the remuneration of the employees concerned.

(4) Senior executives and staff members of credit institutions are required to undertake not to use personal hedging strategies to undermine the risk alignment effects embedded in their remuneration arrangements.

#### *Section 121*

(1) In the application of this subtitle a credit institution permanently affiliated to a central body shall be construed as a single credit institution together with the central body.

(2) The Hungarian branches of credit institutions established in other EEA Member States shall apply the provisions on remuneration of the national law of the State where the credit institution is established.

### 56. Public disclosures

#### *Section 122*

(1) Credit institutions shall, on an individual basis, comply with the public disclosure requirements laid down in Part Eight of Regulation 575/2013/EU at least once every six months, and shall adopt a formal policy to comply with disclosure requirements for assessing the appropriateness of their disclosures, including their verification and frequency.

(2) In addition to what is contained in Regulation 575/2013/EU, parent institutions in a Member State and parent financial holding companies in a Member State shall publicly disclose their legal structure and governance and organizational structure at least annually, including their remuneration policy.

(3) Credit institutions shall comply with public disclosure requirements on their website, or on the internet site on which they publish their annual financial report.

#### *Section 123*

(1) Credit institutions, if subject to supervision on a consolidated basis under Regulation 575/2013/EU, shall disclose at least annually, specifying, by EEA Member State and by third country, the following information for the financial year:

- a)* the credit institution's name, nature of activities and geographical distribution;
- b)* turnover;
- c)* number of employees on a full time basis;
- d)* profit or loss before tax;
- e)* tax on profit or loss; and
- f)* public subsidies received.

(2) Credit institutions shall, on an individual basis, disclose their return on assets, calculated as their net profit divided by their total balance sheet.

### 57. Application of the internal ratings based approach

#### *Section 124*

(1) Without prejudice to what is contained in Part 3, Title I, Chapter 3, Section 1 and Title IV, Chapter 5, Sections 1-5 of Regulation 575/2013/EU, credit institutions shall strive to use the internal ratings based approach for calculating their risk-weighted exposure amounts and capital requirements having regard to their size, internal organization and the nature, scale and complexity of their activities.

(2) In respect of their exposures, credit institutions shall not rely solely on external credit ratings having regard to the nature, scale and complexity of their activities.

(3) The Authority shall monitor the strategic and operational steps taken by credit institutions to achieve the goals set out in Subsections (1) and (2), and shall encourage them to develop internal specific risk assessment capacity and to increase use of internal models, in particular:

*a)* for specific risk of debt instruments in the trading book, and

*b)* for default and migration risk,

where the credit institutions' exposures to specific risk are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers.

### ***Chapter VII***

#### ***Provisions on Exercising Ownership Rights, Governance and Control***

##### **58. Owners with qualifying holding**

#### *Section 125*

Any person with a qualifying holding in a financial institution shall 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 good business reputation and 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.

##### **59. Authorization of the acquisition of qualifying holding**

#### *Section 126*

(1) The Authority's permission shall be requested:

*a)* for the acquisition of a qualifying holding in a financial institution, or

*b)* for the acquisition of additional qualifying holding in a financial institution by which to reach the 20, 30 or 50 per cent limit.

(2) The application for the authorization referred to in Subsection (1) shall have enclosed the documents prescribed in Paragraphs *g)* and *h)* of Subsection (1) of Section 18 and in Subsections (2)-(4) of Section 18.

(3) Members of a financial institution may enter into a contract regarding members' shares or voting rights, or to secure advantages in excess of such rights only upon the Authority's permission.

(4) The Authority's permission is required for the acquisition of majority interest in an enterprise that has a qualifying holding in a financial institution.

(5) The applications for authorization provided for in Subsections (1)-(4) shall contain:

- a) the name of the holder of a qualifying holding in a financial institution;
- b) the percentage of shares owned by the applicant in the enterprise which has a qualifying holding in a financial institution;
- c) the percentage of share proposed to be acquired;
- d) the contract proposal made for the acquisition of members' share or for an agreement to provide substantial advantages attached to voting rights; and
- e) having regard to an executive officer of the applicant, all data and information for assessment of the grounds for exclusion specified in Subsection (4) of Section 137 and a statement regarding the criminal proceedings specified in Subsection (6) of Section 137.

#### *Section 127*

(1) For the purposes of determining the size of qualifying holding, the voting rights shall be calculated - irrespective of any provisions for restrictions on voting rights - on the basis of all the shares to which voting rights are attached, as provided for in the company's charter document.

(2) For the purposes of determining the size of qualifying holding, apart from the applicant's shares, the voting rights referred to in Subsections (3) and (4) shall also be taken into consideration.

(3) For the purposes of determining the size of qualifying holding, the voting rights of:

a) any investment fund manager or undertaking for collective investment in transferable securities (hereinafter referred to as "UCITS"), if the investment fund manager or the UCITS management company is controlled by the applicant and if able to exercise the voting rights attached to the securities it manages,

b) any credit institution or investment firm, if the credit institution or investment firm is controlled by the applicant and if able to exercise the voting rights attached to the portfolio it manages

under direct or indirect instructions from the applicant or another controlled company of the applicant, or in any other way, shall be taken into consideration.

(4) For the purposes of determining the size of qualifying holding, voting rights attached to shares shall be recognized as the voting right of the applicant in any of the following cases, where the voting right:

a) is exercised by the applicant and a third party under an agreement, which provides for the concerted exercise of the voting rights for the parties to the agreement;

b) is exercised by the applicant under an agreement providing for the temporary transfer of the voting rights in question;

c) is exercised by the applicant, in the case of voting rights attaching to shares which are placed as collateral, under an agreement which provides for the exercise of such voting rights;

d) is exercised by the applicant under the right of beneficial interest;

e) is exercised by the applicant's controlled company within the meaning of Paragraphs a)-d);

f) is exercised by the applicant, if functioning as a depositary, at its own discretion in the absence of specific instructions from the depositor;

g) is exercised by a third party in his own name and on behalf of the applicant, under an agreement with the applicant; or

h) is exercised by the applicant, if functioning as a proxy, at its own discretion in the absence of specific instructions from the principal.

(5) For the purposes of determining the size of qualifying holding, voting rights held by the applicant's controlled company need not be taken into account if the applicant and the aforesaid controlled company provides a statement at the time of acquiring the share in question to the effect that:

a) those rights are not exercised, or exercised by a third party independently from the applicant and its controlled company, and that the shares will be disposed of within one year of acquisition;

b) those rights are exercised by a third party - independently from the applicant and its controlled company - according to specific instructions received from that third party on paper or by way of electronic means; or

c) they are not involved in the decisions relating to the appointment and removal of members for the financial institution's decision-making, management or supervisory bodies.

(6) In determining the size of qualifying holding, voting rights held by any credit institution or investment firm that is controlled by the applicant shall not be taken into account if the credit institution or investment firm is authorized to provide portfolio management services, and it is permitted to exercise the voting rights attached to the portfolio it manages:

a) under instructions submitted on paper or by way of electronic means,

b) independently from the applicant.

#### *Section 128*

(1) The person having a qualifying holding in a financial institution shall notify the Authority two days prior to the execution of the contract if he:

a) proposes to terminate his qualifying holding in full, or

b) proposes to alter his qualifying holding so as to reduce it below the 20, 33 or 50 per cent limit.

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

(3) In the case provided for in Paragraph b) of Subsection (1), the notification shall indicate the members' share remaining, the percentage of voting rights or the amendment of the agreement providing substantial advantages.

#### *Section 129*

(1) The Authority shall verify receipt of the application specified in Subsections (1) and (3) of Section 126 in writing, within two working days (hereinafter referred to as "certificate of receipt"), sent to the applicant or the owner of qualifying holding, and shall indicate in the certificate the administrative time limit described in Subsections (2)-(6). This provision shall also apply in the case of remedying deficiencies.

(2) The Authority shall conduct an investigation within sixty working days of the date of issue of the certificate of receipt as regards the proposed acquisition of an interest to examine as to whether compliance with the relevant provisions of this Act can be ensured after the fact.

(3) If the information supplied in accordance with this Act is found deficient, the Authority may request within fifty working days from the date of the certificate of receipt - in writing -

additional information or to have the deficiencies remedied, indicating the information specifically required for completion of the evaluation process (hereinafter referred to as “remedying deficiencies”).

(4) The time limit for remedying deficiencies is twenty working days.

(5) The time limit for remedying deficiencies shall be thirty working days if:

*a)* the applicant is established in a third country, or

*b)* the applicant is not subject to supervision according to the national laws of Member States on the transposition of Council Directives 85/611/EEC and 92/49/EEC, and Directives 2002/83/EC, 2005/68/EC and 2006/48/EC of the European Parliament.

(6) After the deficiencies are remedied the Authority shall be entitled to request further information from the applicant. However, the time limit prescribed for the disclosure of such information shall be included in the administrative time limit.

### *Section 130*

(1) If the applicant:

*a)* is a financial institution, investment firm, insurance company, reinsurance company or a UCITS management company authorized in another EEA Member State,

*b)* is the parent of either of the companies mentioned in Paragraph *a)*, or

*c)* controls either of the companies mentioned in Paragraph *a)*,

the Authority shall forward the application without delay to the competent supervisory authority of the place where the financial institution, investment firm, insurance company, reinsurance company or the UCITS management company is established.

(2) The Authority shall convey the opinions received from the competent supervisory authorities in the justification of its resolution.

(3) If the application of an applicant provided for in Subsection (1) was conveyed to the Authority via another competent supervisory authority, the Authority shall submit the necessary information to the competent supervisory authority forwarding the application, shall formulate its opinion, and may - in justified cases - express reservations regarding the acceptance of the application.

### *Section 131*

(1) The Authority shall refuse to grant the authorization defined in Subsections (1) and (3) of Section 126, if the applicant's (or its member's or executive officer's):

*a)* activities, influence on the financial institution is considered harmful to the financial institution's independent, sound and prudent management,

*b)* business activities or relations, or direct or indirect members' share or holdings in other companies is structured in a manner to obstruct supervisory activities, or

*c)* good business reputation is lacking.

(2) The conduct of the applicant, or of any member or executive officer of the applicant, or their influence on the financial institution shall be considered harmful to the independent, sound and prudent management of the financial institution in particular if:

*a)* the applicant's financial and economic position is deemed inadequate for the size of the ownership interest he proposes to acquire;

*b)* the legitimacy of the funds used for the acquisition of ownership interest cannot be verified, or that of the authenticity of the particulars of the person indicated as the owner of such funds;

c) the applicant fails to meet the conditions set out in the emergency action plan;  
d) the Authority has suspended his right to exercise voting rights within five years preceding the notification; or  
e) in respect of natural persons, there is grounds for exclusion under Subsection (4) of Section 137.

(3) If there is no grounds to refuse authorization for the acquisition of a qualifying interest, but there is a criminal proceeding in progress against the applicant natural person as provided for in Subsection (6) of Section 137, the Authority shall grant authorization subject to suspension of the member's voting rights pending conclusion of the criminal proceeding.

(4) In order to check the facts or circumstances provided for in Subsections (1)-(2), the Authority may request data or information that may be processed by virtue of law from either party concerned.

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

(6) If the member of a financial institution is restrained by law from exercising his voting rights, the voting rights of such person shall not be included for the purposes of quorum.

(7) The permission of the Authority shall not be a substitute for the authorization of the Gazdasági Versenyhivatal (*Hungarian Competition Authority*) required for the acquisition of control.

#### *Section 132*

(1) If the Authority did not refuse to grant its consent within the administrative time limit specified in Section 129 for the acquisition of qualifying holding or for increasing the size of qualifying holding, its consent shall be considered as granted.

(2) If the Authority did not refuse to grant its consent for the acquisition of qualifying holding or for increasing the size of qualifying holding, it may specify the time limit within which to complete the transaction, not exceeding six months.

#### *Section 133*

In the case of failure to apply for authorization as prescribed, refusal of the application, failure to comply with the obligation of notification as prescribed or refusal to disclose information, the Authority may prohibit the exercising of voting rights deriving from the agreement for the acquisition of ownership share or for providing advantages until the relevant statutory requirements are fulfilled.

#### *Section 134*

(1) Any person:  
a) who has acquired a qualifying holding in a financial institution;  
b) who has altered the size of his qualifying holding in a financial institution:  
ba) upon which it reaches the 20, 33 or 50 per cent limit, or  
bb) upon which it drops below the 20, 33 or 50 per cent limit; or  
c) who has entered into an agreement providing substantial advantages attached to ownership rights or voting rights, or has amended such an agreement;

shall notify the Authority in writing within thirty days of the time of conclusion of the agreement.

(2) Financial institutions shall notify the Authority in writing within five working days upon gaining knowledge of any acquisition, disposal or modification of ownership interest relative to the limits laid down in Sections 126-128.

## 60. Regulations relating to owners, members of management bodies and senior executives

### *Section 135*

The articles of association of a credit institution operating in the form of a public limited company may provide for the maximum level of voting rights which may be exercised by any one shareholder. When establishing maximum voting rights, shareholders must not be discriminated against in any way. The company's articles of association may contain provisions to stipulate the maximum level of voting rights of any group of shareholders specified in the articles of association.

### *Section 136*

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

*a)*<sup>17</sup> the shareholders' name, address, mother's name, and citizenship for natural persons, the registered address for legal persons and sole proprietorships;

*b)* if a share is held by more than one person, the information of the owners and their representative as provided for in Paragraph *a*);

*c)* the code, series and face value of the shares;

*d)* the type of shares;

*e)* date of purchase;

*f)* the date when the acquisition is recorded in the register of shareholders;

*g)* the date of over stamping;

*h)* the date when the share is retired and destroyed; and

*i)* the registration number and date of the resolution of the Authority related to the acquisition of the holding.

(2) The executive board shall maintain the register of shareholders so as to contain facilities to permit unrestrained identification of all changes, modifications, deletions or corrections, the name of the person making the entry 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 indirect ownership interest of members of a financial institution holding at least five per cent, calculated according to Schedule No. 3. Persons having or acquiring an ownership interest of five per cent or more in a financial institution shall notify the financial institution concerning their indirect holding in the financial institution, and any change therein, by disclosing simultaneously the data suitable for identification.

(4) The Authority shall suspend the voting rights of any member who fails to fulfill the obligation specified in Subsection (3) until the time at which such obligations are met.

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<sup>17</sup> Amended by Paragraph c) Subsection (2) of Section 308 of this Act.

(5) Senior executives of financial institutions operating in the form of limited companies shall formally notify the financial institution's executive board concerning the shares issued by the financial institution that are in their holding.

*Section 137*

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

(2) Authorization shall be deemed granted if the Authority does not reject it or does not suspend the procedure within thirty days from the day following the date of receipt of the application. If there is a criminal proceeding provided for in Subsection (6) in progress against the person referred to in Subsection (1), the Authority shall suspend its proceedings for the application pending conclusion of the criminal proceeding.

(3) The Authority shall refuse any application for authorization for the election or appointment of a natural person if either of the grounds for exclusion enumerated in Subsections (4) and (5) apply with regard to the person nominated for appointment or election or, in the case of a managing director, if the nominated person fails to satisfy the conditions specified in Section 155.

(4) The persons described in the following may not be appointed as a senior executive of a financial institution or mixed financial holding company:

*a)* any person who has (or had) a qualifying holding in or who is (or has been) the senior executive of such a financial institution:

*aa)* in the case of which insolvency can only be avoided by exceptional measures taken by the Authority, or

*ab)* which was liquidated due to its activity license being revoked, and whose personal responsibility for the development of this situation has been established by final resolution;

*b)* any person who has seriously or systematically violated the provisions of this Act or another legislation pertaining to banking or the management of financial institutions and such has been determined by the Authority, another authority or a court in a final resolution dated within the previous five years;

*c)* any person who has a criminal record;

*d)* any person who is not of good business reputation.

(5) In addition to what is contained in Subsection (4), with the exception of supervisory board members, the person designated to be a senior executive of a credit institution shall satisfy the following criteria:

*a)* have at least three years of experience in banking or business management, or in financial or economic management in the public sector;

*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) Any person who has been indicted by the public prosecutor for any of the criminal offenses specified under:

*a)* Titles VII and VIII of Chapter XV and Chapters XVII and XVIII of Act IV/1978 in force until 30 June 2013,

*b)* Chapters XXVII or XXXV-XLIII of the Criminal Code, or who has been indicted abroad by the competent authority for any crime against property or an economic crime that is punishable under Hungarian law may not be employed as a senior

executive until the conclusion of the criminal proceedings, and such persons shall be suspended from the performance of such duties and responsibilities.

(7) The articles of association of the credit institution that operates in the form of a public limited company may contain provisions to prescribe a larger majority than a simple majority of the votes for the removal of executive board members, not exceeding three-quarters majority of the votes.

#### *Section 138*

(1) Any reference made in this Act to:

*a)* the member of a financial institution or financial enterprise, it shall be construed as the founders of the foundation in the case of a financial enterprise set up as a foundation,

*b)* the executive board of a financial institution or financial enterprise, it shall be construed as the board of trustees in the case of a financial enterprise set up as a foundation.

(2) Any reference made in this Act to general meeting, it shall be construed as the founders of the foundation in the case of a financial enterprise set up as a foundation.

(3) Where this Act contains provisions for calling the general meeting or for implementing sanctions or measures by the members, however, taking such sanctions falls within the competence of the foundation's board of trustees, it shall be construed as convening the board of trustees and implementing its measures in the case of a financial enterprise set up as a foundation.

### 61. Good business reputation

#### *Section 139*

(1) The burden of proof for good business reputation lies with the applicant.

(2) The applicant may provide proof of good business reputation in any manner he proposes, but the Authority may prescribe other specific credentials (documents) to be provided.

(3) If the Authority refuses to accept the proof provided to substantiate good business reputation, it shall be stated in a resolution.

(4) The Authority shall be entitled to contact the competent foreign authority directly as part of its procedure to resolve a person's good business reputation, and may consult the EBA register on actions taken by EEA Member States for that purpose.

### 62. Rules of liability and representation

#### *Section 140*

(1) The executives and members of the executive board and of the supervisory board of a financial institution and the senior executives of a financial institution incorporated as a branch shall be liable to ensure that the financial institution performs the authorized activities in accordance with the provisions of this Act, regulations relating to prudential requirements and the provisions of Regulation 575/2013/EU.

(2) The senior executives 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 clients, in compliance with the relevant regulations.

### *Section 141*

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

- a)* in the case of credit institutions operating in the form of limited companies or set up as a cooperative society, two members of the executive board or two executive officers jointly,
- b)* in respect of the Hungarian branch of a foreign credit institution, two senior executives jointly.

(2) The joint signatory right specified in Subsection (1) may be transferred as a joint authority to sign in accordance with the procedure laid down in the internal policy approved by the credit institution's executive board. The internal policy laying down the signatory right of the persons undertaking commitments on behalf of the credit institution must be presented when requested by any of the credit institution's clients.

### *Section 142*

The executive officers or the auditor of a financial institution shall notify the Authority without delay if:

- a)* there is any danger that the financial institution will not be able to fulfill the responsibilities arising from financial service activities, financial auxiliary service activities or comply with the provisions of this Act, other regulations enacted by authorization of this Act, and other relevant legal provisions pertaining to its activities and foreign exchange regulations;
- b)* the financial institution is unable to meet its payment obligations;
- c)* the reason defined in Section 32 for the withdrawal of the financial institution's activity license and authorization of establishment has occurred.

## 63. Conflict of interest

### *Section 143*

The senior executive shall forthwith notify the Authority:

- a)* when elected to serve in the executive board or supervisory board of another financial institution, or as a managing director or executive officer of a financial institution incorporated as a branch, or when terminating such office;
- b)* when acquiring a qualifying holding in an enterprise or when terminating such holding;
- c)* if indicted in criminal proceedings as provided for in Subsection (6) of Section 137.

### *Section 144*

(1) A senior executive or an employee authorized to make management decisions may not participate in the preparation or passing of decisions relative to any commitment by the financial institution if he holds an executive office or has a qualifying holding in the client on whose behalf the risk is assumed.

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

(3) A senior executive may not assume any contractual obligations - including sales agreements - with the financial institution in which he is a member of the executive board or supervisory board, or is a managing director thereof, unless the executive board has granted prior consent by unanimous decision.

(4) The provision set out in Subsection (3) shall apply *mutatis mutandis* concerning any senior executive of the financial institution having a seat in the executive board or supervisory board or serving as a managing director concerning his plans to conclude a contract with another financial institution of the same group. In this case, the prior consent of the executive board of the contracting financial institution and - if other than the controlling credit institution - of the controlling credit institution shall be required for the conclusion of a contract.

(5) The restriction provided for in Subsection (1) shall not apply if the decision underlying the commitment concerns an enterprise that is subject to supervision on a consolidated basis, where such supervision on a consolidated basis also covers the financial institution in which the senior executive or an employee authorized to make business decisions, who is involved in the decision-making process, holds an executive office.

#### *Section 145<sup>18</sup>*

### 64. Insider dealing

#### *Section 146*

(1) 'Inside information' means information of a precise nature which has not been made public, relating to the financial institution's or its client's financial, economic or legal position, or the expected changes therein, and which, if it were made public, would be likely to have a significant effect on the representation of the financial institution or its client.

(2) For the purposes of this subtitle the following persons shall be considered to have access to inside information:

*a)* senior executives and any person who is recognized as a manager or executive officer by this Act and by the financial institution's internal rules and regulations;

*b)* any person performing official actions and expert's activities and having access to inside 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 inside information, including the head or employee of a foreign financial institution.

#### *Section 147*

(1) The person provided for in Subsection (2) of Section 146 may not use the information obtained while performing the functions of his job, or through such position in connection with the financial institution's operations and clients, nor may he disclose 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 inside information, or with the persons provided for in

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<sup>18</sup> Enters into force on 1 July 2014.

Subsection (2) of Section 146 where any inside information is involved, based on which the person described in Subsection (2) of Section 146, or the close relative thereof, or any third person acquires any financial advantage or causes any damage to other persons.

## 65. Governance of financial institutions

### *Section 148*

(1) All members of the management body in its managerial function of any financial institution must be natural persons.

(2) The management body in its managerial function of a credit institution shall have at least two members employed under an employment contract by the credit institution (hereinafter referred to as “internal members”).

(3) The executive board of a credit institution set up as a cooperative society shall have at least one internal member, and the board of trustees of a financial enterprise set up as a foundation shall have at least one member who is employed by the foundation under employment contract.

### *Section 149*

(1) The management body in its managerial function of a credit institution shall have at least two members recognized as residents according to foreign exchange regulations - including persons with the right of free movement and residence - who has had a permanent residence in Hungary for at least one year.

(2) Internal members of the credit institution’s management body in its managerial function shall be elected from among the managing directors of the credit institution. Any person who has been the auditor of the credit institution or of a financial institution with close links to the credit institution during the preceding three years may not be a member.

(3) Unless otherwise provided for by law, membership in the credit institution’s management body in its managerial function of a person having a contract of employment with the credit institution shall terminate at the time his employment is terminated.

### *Section 150*

In financial institutions, employer’s rights over the managing directors shall be exercised by the executive board.

### *Section 151*

(1) All meetings of the management body of the financial institution shall be recorded in minutes. The minutes shall indicate:

- a) the venue and the date and time of the meeting;
- b) the names of the members present;
- c) the motions presented;
- d) the resolutions approved, and any protests raised against such decisions.

(2) A member of the management body may request his statement to be recorded in the minutes verbatim.

(3) The minutes shall be signed by the chairman of the meeting and by two other members of the management body present. A copy of the minutes shall be sent to all members of the

management body, and the minutes of executive board meeting shall be sent to the chairman of the supervisory board within fifteen days following the meeting, regardless of whether they were present or not.

(4) The management body may only make valid decisions by telephone, fax, telex or other similar means within the time frame specified in the articles of association, if the percentage of votes of the members of the management body - as prescribed in the articles of association - is fixed in a private document representing conclusive evidence and sent to the registered office of the financial institution.

#### *Section 152*

(1) All members of the management body in its supervisory function must be natural persons.

(2) The management body in its supervisory function is a body consisting of at least three but not more than nine members, whose members - with the exception of the employees' representatives - may not be in the employment of the financial institution.

