

Decree No. 11/2006 (VIII. 1.) of the Governor of the MNB

on the requirements for the general terms and conditions and internal regulations of clearing houses for credit institutions

Pursuant to the authorisation defined under Article 60 (1) he) of Act LVIII of 2001 on the Magyar Nemzeti Bank, I hereby decree the following:

CHAPTER I

GENERAL PROVISIONS

Article 1

(1) The scope of this Decree shall apply to organizations providing clearing activities (for the purposes of this Decree hereinafter referred to as “clearing house for credit institutions) specified under Article 3 (2) b) of Act CXII of 1996 on Credit Institutions and Financial Enterprises (hereinafter referred to as “CIFE”) in the territory of the Republic of Hungary.

(2) The provisions of this Decree pertaining to clearing houses for credit institutions shall also apply to the Magyar Nemzeti Bank (hereinafter referred to as “MNB”) in its capacity for operating national payments and clearing system.

(3) Compliance with the requirements set out in this Decree shall serve as a precondition for performing clearing activities. MNB shall monitor compliance with the requirements set out in this Decree in its oversight and supervisory function.

Article 2

For the purposes of this Decree:

- a) ‘clearing system’ shall mean a form of cooperation aiming the clearing of payment transactions based on an agreement between the clearing house for credit institutions, the settlement agent if other than the clearing house for credit institutions, and the participants of the system and the direct submitters, if any;
- b) ‘cooperating parties’ shall include the clearing house for credit institutions, the participants, the direct submitters, if any, and the settlement agent if other than the clearing house for credit institutions;
- c) ‘direct submitter’ shall mean a client of the clearing house for credit institutions other than a participant, who submits payment orders only in connection with its own business directly to the clearing house for credit institutions by authorization of a direct participant and the direct participant settles with that client;
- d) ‘operating risk’ shall mean the risk that deficiencies in information systems or internal controls, human errors or management failures will result in unexpected losses;
- e) ‘financial risks’ shall mean credit and liquidity risk taking by the cooperating parties arising from the operation of the clearing system;

- f) ‘extraordinary situation’ shall mean any situation requiring special handling, where the procedures employed in the clearing process differ from what is contained in the General Terms and Conditions;
- g) ‘participant’ shall mean the member of the clearing system operated by the clearing house for credit institutions, who is engaged in forwarding his own payment orders and the payment orders of his clients;
- ga) ‘direct participant’ shall mean a member of the system who settles his credit and debit derive from his own payments and payments of his clients in the bank account kept by settlement agent against bank accounts of other direct participants or a central technical account.
- gb) ‘indirect participant’ shall mean a participant who settles his credit and debit derive from his own payments and payments of his clients in the bank account kept by a direct participant as a correspondent bank, the clearing house for credit institutions shall settle debit or credit of the indirect participant on the bank account of the direct participant;
- h) ‘settlement’ shall mean the payment of debits and credits between participants of the clearing system on the bank accounts kept by the settlement agent;
- i) ‘settlement agent’ shall mean the institution that keeps the bank account of the participants and that guarantees the settlement of payment transactions, or extends credit to the participants, if necessary, for settlement purposes.

CHAPTER II

CONTENT REQUIREMENTS FOR GENERAL TERMS AND CONDITIONS

Article 3

The clearing house for credit institutions shall determine the following in the general terms and conditions on the rules of execution of the clearing process (hereinafter referred to as “General Terms and Conditions”):

- a) the objective and principles of the clearing system, and other documents governing the operation of the clearing system,
- b) the cooperating parties,
- c) the risks to be taken by the cooperating parties in the clearing system,
- d) the procedure and the conditions for accession and participation,
- e) the information to be provided by the cooperating parties and the conditions of provision of such information,
- f) the procedure and the conditions for termination or suspension of participation,
- g) the procedures for the sending of payment transactions and other messages in the clearing system, and the requirements for acceptance into the clearing system,
- h) the procedures of settlement,
- i) the rules for the management and realisation of collateral, where applicable, and the rules for loss allocation,
- j) the procedure and time limit for handling complaints,
- k) the rules of liability and the cases for limitation of liability, and the rules for compensation for losses where applicable,
- l) the operating schedule of the clearing system,
- m) the rules for the amendment of the General Terms and Conditions,
- n) the rules for publication of the General Terms and Conditions.

