



## **INFORMATIVE GUIDE**

**to Laws and other Legal Provisions Regulating the Provision of Services in  
Hungary**

**2016**

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## ABOUT THIS GUIDE

This Guide to relevant legal provisions was created for financial organisations established in a member state (**EEA state**) of the European Economic Area (**EEA**) intending to launch operations in Hungary in the form of a branch office or by providing cross-border services. Pursuant to the relevant laws, the purpose of this Guide is to inform new market entrants on the terms and conditions applicable to providing service in Hungary, to present the local legal environment and to foster the application of laws.

As of 1 October 2013, the Magyar Nemzeti Bank (**MNB**), in the context of its role defined in Section 4 (9) of the MNB Act, was put in charge of the supervision of the organisations and persons governed by the legislation<sup>1</sup> defined in Section 39(1) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank (**MNB Act**) and their operations.

**The first chapter of this Guide** lists laws and other standards relevant to any institution wishing to provide services in Hungary. It should be noted that recommendations of the MNB — and the Hungarian Financial Supervisory Authority (HFSA) prior to 1 October 2013 — are not legal provisions. Consequently, compliance with them is not obligatory and the MNB cannot sanction any diversion from these recommendations. The main purpose of the recommendations is to inform the public of supervisory expectations which the MNB believes should be adhered to. They are intended to present sound practices that institutions can diverge from (provided such diversion involves the application of stricter standards) and implement practices and internal regulations best suited to their specific risks, organisational structure and service profile.

For the sake of clarity, legal provisions and other standards are grouped by type in this Guide. This categorisation does not represent any order of importance, as branch offices and cross-border service providers must comply with all standards governing their activities.

After the general listing, the document specifies legal provisions that bear special relevance for the sector, individual organisations and their services.

In addition to covering the laws that define the basic rules of activities, this Guide also addresses rules that define the legal environment for services from a criminal and civil law standpoint and presents the basics of consumer protection.

The Guide addresses in particular Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (**APCML**). The provisions of this law give utmost consideration to the requirements set out in Directive 2005/60/EC on preventing the use of financial systems for the purposes of money laundering and terrorism financing.

The same way, the provisions on money laundering set out in the currently effective Criminal Code (Sections 303-303/C of Act IV of 1978 until 30 June 2013 and Sections 399-402 of Act C of 2012 as of 1 July 2013) also

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<sup>1</sup>Pursuant to Section 39(1) of the MNB Act, in the context of its role defined in Section 4 (9) of the MNB Act, the MNB — unless provided otherwise by the law — is in charge of the supervision of the organisations, persons and activities within the scope of following legislation:

- a) the Act on voluntary mutual insurance funds,
- b) the Act on the Magyar Export-import Bank Részvénytársaság and the Magyar Exporthitel Biztosító Részvénytársaság,
- c) the Act on credit institutions and financial enterprises,
- d) the Act on home savings and loan associations,
- e) the Act on mortgage loan companies and on mortgage bonds,
- f) the Act on the services of the compulsory health insurance system,
- g) the Act on the Magyar Fejlesztési Bank Részvénytársaság,
- h) the Act on the capital market,
- i) the Act on the insurance business,
- j) the Act on distance marketing of financial sector contracts;
- k) the Act on occupational pension and the related institutions,
- l) the Act on investment firms and commodity dealers, and on the regulations governing their activities,
- m) the Act on trust companies and collective forms of investment (**Collective Investments Act**),
- n) the Act on reinsurance (**RA**),
- o) the Act on payment services, and
- p) the Act on insurance against civil liability in respect of the use of motor vehicles (**MTPL Act**),
- q) the Act on the Central Credit Information System,
- r) the Act on settlement finality in payment and securities settlement systems,
- s) the Act on payment service providers.

factor in the expectations arising from the practices of mutual assessment organisations (FATF, Council of Europe Moneyval PC-R-EV) established by member states that signed the 8 November 1990 Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

It should be pointed out that financial organisations are required to prepare internal rules concerning the fulfilment of responsibilities set out in the aforementioned laws. These internal rules are subject to approval by supervisory organisation in charge, i.e. the MNB. The MNB developed sample rules to assist the drafting of these documents. These samples are available on the MNB's website, grouped by institution type.

Proceeding from general to specific, this document identifies specific sections in key laws that are indispensable to be familiar with for organisations engaged in financial services. Such provisions are the most important regulations pertaining to the activity concerned and thus special attention must be paid to compliance with them.