(3) The responsibilities of the management body in its supervisory function shall inter alia include the following:

*a)* ensuring that the financial institution has a comprehensive control system in place affording suitable facilities for effective operation;

*b)* making a recommendation to the general meeting for the auditor to be elected, covering also his remuneration;

*c)* reviewing the financial institution's annual and interim financial reports;

*d)* directing the internal control unit, including

*da)* approval of the internal control unit's annual plan of inspections,

*db)* analysis of the reports prepared by the internal control unit at least once every six months, and overseeing the implementation of the necessary measures,

*dc)* appointment, if necessary, of outside experts to assist in the work of the internal control unit,

*dd)* making recommendations regarding personnel changes in the internal control unit;

*e)* draw up recommendations and proposals based on the findings of inspections carried out by the internal control unit.

(4) The management body in its supervisory function shall, in the performance of its duties, have adequate access to information on the risk situation of the credit institution, to the risk management function and to external expert advice.

(5) The prior consent of the supervisory board is required for decisions for entering into an employment contract with the head of the internal control unit, and relating to the termination of his employment contract initiated by the employer.

(6) The chair of the management body in its supervisory function shall send copies of the minutes, proposals and reports to the Authority 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 management.

#### *Section 153<sup>19</sup>*

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<sup>19</sup> Amended by Paragraph g) Subsection (8) of Section 306 of this Act.

A supervisory board of at least three members shall be established to supervise the board of trustees of a financial enterprise set up as a foundation. The provisions relating to the supervisory boards of financial institutions shall apply mutatis mutandis to the aforementioned supervisory board.

## 66. Internal control, internal control systems

### *Section 154*

(1) Banks and specialized credit institutions shall set up and operate an independent internal control unit supervised directly by the management body in its supervisory function. The internal control system shall be operated by the internal control unit, and the functions of the internal control unit shall be carried out by the internal controller.

(2) The purpose of the internal control system is:

- a) promoting the lawful operation of the credit institution;
- b) overseeing compliance with the provisions of the credit institution's internal rules and regulations;
- c) uncovering and reporting any deviation from the relevant legislation or the internal rules and regulations and to propose corrections for any discrepancies that are uncovered;
- d) to ensure that the necessary financial and other information for making decisions are provided;
- e) to ensure that the interests of the credit institution, and the interests of its clients and owners are protected; and
- f) monitoring compliance with the provisions of the relevant internal policies relating to the credit institution, and verifying the contextual effectiveness thereof.

(3) The components of the internal control system are internal control (control procedures incorporated into the system, management control and the internal control unit) and the management information system.

(4) Credit institutions shall set up the internal control system consistent with the characteristics, magnitude, complexity, and risks of the services they provide. The internal control system is built on the credit institution's data files, supported by comprehensive analyses and risk assessments. The internal control system shall cover the full spectrum of the credit institution's operations, the activities of departments, separately and integrated, including outsourced activities.

(5) Credit institution set up as a cooperative society and financial enterprises shall employ at least one internal controller. Credit institutions set up as cooperative societies 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 credit institutions set up as cooperative societies or financial enterprises.

(6) The organizational structure, powers and responsibilities of the internal control unit, the professional requirements for the internal controller, and the rules of procedure must be fixed in the internal policies of the financial enterprise.

(7) The responsibilities of the internal control unit (internal controller) of the financial institution shall include:

- a) to examine the financial institution's
  - aa) operation for the purpose of compliance with internal policies,
  - ab) financial services and financial auxiliary services in terms of legality, security, and transparency; and

*b)* all other functions delegated by law.

(8) 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 managing director may confer any additional control and supervisory functions and duties upon the internal control unit apart from what is contained in the annual plan.

(9) The managing director shall exercise employer's rights over the internal controllers directly.

(10) The head of the internal control unit or the internal controller:

*a)* shall report

*aa)* to the supervisory board and the executive board,

*ab)* in the case of branches, to the founder's supervisory board and executive board or to their appropriate bodies; moreover

*b)* shall, if necessary, have its reports made available to the Authority.

(11) The head of the internal control unit, or the person entrusted with control duties where the financial institution employs only one internal controller,

*a)* shall have a university-level degree in a relevant field provided for in Subsection (3) of Section 155, or shall be a certified chartered accountant with at least three years of professional experience, and

*b)* shall have no criminal record.

(12) The tasks of the internal control unit, the professional requirements for the internal controller, the information technology and other technical equipment to be made available, and the rules of procedure shall be fixed in the internal policies of the management body in its managerial function, with the proviso that it shall be reviewed at least annually. The process referred to in Paragraph *f)* of Subsection (2) shall not apply to internal control policies.

## 67. Management

### *Section 155*

(1) Any person to be appointed or elected to hold a directorship in a credit institution or as a senior executive of a branch:

*a)* shall meet the general requirements set out in Section 137 pertaining to persons in executive positions;

*b)* shall be notified to the Authority - for the purpose of obtaining prior authorization - at least thirty days before the proposed date of election or appointment, and authorization has been granted by the Authority or it is to be considered granted on the basis of Subsection (2) of Section 137;

*c)* shall have:

*ca)* a university-level degree in a relevant field and at least four years of management experience gained at a credit institution,

*cb)* a university-level degree in a relevant field and at least five years of management experience obtained at the Authority, the OBA, at voluntary deposit insurance, institutional protection funds, at the Pénzügyi Szervezetek Állami Felügyelete (*Hungarian Financial Supervisory Authority*) or its predecessor, or at an equivalent foreign institution,

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

*cd)* a university-level degree in a non-related field, and at least six years of management experience at a financial institution or investment firm of the same type or size.

(2) The application referred to in Paragraph *b*) of Subsection (1) above shall include the professional credentials of the person proposed to be appointed or planned to be elected as well as the documents or the certified copies thereof in proof of compliance with the requirements set out in Subsection (1), and a statement from the person affected in respect of the criminal proceedings provided for in Subsection (6) of Section 137.

(3) For the purposes of Subparagraphs *ca)-cc*) of Paragraph *c*) of Subsection (1), the following shall be recognized as a university-level degree in the relevant field:

*a*) a university or college diploma in economics under the Act on Higher Education, or a degree in economics obtained in basic or masters training within the framework of economic sciences according to the Act on Higher Education;

*b*) a law degree;

*c*) a diploma in accountancy; or

*d*) a diploma in higher education or post graduate qualification in the banking profession.

(4) Any person to be appointed to hold a directorship in a financial enterprise:

*a*) shall meet the general requirements set out in Section 137 pertaining to persons in executive positions;

*b*) shall be notified to the Authority - for the purpose of obtaining prior authorization - at least thirty days before the proposed date of election or appointment, and authorization has been granted by the Authority or authorization is to be considered granted on the basis of Subsection (2) of Section 137;

*c*) shall have:

*ca*) a university-level degree,

*cb*) at least three years of professional experience at a financial institution, the MNB, the Pénzügyi Szervezetek Állami Felügyelete or its predecessor, or in public administration, or

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

(5) The application referred to in Paragraph *b*) of Subsection (4) above shall include the professional credentials of the person proposed to be appointed or elected as well as the documents or the certified copies thereof in proof of compliance with the requirements set out in Subsection (4), and a statement from the person affected in respect of the criminal proceedings provided for in Subsection (6) of Section 137.

### *Section 156*

(1) Credit institutions incorporated as limited companies or set up as cooperative societies shall have at least two managing directors, the branches of third-country credit institutions shall have at least two senior executives, and financial enterprises shall have at least one managing director employed under contract of employment.

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

## 68. Provisions relating to public-interest credit institutions

### *Section 157<sup>20</sup>*

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<sup>20</sup> Established by Subsection (6) of Section 306 of this Act, effective as of 15 March 2014.

(1) Public-interest credit institutions shall set up and operate an audit committee according to the provisions of the Civil Code on legal persons, taking into account that - in the case of any credit institution that operates in the form of a private limited company - any reference made in the provisions of the Civil Code on legal persons to a limited company and general meeting shall be construed as a credit institution and its supreme body.

(2) Public-interest credit institutions with a market share of less than 5 per cent in respect of their balance-sheet total may set up a joint risk exposure and management and audit committee whose members shall have appropriate knowledge and expertise to carry out their delegated functions.

## 69. Internal organization

### *Section 158*

(1) Any credit institution that offers investment services or investment auxiliary services as well shall adopt an internal organizational, operational and procedural mechanism, within which the organizational units of financial services and financial auxiliary services, and investment services function as separate units.

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

(3) The organizational units operating independently within the credit institution may exchange bank secrets and securities secrets only as prescribed in the internal rules and regulations. Such rules and regulations shall include provisions to allow access to bank secrets and securities secrets only to persons for whom the information is necessary to discharge their duties.

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

## ***Chapter VIII***

### ***Professional Secrecy***

## 70. Business secrets

### *Section 159*

(1) For the purposes of this Act, 'business secret' shall have the same meaning as defined in the Civil Code.

(2) The owner of a financial institution and a provider of financial and/or financial auxiliary services - other than a financial institution - (including intermediaries), the person planning to acquire a qualifying holding in a financial institution, as well as senior executives and employees of financial institutions and providers of financial and/or financial auxiliary services - other than financial institutions - 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 prescribed in Subsection (2) shall not apply to the following when acting in their delegated function:

a) the MNB;

b) the OBA, deposit and institutional protection funds, and the central bank to the extent required for the integration of credit institutions set up as cooperative societies under the Act on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy, as well as the institutional protection organization defined in the same act, and the government commissioner mentioned in the same act, when acting in the capacity delegated therein;

c) the national security service;

d) the Állami Számvevőszék (*State Audit Office*);

e) the Gazdasági Versenyhivatal (*Hungarian Competition Authority*);

f) the Government oversight agency;

g) property supervisors;

h) the anti-terrorist organization and the internal affairs division that investigates professional misconduct and criminal acts as defined by the Act on the Police.

(4) The obligation of confidentiality prescribed in Subsection (2) shall not apply, concerning the case underlying the procedure, in respect of:

a) investigating authorities and the public prosecutor acting within the scope of criminal procedures in progress and in the process of seeking additional evidence;

b) the courts acting in criminal cases and in civil cases connected with estates, or in bankruptcy and liquidation procedures, as well as acting in local government debt consolidation procedures;

c) the agencies authorized to use secret service means and to conduct covert investigations if the conditions prescribed in other legislation are provided for.

(5) Upon the “urgent matter” request made by an investigating authority, anti-terrorist organization or internal affairs division that investigates professional misconduct and criminal acts as defined by the Act on the Police, financial institutions shall disclose data, whether or not deemed a business secret, from their files which are connected to the case in question even without the public prosecutor’s approval prescribed in specific other legislation.

(6) The disclosure of information by the MNB to the minister in charge of public finances and the minister in charge of the money, capital and insurance markets on credit institutions, in a manner enabling individual identification:

a) for the purpose of analyzing national economy procedures and for compiling the central budget; or

b) where an emergency situation arises which potentially jeopardizes the stability of the financial intermediation system;

shall not be construed as a violation of business secrets.

(7) The Authority’s compliance with the obligation of carrying out supervisory stress tests and for transmitting the outcome of supervisory stress tests to EBA for the purpose of the publication by EBA of the cumulated results of Union-wide stress tests shall not be construed as a violation of business secrets.

## 71. Bank secrets

### *Section 160*

(1) All facts, information, know-how or data in the financial institution’s possession on clients relating to the person, data, financial standing, business activities, management, ownership and business relationships as well as the balance of and transactions executed on the account of a

client at 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 a financial institution shall be considered a client of that financial institution. The provisions on bank secrets shall also apply to any person who approaches a financial institution in order to receive services, but who ultimately decides not to use such services.

(3) The provisions relating to bank secrets shall also apply to the data referred to in Subsection (1) of the clients of intermediaries.

### *Section 161*

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

*a)* so requested by the financial institution's client to whom it pertains, or his lawful representative in an authentic instrument or in a private document representing conclusive evidence expressly indicating the particular data, which are considered bank secrets, to be disclosed; it is not necessary to make the request in an authentic instrument or in a private document representing conclusive evidence if the client provides a statement to that effect 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 client or for enforcement of its outstanding claims.

(2) Pursuant to Paragraph *b)* of Subsection (1), the requirement of confidentiality concerning bank secrets shall not apply to:

*a)* the MNB, the OBA, deposit and institutional protection funds, and the central bank to the extent required for the integration of credit institutions set up as cooperative societies under the Act on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy, as well as the institutional protection organization and the government commissioner in his capacity provided for and detailed by law, the Állami Számvevőszék (*State Audit Office*), the Gazdasági Versenyhivatal (*Hungarian Competition Authority*), the Pénzügyi Békéltető Testület (*Financial Arbitration Board*), voluntary institutional protection and deposit insurance funds, and the European Anti-Fraud Office (OLAF) monitoring the protection of the financial interests of the European Union, when acting in their delegated function;

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

*c)* administrators, liquidators, fiduciaries, and receivers acting in bankruptcy proceedings, liquidation proceedings, in local government debt consolidation procedures, and in dissolution procedures;

*d)* investigating authorities and the public prosecutor's office, acting in an ongoing criminal proceeding or seeking additional evidence;

*e)* courts in respect of criminal proceedings, civil proceedings, bankruptcy proceedings, liquidation and involuntary de-registration proceedings, and local government debt consolidation procedures;

*f)* bodies authorized to use secret service means and to conduct covert investigations if the conditions prescribed in specific other act are provided for;

g) the national security service acting within the scope of duties delegated by law, based upon the special permission of the director-general;

h) tax authorities, customs authorities, health insurance and pension insurance administration agencies in their procedures to check compliance with tax, customs and health insurance and pension insurance payment obligations, and to execute an enforcement order issued for such debts and for the recovery of any provisions that had been claimed and received without legal grounds;

i) bailiffs acting in judicial or administrative enforcement proceedings, including the notice to the name and address of the joint holder of a joint account who is not named as a judgment debtor as specified in Subsection (2) of Section 79/C of Act LIII of 1994 on Judicial Enforcement, and the agency vested with powers to control treasury assets when wishing to enter the enforcement procedure under authority conferred in the Government Decree on Subsidies for Housing Purposes;

j) the Commissioner for Fundamental Rights when acting in an official capacity;

k) the minister in charge of public finances and the minister in charge of the money, capital and insurance markets when acting in their capacity conferred under the Act on the Enhancement of the Stability of the Financial Intermediary System, and the minister in charge for the coordination of supervisory and control functions under competition laws of aid schemes within the meaning of Article 107 of the Treaty on the Functioning of the European Union, other than the support provided from the European Agricultural Fund for Rural Development for processing and marketing agricultural products listed under the Treaty on the Functioning of the European Union, and the aids conferred under the jurisdiction of another minister by other legislation;

l) the Treasury when acting in an official capacity with a view to checking the legal grounds for claiming housing subsidies and the appropriation of such subsidies, and with a view to recovering any disability allowance claimed without legal grounds;

m) the Nemzeti Adatvédelmi és Információszabadság Hatóság (*National Authority for Data Protection and Freedom of Information*) acting in an official capacity;

n) the Magyar Könyvvizsgálói Kamara (*Chamber of Hungarian Auditors*) in connection with any disciplinary proceedings the Magyar Könyvvizsgálói Kamara has opened against the present or former auditor of a financial institution;

o) the Government oversight agency, when acting in an official capacity;

p) to the competent police agency for the tracing of missing persons, or persons subject to an arrest warrant, European arrest warrant or international arrest warrant, and in connection with the identification of an unknown person or a body;

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

(3) Furthermore, the requirement of confidentiality concerning bank secrets shall not apply:

a) when the tax authority or the Authority makes a written request for information from a financial institution on the strength of an international agreement or partnership for cooperation upon a written request made by a foreign authority, provided that 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 of Act XCII of 2003 on the Rules of Taxation;

c) in respect of information provided by a financial institution under Subsection (1) of Section 13 of Act CLXX of 2011 on the Protection of the Homes of Natural Persons Defaulting on Their Obligations Stemming from Loan Contracts;

*d)* where a financial institution complies with the obligation of notification prescribed in the Act on the Implementation of Restrictive Measures Imposed by the European Union Relating to Liquid Assets and Other Financial Interests;

*e)* to the financial institution's compliance with the obligation of reporting prescribed in the Act on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter referred to as "MLT");

*f)* when the Hungarian law enforcement agency makes a written request pursuant to an international agreement for information - that is considered bank secret - from a financial institution, in order to fulfill the written requests made by a foreign law enforcement agency, or by a third-country law enforcement agency if the request contains a confidentiality clause signed by the third-country law enforcement agency;

*g)* when the national financial intelligence unit makes a written request for information - that is considered bank secret - from a financial institution, acting within its powers conferred under the MLT or in order to fulfill the written requests made by a foreign financial intelligence unit, or by a third-country financial intelligence unit if the request contains a confidentiality clause signed by the third-country financial intelligence unit.

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

(5) The information specified in Subsection (4) need not be indicated in the written request if the Gazdasági Versenyhivatal carries out a site inspection or a site search without prior notice. In these cases the Gazdasági Versenyhivatal shall communicate its request on site.

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

(7) Financial institutions may not refuse to disclose information, alleging their obligation of secrecy, in the cases set out in Subsections (1)-(3) of this Section and in Section 162.

(8) The MNB is entitled to obtain bank secrets in the course of data disclosure prescribed for financial institutions by law.

### *Section 162*

(1) Financial institutions shall satisfy the written requests of investigating authorities, the national security service and the public prosecutor's office without delay concerning any client bank account and the transactions they conducted if it is alleged that the bank account or the transaction is associated with:

*a)* any misuse of narcotic drugs (Act IV/1978, Sections 282-282/C), unlawful drug trafficking (Criminal Code, Sections 176-177), possession of narcotic drugs (Criminal Code, Sections 178-179), inciting substance abuse (Criminal Code, Section 181), aiding in the manufacture or production of narcotic drugs (Criminal Code, Section 182) or illegal possession of new psychoactive substances [Act IV/1978, Section 283/B, and Criminal Code, Paragraph *b)* of Subsection (1) of Section 184];

*b)* an act of terrorism (Act IV/1978, Section 261, Criminal Code, Sections 314-316), failure to report a terrorist act (Criminal Code, Section 317), terrorist financing (Criminal Code, Section 318);

*c)* criminal misuse of explosives or blasting agents (Act IV/1978, Section 263, Criminal Code, Section 324);

*d*) criminal misuse of firearms and ammunition (Act IV/1978, Section 263/A, Criminal Code, Section 325);

*e*) money laundering (Act IV/1978, Sections 303-303/A, Criminal Code, Sections 399-400);

*f*) any felony offense committed in criminal association with accomplices or in the framework of a criminal organization;

*g*) insider dealing; or

*h*) market manipulation.

(2) The provisions set out in Subsection (1) shall apply to the anti-terrorist organization and the internal affairs division that investigates professional misconduct and criminal acts as defined by the Act on the Police with respect to data related to criminal activities falling within their jurisdiction.

(3) In the process of satisfying the above-specified requests, financial institutions shall proceed in accordance with the Act on the Protection of Classified Information and other legislation relating to the handling of classified information.

### *Section 163*

(1) The financial institution shall not be allowed to inform the client affected on any disclosure of data made under Paragraphs *d*), *f*), *g*) and *o*) of Subsection (2) of Section 161, Paragraphs *e*)-*g*) of Subsection (3) of Section 161, Section 162, and Paragraph *p*) of Section 164.

(2) With the exceptions set out in Subsection (1), the agency requesting information shall notify the client affected regarding its data request.

### *Section 164*

The following shall not constitute a breach of bank secrecy:

*a*) the disclosure of data compilations from which the clients' personal or business data cannot be identified;

*b*) the disclosure of data pertaining to the name of a payment account holder or the number of such account, furthermore, in connection with any erroneous transfer, disclosure of data to the originator of the executed transfer order or to the credit institution managing the payer's account, relating to the name and address of the payee, or holder of the account if other than a payment account;

*c*) the disclosure of data by a financial institution that is engaged in at least one of the activities specified in Paragraphs *b*)-*g*) of Subsection (1) of Section 3, and by a legal person engaged solely in underwriting guarantees and providing surety facilities to the central credit information system defined by the Act on the Central Credit Information System, including the disclosure of reference data from this system to the reference data providers defined by specific other act;

*d*) the disclosure of data to an auditor authorized by a financial institution, a delegated property administrator, a legal or other expert as well as to an insurance institution providing insurance coverage for the financial institution to the extent necessary for the purposes of the insurance contract;

*e*) the disclosure of data - with the written consent of the financial institution's executive board - to a member with a qualifying holding in the financial institution, a person (enterprise) who proposes to acquire a qualifying holding, an enterprise planning to take over the business as well as auditors, and legal or other experts authorized by such member or such potential members;

f) upon request of the court, presenting the specimen signature of the persons authorized to dispose of the account of a party in a lawsuit;

g) in compliance with bank secrecy regulations, providing data by the MNB suitable for individual identification of credit institutions:

ga) to the Központi Statisztikai Hivatal (*Central Statistics Office*) for statistical purposes,

gb) to the minister in charge of public finances for the purpose of analyzing national economy procedures and for compiling the central budget;

h) the transmission of data by a financial institution to a foreign financial institution if the client of that financial institution (data subject) has consented in writing and the foreign financial institution (data receiver) is able to satisfy the conditions of data processing required by Hungarian law regarding each data item, and if the country where the registered office of the foreign financial institution is located has regulations on data protection which satisfies the requirements of Hungarian regulations as well;

i) disclosure of data to the supervisory authority with jurisdiction over the registered office of the foreign financial institution to the extent necessary for its supervisory activities, and the disclosure of data between the foreign supervisory authority and the Authority 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 Authority 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) the disclosure of data for the purpose of compliance with the provisions of the Act on the Supplementary Supervision of Financial Conglomerates relating to supervision on a consolidated basis;

l) the disclosure by the Authority to the Gazdasági Versenyhivatal (*Hungarian Competition Authority*), acting in its official capacity, of data on credit institutions enabling individual identification;

m) data disclosed by the OBA to foreign deposit insurance schemes and to foreign supervisory authorities by way of the means fixed in the relevant cooperation agreement if they guarantee equivalent or better legal protection for the processing and use of such data with the protection afforded under Hungarian law;

n) data 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 information referred to in Article 4 of Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying the transfers of funds to the payment service provider of the payee governed under the regulation and to the intermediary payment service provider in the cases specified in the regulation;

p) the disclosure of data to the MNB acting within its central banking duties, upon written request, pertaining to loans serving as collateral to cover the transactions conducted with a view to discharging its functions conferred under Subsections (1)-(7) of Section 4 of the MNB Act;

q) the disclosure of data by a financial institution to an intermediary engaged with the financial institution under contract to the extent necessary for the purpose of discharging the contract for financial services mediated by the intermediary;

r) disclosure of information by the Authority in an emergency situation as referred to in Subsection (7) of Section 176 to the central banks of EEA Member States or to the European Central Bank when this information is relevant for the exercise of their statutory tasks;

s) the disclosure of data required in connection with an allegation made public by a client of the financial institution, to the extent necessary for the financial institution's reply relating to the relationship between the financial institution and the client;

t) the disclosure of data by the MNB acting within its central banking duties - with a view to discharging its basic tasks - from the central bank information system, in a form enabling individual identification, to the European System of Central Banks and its members, upon request, to the extent arising from the Treaty on the Functioning of the European Union and required in connection with fulfilling their central banking duties;

u) the disclosure of data by financial institutions within the framework of the provision of payment services, and the processing, clearing and/or settlement of payment transactions to other financial institutions and payment service providers other than financial institutions participating in the processing, clearing and/or settlement of payment transactions;

v) exchange of information between the central depository, central counterparty and bodies providing clearing and settlement services, to the extent deemed necessary for discharging the activities of central counterparties and bodies providing clearing and settlement services; and

w) where a financial institution carries out the obligation delegated under Section 6:418 of the Civil Code.

## 72. Common provisions relating to business and bank secrets

### *Section 165*

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

(2) Pursuant to the obligation of secrecy, no facts, information, know-how or data recognized as business and bank secrets may be disclosed to third parties, subject to the exception set out in this Act, without the consent of the client or the financial institution affected, or used beyond the scope of official responsibilities.

(3) The person acquiring any business or bank secrets may not use 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 clients.

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

(5) Financial enterprises operating payment systems shall be authorized to process personal data, recognized as bank secrets and payment secrets obtained under a payment services framework agreement between a payment service provider and a client, until the term of limitation for enforcing any claim arising from the payment transaction in order to combat payment fraud, and for the purposes of preventing, investigating and detecting fraudulent use of cash-substitute payment instruments.