Objectives, principles, and documents governing the operation of the clearing system

Article 4

- (1) In the General Terms and Conditions the clearing house for credit institutions defines the objective of the clearing system, and the types of payments processed by the clearing system.
- (2) The clearing house for credit institutions shall specify in the General Terms and Conditions the laws and regulations and agreements relevant to the clearing system, and shall indicate that the clearing system operates in accordance with Hungarian law.
- (3) In the General Terms and Conditions the clearing house for credit institutions shall summarize the execution of the clearing process.

Rights and obligations of the cooperating parties

Article 5

In the General Terms and Conditions the clearing house for credit institutions shall define the rights and obligations of the cooperating parties. The corporate name of the clearing house for credit institutions, and also of the settlement agent if other than the clearing house for credit institutions, shall be indicated in the General Terms and Conditions.

Risks taken by the cooperating parties

Article 6

In the General Terms and Conditions the clearing house for credit institutions shall define the financial and operating risk to be taken by the cooperating parties in the clearing system and the procedure for the handling of such risks.

The procedure and the conditions for accession and participation

Article 7

- (1) The clearing house for credit institutions shall lay down provisions in the General Terms and Conditions for the accession of participants into the clearing system and their participation in the system as participants.
- (2) The General Terms and Conditions shall specify the levels of participation of participants, and shall distinguish direct participants and indirect participants, and shall specify the rights and obligations of direct submitters, if any.
- (3) The minimum requirements specified for any particular level of participation shall be the same for all participants in that level.

(4) The clearing house for credit institutions shall lay down provisions in the General Terms and Conditions concerning:

- a) the rules for periodic revision of compliance with the requirements set out for participants,
- b) the procedure where any participant of the clearing system no longer complies with the requirements for participation in the clearing system,
- c) the procedure for any infringement of the provisions contained in the General Terms and Conditions by a participant.

(5) If the system is designated under the Act XXIII of 2003 on Settlement Finality in Payment and Securities Settlement Systems, the General Terms and Conditions shall define the conditions for nonresident institutions for accession to the system directly by way of remote access, or via their Hungarian branches.

Information to be provided by the cooperating parties

Article 8

The clearing house for credit institutions shall lay down provisions in the General Terms and Conditions concerning:

- a) the information that participants and direct submitters are required to provide to the clearing house for credit institutions,
- b) the information that the clearing house for credit institutions is required to provide to participants and direct submitters,
- c) the procedures for the provision of information under Subparagraphs a)-b), and
- d) the deadlines within which participants and direct submitters are required to provide the information regarding the operation of the clearing system to the clearing house for credit institutions , and
- e) the deadlines within which the clearing house for credit institutions is required to provide the information regarding the operation of the clearing system to participants and direct submitters.

Termination or suspension of participation

Article 9

(1) The clearing house for credit institutions shall indicate in the General Terms and Conditions its obligation to notify the MNB where the conditions of termination and suspension of the participation of any participant in the clearing system has been occurred, and shall define the procedures and the conditions of the termination or suspension of the participation of any participant in the clearing system, the time and consequences of such termination or suspension, and the available remedies.

(2) The clearing house for credit institutions shall specify in the General Terms and Conditions the measures that may be necessary in connection with any insolvency proceedings opened by the court or another competent authority for imposing restrictions upon a participant's payments.

(3) The clearing house for credit institutions shall lay down provisions on the General Terms and Conditions concerning the procedures for the suspension or withdrawal of participation by participants, and for changing the participation level of any participant.

Procedures for the sending of messages and the requirements for acceptance

Article 10

The clearing house for credit institutions shall lay down provisions in the General Terms and Conditions concerning:

- a) the form and content of payment messages and other messages, and the major rules of their use,
- b) the key elements of means of data transmission and methods of data transmission, and
- c) the procedures of any erroneous payment messages and other erroneous messages.

Settlement procedure

Article 11

(1) The clearing house for credit institutions shall define in the General Terms and Conditions the procedures and the frequency of settlement, the deadlines and the time when a settlement is final.

(2) The clearing house for credit institutions shall specify in the General Terms and Conditions the responsibilities of the cooperating parties in connection with settlement.

(3) In case the settlement agent is other than the clearing house for credit institutions and the clearing house for credit institutions and the settlement agent concluded an agreement in this subject, the General Terms and Conditions shall contain the responsibilities of the clearing house for credit institutions and the settlement agent, in accordance with the agreement..