**Chapter two of this Guide** briefly outlines the most important rules pertaining to the establishment and operation of branch offices, it reviews the supervision of these institutions, the internal rules to be prepared by them, it furthermore supervises the operations performed in Hungary through branches or in the context of cross-border services provided in Hungary, the reporting, licensing and data provision obligations of branch offices to the MNB, and presents key information on deposit insurance and the central credit information system.

**Chapter three of this Guide** specifies legal provisions that qualify as consumer protection regulations. This chapter was drafted with a view to the special significance of consumer protection regulations for financial organisations that operate in the form of branch offices or cross-border service providers. First it presents the general consumer protection regulations that apply to financial market services and thus to all financial subsectors, then the sector-specific rules. Consumer protection regulations are presented with indication of the legal provision and the section therein that contains the consumer protection requirement.

Section 81(1) of the MNB Act defines consumer protection regulations when discussing the MNB's consumer protection control role. Accordingly, consumer protection regulations are defined as:

- a) the statutes listed in Section 39 of the MNB Act or in the implementation orders thereto which set forth obligations regarding the required conduct vis-à-vis consumers who use the services of persons or organisations governed by the statutes specified in Section 39 of the MNB Act, and
- b) the provisions of Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices (**UBCCP Act**),
- c) the provisions of Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities (**CAA Act**),
- d) the provisions of Act CVIII of 2001 on Certain Issues of Electronic Commerce Services and Information Society Services,

However, the MNB Act does not specify each and every sector-specific legal provision that includes consumer protection regulations. When seeking to identify these provisions, one must take into consideration the requirements in laws subject the MNB's mandate which set forth rules regarding the required conduct of and applicable procedure of financial service providers when dealing with natural person customers. Therefore, all provisions that outline how financial service providers are required to do business with customers qualify as consumer protection regulations. In this respect, consumer protection regulations encompass the various requirements on informing customers, e.g. the requirements presented in various terms and conditions, or those specifying customer treatment procedures at an institution (including requirements on the provision of financial services) along with the rules on retail interest rates, charges and fees. In addition, provisions of the UBCCP Act, CAA Act and the ECIS Act also qualify as consumer protection regulations along with the provision setting out obligations concerning financial consumer disputes.

In addition, provisions of the UBCCP Act, CAA Act and the ECIS Act also qualify as consumer protection regulations along with the provision setting out obligations concerning financial consumer disputes.

The MNB is entitled to verify compliance with the provisions concerning consumer protection and financial consumer legal disputes in the context of consumer protection procedures and to take action in response to their violation. It should be noted that the MNB's scope of authority does not encompass the investigation of

the conclusion, validity, legal consequences and termination of the underlying contract and the declaration of contract violation and the legal consequences thereof.

### **Financial Arbitration Board**

The Financial Arbitration Board (**FAB**) is an off-court, alternative forum operated by the MNB. The FAB seeks to reach an off-court settlement for disputes (**financial consumer disputes**) that relate to the conclusion or fulfilment of a legal relationship for the purpose of using services established between consumers and the organisations or persons specified in Section 39 of the MNB Act (**financial service providers**). In essence, the FAB attempts to negotiate an agreement between the parties. If this effort is not successful, the board makes a decision in order to enforce consumer rights in a simple, fast, efficient and effective manner.

### **Procedure followed by the FAB**

The procedural provisions regarding the FAB are set out in Chapter VIII of the MNB Act. As a main rule, the FAB passes its decisions as a three-member council, with the exception — effective as of 1 January 2015 — of financial consumer disputes involving consumer claims of under HUF 50,000 or requiring a simple decision or requests for equitable procedure, in which case a single board member shall proceed. For the sake of impartiality, the members of the council must not be instructed in connection with financial consumer disputes. Proceedings before the FAB are not public unless with the consent of both parties. Proceedings are initiated on the written request of a consumer, provided he already attempted to settle the dispute directly with the financial service provider concerned. If a financial service provider rejects a complaint, it is required to inform the consumer in writing that he is entitled to initiate FAB proceedings. Another important precondition of starting such proceedings is that no intermediation proceedings or civil court enforcement proceedings are underway for the case concerned.

In the course of the proceedings, the chairman of the board attempts to forge an agreement between the parties. If such agreement is reached and complies with laws, the board in charge passes a resolution approving it. In all other scenarios, the proceedings are continued. If no agreement is reached and the claim is valid, the council will pass a resolution containing a mandatory order or a recommendation, depending on whether the service provider had submitted to FAB decisions before or not. Financial service providers may choose to issue a declaration of submission in which they commit to submit themselves to FAB procedures and to the ruling arising from such procedures. FAB procedures are free of charge and do not incur any dues either for the consumer or the financial service provider. The board's resolution or recommendation does not impact the consumer's right to enforce the claim in court proceedings in case the FAB's decision is dissatisfactory to him.