### *Section 166*

Any information that is declared by specific other act 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 IX*

### *Supervision of Financial Institutions*

#### 73. Reporting requirements

##### *Section 167*

- (1) The executive board of a credit institution shall forthwith notify the Authority in writing:
  - a) in the event where any danger of financial failure (illiquidity) is imminent;
  - b) if any emergency has developed in the credit institution's everyday operations, such as insolvency;
  - c) if its own funds has diminished by twenty five per cent or more;
  - d) if it has terminated distributions; or
  - e) if it has ceased its operations, financial service activities.
- (2) The executive board of a credit institution shall notify the Authority within two working days in writing:
  - a) concerning any increase or reduction of the subscribed capital;
  - b) where any financial service, financial auxiliary service is suspended, restricted, or terminated.
- (3) In connection with credit institutions incorporated as branches, the senior executive of the branch shall file the notification described in Subsections (1) and (2) and shall also report the following to the Authority 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 in any State has become insolvent; or
  - c) if the supervisory authority of jurisdiction by reference to the main office or registered office of the foreign credit institution has imposed measures or sanctions against the credit institution or its branch in any State.
- (4) Credit institutions shall submit to the Authority the results of the calculations of their internal approaches for their risk weighted exposures and capital requirements, together with an explanation of the methodologies used to produce them, at least annually, and the Authority shall make an assessment of those results, data and information, and shall inform the relevant credit institutions of its findings.
- (5) If, during the assessment provided for in Subsection (4), the Authority finds any significant divergence from the previous results or values, the Authority shall investigate the reasons therefor and shall use its observations and experience in the process of authorization of internal approaches so as to ensure that the credit institution in question applies the approach best suitable for the calculation of capital requirements consistent with the credit institution's activity, business base and the composition of its exposures.

##### *Section 168*

Financial institutions and their Hungarian branches and other legal persons engaged in providing financial auxiliary services shall supply data to the Authority at regular intervals, subject to the formal and content requirements described by the relevant legislation.

#### *Section 169*

The Authority may instruct the financial institution to supply (emergency) information - for a specific period of time - with the prescribed content and frequency as it deems necessary for monitoring regularly:

- a) liquidity;
  - b) solvency;
  - c) exposures;
  - d) compliance with the rules of financial services and financial auxiliary services;
  - e) the organization's operation; and
  - f) the internal control mechanism;
- for the purposes of exercising its supervisory powers and responsibilities.

#### *Section 170*

The credit institution shall report to the Authority within five working days 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 171*

The Authority may request the presentation of interim financial reports, statements in a prescribed form and sections, and audit reports by financial institutions and legal persons other than financial institutions engaged in financial auxiliary services, and furthermore, may request information from a financial institution and its bodies on all of their business affairs.

### 74. Supervision on a consolidated basis of credit institutions

#### *Section 172*

(1) The Authority shall be responsible for exercising supervision on a consolidated basis over credit institutions registered in Hungary.

(2) The provisions of the IRA concerning supervision on a consolidated basis shall apply if an investment firm is the parent company of a credit institution or if an investment firm holds a participating interest in a credit institution and that credit institution is not subject to supervision on a consolidated basis as provided for in Subsection (1).

(3) The Authority shall not examine the prudent operation of financial holding companies, foreign credit institutions, financial holding companies and mixed-activity holding companies on an individual basis.

(4) If the Authority finds any evidence in documents or in the course of on-site inspections to substantiate close links, 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 company affected.

(5) A credit institution, financial institution, investment firm or ancillary services company in which a credit institution or financial holding company that is subject to supervision on a consolidated basis has a controlling influence or participating interest shall - unless otherwise provided for by law - 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 shall process such data and information separately, in due compliance with the regulations on data protection.

(6) The Authority shall be authorized to request data and information about credit institutions, financial institutions, investment firms or ancillary services companies in which a credit institution or financial holding company that is subject to supervision on a consolidated basis has a controlling influence or participating interest to the extent as it may be necessary to exercise supervision on a consolidated basis.

(7) In connection with its duties relating to supervision on a consolidated basis, the Authority shall be authorized to request information directly, or indirectly through the credit institution that is subject to supervision on a consolidated basis, from:

*a)* persons with a close link to the credit institution that is subject to supervision on a consolidated basis;

*b)* persons with a 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 participating interest in the credit institution; and

*c)* any credit institution, financial enterprise, investment firm or ancillary services company exempted under Article 19 of Regulation 575/2013/EU.

(8) Disclosure of the information requested by the Authority under Subsection (7) may be refused only in cases provided for by law.

(9) 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.

(10) 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 Authority. 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 and monitor transactions as provided for above, which shall be subject to supervision by the Authority.

(11) Credit institutions and financial holding companies shall be required to notify the Authority forthwith concerning the existence of close links provided for in Regulation 575/2013/EU and referred to in Subsection (7) hereof, including all changes therein and the termination thereof.

(12) The notification requirement under Subsection (11) may be satisfied by the foreign parent financial holding company of a Hungarian-registered credit institution through its credit institution that is subject to supervision on a consolidated basis.

(1) The Authority and the competent supervisory authorities of EEA Member States where the EU parent credit institution, EU parent financial holding company or EU parent mixed financial holding company is established shall cooperate in monitoring:

- a)* the internal capital adequacy assessment process,
- b)* the liquidity risk,
- c)* the supervisory review,
- d)* the extra capital requirement under Subsection (2) of Section 79, or
- e)* compliance with institution-specific liquidity requirements

of an EU parent credit institution and its subsidiaries, or an EU parent financial holding company and its subsidiaries, or an EU parent mixed financial holding company and its subsidiaries (hereinafter referred to as “multi-party proceedings”).

(2) If the Authority exercises supervision over the subsidiary credit institution of an EU parent credit institution, EU parent financial holding company or EU parent mixed financial holding company, at the opening of the proceedings provided for in Subsection (1), the Authority:

*a)* shall forward the necessary information and documents without delay to the competent supervisory authorities of the EEA Member States, where any company is established that is subject to supervision on a consolidated basis together with the EU parent credit institution, EU parent financial holding company or EU parent mixed financial holding company in question, and

*b)* shall simultaneously notify the competent supervisory authorities of the EEA Member States referred to in Paragraph *a)* concerning the deadlines for supplying an opinion, analysis or objection relating to the application to the MNB.

(3) The Authority’s resolution in a multi-party proceedings shall be made in concert with all competent supervisory authorities of EEA Member States participating in the proceedings (hereinafter referred to as “resolution adopted in multi-party proceedings”), and it shall be adopted:

*a)* in respect of Paragraphs *a)*, *c)* and *d)* of Subsection (1), upon receipt of the complete application within four months from the date of submission of the Authority’s risk assessment report made on a consolidated basis (covering also the adequacy on the consolidated level of own funds held by the group taking into account the financial situation and risk profile of the group) to the competent supervisory authority participating in the proceedings,

*b)* in respect of Paragraphs *b)* and *e)* of Subsection (1), upon receipt of the complete application within one month from the date of submission of the Authority’s liquidity risk analysis report made on a consolidated basis (covering also the measures taken to address any significant matters and material findings relating to liquidity, including the measures relating to risk management and the need for institution-specific liquidity requirements) to the competent supervisory authority participating in the proceedings.

(4) If the multi-party proceedings is considered to have failed in the absence of the consent of the competent supervisory authority of any EEA Member State participating in the proceedings, the Authority shall open negotiations within the time limit referred to in Subsection (3) at the request of either of the competent supervisory authorities of EEA Member States with the EBA concerning the failure of the multi-party proceedings, or may do so at its own initiative.

(5) If the multi-party proceedings is considered to have failed in the absence of the consent of the competent supervisory authority of any EEA Member State, the Authority shall adopt a decision within ten working days following conclusion of the multi-party proceedings, taking into consideration the opinions, analysis and objections of all competent supervisory authorities of EEA Member States given during the multi-party proceedings.

(6) If the Authority has opened negotiations with the EBA as provided for in Subsection (4), the deadline for the procedure shall expire, by way of derogation from Subsection (3), after ten working days following the date of submission of the decision adopted under Article 19(3) of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC to the Authority.

(7) Following the negotiations provided for in Subsection (6), the Authority shall take its decision in conformity with the decision of EBA. If the Authority's decision differs considerably from the decision of EBA, it shall offer an explanation therefor.

(8) The Authority shall send a copy of its decision, with detailed reasons, to the competent supervisory authorities of each of the EEA Member States that participated in the proceedings, and to the parent company subject to supervision on a consolidated basis.

(9) If the competent supervisory authority of another EEA Member State has powers to conduct the proceedings, and the subsidiary credit institution of the EU parent credit institution, EU parent financial holding company or EU parent mixed financial holding company is supervised by the Authority, the Authority shall send its opinion and/or objections within the time limit specified by the competent supervisory authority of that other EEA Member State of jurisdiction for conducting the proceedings.

(10) If the competent supervisory authority of the EEA Member State where the EU parent credit institution, EU parent financial holding company or EU parent mixed financial holding company is established has adopted a decision following the proceedings under Subsection (1), such resolution shall be binding in its entirety and directly applicable in Hungary. The Authority shall post a notice on its website in Hungarian, indicating that the competent supervisory authority of the EEA Member State has adopted a resolution. The enforcement of resolutions adopted by the competent supervisory authority of any EEA Member State relating to a body supervised by the Authority, monitoring compliance and the measures that may be imposed shall be governed by the relevant Hungarian laws pertaining to the Authority's resolutions.

(11) The Authority shall assess the need for making changes in the resolution referred to in Subsection (3):

*a)* at least once a year, or

*b)* at the request of the competent supervisory authority of the parent or subsidiary subject to supervision on a consolidated basis made out in writing, with reasons, in respect of Paragraph *d)* or *e)* of Subsection (1),

with the proviso that the competent supervisory authority mentioned in Paragraph *b)* may also participate in the proceedings.

## 75. Supervisory control on a consolidated basis

### *Section 174*

(1) Under Regulation 575/2013/EU, the Authority shall be authorized to conduct inspections, on site or otherwise, at the companies subject to supervision on a consolidated basis, including those to which supervision on a consolidated basis also applies, for compliance with the provisions set out in Section 172 and in Regulation 575/2013/EU relating to supervision on a consolidated basis.

(2) The Authority shall have powers to conduct inspections, on site or otherwise, at the persons referred to in Subsection (7) of Section 172 to check the authenticity of the reports, data and information disclosed in connection with supervision on a consolidated basis.

(3) At the request of the supervisory authority of a third country, the Authority, having considered the availability of reciprocity or on the basis of an existing supervisory arrangement, 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.

(4) At the request of the supervisory authority of a third country, the Authority, having considered the availability of reciprocity, may conduct the inspections specified in Subsections (1) and (2) hereof, or, if there is an existing supervisory arrangement, 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 partake in the inspections.

(5) If the parent credit institution is a third-country credit institution, financial holding company or mixed financial holding company, the Authority 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 2013/36/EU of the European Parliament and of the Council concerning supervision on a consolidated basis. As part of the examination, the Authority shall consult with the EBA, following which it shall make a decision regarding conformity.

(6) If the laws of the third country are not in conformity with the provisions laid down in Directive 2013/36/EU of the European Parliament and of the Council concerning supervision on a consolidated basis, the Authority shall take over supervision on a consolidated basis, and shall take all appropriate measures at its disposal.

(7) Where Subsection (6) applies, the Authority shall consult with the competent supervisory authority of the third country where the credit institution, financial holding company or mixed financial holding company in question is established.

#### *Section 175*

(1) If the credit institution is a parent institution in a Member State or an EU parent company, supervision on a consolidated basis shall be exercised by the competent supervisory authority of the EEA Member State that authorized the credit institution.

(2) Where the parent of an parent credit institution is a parent financial holding company or parent mixed financial holding company in a Member State or an EU parent financial holding company, or a parent mixed financial holding company in a Member State or an EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent supervisory authority of the EEA Member State that authorized the credit institution. If the Authority exercises supervision on a consolidated basis, it shall provide the European Commission with written notification concerning the parent financial holding company and the mixed financial holding company, and shall forward such information to the competent supervisory authorities of other EEA Member States.

(3) If a credit institution that is established in Hungary and a credit institution established in another EEA Member State are subsidiaries of the same parent financial holding company or parent mixed financial holding company in a Member State, or an EU parent financial holding company or an EU parent mixed financial holding company, supervision on a consolidated basis

shall be exercised - with the exception set out in Subsection (4) - by the competent supervisory authority of the EEA Member State in which the financial holding company or mixed financial holding company is registered.

(4) If a credit institution that is established in Hungary and a credit institution established in another EEA Member State:

*a)* are subsidiaries of the same financial holding company or mixed financial holding company, and neither is established in the EEA Member State in which the financial holding company or mixed financial holding company is established, or

*b)* are subsidiaries of several financial holding companies which are established in different EEA Member States, and the credit institution subsidiary is authorized in each of these EEA Member States,

supervision on a consolidated basis shall be exercised by the supervisory authority supervising the credit institution with the largest balance sheet total.

(5) Supervisory authorities may derogate from the provisions of Subsections (2)-(4), in this case however, the parent financial holding company or parent mixed financial holding company in a Member State, the EU parent financial holding company, the parent mixed financial holding company in a Member State, or the EU parent mixed financial holding company shall be consulted before the agreement is made.

(6) An agreement concluded under Subsections (4)-(5) shall ensure the flow of information for the objectives of supervision on a consolidated basis as well as collaboration between the supervisory authorities 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.

#### *Section 176*

(1) The Authority shall cooperate closely with the supervisory authorities of other EEA Member States in exercising supervision on a consolidated basis.

(2) The Authority may supply reports, data and information to the competent supervisory authorities of other EEA Member States to the extent necessary for the objectives of supervision on a consolidated basis.

(3) At the request of the supervisory authority of another EEA Member State, the Authority may conduct supervision on a consolidated basis, and it may give its consent to the competent supervisory authority requesting consent, or to an auditor or other expert designated by it to partake in the inspections.

(4) If the Authority functions as a supervisory authority exercising supervision on a consolidated basis, the requirement of cooperation with the competent supervisory authorities of other EEA Member States shall - in addition to what is contained in Subsections (1) and (2) - cover the planning and coordination of supervisory activities:

*a)* in going concern situations, including compliance with regulations relating to governance arrangements and risk-management requirements, the internal capital model of credit institutions, supervisory review, compliance with public disclosure requirements, and the implementation of measures taken in connection with the credit institution,

*b)* in emergency situations, in cooperation with the competent central banks if necessary, in preparation for and during crisis situations, including adverse developments in credit institutions or in financial markets.

(5) The Authority - having regard to Sections 200-204 - shall provide the competent supervisory authorities of EEA Member States with all relevant information:

*a)* concerning identification of the ownership and management structure of credit institutions subject to supervision on a consolidated basis, as well as of the competent supervisory authorities of said credit institutions;

*b)* concerning procedures for the collection of information from the credit institutions subject to supervision on a consolidated basis, and the verification of that information;

*c)* concerning adverse developments in credit institutions, investment firms, financial institutions, investment fund management companies or ancillary services companies subject to supervision on a consolidated basis, which could seriously affect credit institutions;

*d)* concerning the imposition of an additional capital charge under regulatory review and the imposition of any limitation on the use of the advanced measurement approach for the calculation of capital requirement for operational risk; and

*e)* that has any impact on the prudential treatment of an credit institution or financial enterprise that is supervised by the competent authority of another EEA Member State.

(6) If the Authority exercises supervision of the subsidiary of an EU parent company, EU parent financial holding company or EU parent mixed financial holding company that is established in another EEA Member State, and if it needs information which has already been given to the supervisory authority of the EU parent company, EU parent mixed financial holding company or EU parent financial holding company, the Authority shall contact this supervisory authority first.

(7) If the Authority exercises supervision of a credit institution that is subject to supervision on a consolidated basis, and where an emergency situation arises - including adverse developments in financial markets - which potentially jeopardizes the stability of the financial system in any of the EEA Member States:

*a)* where any credit institution, investment firm, investment fund management company or financial enterprise in which the credit institution in question maintains a controlling influence is established, or

*b)* where any credit institution, investment firm, investment fund management company or financial enterprise, in which the credit institution in question holds any participating interest is established, or in which EEA Member State a credit institution established a systemically relevant branch, that is supervised by the Authority on a consolidated basis, the Authority shall forthwith inform the EBA, and the central government, the competent supervisory authority and the central bank of the EEA Member State affected.

## 76. Supervisory review and evaluation

### *Section 177*

(1) The Authority shall review and assess the strategies, policies, processes and mechanisms implemented by credit institutions with a view to enforcing compliance with the provisions of this Act, with prudential requirements and with Regulation 575/2013/EU.

(2) The Authority shall review and evaluate whether the credit institution complies with the provisions of this Act, with prudential requirements and with all requirements set out in Regulation 575/2013/EU.

(3) The Authority shall carry out the review and evaluation in accordance with Part One, Title II of Regulation 575/2013/EU.

(4) The review and evaluation performed by the Authority shall cover:

*a)* risks to which the credit institutions are or might be exposed;  
*b)* systemic risks that a credit institution poses to the financial intermediary system; and  
*c)* risks revealed by stress testing taking into account the nature, scale and complexity of an credit institution's activities.

(5) In addition to credit, market and operational risks, the review and evaluation shall also cover:

*a)* the results of the stress test carried out by credit institutions applying an internal ratings based approach;

*b)* the management of concentration risk referred to in Paragraph *b)* of Subsection (5) of Section 108;

*c)* the robustness, suitability and manner of application of the policies and procedures implemented for the management of the residual risk - provided for in Paragraph *a)* of Subsection (5) of Section 108 - associated with the use of recognized credit risk mitigation techniques;

*d)* the exposure to, measurement and management of liquidity risk by credit institutions, including the development of alternative scenario analyses, the application of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;

*e)* the impact of effects of credit portfolio diversification and how such effects are factored into the risk measurement system;

*f)* the results of stress tests carried out by credit institutions using an internal model approach to calculate market risk capital requirements;

*g)* any additional capital charge from country risk related exposures;

*h)* a review process conducted by the Authority to determine the impact that a sudden and unexpected change in interest rates - the size of which shall be prescribed by the Authority - is likely to have on own funds;

*i)* the extent to which the own funds held by a credit institution in respect of assets which it has securitized are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

*j)* the business model of the credit institution;

*k)* the assessment of systemic risk;

*l)* the exposure of credit institutions to the risk of excessive leverage, and the adequacy of the arrangements, strategies, processes and mechanisms implemented to manage the risk of excessive leverage; and

*m)* the governance arrangements of credit institutions, their corporate culture and values, and the ability of members of the management and supervisory bodies to perform their duties.

(6) Within the framework of the review referred to in Paragraph *d)* of Subsection (5), the Authority shall assess the management of liquidity risk and the application of risk mitigants with regard to the role played by credit institutions in the financial markets, and shall promote the development of sound internal methodologies.

(7) Relying on the findings of the supervisory review and evaluation conducted under Subsections (1) and (2), the Authority shall determine whether the arrangements, strategies,

processes and mechanisms implemented by the credit institutions and the own funds and liquid assets held by these ensure a sound management and coverage of their risks.

(8) In the review and evaluation the Authority shall consider whether the value adjustments and provisions taken for positions in the trading book enable the credit institution to sell or hedge out its positions within a short period of maximum thirty days without incurring material losses under normal market conditions.

(9) The review and evaluation performed by the Authority shall include the exposure of credit institutions to the interest rate risk arising from non-trading activities.

(10) In the review and evaluation the Authority shall monitor whether an credit institution has provided implicit support to a securitization. If a credit institution is found to have provided implicit support under Article 248 of Regulation 575/2013/EU on more than one occasion, however, it failed to achieve a significant transfer of risk, the Authority shall take the measures specified in Section 185.

(11) The Authority shall establish the frequency and intensity of the review and evaluation having regard to the size, systemic importance, nature, scale and complexity of the activities of the credit institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis.

(12) If, according to the findings of the supervisory review and evaluation, the Authority considers that the economic value of a credit institution (assets and liabilities, off-balance-sheet items, net cash flow at current value) calculated with regard to the change in interest rates as specified in Paragraph *h*) of Subsection (5) declines by more than twenty per cent of its own funds relative to its economic value calculated without the effects of the interest rate changes, as a result of a sudden and unexpected change in interest rates of 200 basis points or such change as defined in the EBA guidelines, the Authority shall take the measures necessary.

(13) In conducting the supervisory review and evaluation under Paragraph *m*) of Subsection (5), the Authority shall, at least, have access to:

*a*) agendas and supporting documents for meetings of the management and supervisory bodies and their committees, and

*b*) the results of the internal or external evaluation of performance of the management body.

(14) The Authority shall carry out as appropriate but at least annually supervisory stress tests on credit institutions it supervises, to facilitate the supervisory review and evaluation process.

(15) The Authority shall review and evaluate the recovery plan of credit institutions. In addition to the requirements set out in Subsection (2) of Section 114, the review shall cover the potential courses of action laid down in the recovery plan:

*a*) as to whether it is capable to restore the credit institution's financial stability in the case of adverse developments which constitute a serious threat to liquidity or solvency, taking into account the steps the credit institution has taken or plans to take;

*b*) as to whether it can be realistically implemented, relying on the relevant stress scenarios, even if other credit institutions are also in the process of implementing recovery plans.

(16) If, based on the evaluation, the recovery plan is found incomplete or its implementation is likely to be frustrated, the Authority shall - by way of a resolution - order the credit institution to rework its recovery plan within three months.

### *Section 178*

(1) The Authority shall, at least annually, adopt a supervisory examination program for credit institutions registered in Hungary:

- a)* for which the results of stress tests or the outcome of the supervisory review and evaluation process indicate significant risks to their ongoing financial soundness;
  - b)* which are found in breach of the provisions of this Act, prudential requirements and Regulation 575/2013/EU; or
  - c)* which are considered systemically important under the financial system.
- (2) The supervisory examination program shall *inter alia* include the following:
- a)* a plan for the execution of supervisory tasks;
  - b)* distribution of resources for the execution of supervisory tasks;
  - c)* an identification of which credit institutions are intended to be subject to enhanced supervision and the measures, exceptional measures necessary for such supervision; and
  - d)* a plan for on-site inspections.
- (3) For the purposes of Paragraph *c)* of Subsection (2), the Authority:
- a)* may increase the number or frequency of on-site inspections;
  - b)* may appoint an on-site inspector;
  - c)* shall order additional or more frequent reporting;
  - d)* shall review the operational, strategic or business plans conducted by increased frequency relative to Subsection (11) of Section 177;
  - e)* shall perform thematic examinations monitoring specific risks that are likely to materialize.

#### *Section 179*

- (1) The Authority shall review at least every three years the authorized internal approaches credit institutions use for calculating own funds requirements, in particular their compliance with the relevant requirements, and whether the approaches used are well developed and up-to-date.
- (2) Within the framework of the review referred to in Subsection (1), the Authority shall take into account the changes in a credit institution's business and to the implementation of those approaches to new products.
- (3) If the Authority identifies material deficiencies in risk capture by a credit institution's internal approach, the Authority:
- a)* shall order the credit institution to rectify its internal approach, or
  - b)* shall take appropriate steps to mitigate the consequences of such deficiencies, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.
- (4) If the Authority finds that the internal approach used by a credit institution no longer meets the requirements for applying that approach, the Authority shall require the credit institution:
- a)* to demonstrate that the effect of non-compliance is immaterial, or
  - b)* to present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation.
- (5) In the case provided for in Paragraph *b)* of Subsection (4), the credit institution shall amend the plan if the Authority is of the opinion that it is unlikely to result in full compliance with the relevant requirements or that the deadline is inappropriate.
- (6) If there is a demonstrated risk that the credit institution is unlikely to be able to restore compliance within the prescribed deadline and has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the Authority:
- a)* shall revoke the permission to use the internal approach,
  - b)* shall limit the permission to compliant areas or those where compliance can be achieved within the prescribed deadline.

(7) If for an internal market risk model numerous overshootings indicate that the credit institution's internal model is not or is no longer sufficiently accurate, the Authority:

- a) shall revoke the permission for using the internal model, or
- b) shall impose appropriate measures to ensure that the internal model is improved promptly.

#### *Section 180*

(1) The Authority may apply the supervisory review and evaluation process in a similar or identical manner to credit institutions:

- a) with similar risk profiles such as similar business models or geographical location of exposures, or
- b) which pose similar risks to the financial intermediary system.

(2) The credit institutions provided for in Subsection (1) may in particular be determined in accordance with the assessment of systemic risk.

#### *Section 181*

For the purposes of determining specific liquidity requirements on the basis of supervisory review and evaluation, the Authority shall take into account:

- a) the business model of the credit institution;
- b) the arrangements, processes and mechanisms referred to in Paragraph *f*) of Subsection (5) of Section 108;
- c) the outcome of the supervisory review and evaluation; and
- d) systemic liquidity risk that threatens the integrity of the financial markets of Hungary.