Management and realisation of collateral, loss allocation

Article 12

(1) The clearing house for credit institutions shall lay down provisions in the General Terms and Conditions concerning:

- a) the rules for provision of collateral,
- b) the validation of collateral,
- c) the set of eligible assets and the quantity of collateral,
- d) the rules for realisation and the procedures of supplementation of collateral,
- e) the rules for bearing losses not covered by collateral.

(2) Where any collateral is managed by an entity other than a clearing house for credit institutions, the General Terms and Conditions shall define the responsibilities of the a

clearing house for credit institutions and the entity managing the collateral as stipulated in their agreement.

Procedure and time limit for handling complaints

Article 13

The clearing house for credit institutions shall lay down provisions in the General Terms and Conditions for the handling and evaluation of complaints lodged by participants and direct submitters, as well as the time limit that may not exceed 15 business days for any particular case.

Rules of liability, limited liability, mitigation of and compensation for damages

Article 14

(1) The clearing house for credit institutions shall specify the rules concerning the liability of the cooperating parties in the General Terms and Conditions.

(2) The clearing house for credit institutions shall lay down provisions in the General Terms and Conditions for the conditions and the means for the obligation of the cooperating parties for the mitigation of and compensation for damages.

Operating schedule of the clearing system

Article 15

(1) The clearing house for credit institutions shall demonstrate in the General Terms and Conditions the method for the determination and publication of the annual calendar for clearing operations.

(2) The clearing house for credit institutions shall publish in the General Terms and Conditions the detailed timetable for the operating hours of the clearing system.

Rules for the amendment of the General Terms and Conditions

Article 16

The clearing house for credit institutions shall lay down provisions in the General Terms and Conditions concerning the disclosure of any proposal for the amendment of the General Terms and Conditions to the direct participants so as to allow sufficient time for them to make any comments. The deadline for comments shall be minimum 5 business days, in case of complex or substantial amendments 10 business days, but no more than 15 business days.

Publication of the General Terms and Conditions

Article 17

The clearing house for credit institutions shall publicate the General Terms and Conditions and its amendments in accordance with Article 27 (1) of Act LVIII of 2001 on the Magyar Nemzeti Bank and Article 203 (2) of CIFE respectively.

CHAPTER III

PROVISIONS FOR THE INTERNAL REGULATIONS OF THE CLEARING HOUSE FOR CREDIT INSTITUTIONS

Internal regulations for handling extraordinary situations

Article 18

(1) The clearing house for credit institutions shall specify in the internal regulations for handling extraordinary situations the types of and the criteria for extraordinary situations, and the rules for declaring an event to be a extraordinary situation and for announcing it.

(2) In the internal regulations for handling extraordinary situations the clearing house for credit institutions shall lay down

- a) the procedures to be adapted,
- b) the decision-making authorizations to be observed,
- c) the derogation permitted from the rules laid down in the General Terms and Conditions,
- d) the means of communication,
- e) the central phone numbers and other means of access for communication

in extraordinary situations.

(3) The clearing house for credit institutions shall make available its proposal for the internal regulations for handling extraordinary situations and for its amendment to the direct participants, and shall allow sufficient time for them to make any comments. The deadline for comments shall be minimum 5 business days, in case of complex or substantial amendments 10 business days, but no more than 15 business days.

(4) Enforcement of the internal regulations for handling extraordinary situations and its amendment shall be subject to the approval of the MNB as overseer.

Internal regulations for fees

Article 19

(1) The clearing house for credit institutions shall specify in the internal regulations for fees the fees, charges and expenses to be charged for accession, participation, direct submission and for the services provided by the clearing house for credit institutions.

(2) The fees, charges and expenses to be charged to the participants of the clearing system may differ only in terms of the volume of transactions, the type of services provided and the selected telecommunications channel.

(3) Enforcement of the internal regulations for fees and its amendment shall be subject to the approval of the MNB as overseer.

Availability of regulations to the interested parties

Article 20

(1) The clearing house for credit institutions shall make available its internal regulations for handling extraordinary situations and its internal regulations for fees to the direct participants, the direct submitters and the settlement agent.

(2) The clearing house for credit institutions shall make available the internal regulation for fees to the request of the direct participants and direct submitters entitled to accede to the clearing system.

CHAPTER IV

CLOSING PROVISIONS

Article 21

(1) This Decree shall enter into force on the eighth day following of its promulgation.

(2) Clearing houses for credit institutions already carrying out clearing activities on the territory of the Republic of Hungary when this Decree enters into force shall meet the requirements specified in this Decree not later than 7 months following the entering of this Decree into force.