### 77. Supervisory review at group level

#### *Section 182*

Under Section 173, multi-party proceedings shall be conducted and decisions shall be adopted within the framework of such multi-party proceedings in the case where supervisory review is conducted on a consolidated basis.

### 78. Common rules for the application of sanctions and exceptional measures

#### *Section 183*

(1) In the event of taking sanctions and exceptional measures, and upon imposing fines upon a financial institution, the Authority shall notify the OBA simultaneously with adopting the resolution therefor if the resolution has any bearing on the OBA in carrying out its functions delegated under this Act, or if it was adopted in connection with any infringement committed by a financial institution concerning the activities of the OBA.

(2) Moreover, the Authority shall notify the OBA also if it uncovers any situation relying on information received from the competent authority supervising the credit institution's parent company that may have an impact on the OBA carrying out its functions conferred by this Act.

#### *Section 184*

(1) The Authority shall consider the need for measures if a financial institution, or any legal person other than a financial institution, engaged in providing financial auxiliary services, or a senior officer or owner thereof infringes upon this Act, the legal provisions on effective, reliable and independent ownership and prudent operation, and other relevant legal provisions pertaining to their activities, or there is irrefutable evidence as to their negligence to take reasonable care in their activities, thus in particular, if:

*a)* their decision-making system and rules of procedure are not in conformity with regulations, or they fail to observe them during their operation;

*b)* their accounting, bookkeeping and auditing system fails to meet the requirements of the relevant legislation;

*c)* they fail to discharge their obligation to disclose data, to report or to provide information to the Authority, their owners and members, and to the OBA by the prescribed deadline;

*d)* the activity of their auditors is not in compliance with the relevant legislation, or they inform the executive board, the supervisory board or the Authority in delay and inaccurately concerning any infringements, deficiencies and other problems - jeopardizing their prudent operation - found at the financial institution;

*e)* their own funds is insufficient to guarantee coverage of their risks or, in the case of credit institutions, it does not reach the limit provided for in Subsection (2) of Section 79;

*f)* they violate any of the regulations on exposures, on the assessment, analysis, evaluation and identification of exposures, on the management of exposures, on the management and mitigation of risks;

*g)* they fail to inform the executive board, the supervisory board, general (delegate) meeting or the sole proprietor about the measures taken by the Authority;

*h)* there is a risk that the credit institution is likely to fail in complying with the regulations on liquidity or the minimum level of own funds, or with the regulations on the approximation of maturities of assets and liabilities;

*i)* they fail to comply with minimum reserve requirements;

*j)* they fail to discharge the obligations conferred by the MLT;

*k)* the credit institution fails to comply with the obligation set out in Subsection (6) of Section 228.

(2) In the event of any gross infringement of the provisions of this Act, the regulations pertaining to the prudent operation of financial institutions and legal persons other than a financial institution engaged in providing financial auxiliary services, or other relevant legal provisions pertaining to their activities, the Authority shall weigh the available data and information and take the necessary measures, if:

*a)* the financial institution is engaged in carrying out any activities prohibited by law or for which it is not authorized;

*b)* the financial institution is unable to satisfy on an ongoing basis the requirements for authorization described in this Act during its operation;

*c)* the financial institution plans to pay or pays dividends in a situation when its own funds is below the capital requirements specified in Subsection (2) of Section 79, or has failed to set aside general reserves during the year;

*d)* the financial institution does not have sufficient provisions and the valuation of its assets is inadequate, as a consequence of which its own funds must be reduced by the amount of unclaimed provisions and value adjustments;

*e)* the financial institution regularly and/or gravely breaches the regulations on exposures (for example, engaged in undertaking any exposure without due care and diligence);

*f)* the financial institution is unable to fulfill or - repeatedly - fails to discharge in due time its obligation of data disclosure, notification or to provide information to the Authority, its owners and members and the OBA;

*g)* the financial institution prevents the Authority or the auditor in performing their tasks;

*h)* the financial institution operates without the prescribed regulations, records, information technology and controlling systems;

*i)* the financial institution fails to comply with supervisory measures taken in respect of its non-compliance with regulations;

*j)* the financial institution repeatedly infringes the regulations specified in Subsection (1) within two years of the operative date of the measure taken by the Authority or the resolution imposing a fine;

*k)* the credit institution fails to comply with the regulations on liquidity or the minimum level of liquidity, or with the regulations on the approximation of maturities of assets and liabilities.

(3) In the event of any serious infringement of the provisions of this Act, regulations pertaining to prudent operation, and other relevant legal provisions pertaining to its activities, the Authority shall take the necessary sanctions or exceptional measures, if:

*a)* the financial institution's own funds does not reach eighty per cent of the capital requirement provided for in Subsection (2) of Section 79 in the case of credit institutions;

*b)* the financial institution proposes to pay or pays dividends in a situation where its own funds is below eighty per cent of the capital requirement provided for in Subsection (2) of Section 79;

*c)* the financial institution fails to meet its obligation to set aside provisions or the obligation of value adjustment, has insufficient provisions and inadequate value adjustments, that is to say that the evaluation of off-balance sheet items and assets was incorrect, as a consequence of which its own funds - upon being reduced by the amount of unclaimed provisions and value adjustments - falls below eighty per cent of the capital requirement provided for in Subsection (2) of Section 79;

*d)* the financial institution fails to comply with the regulations for ensuring liquidity and the approximation of maturities of assets and liabilities, and thereby constitutes a serious threat to the credit institution's ability to maintain its liquidity;

*e)* the financial institution frequently or considerably infringes upon the regulations on exposures, and thereby constitutes a serious threat to the credit institution's liquidity, solvency or profitability;

*f)* the financial institution is frequently engaged in carrying out any activities prohibited by law or for which it is not authorized;

*g)* the financial institution is unable to satisfy the requirements for authorization described in this Act during its operation;

*h)* the financial institution operates without the necessary accounting, management information or internal control system, or these systems are inefficient to provide a view of the credit institution's actual financial position;

*i)* the financial institution, in the course of its activities for taking deposits, determines an interest rate significantly differing from the market value representing increased risks for the credit institution or the deposit-holders;

*j)* the financial institution enters into unlawful or sham contracts in order to gain pecuniary benefits or to alter its balance sheet total or capital requirement;

*k)* the financial institution employs an auditor who fails to inform the Authority, the executive board and the supervisory board of the financial institution about any gross infringement,

deficiencies and other problems found at the financial institution and endangering the prudent operation of the financial institution;

*l)* the financial institution repeatedly infringes the regulations specified in Subsection (1) within five years of the operative date of the measure taken by the Authority under Subsection (2) or the resolution imposing a fine;

*m)* the financial institution fails to fulfill the provisions of the supervisory measures taken for any severe infringement of regulations;

*n)* the financial institution had its activity (operating) license withdrawn pursuant to Act CXXXV of 2013 on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy.

(4) The Authority shall take the necessary sanctions or exceptional measures if there is a demonstrated risk that the credit institution is unlikely to be able to comply within the twelve-month period ahead with the provisions of this Act and the regulations relating to prudential requirements.

(5) The Authority shall, in addition to the provisions set out in Subsection (3), take the necessary sanctions or exceptional measures also if:

*a)* the capital maintenance ratio of a branch of a third-country credit institution has fallen below one-hundred per cent;

*b)* if the foreign credit institution or any of its branch in any State has become insolvent.

(6) The Authority shall, furthermore, have powers to take measures if the supervisory authority with jurisdiction over the registered office of the third-country credit institution has taken measures or sanctions against the given credit institution or one of its branches operating in any State for a reason that affects the safe operation of the branch.

(7) The Authority shall take the necessary sanctions or exceptional measures if, according to the findings of the supervisory review and evaluation carried out under Section 177:

*a)* the credit institution's own funds is insufficient to guarantee sound management and cover of their risks; or

*b)* the credit institutions' internal control mechanism, corporate governance functions and risk management procedures, internal models for the assessment of capital adequacy, and management of large exposures fail to comply with requirement set out in this Act and in regulations relating to prudential requirements.

(8) Prior to taking exceptional measures with respect to a credit institution that is subject to supervision on a consolidated basis, the Authority shall - with the exception set out in Subsection (9) - consult the competent supervisory authority of the EEA Member State where the credit institution to which supervision on a consolidated basis applies jointly with the credit institution in question is established.

(9) Before adopting a resolution for taking exceptional measures, the Authority shall not be required to consult with the competent supervisory authority of the other EEA Member State if the time required for consultation may jeopardize the enforceability of the decision. In this case, the Authority shall, without delay, inform the competent supervisory authority of the other EEA Member State on the passing of the resolution.

## 79. Measures

### *Section 185*

(1) In the event where any infringement of regulations or deficiencies are established - if these do not severely jeopardize the prudent operation of the financial institution -, the Authority shall have powers to take the following measures:

*a)* order the financial institution to take the necessary steps:

*aa)* in order to comply with the regulations of this Act and the regulations relating to prudential requirements, to eliminate the uncovered deficiencies,

*ab)* in order to preserve or restore its financial soundness;

*b)* advise the financial institution:

*ba)* to provide further training to its employees (managers) or to hire employees (managers) with the appropriate professional skills,

*bb)* 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,

*bc)* to revise its business management concept;

*c)* impose an obligation for disclosing specific data or information;

*d)* order the financial institution to draw up and execute an emergency action plan;

*e)* issue a warning to the senior executive of the financial institution;

*f)* adopt a resolution to declare the fact of infringement, and shall order the cessation of the infringement or prohibit any further infringement;

*g)* require the credit institution to take measures for the reinforcement of the arrangements, processes, mechanisms and strategies relating to its internal control mechanism, corporate governance functions, risk management procedures and internal models for the assessment of capital adequacy;

*h)* order the credit institution to comply with provisions relating to publication requirements above and beyond those publication requirements provided for by law.

(2) In the event where infringement of regulations or deficiencies are established - if they are considered to severely jeopardize the prudent operation of the financial institution -, the Authority shall have powers to take the following measures:

*a)* delegate - one or more - on-site inspectors to the financial institution;

*b)* order the financial institution:

*ba)* to draw up new internal regulations, or to revise or apply the existing regulations along specific guidelines,

*bb)* to provide further training to its employees (managers) or to hire employees (managers) with the appropriate professional skills,

*bc)* to conduct an investigation in the interest of determining responsibilities for the damages caused and to initiate proceedings against the responsible person,

*bd)* to cut its operating expenses,

*be)* to set aside sufficient reserves,

*bf)* to convene the executive board or the supervisory board and advise these bodies to put specific items on the agenda and point out the need for making certain specific decisions,

*bg)* to elect another auditor;

*c)* prohibit, limit or make subject to conditions:

*ca)* the payment of dividends,

*cb)* the payment of remuneration of executive officers,

*cc)* the obtaining of loans by the owners of the financial institution, or rendering services to them by the credit institution which involve any exposure,

*cd)* the granting of loans by the financial institution to enterprises belonging to the sphere of interests of the owners or executive officers,

*ce*) the extension (prolongation) of deadlines provided for in loan or credit agreements,  
*cf*) performing certain financial service activities or financial auxiliary service activities,  
*cg*) the opening new branches, starting new financial services as well as starting up new activities (business lines) within a financial service;

*d*) order the credit institution to determine the variable remuneration of persons as a percentage of total net revenue when it is inconsistent with prudential requirements.

(3) The delegated on-site inspector shall be entitled:

*a*) to perform any supervisory activity;

*b*) to participate and make comments as an observer at the meetings of the management, the executive board, any body or committee empowered to make decisions relating to exposures, the supervisory board or at the general (delegate) meeting;

*c*) to consult with the financial institution's auditor.

(4) If the capital maintenance index of a credit institution incorporated as a branch falls below one hundred per cent, the Authority shall order the parent foreign credit institution to bring the branch into compliance with the provisions pertaining to capital maintenance ratio.

### *Section 186*

(1) The Authority shall have powers to impose additional capital requirements upon a credit institution if:

*a*) the credit institution does not meet the requirements relating internal models for the assessment of capital adequacy, recovery plan and large exposures;

*b*) risks or elements of risks are not covered by the credit institution's capital requirements;

*c*) the sole application of previous measures is unlikely to improve the credit institution's arrangements, processes, mechanisms and strategies sufficiently;

*d*) non-compliance with the requirements for the application of the credit institution's approach will likely lead to inadequate capital requirements;

*e*) the credit institution's risks are likely to be underestimated;

*f*) the credit institution reports to the Authority that the stress test results materially exceed its capital requirement for the correlation trading portfolio.

(2) For the purposes of determining the appropriate level of additional capital requirement the Authority shall take into account:

*a*) the quantitative and qualitative aspects of the credit institutions' internal models for the assessment of capital adequacy;

*b*) the suitability of the credit institutions' internal control mechanisms and risk management processes;

*c*) the outcome of the review and evaluation carried out at the credit institution; and

*d*) the credit institution's systemic risks.

(3) The additional capital requirement imposed upon a credit institution may not be higher than one and a half times the capital requirement specified in Paragraph *a*) of Subsection (2) of Section 79.

### *Section 187*

(1) If the Authority finds it necessary to adopt an emergency action plan as well, it may allow a maximum period of thirty days for the elaboration thereof.

(2) Where it is necessary to convene the general (delegate) meeting for the approval of the emergency action plan or with a view to increasing the capital, the Authority may grant an extension of twenty-one days beyond the time limit specified in Subsection (1). If the general (delegate) meeting has decided on a capital increase or on the provision of core loan capital, not more than an additional fifteen days may be allowed from the date of the resolution for payment of the capital.

#### *Section 188*

For the purposes of implementation of the emergency action plan, the Authority may exempt the financial institution from the obligations set out in Subsection (2) of Section 79, Sections 101 and 102, and in Articles 387-403 of Regulation 575/2013/EU for a specific period of not more than one year. The Authority may extend this exemption on one occasion for a maximum period of six months.

## 80. Exceptional measures

#### *Section 189*

(1) In the cases provided for in Subsection (3) of Section 184, the Authority may also apply the following exceptional measures:

- a)* it may order
  - aa)* the credit institution to sell off its assets used for purposes other than banking,
  - ab)* the financial institution to appoint its capital structure within the time limit and in compliance with the requirements prescribed by the Authority,
- b)* it may limit or prohibit the credit institution
  - ba)* to conclude transactions between the owners and the credit institution,
  - bb)* to effect payment of deposits and other repayable funds,
  - bc)* to undertake commitments;
- c)* it may determine the highest rate of interest that may be charged by the credit institution;
- d)* it may order the executive board to convene the general meeting, and furthermore, it may advise these bodies to put specific items on the agenda and point out the requirement of making specific decisions;
- e)* it may appoint a supervisory commissioner to the financial institution; or
- f)* it may withdraw the authorization granted for the election or appointment of a senior executive whose personal responsibility for the development of this situation has been established by final resolution, and may instruct the financial institution to elect or appoint another senior executive in replacement, with the proviso that this exceptional measure may not impose contemporaneously a fine upon the executive officer in question;
- g)* it may order the credit institution to activate its recovery plan as provided for in Section 114, and to apply the measures contained therein.

(2) In addition to the exceptional measures described in Subsection (1), the Authority may simultaneously call upon the owner of the financial institution, or the founders of the financial enterprise set up as a foundation:

- a)* entered into the register of shareholders - in the case of financial institutions set up as cooperatives, into the register of members - having a direct ownership interest reaching or exceeding five per cent, and

*b)* having a qualifying holding,  
to take the measures deemed necessary.

(3) As regards the Hungarian branch of a third-country credit institution, the Authority shall notify the third-country credit institution and its supervisory authority at the time when taking the exceptional measures specified in Subsection (1).

(4) Simultaneously with the notice described in Subsection (2) hereof, the Authority shall notify the financial institution's executive board, supervisory board and auditor and shall call upon the executive board to take the measures listed in Paragraph *b)* of Subsection (2) of Section 185 without delay.

(5) The exceptional measures described in Paragraphs *b)*, *c)* and *e)* of Subsection (1) - with the exception of Subparagraph *bb)* of Paragraph *b)* - may be taken by the Authority for a specific period of time of not more than one year. The Authority may extend this time limit on one occasion by a maximum period of six months.

(6) The Authority may order the measure specified in Subparagraph *bb)* of Paragraph *b)* of Subsection (1) of this Section for a maximum period of ninety days.

(7) In connection with public limited companies, by way of derogation from the Companies Act, in the application of Paragraph *d)* of Subsection (1) the general meeting shall be called twenty-one days in advance.

(8) Upon taking the exceptional measures specified in Subparagraphs *ba)*-*bb)* of Paragraph *b)* of Subsection (1), the Authority shall forthwith notify the supervisory authorities of the EEA Member States in which the credit institution affected by the measure operates any branches or provides cross-border services.

#### *Section 190*

(1) Upon receiving the notification described in Subsection (2) of Section 189, the credit institution's executive board shall take prompt action to ensure that:

*a)* the deposits and other receivables of the owners - or members in the case of credit institutions set up as a cooperative society - due from the credit institution are blocked,

*b)* all loans provided to companies in the owners - or members in the case of credit institutions set up as a cooperative society - sphere of interests are suspended,

*c)* no financial services involving exposures are rendered to the owners, or members in the case of credit institutions set up as a cooperative society.

(2) If the measures listed in Subsection (1) have been implemented, the owners - or members in the case of credit institutions set up as a cooperative society - 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 189 only if they announced to the Authority the disposal of their shares in writing at least sixty days prior to receiving the notification.

(4) The executive board of the credit institution shall keep the restrictions provided for 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 191*

(1) If the financial institution fails to comply with the supervisory measures adopted under Paragraph *d*) of Subsection (1) of Section 189, the Authority may initiate at the court of registry the convening of the financial institution's general meeting.

(2) In the request referred to in Subsection (1), the Authority shall present a proposal as to the time, location and agenda of the general meeting.

(3) The court of registry shall adopt a decision on calling the general meeting within eight days.

#### *Section 192*

In addition to the measures provided for in Subsection (1) of Section 189, the Authority may suspend the voting rights of the owners of the financial institutions falling under its jurisdiction for a specific period of time of not more than one year if the member's activity or influence exercised upon the financial institution is considered, relying on the available facts, to jeopardize the financial institution's reliable and prudent operation; in such cases the votes effected by such restriction shall not be included for the purposes of quorum.

#### *Section 193*

Where deemed necessary, the Authority may take the sanctions or exceptional measures described in Sections 185 and 189-192 separately, or repeatedly and collectively as well.

#### *Section 194*

(1) The Authority may appoint a supervisory commissioner particularly if:

*a*) the financial institution encounters a predicament carrying potential and imminent danger where the financial institution is unable to meet its obligations;

*b*) the credit institution's executive board is unable to perform its functions, hence endangering the interests of deposit-holders;

*c*) the deficiencies revealed in respect of the credit institution's accounting or internal control system are of an extent where it has become impossible to evaluate the credit institution's actual financial position; and

*d*) the credit institution's own funds does not reach eighty per cent of the capital requirement provided for in Subsection (2) of Section 79, and the credit institution's executive board fails to convene the general meeting despite the Authority's exceptional measure.

(2) The Authority shall appoint a supervisory commissioner to the credit institution if:

*a*) the credit institution's own funds does not reach eighty per cent of the capital requirement provided for in Subsection (2) of Section 79, and the member or the third-country credit institution is incapable or unwilling to increase the credit institution's equity capital or own funds to the level prescribed by law or by the Authority in a resolution, or

*b*) the competent authority responsible for the supervision of the credit institution's parent company notifies the Authority of the occurrence of an emergency situation which potentially jeopardizes the financial stability of the parent company, or

*c*) the mandate of the executive officer of the credit institution set up as a cooperative society has been suspended under Paragraph *a*) of Subsection (4) of Section 15 of Act CXXXV of 2013 on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy by the Takarékbank Zrt., or, if the Authority has withdrawn the activity license of the credit institution set up as a cooperative society pursuant to

Subsection (3), (7) or (13) of Section 19 of Act CXXXV of 2013 on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy.

#### *Section 195*

(1) The responsibilities described in the Companies Act and in the regulations on cooperatives relating to members of the credit institution's executive board shall remain in effect for decisions adopted before the time of receipt of the resolution on the appointment of the supervisory commissioner.

(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 196*

(1) During the period of the supervisory commissioner's appointment, members of the executive board may not perform their duties and exercise their signatory rights as described in the statutory provisions on business associations and cooperatives, and in the articles of association. For the period of appointment, the supervisory commissioner shall exercise the rights of members of the executive board provided for by law and the articles of association.

(2) By way of derogation from Subsection (1), members of the executive board and the supervisory board shall have the right - including during the mandate of the supervisory commissioner - to seek remedy against the resolution appointing the supervisory commissioner and the resolution the Authority has adopted against the credit institution, and to represent the credit institution in such proceedings or delegate a representative on the credit institution's behalf.

#### *Section 197*

(1) If the Authority considers the measures taken according to Subparagraph *cf)* of Paragraph *c)* of Subsection (2) of Section 185, Subsection (5) of Section 48 and Subsection (2) of Section 55 as payment restrictive actions under the SFA, the Authority shall have powers, upon delivery of the decision thereof, to block the settlement or execution by the payment system of payment orders addressed to an institution that is the subject of the proceedings, and that has direct access to the payment system, on a temporary or permanent basis. The Authority shall forthwith notify such decision to the operator of the payment system.

(2) At the time of notifying the institution affected by the resolution provided for in Subsection (1), having direct access to the payment system, the Authority shall forthwith notify the operator of the payment system as well.

(3) After the time provided for in Paragraph *a)* of Subsection (1) of Section 3 of the SFA, settlement or execution of payment orders addressed to an institution having direct access to the payment system may be carried out beyond dispute irrespective of the notification of the decision provided for in Subsection (1) to the payment system operator.

#### *Section 198*

(1) The Authority shall notify the OBA without delay on the notification specified in Section 142 and on the requirement for taking the exceptional measures specified in Section 184, and the

mandatory institutional protection organization if the exceptional measures were taken against a credit institution set up as a cooperative society.

(2) If the Authority has taken any of the measures provided for in Sections 174-178 or Sections 180-193 against a credit institution set up as a cooperative society, the Authority shall forthwith notify the mandatory institutional protection organization thereof.

(3) If the measures the Authority has taken as provided for in Sections 174-193 concerns a credit institution set up as a cooperative society against which the mandatory institutional protection organization has already instituted some action under Act CXXXV of 2013 on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy, and it is still in effect, the Authority shall adopt a resolution on whether to maintain, amend or terminate the effect of the measure taken by the mandatory institutional protection organization.

## 81. Supervision of branches and cross-border services

### *Section 199*

(1) As regards the Hungarian branches of financial institutions established in other EEA Member States, at the request of the competent supervisory authority of such EEA Member State supervision may be carried out by the Authority. Supervision of branches of financial institutions established in other EEA Member States shall be carried out in accordance with Hungarian law.

(2) In carrying out the supervision of the Hungarian branches of financial institutions established in other EEA Member States the Authority may conduct on-the-spot checks and inspections, and may request information necessary for the performance of supervision from the branch or the competent supervisory authority of the home State of the branch. Before carrying out such checks and inspections the Authority shall consult the competent supervisory authority of the home State of the branch, and afterwards it shall communicate to the competent supervisory authority of the home State of the branch the information obtained and findings that are relevant for the risk assessment of the institution inspected or the stability of the financial system of Hungary.

(3) If the branch of a financial institution established in another EEA Member State or the cross-border services provided in Hungary by such financial institution infringes upon the regulations of Hungary, or if there is a demonstrated risk that it will infringe upon such regulations, or if the Authority discovers any deficiencies in the operation of the branch or the financial institution, the Authority shall so inform the competent supervisory authority of the home State of the branch.

(4) If the competent supervisory authority of the home State of the branch fails to take the necessary steps to eliminate the infringement uncovered under Subsection (3) upon receipt of the notice provided for in Subsection (3), the Authority may refer to the EBA.

(5) The Authority shall have powers to take direct action of its own accord if it deems that the unlawful situation poses a substantial threat to the stability of the financial intermediary system or to the interests of clients. The Authority shall inform the competent supervisory authority of the EEA Member State affected on the sanctions and exceptional measures taken, including the reasons.

(6) The sanctions and exceptional measures taken under Subsection (5) shall be revoked if:

a) the EEA Member State affected has adopted reorganization measures sufficient to eliminate the infringement referred to in Subsection (1),

*b)* the infringement ceases, and the sanctions and exceptional measures are no longer necessary.

(7) If the branch of a financial institution established in Hungary or the cross-border services provided in another EEA Member State by such financial institution infringes upon the regulations of that EEA Member State, or if there is a demonstrated risk that it will infringe upon such regulations, and if the Authority is notified thereof, the Authority shall take sanctions and exceptional measures necessary to eliminate the infringement.

(8) The Authority shall communicate the reasons for taking the sanctions and exceptional measures provided for in Subsection (7) to the competent supervisory authorities of the EEA Member States affected.

## 82. Data processing by the Authority

### *Section 200*

(1) The Authority shall be entitled to process data to the extent required to perform the functions relating to the supervision of the financial intermediation system, including personal data processed within the meaning of this Act.

(2) The Authority shall - by way of a resolution - register the following data of financial institutions:

- a)* name, registered office;
- b)* scope of activities;
- c)* exact date of establishment;
- d)* amount of subscribed capital, initial capital;
- e)* owners with qualifying holding;
- f)* names of senior executives;
- g)* date of taking up the pursuit of the business of financial services;
- h)* names of the senior executives of a foreign credit institution operating a branch in Hungary;
- i)* date and place of foundation of the credit institution's subsidiary, foreign bank representative offices or foreign branches;
- j)* names of the persons in charge of management of the entities provided for in Paragraph *i*);
- k)* changes in the particulars under Paragraphs *a*)-*j*).

(3) The Authority shall - by way of a resolution - register:

- a)* the data of persons with close links to any credit institution that is subject to supervision on a consolidated basis or supplementary supervision;
- b)* the data of persons with close links to any parent company of any credit institution that is subject to supervision on a consolidated basis or supplementary supervision; and
- c)* the particulars of the parent company - if it is a mixed-activity holding company or a mixed financial holding company - of a credit institution that is required for the supervision of that credit institution.

### *Section 201*

The Authority shall - by way of a resolution - register the following particulars of bank representative offices of foreign credit institutions:

- a)* name, registered address, scope of activities of the represented credit institution, and the place where it performs the activities;
- b)* date of foundation of the bank representative office and date of its authorization;

- c) registered office of the bank representative office;
- d) name of the head of the bank representative office;
- e) date of the opening of the bank representative office;
- f) any changes in the particulars under Paragraphs a)-d).

### *Section 202*

(1) With a view to discharging its supervisory functions and to protecting the interests of consumers, the Authority shall maintain a register on intermediaries and also on intermediary subcontractors. The Authority shall include the following particulars of intermediaries and intermediary subcontractors in the said registers:

- a) name and registered office;
- b) place of operations;
- c) the date of authorization of the activity, or the date of notification where the activities are subject to notification;
- d) an indication as to whether the registered entity is a special services intermediary, a tied agent, a multiple special services intermediary, a multiple agent, a broker or a intermediary subcontractor;
- e) name of the financial institution that employs the intermediary;
- f) the date of taking up the pursuit of service activities;
- g) in the case of an intermediary subcontractor, the name of the intermediary;
- h) as regards the senior executives of independent intermediaries:
  - ha) their title,
  - hb) from the identification data provided for in Schedule No. 2, the name, place and date of birth, and mother's name of such senior executives.

(2) The Authority shall record all changes in the particulars referred to in Subsection (1), and shall update the register without delay upon receipt of notice.

(3) The Authority shall display and regularly update the data specified in Paragraphs a)-g) of Subsection (1), and the particulars of the senior executive mentioned in Subparagraph ha) of Paragraph h) of Subsection (1) on its website, and make them available to the general public.

### *Section 203*

(1) The Authority may only disclose - to the bodies provided for in Subsections (2) and (3) of Section 161 - bank secrets, business secrets and other data or information for the purpose of performing its functions relating to the supervision of the financial intermediation system, to the extent required to fulfill their responsibilities conferred by law, in accordance with the provisions of international cooperation agreements.

(2) The Authority 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 affected, and may only disclose or impart such with the consent of the foreign supervisory authority concerned. Disclosure of the group examination report data to the leader of the financial group during the control procedures carried out under the MNB Act in the case of supervision on a consolidated basis shall not be construed as violation of bank secrets and business secrets.

## *Section 204*

(1) In order to perform its functions relating to the supervision of the financial intermediation system, the Authority shall keep records under the provisions of Sections 200-202 and, based on the disclosures it has ordered, on:

- a)* financial institutions, bank representative offices, ancillary services companies and intermediaries;
- b)* enterprises providing financial auxiliary services;
- c)* the owners of financial institutions and independent intermediaries;
- d)* the senior executives of financial institutions and independent intermediaries;
- e)* auditors; and
- f)* applicants.

(2) In addition to the identification data provided for in Schedule No. 2, such records shall *inter alia* include:

- a)* in relation to qualifying holding, the percentage of holding and the contract providing for the exercise of such qualifying holding;
- b)* the extent of close links referred to in Paragraphs *a)-b)* of Subsection (3) of Section 200, and the contract providing for the exercise of such close link;
- c)* the title of senior executives and their jobs, subject of the appointment, type of the legal relationship, credentials as well as all measures taken by the Authority regarding the registered person;
- d)* contents of the application for the issue of or giving up the license as well as the data of the document attached for the purpose of assessment of the application;
- e)* internal rules and regulations of the credit institution, particularly the articles of association, the standard service agreement, the regulations for rating debtors and for credit assessment, the regulations for ensuring solvency, and the internal credit policy;
- f)* the annual account 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 executive board and supervisory board;
- h)* in the case of complaints or public announcements, the personal data of the complaining party, and the event and the name of the provider of financial services, financial auxiliary services to which the complaint pertains;
- i)* the documentation of the calculation of own funds and capital adequacy;
- j)* the data required for controlling large exposures, internal credits, follow-up loans, investment limitations and creation of special risk provisions;
- k)* in respect of credit institutions incorporated as branches, in addition to what is contained in Paragraphs *a)-j)*, the data necessary for monitoring the capital maintenance ratio; and
- l)* name of the consumer protection officer for handling consumer affairs provided for in Subsection (15) of Section 288.

(3) In connection with the data provided for in Subsection (2), the Authority may process the following personal data of the financial institution's clients in addition to those listed in Schedule No. 2:

- a)* the client's credit data;
- b)* the client's other risk data;
- c)* the client's deposit data;
- d)* other data of the client on receivables due from the financial institution.

(4) The Authority's authorization shall also serve as proof of registration.

## 83. Dissemination of information

### *Section 205*

(1) The Authority shall forthwith send to the court of registry its resolutions on the authorizations it has issued, including any amendment and withdrawal of such authorizations, covering also the authorization for the amendment of the articles of association.

(2) The Authority shall send its final resolution on the refusal of an application for authorization to the court of registry.

### *Section 206*

Resolutions for the limitation of exercising ownership rights shall be entered by the court of registry, based on the Authority's notification, to the company register within eight days.

### *Section 207*

The Authority shall publish the register of agents specified in Subsections (1) and (2) of Section 21 on its website every six months.

## 84. Supervision fee

### *Section 208*

(1) Financial institutions and the Hungarian branches of these institutions, companies other than financial institutions engaged in financial auxiliary services, independent intermediaries and bank representative offices shall be required to pay a supervision fee to the Authority.

(2) The supervision fee shall comprise the minimum charge calculated according to Subsections (3) and (4), plus the variable-rate fee calculated according to Subsections (5)-(8).

(3) The minimum charge is calculated by multiplying the unit base-rate with the index number specified in Subsection (4). The unit base-rate shall be fifty thousand forints.

(4) The index number:

*a)* for banks and specialized credit institutions shall be forty;

*b)* for credit institutions set up as cooperative societies and financial enterprises shall be four;

*c)* for the Hungarian branches of financial institutions established in other EEA Member States shall be four;

*d)* for companies other than financial institutions providing financial auxiliary services, bank representative offices and for independent intermediaries shall be one.

(5) The annual variable-rate fee payable by credit institutions shall be:

*a)* 3.8 ‰ of the capital requirement calculated according to Paragraph *a)* of Subsection (2) of Section 79, and

*b)* 0.25 ‰ of the value of assets contained in the portfolio managed in compliance with the IRA - not including the management of the assets of voluntary mutual insurance funds and the management of assets of private pension funds -, calculated at market value.

(6) The annual variable-rate fee payable by financial enterprises shall be 0.2 ‰ of the balance sheet total shown in the annual account of the financial enterprise, with the exception that the

annual variable-rate fee payable by financial enterprises engaged exclusively in group financing shall be one million forints maximum.

(7) The annual variable-rate fee payable by the Hungarian branches of credit institutions established in other EEA Member States shall be:

- a) 0.1 ‰ of the balance sheet total shown in the annual account of the Hungarian branch; and
- b) 0.125 ‰ of the value of assets contained in the portfolio managed in compliance with the IRA - not including the management of the assets of voluntary mutual insurance funds and the management of assets of private pension funds -, calculated at market value.

(8) The annual variable-rate fee payable by the Hungarian branches of financial enterprises established in other EEA Member States shall be 0.1 ‰ of the balance sheet total shown in the annual account of the Hungarian branch.

## *Chapter X*

### *The Országos Betétbiztosítási Alap (National Deposit Insurance Fund)*

#### 85. General provisions

##### *Section 209*

(1) Subject to the exception set out in Subsection (3) all credit institutions are required to join the OBA.

(2) Foreign branches of credit institutions that have their registered offices in the territory of Hungary shall be covered by deposit insurance services provided by the OBA, except where the laws of the country in which the branch is set up do not permit it. Foreign branches of credit institutions that have their registered offices in the territory of Hungary may decide to join the deposit insurance scheme of the given country. Credit institutions shall notify the OBA 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) Branches of credit institutions established in other EEA Member States are not required to join the OBA if they are covered by a deposit guarantee scheme under Directive 94/19/EC of the European Parliament and of the Council. Subject to authorization by the Authority, branches of third-country credit institutions shall not be required to join the OBA if the Authority considers 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 Authority shall take into consideration:

- a) the scope of deposits covered;
- b) the clients affected by the deposit insurance scheme;
- c) the amount of deposit insurance;
- d) the expected time requirement for the payment of deposits on the basis of the deposit insurance procedures;
- e) the possibility of filing deposit claims; and
- f) the opinion of the OBA.

(5) If a branch is not required to join the OBA pursuant to Subsection (3), it may decide to join the OBA at its own volition in order to obtain the supplementary cover referred to in Subsection (7) if it is able to meet the requirements of the OBA for membership.

(6) Any branch of a credit institution established in another EEA Member State that is not covered by a deposit guarantee scheme prescribed under Directive 94/19/EC of the European Parliament and of the Council shall join the OBA in order to obtain the supplementary cover referred to in Subsection (7). If, in the opinion of the Authority, the branch 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 OBA in order to obtain comprehensive insurance cover.

(7) If the maximum amount of compensation provided by the OBA 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 branches, the OBA shall, at the request of the branch, provide supplementary cover if the branch has already joined the OBA. Supplementary compensation may be claimed if the competent authority of the country in which the head office of the branch is located notifies the OBA about frozen deposits. Other aspects of supplementary compensation claims shall be governed by the provisions of Section 217.

(8) The OBA 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 210*

Compensation for deposits collected by branches of third-country credit institutions may be paid only up to the amount insured by the OBA.

#### *Section 211*

(1) The responsibilities of the OBA shall inter alia include:

*a)* providing depositors with information in Hungarian or, in the case of foreign branches of credit institutions which are established in Hungary, in the language of the country in which the branch has been incorporated;

*b)* paying compensation in the amount specified in Section 214 to a deposit-holder whose account held at a member credit institution is frozen, or in the event of dissolution or liquidation proceedings opened if the Authority has withdrawn the credit institution's activity license according to Paragraph *a)* or *b)* of Subsection (1) of Section 33, or, without prejudice to the previous regulations, if the decision for the winding up of the credit institution set up as a cooperative society was adopted pursuant to Subsection (5) of Section 17/T of Act CXXXV of 2013 on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy; and

*c)* performing the tasks, related to guarantees provided by the State 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 State.

(2) Mandated by the State, the OBA shall represent the State within its scope of responsibilities defined in Subsection (1) at composition negotiations and during liquidation proceedings.

## 86. Deposits insured by the OBA

### *Section 212*

- (1) The insurance provided by the OBA applies to registered accounts only.
- (2) The insurance provided by the OBA - with the exceptions set out in Section 213 - 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 facilities provided on the strength of law before 30 June 1993, and
  - b) without any State guarantee after the 30 June 1993, at credit institutions which are members of the OBA.
- (3) The insurance provided by the OBA shall apply to deposit documents issued or offered in a series similar to securities up to 30 June 1993, irrespective of its denomination.
- (4) Funds placed after 30 June 1993 into accounts under deposit contracts concluded prior to 30 June 1993 - insured by State guarantees (surety facilities) - shall be insured - by the OBA - in accordance with the provisions of this Act.

### *Section 213*

- (1) Insurance provided by the OBA shall not cover the deposits of:
  - a) budgetary agencies;
  - b) business associations in long-term and exclusive State ownership;
  - c) municipal governments;
  - d) insurance companies, voluntary mutual insurance funds and private pension funds;
  - e) investment funds;
  - f) the Nyugdíjbiztosítási Alap (*Pension Insurance Fund*) and their management bodies, the health insurance administration agency and the pension insurance administration agency;
  - g) extra-budgetary funds;
  - h) financial institutions;
  - i) the MNB;
  - j) investment firms, members of the stock exchange and commodity dealers;
  - k) compulsory or voluntary deposit insurance, institution and investor protection funds, Pénztárak Garancia Alapja (*Pension Guarantee Fund*);
  - l) senior executives of credit institutions, appointed auditors of credit institutions, persons holding 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 operators in which any of the persons referred to in Paragraph l) has a qualifying holding; and
  - n) venture capital companies and venture funds;and the foreign equivalents of the deposit-holders listed above.
- (2) The insurance provided by the OBA shall not apply furthermore to:
  - a) deposits on which the depositor 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 placed at the time of conclusion of the contract;
  - b) deposits in respect of which it has been determined by final court decision that the funds deposited therein originate from money laundering; and

c) deposits placed in a currency other than euro or the legal tender of EEA Member States or the Member States of the Organization for Economic Cooperation and Development.

## 87. Indemnity provided by the OBA

### *Section 214*

(1) The OBA shall indemnify persons entitled to compensation first for the principal and then for the interest on frozen deposits, and on deposits placed with credit institutions whose authorization has been withdrawn by the Authority according to Subsection (1) of Section 33, or that is undergoing liquidation by order of the court, in forints - save where Subsection (2) applies -, up to a maximum amount of one hundred thousand euro per person and per credit institution on the aggregate.

(2) The amount of compensation shall be translated to forints by the official exchange rate published by the MNB acting within its central banking duties, in effect on the day preceding the day of the opening of the compensation procedure as provided for in Subsection (1) of Section 217.

(3) In the case of foreign exchange deposits, the amount of compensation and the amount limit specified in this Subsection shall be determined based on the official exchange rate published by the MNB acting within its central banking duties, in effect on the day preceding the day of the opening of the compensation procedure as provided for in Subsection (1) of Section 217, regardless of the time of payment.

(4) The OBA shall pay compensation for deposits placed in the foreign branch of a credit institution established in Hungary in the currency of the country where the branch is located. If the official currency of the country where the branch is located is other than euro, first the amount of the coverage limit shall be calculated in forints based on the official exchange rate published by the MNB acting within its central banking duties, in effect on the day preceding the day of the opening of the compensation procedure as provided for in Subsection (1) of Section 217, then the amount of compensation shall be determined using the official forint exchange rate published for the currency in question by the MNB acting within its central banking duties, in effect on that same day.

(5) The OBA shall compensate persons entitled to compensation for uncapitalized and unpaid interest on deposits placed with credit institutions whose authorization has been withdrawn by the Authority according to Subsection (1) of Section 33, or that is undergoing liquidation by order of the court, up to the day of the opening of the compensation procedure as provided for in Subsection (1) of Section 217, up to the limit specified in Subsection (1) hereof by calculating with the interest rate specified in the contract.

(6) In the case of prize drawing deposits - irrespective of when the deposit was placed - the deposit-holder shall be entitled to compensation in the face value of the deposit, up to the amount limit specified in Subsection (1).

(7) The deposit-holder may not, upon any grounds, demand any payment from the OBA over and above the compensation amount defined in Subsections (1)-(6).

(8) In the case of joint deposits, the amount limit provided for in Subsections (1)-(3) for compensation shall be taken into account separately in respect of each person entitled to compensation. From the point of view of calculating the amount of compensation - unless otherwise provided for in the contract -, the deposit-holders shall be entitled to the deposit amount in equal proportions.

(9) In the merger of credit institutions, the deposits of the same depositor that were placed with the merging or the acquired or acquiring credit institutions before the merger 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, or as regards home savings deposits, until terminated.

(10) In the case of transfer of client accounts, in terms of the amount limit specified in Subsections (1)-(3), the regulations on mergers under Subsection (7) shall apply *mutatis mutandis*.

(11) No compensation shall be paid on deposits in connection with which criminal proceedings are in progress due to money laundering allegations until the final and binding conclusion of such proceedings.

(12) The amount limit of compensation defined under Subsections (1)-(3) for deposits placed in group accounts - irrespective of the time of placement of the deposit - shall be taken into account in the case of condominiums and housing cooperatives separately for each residential unit, and in the case of building societies and school associations they shall be taken into account separately for each depositor.

(13) Upon the deposit-holder's death, the deposits of the testator and the heirs - irrespective of the time of placement of the deposit - shall be treated as separate accounts for a period of one year from the operative date of the grant of probate or the court ruling, or until the expiry of the fixed-rate instruments - whichever occurs later -, and they shall not be counted on the aggregate with other accounts the heirs may have when determining the amount limit of compensation under Subsections (1)-(3). Compensation for the testator's deposit shall be payable up to the amount limit referred to in Subsections (1)-(3), regardless of the number of heirs. This provision shall also apply to joint accounts.

(14) In the application of Subsections (1)-(3), the deposits of private entrepreneurs - irrespective of when the deposit was placed - shall be treated separately from other deposits the same individual has placed as a private person.

(15) As regards the safe custody service activities of notaries public, court bailiffs and attorneys, the accounts opened at credit institutions - other than the ones opened at the credit institution for safe custody services under Subsection (1) of Section 6 - shall be handled separately in the application of Subsections (1)-(3) irrespective of the date of placement from any other account the notary public, court bailiff or attorney may have at the same credit institution. Such an account (or accounts if there is more than one, separately) shall be covered by the insurance provided by the OBA, even if the grounds for exclusion under Paragraph 1) of Subsection (1) of Section 213 apply to the notary public, court bailiff or attorney. In connection with any compensation paid under Section 217, the OBA shall be entitled to request the attorney (law firm) to present the deposit records prescribed by the bar association so as to verify whether the sum placed in the attorney's escrow account is construed as a separate deposit for the purpose of the amount limit of compensation.

### *Section 215*

(1) In the case of deposits insured by the OBA, offsetting between the credit institution and the depositor is allowed if the depositor has any overdue debt owed to the credit institution relating to loans or other transactions. The credit institution shall inform the OBA about its offsetting claims and shall simultaneously disclose information relating to the deposits. The credit institution shall produce documents in proof of having notified the depositor (debtor) of its offsetting claim. If

offsetting is executed, the OBA shall pay the depositor the amount remaining after deduction of the amount due and transferred to the credit institution from the amount specified in Section 214.

(2) In the course of determining the amount of compensation, all deposit claims due to the client from an OBA member are to be added up. If an OBA member has any claim against the client that is overdue, it shall be included in the client's claim when determining the compensation amount.

(3) In the case of deposits serving as collateral, the OBA shall effect any payment only if the grounds for receiving the compensation amount can be determined beyond doubt based on the parties' agreement or on the final court ruling or resolution of an authority.

### *Section 216*

(1) In connection with deposits placed with State guarantee, the OBA may assume compensation payments and may undertake to enforce claims on the State's behalf under contract concluded with the State, for a fee to be agreed upon. If the State guarantee is called through the OBA, payment and the State's claim shall be governed by the provisions of Subsections (2)-(4).

(2) As regards the calling of a State guarantee, and the enforcement of the claim arising therefrom, the State shall be represented by the minister in charge of public finances. If the OBA finds that there is any deposit among the deposits that was placed with State guarantee, it shall contact the minister in charge of public finances in writing.

(3) In connection with deposits covered by a State guarantee, the minister in charge of public finances shall begin to pay from the central budget the funds required for calling the guarantee to the OBA within forty-five working days following the day of the opening of the compensation procedure as specified in Subsection (1) of Section 217. The OBA may only use these funds for fulfilling payment obligations deriving from the calling of the State guarantee, which payments may be supervised by a representative of the minister in charge of public finances in the premises of the credit institution.

(4) Receivables due to the deposit-holders from the credit institution shall be assigned upon the State up to the amounts paid on the grounds of calling the State guarantee. Upon the assignment of claims, the State shall succeed the formerly entitled party. The State shall be empowered to recover its claims in dissolution proceedings opened after the credit institution's activity license has been withdrawn under Paragraph *a*) of Subsection (1) of Section 33, or during the credit institution's liquidation. In the course of dissolution proceedings opened after the credit institution's activity license has been withdrawn under Paragraph *a*) of Subsection (1) of Section 33, or 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 assigned upon the State if the State is otherwise required to effect payments under a guarantee.

## 88. Distributions from the OBA

### *Section 217*

(1) The OBA shall begin to compensate the depositors following the day on which the deposits were frozen or, if the Authority has delivered its decision adopted under Paragraph *a*) or *b*) of Subsection (1) of Section 33 or pursuant to Subsection (5) of Section 17/T of Act CXXXV of 2013 on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy, or if liquidation proceedings have been

opened, following the publication of the court order on liquidation, whichever of the three occurs first (hereinafter referred to as “day of the opening of the compensation procedure”) and shall effect all compensation payments to the depositor within twenty working days. In justified cases, at the request of the OBA, the Authority may authorize the OBA to extend the payment deadline once, by not more than ten working days.

(2) The OBA shall publish in at least two daily newspapers of nationwide circulation and also on its website the conditions for the compensation of depositors and the information related to the process. The information published by the OBA shall be posted on the website of the credit institution affected by the compensation.

(3) In the case of registered deposits, the credit institution holding the deposit shall record two further identification data - from among those enumerated in Schedule No. 2 as prescribed by the OBA - in addition to the depositor’s name for the purpose of being able to establish entitlement to compensation clearly, beyond any doubt.

(4) Payments shall be made through orders given to credit institutions, by means of depositing the sum of compensation to the depositor’s benefit on an account carried by another credit institution, by way of cash payment from payment account through the institution operating the Postal Clearance Center, or by way of direct cash payment in the legal tender of the country where the deposit is placed. Compensation shall be paid out only if it reaches the equivalent of five hundred forints.

#### *Section 218*

The credit institution affected by the compensation shall, if so requested by the OBA, enter into an agreement with the OBA for carrying out tasks in connection with the payment of compensation for deposits insured by the OBA. For these services, the credit institution shall be entitled to a fee as stipulated in its last standard service agreement in effect while it was operating or in accordance with the item in its last standard service agreement that is most similar in content.

### 89. Passing of paid deposit claims

#### *Section 219*

(1) In the event the OBA has paid compensation to the depositors, the claims due from the credit institution shall pass - up to the amount paid - from the depositor to the OBA. Upon the passing of claims, the OBA shall succeed the formerly entitled party. The OBA shall be entitled to enforce the claims that have passed in the cases defined in Subsection (1) of Section 217.

(2) The credit institution concerned shall repay or reimburse the OBA the amounts paid and the costs incurred by the OBA in relation to the payments in the case of any payments made from the OBA to the person entitled to compensation. This obligation shall apply also if the credit institution’s membership in the OBA has been terminated.

(3) In the course of dissolution proceedings opened after the credit institution’s activity license has been withdrawn under Paragraph *a*) of Subsection (1) of Section 33, or in the course of liquidation of a credit institution, the OBA 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 OBA, but in respect of which it has a payment obligation according to Section 214, including the costs incurred in relation to effecting of the payments.

(4) In the application of Subsection (2), the paying credit institution's fee, the costs of transfers, printing costs, communications costs, costs of computer services and legal expenses shall be recognized as costs incurred by the OBA in connection with making compensation payments.

(5) The OBA shall be entitled to enforce claims only against such credit institution set up as a cooperative society provided for in Act CXXXV of 2013 on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy, where the deposit was placed.

## 90. Legal status of the OBA

### *Section 220*

- (1) The OBA is vested with legal personality.
- (2) The OBA is seated in Budapest.
- (3) The OBA may not be required to pay any corporate taxes, local taxes or duties on its assets, revenues and proceeds.
- (4) The funds of the OBA may not be appropriated and may not be used for purposes other than those specified in Section 211.
- (5) The equity capital of the OBA cannot be diversified.

### *Section 221*

The financial and accounting control of the OBA shall be performed by the Állami Számvevőszék (*State Audit Office*).

### *Section 222*

- (1) The OBA shall appoint an auditor.
- (2) The auditor of the OBA shall be selected by the board of directors from among persons certified to audit financial institutions.
- (3) The term of appointment of the auditor, if a natural person, shall be limited to five years. The same auditor may be contracted again three years after the original term expires. The auditor employed by an audit firm (employee, executive officer, working member) may audit the books of the OBA for a maximum period of five years and may be assigned again three years after the original term expires.
- (4) The auditor shall be responsible for auditing the accounting records and annual account of the OBA, and to comment on the authenticity of the material submitted to the executive board in connection with the management of the OBA and the management and use of assets.

## 91. Organizational structure of the OBA

### *Section 223*

- (1) The governing body of the OBA is the board of directors.
- (2) The board of directors of the OBA is comprised of :
  - a) the person delegated by the minister in charge of the money, capital and insurance markets;
  - b) two persons appointed by the Governor of the MNB, one for carrying out the tasks specified in Subsection (7) of Section 4 of the MNB Act and the other for carrying out the tasks specified

in Subsection (9) of Section 4 of the MNB Act in the capacity of deputy chairman or designated manager;

c) two persons appointed by the interest representation organizations of credit institutions;

d) the person delegated by the Chairman of the Executive Board of the Szövetkezeti Hitelintézetek Integrációs Szervezete (*Integration Organization of Cooperative Credit Institutions*); and

e) the managing director of the OBA.

(3) Board members - with the approval of the board of directors - may appoint a permanent proxy who shall attend the meetings of the board in the absence of the member with full rights of making decisions.

(4) Meetings of the board of directors shall have quorum if more than half of the members are present. Resolutions of the board of directors shall be adopted by a simple majority of votes. In case of a draw, the chair shall have a casting vote.

(5) The executive board shall elect a chair and a deputy chair annually from among its members. The managing director may not be elected as chairman or deputy chairman.

## 92. Duties of the board of directors of the OBA

### *Section 224*

(1) The board of directors shall:

a) govern and control the financial management and other activities of the OBA;

b) adopt the rules and regulations of the OBA;

c) determine the tasks and remuneration of the managing director and representatives of the OBA;

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) prescribe the use of special symbols, information and other means for credit institutions to convey a message that the deposits placed with those credit institutions are insured;

g) decide on actions to be taken in respect of carrying out the functions of the OBA;

h) determine the order of payments to be effected by the OBA under this Act;

i) decide on the budget of the OBA, including its operating costs;

j) approve the annual account of the OBA and the auditor's report, determine the financial position of the OBA 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 Állami Számvevőszék (*State Audit Office*) and send the same to the credit institutions;

k) establish once a year the fee policy of the OBA within the framework of this Act and shall notify the credit institutions on this policy, and shall determine the members' annual payment obligations based on this 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 234;

n) make recommendations to the Authority for the control of credit institutions in terms of compliance with the requirements regarding deposit insurance;

o) carry out other duties prescribed in this Act.

(2) When carrying out its functions, the board of directors may use the services of the Authority.

#### *Section 225*

(1) The board of directors shall have powers to appoint and dismiss the managing director and to exercise employer's rights in respect of the managing director. The board of directors may transfer this right - with the exception of appointment and dismissal - to the chair of the board.

(2) The board of directors shall oversee the activities of the managing director of the OBA.

### 93. Managing director and work organization of the OBA

#### *Section 226*

(1) The OBA has an independent work organization.

(2) The managing director shall have operational control over the activities of the OBA. The managing director shall exercise employer's rights in respect of the employees of the OBA.

(3) The managing director - subject to the consent of the board - may contract third parties for certain services and may enter into cooperation agreements for the performance of certain functions.

(4) In respect of the director and employees of the OBA, the provisions of Act I of 2012 on the Labor Code shall apply.

#### *Section 227*

When acting within the scope of its responsibilities, the board of directors shall make appointments in accordance with the rules of conflict of interests provided for in this Act.

### 94. Disclosure of information to the OBA

#### *Section 228*

(1) The OBA may only request information from the credit institutions which are necessary for its activities and which are not available to the Authority or the MNB acting within its central banking duties.

(2) When so requested by the OBA:

*a)* credit institutions shall provide information in compliance with this Act on the data specified by the OBA, and

*b)* the Authority and the MNB acting within its central banking duties shall provide information from the data available to them.

(3) The senior executive of any Hungarian branch that has joined the OBA shall immediately notify the OBA in writing if the parent credit institution or any of its branches in any State has become insolvent.

(4) The OBA may use the information described in Subsection (2) only to the extent required for the performance of its duties.

(5) The Authority shall have powers to conduct inspections at member institutions to monitor compliance with the requirements pertaining to deposit insurance, including the availability of data to the payment mechanism of the OBA and the aggregation of accounts separately for each

person. The Authority shall set up its annual control plan in consideration of the opinion of the OBA relating to inspections.

(6) Credit institutions shall have facilities to keep records on the deposits and depositors, containing the identification data specified in Schedule No. 2, and to make them available when requested by the OBA within five working days for the purpose of compensation. In connection with group accounts, in addition to the particulars of deposit-holders, credit institutions are required to keep records of the number of residential units in the case of condominiums and housing cooperatives, or the number of depositors in the case of building societies and school associations, if the amount deposited is higher than the amount limit specified in Subsections (1)-(3) of Section 214.

(7) The OBA shall test the operation of its payment mechanism on a regular basis based on the data sets supplied by the member institutions.

(8) In the case of compensation, the credit institution shall make available to the OBA, within three working days upon the request of the OBA, a program for the conversion of its deposit records to the payment mechanism of the OBA for processing such records, and shall provide facilities enabling the said payment mechanism to process data relating to its deposit portfolio.

#### *Section 229*

(1) All bank secrets and business secrets as well as data, facts or circumstances, obtained by the persons engaged with the OBA under contract of employment or similar relationship, or under personal service contracts, as well as the members of the board of directors, and all data, facts or circumstances which are not required to be disclosed by the OBA to other authorities or to the public shall be treated by such persons as strictly confidential.

(2) The provisions of the Civil Code on business secrets shall apply, in particular, to data from the agreement and cooperation referred to in Subsection (8) of Section 209, which are treated as business secrets by foreign deposit insurance schemes or foreign competent supervisory authorities, however, it shall be without prejudice to the availability to the general public of data and information relating to the public functions conferred upon the OBA.

#### *Section 230*

Any claims against the OBA for damages caused unlawfully may be enforced only if properly evidenced that the action or negligence of the OBA was unlawful and the incurred damages are the result of such action or negligence.

### **95. Account and cash management procedures of the OBA**

#### *Section 231*

(1) All revenues of the OBA, including those from its operation, shall be credited to the payment account of the OBA; on the other hand, operating expenses and payments in connection with insurance activities shall be made from this payment account.

(2) The funds of the OBA - with the exception of petty cash, the liquidity reserve kept on the payment account and the amounts transferred to a credit institution for effecting payments or for other purposes necessary for the operation of the OBA - shall be kept in government securities or in deposits held with the MNB.

(3) The profits of the OBA, if any, may only be used to increase its equity capital.

## 96. Resources of the OBA

### *Section 232*

(1) The resources of the OBA are comprised of:

- a)* affiliation fees;
- b)* regular or extraordinary annual payments by member credit institutions;
- c)* loans taken out by the OBA;
- d)* other revenues; and
- e)* bonds issued by the OBA.

(2) With a view to fulfilling its obligations described in Paragraph *b)* of Subsection (1) of Section 211, the OBA may borrow:

- a)* from the MNB, or
- b)* from credit institutions.

(3) The OBA shall be entitled to issue bonds with a view to fulfilling its obligation provided for in Paragraph *b)* of Subsection (1) of Section 211.

(4) The State shall provide surety facilities for the loans taken out and bonds issued by the OBA - in the amount approved by the minister in charge of public finances - with a view to fulfilling its obligations provided for in Paragraph *b)* of Subsection (1) of Section 211. Apart from the State surety facilities, the creditor shall not be required to demand additional security for the liabilities of the OBA. The OBA shall not be charged a fee for the State guarantee.

## 97. Affiliation fee

### *Section 233*

Any credit institution shall, upon joining the OBA, pay a one-time affiliation fee at the rate of half per cent of its subscribed capital to the OBA within thirty days of receiving the authorization.

## 98. Annual fees

### *Section 234*

(1) The obligation of OBA members to pay annual fees shall be determined by taking into account the total amount of deposits carried by the credit institution insured by the OBA - in accordance with Sections 212 and 213 - on 31 December of the previous year, the credit institution's membership in voluntary deposit insurance and institutional protection funds, and other factors established in the rules and regulations of the OBA. In 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's home office is located. When determining the annual fee, the OBA may consider the ratings determined for the credit institutions and their obligations by the rating organization prescribed by 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 OBA and kept with the member institution on 31 of December of the previous year and the deposits insured by the OBA as provided for by statutory provisions on the annual accounting and bookkeeping obligations of credit institutions.

(3) Credit institutions shall pay the annual fee in quarterly installments, by the fifteenth day of the quarter to which it pertains to the payment account of the OBA.

(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 OBA in the form and at the date described in the rules and regulations of the OBA.

(5) The fee to be paid by the credit institution for the year when receiving authorization for banking operations shall be determined, according to the general rules, 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 OBA.

(6) If a credit institution is engaged in high-risk activities justifying an increase in the fee according to the regulations, the OBA may increase the fee to be paid by the credit institution in the course of the year. Prior to increasing the fee, the OBA shall:

*a)* request the opinion of the MNB acting within its central banking duties and the Authority, and

*b)* allow the credit institution to submit its comments.

(7) The fee increased as under 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 taken out by the OBA under Paragraph *c)* and for redemption of the bonds issued under Paragraph *e)* of Subsection (1) of Section 232 the OBA may prescribe an extra payment obligation for 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 extra payment obligation may not exceed the amount of the fee determined according to Subsection (2) in respect of any credit institution.

(9) Where the OBA gains any income in connection with the events that prompted the OBA to take out the loan, it shall - on general principle - be used to reduce the existing loan debt and thereafter to reduce the extra payment obligation of the credit institutions and to repay the same.

(10) In the initial year of its dissolution or liquidation, the credit institution must pay the prorated annual fee in accordance with the provisions described in this Section for the period up to the day of the opening of the liquidation or dissolution proceeding. The fee shall be calculated based on the last payment made before the liquidation or dissolution was ordered, projected on the basis of the insured deposit holdings.

## 99. Accounting of fees received

### *Section 235*

Credit institutions shall show the amount paid to the OBA (including the affiliation fee) under other operating charges.

## 100. Joining the OBA

### *Section 236*

(1) Simultaneously with submitting the application for the activity license governed under Section 20, the credit institution shall also send a letter of intent of admission to the OBA and enclose a copy of such declaration to the application for activity license, unless the credit institution is incorporated as a branch and it is not required to join the OBA pursuant to Subsection (3) of Section 209.

(2) The letter of intent of admission shall be prepared in the form as published by the OBA.

## 101. Initiating actions and sanctions, termination of membership in the OBA

### *Section 237*

(1) Where a credit institution:

*a)* fails to fulfill the payment obligations described in Sections 233-234 in due time;

*b)* indicates its membership in the OBA 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 OBA;

*c)* violates the regulations on information requirements relating to deposit insurance;

*d)* has records from which the depositors' entitlement to indemnity cannot be unambiguously determined; or

*e)* breaches the regulations on deposit insurance;

the OBA shall advise the credit institution to cease the unlawful conduct and shall simultaneously inform the Authority thereof.

(2) If the credit institution fails to cease the unlawful conduct referred to in Subsection (1) after a period of thirty days following the warning, the OBA may request the Authority to take action against the credit institution, impose a fine upon it, or, with the assent of the Authority, terminate the credit institution's membership after a period of twelve months from the date of announcement of the pertinent measures if the credit institution continues to carry on the unlawful conduct during this time.

(3) In the case of moving for exclusion, the credit institution's membership in the OBA shall be terminated after the date specified in the advance notice, unless the credit institution has taken the actions aimed at conforming to regulations or terminating an improper conduct.

### *Section 238*

The membership of a credit institution in the OBA shall be terminated if the credit institution is no longer permitted to take deposits by decision of the Authority.

### *Section 239*

(1) Subject to the exception set out in Subsection (4), the 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 OBA or its membership has been terminated voluntarily or otherwise, it may not request a refund of its earlier payments. The exclusion or the termination of membership, voluntarily or otherwise, shall not effect the obligation of the excluded credit institution to pay the annual fee on the insured deposits as described in Section 234.

(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.

(4) The OBA - following termination of the membership of a credit institution - shall not pay compensation for any deposit that is covered by any foreign deposit guarantee scheme.

#### *Section 240*

In the case of exclusion under Section 237, the OBA shall notify the Authority in writing - within twenty four hours - about the exclusion and the reasons therefor, and shall publish a notice thereof within forty-eight hours in at least two daily newspapers of nationwide circulation.

### ***Chapter XI***

#### ***Voluntary Deposit and Institution Insurance***

##### **102. General provisions**

#### *Section 241*

(1) Credit institutions may establish a voluntary deposit insurance fund or 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 appropriated or used for purposes other than those described in its instrument of constitution. In the case of a member’s withdrawal 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 payment accounts and the amounts transferred to the credit institution for effecting payments or for other purposes necessary for the operation of the voluntary fund - shall be held in government securities.

(4) Credit institutions shall show payments made to the voluntary fund under other operating charges.

##### **103. Establishing voluntary funds**

#### *Section 242*

(1) An inaugural general meeting shall be convened in order to establish a voluntary fund. This general meeting shall have the function to draw up a members’ register, authoring the instrument of constitution, adopting the internal rules and regulations specified in this Act, and electing the officers.

(2) The inaugural general meeting shall adopt its resolutions by simple majority vote. In all other aspects of passing resolutions the provisions of this Act shall apply.

(3) Voluntary funds may only be founded for unspecified periods.

#### *Section 243*

(1) The events of the inaugural general meeting shall be recorded in minutes. The minutes shall be signed by the chairman elected by the general meeting and the keeper of the minutes, and shall be witnessed by two members.

(2) The instrument of constitution adopted by the inaugural general meeting shall be signed by all of the members, executed in a notarized document, or in a document countersigned by a lawyer.

#### *Section 244*

(1) The establishment of a voluntary fund shall be reported to the Authority for the purpose of authorization with:

- a)* the certified minutes of the inaugural general meeting,
- b)* the instrument of constitution, and
- c)* the members' register

enclosed, within fifteen days of the adoption of the instrument of constitution.

(2) Authorization shall be considered granted if the Authority fails to refuse the application within thirty days of receiving it.

(3) The Authority may refuse the application for authorization only if the submitted documents do not comply with the provisions set out in the relevant legislation.

(4) Within thirty days of the day on which the authorization is granted - or, in the case provided for in Subsection (2), the day on which the deadline expires - the establishment of a voluntary fund shall be notified - with the documents provided for in Subsection (1) enclosed - to the competent general court in whose jurisdiction the voluntary fund's registered office is 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 adopt a decision concerning registration in non-contentious priority proceedings. The court's resolution on registration shall be delivered to the Authority as well.

(6) The registration of a voluntary fund shall not be refused if the founders have satisfied the conditions stipulated in this Act.

(7) Once the court has registered the voluntary fund, it shall be recognized with retroactive effect to the day of the inaugural general meeting.

(8) In all other matters, the provisions of the Act on the Registration of Civil Society Organizations and on the Related Procedural Regulations pertaining to associations shall apply *mutatis mutandis* to the registration of voluntary funds.

### 104. Instrument of constitution

#### *Section 245*

(1) The instrument of constitution shall contain the organizational and operational mechanism of the voluntary fund.

(2) The instrument of constitution shall *inter alia* contain the following:

- a)* the name and registered office of the voluntary fund;
- b)* the founders;
- c)* the procedures for joining, withdrawal and being excluded from the voluntary fund;
- d)* the organizational structure of the voluntary fund, as well as the voluntary fund's control and crisis management policy;

- e)* the voting mechanism in the general meeting and the members' voting rights;
  - f)* the responsibilities of the voluntary fund and the rights connected thereto, including the rights relating to control and data disclosure which are deemed necessary to accomplish the voluntary fund's functions;
  - g)* the rights and obligations of the members of the voluntary fund;
  - h)* the policy for managing the assets managed by the voluntary fund;
  - i)* the rules for the payment of membership dues; and
  - j)* the settlement procedure used when members withdraw or are excluded.
- (3) The Authority's consent is required - having regard to Section 244 - for adopting and amending the voluntary fund's instrument of constitution as well as for terminating the voluntary fund.

## 105. The member's register

### *Section 246*

- (1) Voluntary funds shall compile registers of their members and keep them up to date at all times. The executive board shall maintain the register.
- (2) Registers shall inter alia contain the members' names (corporate names), their registered offices, addresses of the members' district offices, and the names of their senior executives.
- (3) Once a member has been entered in the register, membership shall be recognized with retroactive effect to the day of the general meeting's decision.

## 106. General meeting

### *Section 247*

- (1) The general meeting, consisting of all of the members, functions as the supreme body of the voluntary fund.
- (2) All members of the voluntary fund shall be entitled to participate in the activities of the general meeting.
- (3) The powers of the general meeting shall be defined in the instrument of constitution. The following shall be within the exclusive powers of the general meeting:
- a)* drawing up the instrument of constitution, including subsequent amendments;
  - b)* decision on the admission and exclusion of members;
  - c)* preparing the annual budget of the voluntary fund and adopting its annual account;
  - d)* electing the members and the chair of the executive board and the supervisory board;
  - e)* appointing the auditor;
  - f)* making decisions in matters of merger, division, and termination; and
  - g)* other matters delegated by law.
- (4) The general meeting shall be convened at the intervals specified in the instrument of constitution, but at least once a year. Moreover, the general meeting shall be convened when so ordered by the court or if the members so requested - in the percentage specified in the instrument of constitution - with the reason and purpose indicated.
- (5) The executive board shall convene the general meeting in writing at least fifteen days prior to the appointed date. The procedures for passing resolutions and conducting elections shall be laid down in the instrument of constitution, with the proviso that the majority of all of the votes

of the voluntary fund is required to pass any and all resolutions having regard to the relevant provisions of this Act.

(6) Unless otherwise provided for by the instrument of constitution, matters 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 item in question.

## 107. Executive board

### *Section 248*

(1) The general meeting shall elect an executive board composed of at least five and not more than eleven members - the exact number being specified in the instrument of constitution - and shall elect a chairman from among these members.

(2) The chairman shall represent the voluntary fund in dealings with third parties and before the authorities. The instrument of constitution may authorize those members other than the chairman to represent the fund.

### *Section 249*

(1) The executive board shall govern the voluntary fund in accordance with the resolutions of the general meeting and shall decide all matters which are not delegated upon another body or representative of the voluntary fund neither by law nor the instrument of constitution.

(2) The executive board shall meet as often as provided for in the instrument of constitution, but at least once every two months. The executive board shall give account of its activities to the general meeting at least once a year.

(3) The executive board 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, subject to approval by the general meeting.

(4) Members of the executive board shall exercise particular care in their actions, as generally expected of persons in such positions, on the basis of the primacy of the interests of the voluntary fund. Members of the executive board shall be subject to unlimited, joint and several liability under civil law for damages caused to the voluntary fund by any breach of their responsibilities.

(5) Members of the executive board 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).

## 108. Supervisory board

### *Section 250*

(1) The general meeting shall elect a supervisory board composed of at least three and not more than nine members - the exact number being specified in the instrument of constitution - and shall elect a chairman from among these members.

(2) The supervisory board shall supervise the management of the voluntary fund on behalf of 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 executive board proceed in compliance with the relevant legislation, the instrument of constitution or any other internal policy;
- c)* may initiate the removal of, or taking disciplinary actions against, all or certain members of the executive board, and the convening of an extraordinary general meeting;
- d)* shall convene the general meeting, and shall simultaneously notify the Authority if the executive board fails to satisfy its obligations to do so;
- e)* shall present its opinion on the annual budget submitted to the general meeting and on the annual account, without which no valid resolution can be made on these subjects; and
- f)* shall make recommendations to the general meeting for determining the remuneration of members of the executive board.

#### *Section 251*

- (1) The supervisory board may temporarily suspend the operation of the executive board, where so required by the interests of the members.
- (2) Upon having the executive board suspended, the supervisory board shall simultaneously:
  - a)* request that an extraordinary general meeting be convened within thirty days, and
  - b)* attend to the affairs of management until the general meeting convenes.

#### *Section 252*

- (1) The supervisory board shall function 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, subject to approval by the general meeting.
- (4) Members of the supervisory board shall be subject to unlimited, joint and several liability for damages caused to the voluntary fund by any breach of their supervisory obligations.

### 109. Auditor

#### *Section 253*

- (1) Voluntary funds shall appoint an auditor.
- (2) The general meeting shall choose the voluntary fund's auditor from among persons certified 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 again by the same voluntary fund three years after the original term expires. An auditor employed by an audit firm (employee, executive officer, working member) may audit the books of a voluntary fund for a maximum period of five years and may be appointed again by the same voluntary fund three years after the original term expires.
- (4) The auditor shall be responsible for carrying out the audits of the voluntary fund's accounting records and annual account, and to comment on the authenticity of the material submitted to the executive board in connection with the management of the voluntary fund and

the management and use of assets. No resolution may be adopted on any matter without the auditor's opinion and the auditor's obligation to make a report.

## 110. Remedy against the decisions of a voluntary fund

### *Section 254*

(1) Any member may challenge a resolution of any of the voluntary fund's bodies that is deemed unlawful in court, within thirty days of the day of gaining knowledge thereof, at most within ninety days of the date on which it was adopted.

(2) Challenging a resolution shall not preclude its execution; however, the court may suspend its enforcement in justified cases.

### *Section 255*

(1) In the event where any resolution of the voluntary fund is found unlawful, the Authority may - if there is no other way to ensure the legality of operation - bring action in court. Upon the Authority's action the court:

*a)* may overturn the voluntary fund's unlawful resolution and may order - if deemed necessary - that a new resolution be adopted,

*b)* may convene the voluntary fund's general meeting in order to restore legality of operation, or

*c)* may suspend the operation of the voluntary fund.

(2) Actions brought by a member of the voluntary fund or the Authority shall be heard in the court in whose jurisdiction the voluntary fund is registered.

## 111. Support to be provided by voluntary funds

### *Section 256*

(1) In order to perform its duties described in its instrument of constitution, an institutional protection fund may provide the following to a member institution under support agreement entered into with the member institution or the owner thereof:

*a)* guarantees,

*b)* capital allocations,

*c)* loans.

(2) Credit institutions, utilizing the voluntary deposit insurance fund, shall pay at least the central bank base rate in interest until the borrowed funds are repaid. Withdrawal from the voluntary deposit insurance fund shall have no bearing on the said repayment obligation.

(3) The voluntary fund shall inform the Authority concerning the measures it plans to take in order to avoid payments.

## 112. Mandatory institutional protection organization

### *Section 257*

(1) An institutional protection integration organization may be set up by virtue of law (mandatory institutional protection organization).

(2) The regulations concerning the organizational structure and functioning of the mandatory institutional protection organization shall be laid down in an act.

## ***Chapter XII***

### ***Accountancy and Audit of Financial Institutions***

#### **113. Accounting**

##### *Section 258*

(1) Financial institutions shall keep all records relating to business activities in the Hungarian language - in compliance with the provisions of Hungarian accounting law - and in a manner containing sufficient facilities for control and supervision by the Authority and the central bank.

(2) The above-specified business records shall meet the following requirements:

*a)* shall have facilities to enable the internal control of financial institutions,

*b)* shall have facilities to ensure prudent and reliable governance and management - including an assessment of the activities of persons in executive positions - as well as inspections conducted by the owners, the auditor and the Authority and, furthermore, to assist the financial institution in fulfilling its statutory and contractual obligations.

##### *Section 259*

(1) Financial institutions shall send their annual account - 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 Authority within fifteen business days of the day on which they are adopted, on or before 31 May of the year following the current year at the latest, and the consolidated annual account within fifteen working days of the day on which they are adopted, on or before 30 June of the year following the current year at the latest.

(2) The provisions of Sections 258-264 shall not apply to the accountancy and auditing of legal persons engaged in providing the financial auxiliary services specified in Paragraphs *a)* and *c)* of Subsection (2) of Section 3.

(3) Third-country financial institutions that have a branch in Hungary shall publish the official Hungarian translation of their balance sheet and profit and loss account prepared according to the laws of their home countries and approved by an auditor in two national daily papers within thirty days of approval.

#### **114. Auditing**

##### *Section 260*

(1)<sup>21</sup> In the case of financial institutions the auditor commissioned for auditing services shall be a certified auditor or registered statutory auditor (audit firm) and:

*a)* the auditor (audit firm) shall be certified to audit financial institutions;

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<sup>21</sup> Amended by Paragraph d) Subsection (2) of Section 308 of this Act.

*b)* the auditor shall not have any, direct or indirect, ownership interest in the credit institution;  
*c)* the auditor shall not have any loan debt towards the credit institution; and  
*d)* neither of the members with a qualifying holding shall have any, direct or indirect, ownership interest in the audit firm.

(2) The restrictions laid down in Paragraphs *c)*-*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, if a natural person, shall be limited to five years. The same auditor may be contracted again three years after the original term expires. An auditor employed by an audit firm (employee, executive officer, working member) may audit the books of a credit institution for a maximum period of five years and may be appointed again by the same credit institution three years after the original term expires.

(4) In addition to the requirements set out 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 institutions set up as cooperative societies - at any given time;

*b)* he shall be permitted to audit the books of maximum ten credit institutions set up as cooperative societies at any given time;

*c)* the income (revenue) of the auditor from any one credit institution may not be greater than thirty per cent of his annual income (revenue);

*d)* the income (revenue) of the auditor from financial institutions, investment firms, investment fund management companies, stock exchanges or bodies providing clearing and settlement services controlled by a group or holding, or from an investment fund managed by an investment fund management company controlled by the same group or holding cannot exceed sixty per cent of his annual income (revenue).

(5) In addition to the requirements set out in Subsection (1), the following provisions shall also apply to audit firms of credit institutions:

*a)* any auditor in the employ of an audit firm - who satisfies the requirements set out in Subsection (1) - shall be permitted to audit the books of maximum five credit institutions, excluding credit institutions set up as cooperative societies, at any given time;

*b)* any auditor in the employ of an audit firm - who satisfies the requirements set out in Subsection (1) - shall be permitted to audit the books of maximum ten credit institutions set up as cooperative societies at any given time;

*c)* the income (revenue) of the audit firm from any one credit institution cannot exceed ten per cent of its annual net revenue;

*d)* the revenue of the audit firm from financial institutions, investment firms, investment fund management companies, the stock exchange or bodies providing clearing and settlement services controlled by a group or holding, or from an investment fund managed by an investment fund management company controlled by the same group or holding cannot exceed thirty per cent of its annual net revenues.

(6) Financial institutions may not commission employees of the Authority or close relatives of employees of the Authority for auditing.

### *Section 261*

(1) The auditors of financial institutions shall have a duty to report promptly to the Authority, while notifying the financial institution at the same time in writing, of any fact concerning that

financial institution of which they have become aware while carrying out that task which is liable to:

- a)* lead to refusal to certify the accounts or to the expression of reservations;
- b)* constitute a criminal offense or a material breach of the financial institution's internal rules and regulations, or to forewarn any imminent infringement of such regulations;
- c)* constitute a material breach of this Act or other regulations, or the provisions decreed by the Authority;
- d)* result in any uncertainty as to the ability of the financial institution to meet its liabilities and commitments, or safeguard the assets entrusted to it; or
- e)* constitute serious deficiencies or shortcomings in the internal control regime and compliance functions of the financial institution; or
- f)* result in a considerable difference of opinion between the auditor and the management of the financial institution regarding issues affecting the solvency, income, data disclosure or accounting of the financial institution, which are considered essential from the point of view of operations.

(2) The person auditing the consolidated annual account of a financial institution shall forthwith notify the Authority in writing if his findings with respect to a company that is considered to have close links due to a controlling influence with the financial institution reveal any facts that adversely affect the continuous functioning of the financial institution or indicate the occurrence of what is contained in Paragraph *a)* or *c)* of Subsection (1).

(3) In addition to what is contained in Subsections (1) and (2),

- a)* the auditor shall have the right:
  - aa)* to consult with the Authority, and
  - ab)* to convey the findings of his audit to the Authority;
- b)* the Authority shall be entitled to demand and receive information directly from the auditor concerning the findings of his audit.

### *Section 262*

In the case described in Paragraph *k)* of Subsection (3) of Section 184 the Authority shall have powers to instruct the credit institution to replace its auditor and to request that the auditor's certificate to audit financial institutions be withdrawn.

### *Section 263*

(1) When auditing the annual account of a credit institution the auditor shall also examine the following:

- a)* the accuracy of assessments by professional standards;
- b)* whether the prescribed and necessary value adjustments and readjustments have been made;
- c)* whether the prescribed and necessary provisions have been set aside;
- d)* ongoing compliance with the provisions on own funds, capital adequacy, financial stability and liquidity, and also the regulation pertaining to financial services and financial auxiliary services;
- e)* compliance with the legal provisions on prudential management for effective, reliable and independent operations, as well as the provisions of the MNB Act, other relevant legal provisions pertaining to its activities, and the administrative decisions of the MNB; and
- f)* the operation of adequate control mechanisms.

(2) Upon conclusion of the audit, the auditor shall record his findings on the issues specified in Subsection (1) in a separate supplementary report, and shall send it to the executive board, the managing director, the chairman of the supervisory board and to the Authority at the latest by 31 May of the following year.

(3) In auditing the credit institution's books, the auditor shall check the contents of the information published, including their correctness in terms of value.

#### *Section 264*

(1) Financial institutions shall send to the Authority the contract concluded with the auditor - for auditing the annual account - and all of the reports prepared by the auditor regarding the annual account.

(2) Prior to the approval of the annual account, the Authority is entitled, on the basis of the auditor's report, to instruct the financial institution to provide for the re-examination of the financial report that contains any incorrect or inaccurate data, implement the necessary corrections and have the corrected data verified by an auditor.

(3) If, after the annual account has been approved, the Authority discovers that the annual account contains any substantial error, the Authority may order the financial institution concerned to have the figures revised and verified by an auditor. The financial institution affected shall present the revised data verified by an auditor to the Authority.

### ***Chapter XIII***

#### ***Protection of Clients***

##### **115. General provisions**

#### *Section 265*

(1) With the exception set out in Subsection (2), financial institutions shall not be permitted to provide a loan to a consumer where the annual percentage rate of charge exceeds the central bank base rate increased by 24 percentage points.

(2) As regards credit card interest and lines of credit connected to payment account, or credit provided for the purchasing of durable consumer goods (other than motor vehicles) primarily used for personal, family or household purposes, including services, and credit secured by possessory lien, the annual percentage rate of charge for these credits may not exceed the central bank base rate increased by 39 percentage points.

(3) For the purposes of this Section, the central bank base rate in effect on the first day of the month preceding the calendar half-year affected shall apply for the entire period of the given calendar half-year.

#### *Section 266<sup>22</sup>*

#### *Section 267*

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<sup>22</sup> Repealed by Paragraph e) of Subsection (2) of Section 308 of this Act, effective as of 15 March 2014.

(1) Where a financial institution has concluded a mortgage loan contract or a residential financial leasing agreement that is linked to, or denominated in, a foreign currency and repaid in forints (hereinafter referred to as “foreign exchange based”):

- a) the loan amount at the time of disbursement,
- b) the amount of the monthly installment, and
- c) any cost, fee or commission charged in a foreign currency,

shall be translated to forints by the official exchange rate quoted and published by the MNB acting within its central banking duties, unless the financial institution has its own medium rate of exchange.

(2) If a financial institution has its own medium rate of exchange, the sums referred to in Paragraphs a)-c) of Subsection (1) shall be translated to forints by either of the following means at the financial institution’s option:

- a) by the medium rate of exchange quoted and published by the financial institution itself, or
- b) by the official exchange rate quoted and published by the MNB.

(3) Financial institutions shall not be authorized to charge any additional cost, fee or commission for the conversion and calculation performed under Subsection (1).

(4) The provisions of Subsections (1)-(3) shall also cover the cases where installments are paid not on a monthly basis, and if the consumer decided to repay a part of his debt, or to pay off the loan amount in full early.

(5) The provisions of this Section shall not apply to cases where installments are paid in a foreign currency.

## 116. Special provision relating to commercial communication

### *Section 268*

In the cases defined in the legislation adopted for the implementation of this Act, the commercial communication shall contain information concerning the integrated deposit rate index. The regulations for the calculation of this index and for the means of display are laid down in the legislation adopted for the implementation of this Act.

### *Section 269*

Advertisements on behalf of credit institutions, when acting as the advertisers, for inviting young persons for placing money on deposit, borrowing or using other financial services shall be published in at least two national daily newspapers, and in at least one local daily newspaper and one national daily newspaper when transmitted on behalf of credit institutions set up as cooperative societies.

### *Section 270*

Drawings, except for prize drawing deposits, may not be advertised.

## 117. Provision of information to clients

### *Section 271*

(1) Financial institutions shall publish the following in the form of a posted notice in the customer area of their premises, and where services are provided in electronic commerce, by way of electronic means in easily accessible format:

- a) standard service agreement, containing inter alia the standard contract terms and conditions;
- b) contract terms and conditions for financial services and financial auxiliary services (transactions) offered for clients;
- c) rates of interest, service fees, and other costs charged to clients, interests on late payment and the method of computation of interests.

(2) Financial institutions shall make available free of charge upon a client's request:

- a) the standard service agreement; and
- b) the data to be published under the provisions of the relevant legislation.

(3) Prior to entering into a contract, financial institutions shall - unless otherwise provided for by law - inform prospective clients if some law other than Hungarian law will be used for settling legal disputes in connection with the contract, or if Hungarian courts are not vested with exclusive jurisdiction.

(4) In the case of consumer loan contracts provided in a foreign currency, the financial institution shall expressly specify in the contract the risks to which the client is exposed, and the client shall be required to verify acknowledgement by his signature.

(5) In the case of foreign currency loans, the statement of disclosure of risk provided for in Subsection (4) shall cover the risks in any fluctuation of exchange rates, and its effect on the installment payments.

(6) In good time before the client is bound by any agreement, in any case before starting to provide the service, the financial institution shall provide the client with clear, full and accurate information that it has undertaken to be bound by the code of conduct referred to in Paragraph *i*) of Section 2 of Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices in relation to one or more of the activities to which the agreement pertains, indicating also the place where the code of conduct is available free of charge.

(7) If the financial institution has the necessary technical means available, it shall post on its website the code of conduct referred to in Subsection (6) and shall provide unrestricted and non-stop access free of charge for the general public in the languages available.

## 118. Information to deposit-holders

### *Section 272*

(1) Credit institutions shall provide depositors with readily intelligible information concerning the material issues that affect the depositors in regard to the OBA and foreign deposit guarantee institutions and, if participating in a voluntary deposit guarantee or institutional protection fund, in that respect, thus, for example, the types of deposits covered by the OBA, the extent of cover, and - if the Authority has withdrawn the credit institution's activity license according to Section 33, or the credit institution has been liquidated - the conditions for compensation payments under Subsection (1) of Section 214 as well as the procedure required for obtaining the cover. Furthermore, credit institutions are required to inform depositors where the insurance provided by the OBA shall not cover an account under Section 213 or Subsection (4) of Section 239.

(2) Unless otherwise agreed by the parties, credit institutions shall supply the information referred to in Subsection (1) in the Hungarian language.

### *Section 273*

(1) A credit institution shall inform its depositors if its membership in the OBA or in a foreign deposit guarantee institution has been terminated, and it shall remove all mention of the deposit insurance provided for in this Act from all notices and other similar information material. The information shall contain the rights of depositors and the procedure for the enforcement of such rights.

(2) Unless otherwise agreed by the parties, credit institutions shall supply the information referred to in Subsection (1) in the Hungarian language.

### *Section 274*

It is prohibited to use any information relating to deposit insurance, the OBA or the voluntary deposit and institutional protection fund for the purpose of increasing deposit holdings, in particular for advertisements.

## 119. Periodic information

### *Section 275*

(1) In continuing contractual relationships - including contracts for deposits tied up on a recurrent basis - the financial institution shall send the client a clear and comprehensive statement (extract) in writing that is easy to understand:

*a)* at least once a year, and

*b)* at the time the contract expires.

(2) The account statement - unless otherwise provided for by the standard service agreement or another contract - shall be considered accepted if the client does not raise any objection in writing within sixty days of receiving the statement; it, however, shall not effect the enforceability of the deposit to which it pertains.

(3) The client may request - at his own expense - a statement on individual transactions carried out in the previous five years. The credit institution is required to send such statements in writing to the client at the latest within ninety days.

(4) Unless otherwise agreed by the parties, 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.

(5) Credit institutions are required to prepare statements once a year, according to the layout specified by the OBA, on the total balance of all insured deposits held by a single person at the credit institution, and on the amount of deposit insurance cover due to that deposit-holder accordingly.

## 120. Standard service agreement

### *Section 276*

(1) Financial institutions are required to adopt and lay down the standard contract terms and conditions for the services they provide under authorization and on a regular basis in a standard service agreement.

(2) Where a financial institution undertook to be bound by the code of conduct in relation to one or more of its activities, this shall be clearly indicated in its standard service agreement.

#### *Section 277*

The standard service agreement containing the terms and conditions of deposit transactions shall include, in particular:

- a)* the full name of the credit institution, number and date of its activity license;
- b)* the method of calculation of interests and average interests, and whether the interest rate can be changed;
- c)* the minimum amount accepted by the credit institution as a deposit;
- d)* the minimum period during which the deposit cannot be withdrawn, or during which the deposit may be withdrawn subject to losing all or part of the interest;
- 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 credit institution.

#### *Section 278*

(1) The standard service agreement containing the standard contract terms and conditions of credit and loan operations shall inter alia contain:

- a)* the full name of the financial institution, number and date of its activity license;
- b)* whether the interest rate can be changed and, if so, how;
- c)* method of calculation 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 central credit information system (hereinafter referred to as “KHR”) defined by the Act on the Central Credit Information System, and an indication of the remedies available;
- g)* in the case of foreign exchange based mortgage loan contracts, the calculation method selected according to Section 267 and applied, and an indication of the time when conversions to forints take place.

(2) Paragraph *g)* of Subsection (1) shall apply to foreign exchange based financial leasing agreements as well.

### 121. Special provisions relating to certain specific contracts

#### *Section 279*

(1) All contracts of financial institutions for supplying financial services and financial auxiliary services shall be made in writing, including if made in the form of an electronic document executed with at least an advanced electronic signature. The financial institution shall provide an original copy of the written contract to the client.

(2) In the contract concluded under Subsection (1) the financial institution and the client may agree to conclude contracts for specific financial services and financial auxiliary services by way

of identified electronic means. The contract for financial services and financial auxiliary services entered into as provided for above shall be construed as a contract executed in writing.

(3) The agreement for supplying financial services and financial auxiliary services shall clearly indicate the interest rates, fees and all other charges and conditions, including the legal consequences of any default in payment, and the procedure for the enforcement of additional obligations made in security of the contract and the legal ramifications involved.

(4) In loan agreements or financial leasing agreements concluded with consumers only the interest rate, fees and commissions may be changed unilaterally to the disadvantage of the client. Other conditions, including a listing of the grounds substantiating the unilateral modification of the terms and conditions of the contract, may not be altered unilaterally to the disadvantage of the client. The creditor shall be able to exercise the right of unilateral modification if the objective reasons giving grounds for modification are fixed in the contract, and if the creditor has committed its pricing criteria in writing.

(5) Pricing criteria shall inter alia contain the following:

a) any change in the interest rate, fee and commission may be allowed only on grounds having a material impact on the interest rate, fee and commission in question, as it is fixed in the contract;

b) where changes in the same circumstances warrant the reduction of interest rates, fees and commissions, this shall be enforced as well;

c) specific conditions showing cause and effect relationships with, and bearing any relevance to, the interest rate, fees and commissions shall be taken into consideration in proportion of the actual impact they may have;

d) fees and commissions may be increased annually by not more than the annual consumer price index published by the Központi Statisztikai Hivatal (*Central Statistics Office*) for the previous year.

(6) The adequacy of the pricing criteria, and the means of application of the pricing criteria shall be monitored by the Authority in accordance with the provisions laid down in the code of conduct governed by Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices, that is approved by the Authority as well.

(7) As regards foreign exchange based credit and loan agreements concluded with consumers, financial institutions shall be allowed to charge in a foreign currency only those expenses and fees, which are directly connected to obtaining the foreign currency required to execute and maintain the given contract, including service charges similar in nature to interest and the costs of credit protection facilities proportionate to the outstanding amount of the foreign exchange based credit and loan agreements, if the insurance premium payable by the credit institution is also foreign exchange based. Fees and expenses related to the conclusion of the contract, to correspondence, statements and certificates, visiting clients, credit monitoring, termination, the appraisal and replacement of collateral, amendment of the contract, credit protection facilities not proportionate to the outstanding amount of the foreign exchange based credit and loan agreements, furthermore, administration charges pertaining to the credit agreement and to the closure of the related credit account may not be charged to the consumer in a foreign currency.

(8) Having regard to the contracts mentioned in Subsection (4), any changes applied unilaterally regarding interest rates, fees or commissions - not including the change of any interest rate that is tied to a reference rate and with the exception of home loans provided with State subsidized interest rates -, if to the disadvantage of clients, shall be published by way of posted notice sixty days prior to the operative date of such changes. Said changes and the resulting changes envisaged in the amount of installment payments - not including the change of

interest rate that is tied to a reference rate and with the exception of home loans provided with State subsidized interest rates - shall be notified to the clients affected by mail, or on another durable medium specified in the contract. Where commercial electronic services are provided, information relating to changes shall be made available to clients also by way of electronic means on an ongoing basis in easily accessible format.

(9) The time of dispatch of the direct means of communication referred to in Subsection (8) shall precede the effective date of the change by at least sixty days.

(10) In connection with loans provided with State subsidized interest rates, changes in contractual conditions relating to interest rates, fees and commissions, if to the disadvantage of clients, shall be published by way of posted notice fifteen days prior to the effective date of such changes, furthermore, where commercial electronic services are provided, the aforementioned changes shall be notified to clients also by way of electronic means on an ongoing basis in easily accessible format.

(11) Having regard to the contracts mentioned in Subsection (4), where any changes are unilaterally applied to the disadvantage of the clients regarding interest rates, fees or commissions - if the interest is tied to a reference rate, not including where such change is invoked by any change in the reference rate - the clients affected shall have the right to withdraw from the contract - subject to the exception set out in Subsection (12) - free of charges before the change takes effect.

(12) In connection with mortgage-backed loan contracts - including the case where a loan is refinanced by a mortgage loan company after refinancing has in fact been completed -, where the contract is terminated upon the exercise of the client's right of withdrawal due to changes applied unilaterally to the disadvantage of clients regarding interest rates, fees or commissions, the credit institution shall be entitled to recover its costs stemming from early amortization provision. The loan agreement shall contain an indication that the loan is mortgage-backed, or that refinancing is proposed by way of second mortgage, including the relevant legal consequences. In connection with a loan agreement where refinancing is provided by a mortgage loan company, the client affected shall be informed by way of a notice dispatched within not more than thirty days of the effective date of refinancing.

(13) Having regard to contracts not mentioned in Subsection (4), interest rates, fees and other contract terms and conditions may be unilaterally modified to the disadvantage of the client only if it is expressly permitted in a separate section of the agreement for the financial institution under specific conditions or circumstances. Changes in contractual conditions relating to interest rates and fees, if to the disadvantage of clients, shall be published by way of posted notice fifteen days prior to the operative date of such changes, furthermore, where commercial electronic services are provided, the aforementioned changes shall be notified to clients also by way of electronic means on an ongoing basis in easily accessible format.

(14) A contract may not be modified unilaterally by introducing new fees or commissions. The calculation methods of certain interest rates, fees and commissions may not be modified unilaterally to the disadvantage of the client.

(15) The notice posted for clients shall contain information specific to interest rates, fees and commissions, showing the extent of change in such interest rates, fees and commissions. The reasons for the change shall be made available to clients.

(16) Financial institutions shall be allowed to make any change in the terms and conditions of client contracts unilaterally if it is not to the disadvantage of the client.

(1) By way of derogation from Subsections (4)-(6), (8)-(9) and (11) of Section 279, Subsections (2)-(10) hereof shall apply to mortgage loan contracts.

(2) In connection with mortgage loan contracts, in the case of the consumer's performance in accordance with the contract, the financial institution may not charge any fee or service charges similar in nature to interest, levied on a regular basis in addition to the interest, and may not offer at the time of conclusion of the contract reduced rates for a limited period.

(3) At the time of conclusion of the mortgage loan contract, financial institutions shall - unless otherwise provided for by law - define changes in interest rates by either of the following methods:

*a)* based on reference interest rate, or

*b)* the interest rate shall be fixed for 3, 5 or 10-year interest periods specified in the loan agreement.

(4) In addition to interest, financial institutions shall be allowed to increase non-regular fees and other charges in connection with existing contracts annually, by not more than the annual consumer price index published by the Központi Statisztikai Hivatal (*Central Statistics Office*) for the previous year.

(5) Where Paragraph *a)* of Subsection (3) applies, financial institutions shall be allowed to change the difference between the interest rate charged and the reference rate (premium) unilaterally, to the consumer's detriment only if:

*a)* the consumer is past due more than forty-five days on any monthly installment payment, or

*b)*<sup>23</sup> the consumer fails to make payments of the premium for the property insurance policy concluded for the real estate property pledged as collateral, with the financial institution named as the beneficiary, or on which the financial institution holds a lien, upon receipt of notice from the financial institution by post or other means of direct communication specified in the contract, for at least two months.

(6) Financial institutions shall define the impact of changes specified in Subsection (5) on the premium in their internal policies.

(7) For the purposes of Paragraph *a)* of Subsection (3), reference interest rate shall be:

*a)* in the case of forint loans, 3-month, 6-month or 12-month BUBOR, or the average 3-year or 5-year yield on government securities published monthly by the Államadósság Kezelő Központ Zrt. (*Government Debt Management Agency*) according to the Government Decree on Subsidies for Housing Purposes,

*b)* in the case of euro loans and euro-based loans, 3-month, 6-month or 12-month EURIBOR,

*c)* in the case of Swiss franc loans or Swiss franc-based loans, 3-month, 6-month or 12-month CHF LIBOR.

(8) In connection with mortgage loan contracts linked to a reference interest rate, the interest rate shall be adjusted according to the time intervals the selected reference interest rate represents, to the reference rate in effect two days before the last working day of the month preceding the date of maturity.

(9) Where the interest rate is fixed according to Paragraph *b)* of Subsection (3), the rates for the new interest periods shall be published by way of posted notice at least ninety days before the rates in question are set to take effect. Said changes and the resulting changes envisaged in the amount of installment payments shall be notified to the clients affected by post or other direct means of communication specified in the contract. The direct means of communication referred

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<sup>23</sup> Established by Subsection (7) of Section 306 of this Act, effective as of 15 March 2014.

to above shall be dispatched at least ninety days before the effective date of the change. Where commercial electronic services are provided, information relating to changes shall be made available to clients also by way of electronic means on an ongoing basis in easily accessible format.

(10) Where the interest rate is fixed according to Paragraph *b*) of Subsection (3), the client shall have the right to withdraw from the contract - subject to the exception set out in Subsection (12) of Section 279 - free of charge over a period of ninety days before the new interest period takes effect. The client's withdrawal from the contract shall be disregarded if unable to repay the full amount owed to the lender under the given contract before the end of the interest period.

#### *Section 281*

(1) Credit institutions may only enter into deposit contracts (or release deposit documents) or issue debt securities if the underlying contract contains a reference to the regulations specified under Subsection (1) of Section 213 and Paragraph *c*) of Subsection (2) of Section 213.

(2) If a credit institution that is a member of the OBA carries out deposit transactions through a tied intermediary under Paragraph *h*) of Subsection (1) of Section 14, the tied intermediary shall also indicate the credit institution on behalf of which the deposit is received.

(3) Deposit documents made out in the form of securities shall visibly indicate that the underlying contract is a deposit contract or a savings deposit contract.

#### *Section 282*

Payments made from the deposit accounts described in Subsection (4) of Section 212 shall in all cases be effected from the amount deposited at the earliest.

### 122. Provisions on the termination of contracts

#### *Section 283*

(1) Before terminating a loan agreement or financial leasing agreement concluded with a consumer, the financial institution shall dispatch a payment notice in writing to the consumer and the person shown as the guarantor, and - if the collateral is provided not by the borrower - to the obligor as well, raising awareness of the consumer, the guarantor and the obligor in showing the full amount of the debt and the amount owed, the interest payable and interest on late payment, the additional interest charged upon default and the possible legal effects in the event of non-payment.

(2) The financial institution shall send to the consumer and the guarantor the notice of terminating the loan agreement or financial leasing agreement concluded with the consumer. The burden of proof of having the notice of termination sent lies with the financial institution.

(3) Before terminating a mortgage loan contract, the financial institution shall send a statement - together with the written notice provided for in Subsection (1), and in addition to the information provided for in Subsection (1) - showing the installment payments made by the consumer from the beginning of the contract on the aggregate for each year - broken down monthly at the consumer's request -, the amount of principal repaid, the amount of interest charged, interest on late payment and other charges, and the amount of interest capitalized and the amount still owed.

#### *Section 284*

(1) In the case of residential credit and loan agreements or financial leasing agreements concluded with consumers, after ninety days following termination of the agreement the financial institution shall not be authorized to charge any interest on late payment, cost, fee or commission due to the consumer's default in a sum exceeding the interest and service charge in effect on the day preceding the day of termination of the agreement.

(2) If the residential credit and loan agreement or financial leasing agreement concluded with a consumer is foreign exchange based, and it contains a clause that the loan balance outstanding at the time of termination of the agreement is to be converted to forints, the provision contained in Subsection (1) shall apply by way of derogation that after ninety days following cancellation of the agreement the financial institution shall not be authorized to charge any interest on late payment, cost, fee or commission due to the consumer's default in a sum exceeding the interest and service charge in effect on the day of termination of the agreement.

### 123. Issue and redemption of electronic money

#### *Section 285*

Credit institutions that issue electronic money shall apply Section 66 of Act CCXXXV of 2013 on Payment Service Providers in the pursuit of such activity.

### 124. Bank holidays

#### *Section 286*

(1) Credit institutions may install a maximum of two bank holidays a year. Such suspension of financial services, financial auxiliary services on specific working days may apply to:

- a)* accounting (accounting holiday),
- b)* teller services (teller holiday), or
- 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 shall notify the Authority accordingly.

(3) In addition to what is contained in Subsection (1), upon the request of the credit institution, the Authority may order the holding of a bank holiday. The number of bank holidays thus ordered may not be more than three days in a year.

### 125. Proceedings in connection with any infringement of regulations relating to business-to-consumer commercial practices

#### *Section 287*

In connection with any infringement of the provisions of this Act and other legislation adopted for the implementation of this Act, relating to business-to-consumer commercial practices and in particular to information requirements, the Authority shall proceed in accordance with Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices, if the infringement concerns any consumer.

## 126. Complaints handling

### *Section 288*

(1) Financial institutions and independent intermediaries shall provide facilities for their clients to submit any complaint they may have relating to the financial institution's or independent intermediary's conduct, activity or any alleged infringement orally (in person, by telephone) or in writing (delivered in person or by others, by post, fax transmission, or by electronic mail).

(2) Financial institutions and independent intermediaries shall receive:

*a)* oral complaints in all premises open to the clients, during regular business hours, or failing this at the service provider's main offices workdays between 8:00 hours and 16:00 hours;

*b)* oral complaints made by telephone workdays between 8:00 hours and 20:00 hours;

*c)* written complaints electronically, on an ongoing basis with alternate facilities made available on demand, in the event of any malfunction.

(3) Where complaints are handled by telephone, financial institutions shall have in place means to receive calls and to deal with the complaint within a reasonable period of time.

(4) Where complaints are handled by telephone, the financial institution shall record the conversation between the financial institution or independent intermediary and the client, and shall retain this recording for a period of one year. At the client's request the audio recording shall be replayed, and a certified report on the audio recording shall be made available to the client free of charge.

(5) Subject to the exception set out in Subsection (6), financial institutions and independent intermediaries shall investigate oral complaints without delay and, if possible, take action to remedy the situation. If the client is in disagreement with the way the complaint is handled, the financial institution and the independent intermediary shall write up a report on the complaint, indicating also its position, and shall give a copy of this report to the client if the complaint is made orally in person, or shall send it to the client if the complaint is communicated by telephone - together with what is contained in Subsection (7) -, and shall proceed in other respects in accordance with the provisions on written complaints.

(6) If the complaint cannot be investigated immediately, the financial institution and the independent intermediary shall write up a report on the complaint, and shall give a copy of this report to the client if the complaint is made orally in person, or shall send it to the client if the complaint is communicated by telephone - together with what is contained in Subsection (7) -, and shall proceed in other respects in accordance with the provisions on written complaints.

(7) The financial institution and the independent intermediary shall communicate its position relating to the written complaint - with explanation - to the client within thirty days of receipt of the complaint.

(8) Where a complaint is rejected, the financial institution and the independent intermediary shall inform the client affected in writing of his right to initiate the proceedings of the Authority for the protection of consumers' interests for any infringement of consumer regulations under the MNB Act, or to bring action in court in connection with any dispute relating to the conclusion, validity, legal aspects and termination of contracts, and cases of breach of contract and the related legal ramifications, or may seek remedy at the Financial Arbitration Board. The financial institution or the independent intermediary shall furnish the mailing address of the Financial Arbitration Board.

(9) The financial institution and the independent intermediary shall retain the complaint and the reply provided therefor for a period of three years, and shall make them available to the Authority when so requested.

(10) Financial institutions and independent intermediaries are required to draw up effective and transparent procedures for the reasonable and prompt handling of complaints received from clients, and to keep records in accordance with Subsection (13) (hereinafter referred to as “complaints handling policy”). Financial institutions and independent intermediaries shall inform their clients in the complaint handling policy concerning the place for handling complaints, and shall indicate its mailing address, electronic mail address, telephone number and fax number.

(11) Financial institutions and independent intermediaries shall maintain records on the complaints received from clients, and the actions and measures taken for its handling and resolution.

(12) The register referred to in Subsection (11) shall contain:

- a) a description of the complaint, and an indication of the underlying event or fact;
- b) the date and time of submission of the complaint;
- c) a description of the measures proposed for the handling and resolution of the complaint, and the reason or reasons if rejected;
- d) the time limit for taking the measures indicated in Paragraph c) and the person appointed to implement it; and
- e) the date and time of response to the complaint.

(13) Financial institutions and independent intermediaries shall display the complaint handling policy on their website and in all premises open to patrons, or failing this it may be posted at their main offices.

(14) Financial institutions and independent intermediaries shall not be authorized to charge the costs of investigating complaints to the consumers.

(15) Financial institutions and independent intermediaries shall designate a consumer protection officer for handling consumer affairs, and shall notify the Authority of this officer in writing within fifteen days, including any subsequent changes in his person.

## *Chapter XIV*

### *Miscellaneous and Closing Provisions*

#### 127. Miscellaneous provisions

##### *Section 289*

(1) For the purposes of Article 458(2)d)i)-iv) and vii) of Regulation 575/2013/EU, the minister in charge of the money, capital and insurance markets shall function as the designated authority.

(2) For the purposes of Article 458(2)d)v) and vi) of Regulation 575/2013/EU, the MNB shall function as the designated authority.

#### 128. Authorizations

##### *Section 290*

(1) The Government is hereby authorized to decree the detailed regulations:

*a)* relating to the supply of services described in Subsection (1) of Section 3 and financial auxiliary services provided for in Paragraphs *a)* and *d)* of Subsection (2) of Section 3, including the mandatory layout of contracts concluded in connection with these services;

*b)* relating to the computation and publication of the integrated deposit rate index;

*c)* concerning the personnel and infrastructure requirements for providing financial services and financial auxiliary services described, respectively, in Subsection (1) of Section 3 and in Subsection (2) of Section 3;

*d)* relating to the obligation of disclosure of credit institutions;

*e)* relating to the mandatory layout of the professional indemnity insurance policy of independent intermediaries;

*f)* for determining the amounts of referral fees and the terms and conditions for their payment;

*g)* concerning the cases and the terms and conditions under which a financial institution can be authorized to unilaterally modify the interest rates of the agreements referred to in Section 210/A of Act CXII of 1996 - in effect prior to 1 April 2012 - to the disadvantage of the client;

*h)* concerning the application of the remuneration policy having regard to the size, nature, scale, complexity and legal form of the activities of the credit institution concerned.

(2) The minister in charge of the money, capital and insurance markets is hereby authorized to decree the detailed regulations:

*a)* for the investment policies of credit institutions;

*b)* concerning the criteria for qualification and evaluation of receivables, off-balance sheet items and collaterals;

*c)* concerning the minimum content requirements for information to be provided before the conclusion of a contract concluded with the consumer, during and upon the termination of the contractual relationship;

*d)* concerning internal control systems and mechanisms;

*e)* for the official training of intermediaries, and the requirements for obtaining an official certificate for the pursuit of intermediation of financial services, the amount of the examination fee, the terms of payment and the conditions for refund;

*f)* concerning foreign exchange open positions;

*g)* relating to the professional requirements for the training and examination of bank sales representatives, securities traders, specialized bank officers, and investment advisors.

(3) The Governor of the MNB is hereby authorized to decree the detailed regulations concerning the procedure for providing information to consumers before the conclusion of a contract, during and upon the termination of the contractual relationship, and for handling client complaints in terms of formal and procedural requirements.

(4) The Governor of the MNB is hereby authorized to decree, acting within its function as supervisory authority of the financial intermediary system, to determine:

*a)* in accordance with Article 465(2) of Regulation 575/2013/EU, the levels of the Common Equity Tier 1 and Tier 1 capital ratios that credit institutions shall meet or exceed;

*b)* the applicable percentage falling within the ranges specified in Article 467(2) of Regulation 575/2013/EU;

*c)* in accordance with Article 468(3) of Regulation 575/2013/EU, the applicable percentage of unrealized gains relating to assets and liabilities measured at fair value that is not removed from Common Equity Tier 1 capital;

*d)* in accordance with Article 478(3) of Regulation 575/2013/EU, the applicable percentages for deduction from Common Equity Tier 1, Additional Tier 1 and Tier 2 items;

e) the applicable percentages provided for in Article 479(4) of Regulation 575/2013/EU for the temporary application of the items that qualified as consolidated Common Equity Tier 1 capital under the regulations in force by 31 December 2013, which, however, do not qualify as such under the provisions of Regulation 575/2013/EU currently in force;

f) in accordance with Article 480(3) of Regulation 575/2013/EU, the value of the applicable factor for recognition in consolidated own funds of minority interests and qualifying as Additional Tier 1 and Tier 2 capital items;

g) in accordance with Article 481(5) of Regulation 575/2013/EU, the applicable percentages prescribed under the regulations in force by 31 December 2013 for Common Equity Tier 1, common equity, Additional Tier 1 and own-fund items, pertaining to the temporary application of filters or deductions not provided for in Regulation 575/2013/EU;

h) in accordance with Article 486(6) of Regulation 575/2013/EU, the applicable percentages prescribed under the regulations in force by 31 December 2013 for Common Equity Tier 1, Additional Tier 1 and Tier 2 capital items, pertaining to the temporary application of such items, which, however, do not meet the requirement set out in Regulation 575/2013/EU.

(5) The Governor of the MNB is hereby authorized to decree, acting within its function as supervisory authority of the financial intermediary system, to determine the discount rate applicable for determining the present value of payments for the performance-based component of remuneration.

## 129. Implementing provisions

### *Section 291*

(1) This Act - with the exceptions set out in Subsections (2) and (3) - shall enter into force on 1 January 2014.

(2) Section 135, Paragraph *w*) of Section 164, Section 306 and Subsection (2) of Section 308 shall enter into force on 15 March 2014.

(3) Section 145 shall enter into force on 1 July 2014.

## 130. Transitional provisions

### *Section 292*

(1) Financial institutions authorized at the time of this Act entering into force for purchasing (with or without assuming the obligor's risk), advancing and discounting receivables within the framework of credit and loan operations shall remain entitled to carry out the activity provided for in Paragraph *l*) of Subsection (1) of Section 3 without specific authorization.

(2) Credit institutions existing at the time of this Act entering into force may - by way of derogation from Subsection (5) of Section 117 - use up to 30 June 2014 a remuneration policy approved by the management body in its managerial function and examined by the management body in its supervisory function.

(3) The provisions of Section 118 shall apply to remunerations paid after 1 January 2014 also if the agreement pertaining to such distribution was concluded before the time of this Act entering into force.

(4) In the case of mortgage loan contracts concluded with consumers before 1 April 2012, with a remaining maturity of more than one year - if it fails to satisfy the provisions of Section 280 -

the consumer shall have one opportunity to request to have the contract amended or refinanced according to the conditions made available, for the purpose of conformity with Section 280, where the new loan:

- a) shall be a forint loan, if the original loan was also a forint loan,
- b) may either be an euro loan, euro-based loan or forint loan, if the original loan was an euro-based loan, euro loan or other foreign exchange loan not covered in Paragraph c),
- c) may either be a Swiss franc loan, Swiss franc-based loan, euro loan, euro-based loan or forint loan, if the original loan was a Swiss franc loan or Swiss franc-based loan.

(5) The amendment or refinancing of an existing mortgage loan contract concluded with a consumer before 1 April 2012, with a remaining maturity of more than one year, under Subsection (4) shall be available to a consumer who supplies all documents required for the amendment or refinancing of the mortgage loan contract to the financial institution within sixty days of the date of submission of a request for restructuring in writing.

(6) The lender financial institution may not refuse the client's request for the amendment of his mortgage loan contract referred to in Subsection (4), and may not charge any fee, charge or commission for early repayment affected in connection with the amendment or refinancing of the contract.

(7) If the consumer did not exercise the option defined in Subsection (4), the amendment of mortgage loan contracts concluded before 1 April 2012 shall be governed by the provisions of Act CXII of 1996 in effect on 31 March 2012.

### *Section 293*

(1) Subsections (4)-(6) and (8)-(16) of Section 279 shall also apply to the amendment of consumer loan agreements or financial leasing agreements concluded before 1 August 2009, subject to the exception set out in Subsection (2).

(2) Subsections (4)-(6), (8), (9), (11) and (13)-(15) of Section 279 and the first sentence of Subsection (12) of Section 279 shall not apply to mortgage-backed loan contracts concluded before 1 August 2009. The second sentence of Subsection (12) of Section 279 shall apply to contracts concluded after 1 January 2010.

### *Section 294*

(1) Subsection (1) of Section 213 of this Act shall not apply to deposits placed by commodity dealers and by the Pénztárak Garancia Alapja (*Pension Guarantee Funds*) before 1 January 2003.

(2) In the application of Chapter X, mortgage bonds issued before 1 January 2003 by mortgage loan companies and junior subordinated loan capital shall be construed as deposits.

### *Section 295*

(1) If the purchase price of a residential property that is occupied by the debtor, if acquired by the financial institution after 1 March 2010 under a buy option stipulated in a consumer loan agreement concluded before 1 January 2010 for reasons of security, is below seventy per cent of the market value appraised by an expert within a six-month period preceding the time when the buy option is exercised (minimum price), the holder of the buy option shall be liable to pay to the debtor - according to the provisions on unjust enrichment - the difference between the purchase

price and the minimum price, in addition to the purchase price, or to take such sum into consideration for the purpose of settlement carried out in accordance with Subsection (2).

(2) The holder of the buy option referred to in Subsection (1) shall settle accounts with the debtor as regards the difference between his claim and the related charges, and the sum the holder is required to cover according to Subsection (1).

(3) The provisions of Subsections (1) and (2) shall also apply if the financial institution:

- a) assigns the right to exercise the buy option stipulated for reasons of security to a third party;
- b) transfers (assigns) the claim secured by buy option to a third party.

#### *Section 296*

Credit institutions set up as cooperative societies existing or whose authorization is pending at the time of this Act entering into force shall meet the requirements provided for in Section 12 as of 31 December 2015.

#### *Section 297*

(1) Subsection (3) of Section 283 shall apply to mortgage loan contracts concluded before the time of entry into force of this Act and terminated after 1 March 2014.

(2) Section 267 shall also apply to mortgage loan contracts concluded after the time of entry into force of this Act for purposes other than residential, and to installments payable after 1 July 2014 for contracts existing at the time of entry into force, and to any cost, fee or commission charged in a foreign currency.

#### *Section 298*

(1) Between 1 January 2014 and 31 December 2015 the level of the capital conservation buffer that credit institutions are required to maintain under Section 86 is zero.

(2) Effective as of 1 January 2016, credit institutions shall calculate the amount of capital conservation buffer under Section 86 as per the following:

- a) in the period between 1 January 2016 and 31 December 2016, 0.625 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU;
- b) in the period between 1 January 2017 and 31 December 2017, 1.25 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU;
- c) in the period between 1 January 2018 and 31 December 2018, 1.875 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU.

#### *Section 299*

(1) Credit institutions shall, in accordance with Section 87 - with the exceptions set out in Subsection (2), (3) or (4) -, maintain an institution-specific countercyclical capital buffer at the latest as of 1 January 2019.

(2) Where a countercyclical capital buffer is prescribed by the MNB, acting within its macroprudential function, under Section 183/A of the MNB Act, credit institutions shall maintain an institution-specific countercyclical capital buffer:

- a) in the period between 1 January 2014 and 31 December 2014, up to 0.625 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU;

*b)* in the period between 1 January 2015 and 31 December 2015, up to 1.25 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU;

*c)* in the period between 1 January 2016 and 31 December 2016, up to 1.875 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU; with the proviso that it shall be calculated as of 1 January 2017 by the rate specified in Section 87.

(3) Where a countercyclical capital buffer is prescribed by the MNB, acting within its macro-prudential function, under Section 183/A of the MNB Act, credit institutions shall maintain an institution-specific countercyclical capital buffer:

*a)* in the period between 1 January 2015 and 31 December 2015, up to 0.625 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU;

*b)* in the period between 1 January 2016 and 31 December 2016, up to 1.25 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU;

*c)* in the period between 1 January 2017 and 31 December 2017, up to 1.875 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU; with the proviso that it shall be calculated as of 1 January 2018 by the rate specified in Section 87.

(4) Where a countercyclical capital buffer is prescribed by the MNB, acting within its macro-prudential function, under Section 183/A of the MNB Act, credit institutions shall maintain an institution-specific countercyclical capital buffer:

*a)* in the period between 1 January 2016 and 31 December 2016, up to 0.625 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU;

*b)* in the period between 1 January 2017 and 31 December 2017, up to 1.25 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU;

*c)* in the period between 1 January 2018 and 31 December 2018, up to 1.875 per cent of the total risk exposure amount provided for in Paragraph 3 of Article 92 of Regulation 575/2013/EU; with the proviso that it shall be calculated as of 1 January 2019 by the rate specified in Section 87.

### *Section 300*

If a credit institution proceeds according to Subsections (2) and (3) of Section 299 and the designated authority of another EEA Member State or a third country where the credit institution operates has not set a countercyclical buffer rate, in determining the institution-specific countercyclical capital buffer the credit institution shall maintain a zero per cent countercyclical capital buffer rate in respect of its exposures to counterparties located in that EEA Member State or third country.

### *Section 301*

Effective as of 1 January 2016, credit institutions shall calculate the amount of capital buffers applicable to global systemically important credit institutions under Section 89 as per the following:

*a)* in the period between 1 January 2016 and 31 December 2016, 25 per cent of the capital buffer requirement relating to global systemically important credit institutions provided for in Section 89;

b) in the period between 1 January 2017 and 31 December 2017, 50 per cent of the capital buffer requirement relating to global systemically important credit institutions provided for in Section 89;

c) in the period between 1 January 2018 and 31 December 2018, 75 per cent of the capital buffer requirement relating to global systemically important credit institutions provided for in Section 89.

### *Section 302*

Until such time as the elimination of the national discretion under Article 507 of Regulation 575/2013/EU, credit institutions shall not apply Article 395(1) of Regulation 575/2013/EU with respect to:

a) covered bonds falling within the terms of Article 129(1), (3) and (6) of Regulation 575/2013/EU;

b) exposures to or guaranteed by regional governments or local authorities of EEA Member States where those claims would be assigned a 20 per cent risk weight under Part Three, Title II, Chapter 2 by those regional governments or local authorities;

c) to exposures to the credit institution's parent company or any of its other subsidiaries, or the credit institution's own subsidiary, if supervision on a consolidated basis to which the credit institution is subject applies to these companies as well;

d) to exposures to credit institutions with which the credit institution is associated in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations;

e) minimum central bank reserves;

f) 50 per cent of off-balance sheet documentary credits and off-balance sheet undrawn credit facilities referred to in Point 3 of Annex I of Regulation 575/2013/EU.

### *Section 303*

(1) Credit institutions shall make public the information provided for in Paragraphs a)-c) of Subsection (1) of Section 123 from 1 July 2014, and the information provided for in Paragraphs d)-f) of Subsection (1) of Section 123 from 1 January 2015.

(2) Global systemically important credit institutions shall disclose to the European Commission the information provided for in Paragraphs d)-f) of Subsection (1) of Section 123 from 1 July 2014.

### *Section 304*

Credit institutions existing or whose authorization is pending at the time of this Act entering into force shall meet the requirements provided for in Section 114 as of 1 January 2015.

## 131. Compliance with the Acquis

### *Section 305*

This Act contains regulations that may be approximated with the legislation of the European Union listed in Schedule No. 5.

## 132. Amendments

*Section 306<sup>24</sup>*

*Section 307<sup>25</sup>*

*Section 308*

(1)<sup>26</sup>

(2)<sup>27</sup>

### *Schedule No. 1 to Act CCXXXVII of 2013*

#### ***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 CCXXXVII of 2013*

#### ***Identification Data***

1. Personal identification data and address of natural persons: name, birth name, mother's name, date and place of birth, citizenship, home 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.

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<sup>24</sup> Repealed under Section 12 of Act CXXX of 2010, effective as of 16 March 2014.

<sup>25</sup> Repealed by Paragraph f) of Subsection (2) of Section 308 of this Act, effective as of 15 March 2014.

<sup>26</sup> Repealed under Section 12 of Act CXXX of 2010, effective as of 2 January 2014.

<sup>27</sup> Repealed under Section 12 of Act CXXX of 2010, effective as of 16 March 2014.

2. Identification data of financial institutions, companies, and acceptors: name, abbreviated name, registered office, addresses of business locations and branches, tax number, name and position of persons authorized to represent the company.

Schedule No. 3 to Act CCXXXVII of 2013

***Calculation of Indirect Holding***

For the purposes of this Act, the procedure for the calculation of indirect holding is as follows:

1. The extent of an indirect holding shall be determined by multiplying the share or voting right held in the intermediary company 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 are to be calculated cumulatively.

3. Voting rights shall be taken into account in the same manner as ownership interests.

Schedule No. 4 to Act CCXXXVII of 2013

***Multiplication factor for distributions***

The multiplication factor under Subsection (6) of Section 94 for distributions shall be determined as follows:

a) where the Common Equity Tier 1 capital maintained by the credit institution is above the level of own funds requirement provided for in Article 92 of Regulation 575/2013/EU, and it is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

b) where the Common Equity Tier 1 capital maintained by the credit institution is above the level of own funds requirement provided for in Article 92 of Regulation 575/2013/EU, and it is within the second quartile of the combined buffer requirement, the factor shall be 0.2;

c) where the Common Equity Tier 1 capital maintained by the credit institution is above the level of own funds requirement provided for in Article 92 of Regulation 575/2013/EU, and it is within the third quartile of the combined buffer requirement, the factor shall be 0.4;

d) where the Common Equity Tier 1 capital maintained by the credit institution is above the level of own funds requirement provided for in Article 92 of Regulation 575/2013/EU, and it is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6.

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4}$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4}$$

“Qn” indicates the ordinal number of the quartile concerned.

Schedule No. 5 to Act CCXXXVII of 2013

***Compliance with the Acquis***

I. This Act serves the purpose of conformity with the following legislation of the European Union:

1. Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions.

2. Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit guarantee schemes.

3. 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.

4. 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.

5. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

6. Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit guarantee schemes as regards the coverage level and the payout delay.

7. Article 2(1)a) of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests [Paragraph f) of Subsection (1) of Section 185 - in the proceedings of the Authority].

8. Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

9. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

II. This Act contains provisions for the implementation of the following legislation of the European Union in connection with the proceedings of the Authority:

Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards Article 4(6)f) [Subsection (1) of Section 185].

III. This Act contains provisions for the implementation of:

1. Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.