### **FAB procedures in the case of cross-border financial disputes**

Since 1 July 2011, the FAB has been the responsible for duties arising from Hungary's participation in the European network of alternative financial dispute settlement forums (**FIN-Net**). FIN-Net is a system operating in the EEA, functioning as an alternative dispute settlement network for cross-border disputes between consumers and financial service providers.

One scenario of cross-border financial consumer disputes is when the consumer's permanent or temporary place of residence is in Hungary and the financial service provider's seat, premises or place of settlement is in a different EEA state. The other scenario is vice versa, when the consumer's permanent or temporary place of residence is in another EEA state and the financial service provider is established in Hungary. In the first scenario, the FAB procedure can only be launched if the service provider has issued a declaration of submission in the dispute concerned.

Contrary to domestic settlement procedures, cross-border procedures are always executed in writing. However, the chairman of the council in charge can initiate a hearing in light of the circumstances, but only with the prior consent of both parties. Another special rule is that the procedural deadline can be extended by 90 days at most by the chairman of the FAB at the recommendation of the council chairman in warranted cases, limited to one extension per case. The procedure shall be conducted in English. The proceeding council shall also issue its resolutions in English, unless the applicant requests use of the language of the contact

affected by the legal dispute and/or the language of communication used between it and the affected service provider be used.



## CHAPTER 1

### LEGAL PROVISIONS AND STANDARDS PERTAINING TO SPECIFIC FINANCIAL SUBSECTORS

#### I. COMMON REGULATIONS

The MNB is providing the following legal guidance on the basis of Section 42 of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (ACI), Section 26 of Act CCXXXV on Payment Service Providers (**PSPA**), Sections 283 (1), 423 and 286 of Act LXXXVIII of 2014 on the Business of Insurance (**IA**), Sections 171-174 of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (AIFCD) and Section 83 (2) of Act on Occupational Pension and the Related Institutions (**OP Act**).

**Financial institutions (credit institutions, financial enterprises, payment institutions and electronic money institutions), investment enterprises, insurers and occupational pension providers established in an EEA state and operating in Hungary as a branch office or cross-border service provider must pay special attention to compliance with the following legal provisions and standards:**

##### **Laws:**

1. Act LIII of 1994 on the Enforcement of Court Decisions (**Enforcement Act**);
2. Act IV of 1978 on the Criminal Code was effective until 30 June 2013, and Act C of 2012 on the Criminal Code is effective as of 1 July 2013;
3. Act V of 2006 on Public Company Information (**PCI Act**);
4. Act XLIX of 1991 on Bankruptcy and Liquidation Proceedings;
5. ECIS Act;
6. UBCCP Act;
7. CAA Act;
8. Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (**AGRAPS**);
9. Act LV of 2002 on Mediation;
10. Act CXXXII of 1997 on the Hungarian Branch Offices and Commercial Representative Offices of Companies Registered Abroad (**BOA**);
11. the MNB Act;
12. Act XXII on the Labour Code (**Labour Code**);
13. the APCML;
14. Act III of 1952 on the Code of Civil Procedure (**CCP**);
15. Act IV of 1959 on the Civil Code, effective until 14 March 2013, and Act V of 2013 on the Civil Code effective as of 15 March 2014 (**Civil Code**);
16. Act C of 2000 on Accounting (**AA**);
17. Act CXII of 2011 on Informational Self-Determination and Freedom of Information (**Informational Act**);
18. Act X of 2006 on Cooperatives;
19. Act LXIX of 2006 on European Cooperatives;
20. Act XLV of 2004 on European Joint-Stock Companies;
21. Act CXL of 2007 on Cross-Border Mergers of Limited Liability Companies;
22. Act XXV of 2005 on Distance Marketing of Financial Sector Contracts (**DMA**);
23. Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (**UPC Act**);
24. Act XLVIII of 1996 on Public Warehousing;
25. Act CLV of 1997 on Consumer Protection (**CP Act**).

##### **Law decree:**

Law Decree 13 of 1979 on Private International Law

##### **MNB Decree:**

1. MNB Decree 39/2013 (XII. 29.) on the master data reporting obligation of persons and organisations under the supervision of the system of financial intermediation

2. MNB Decree 44/2013 (XII. 29.) on the method and terms of the payment and calculation of the supervisory fee
3. MNB Decree 28/2014 (VII. 23.) on the rules pertaining to complaint handling by financial organisations

#### **MNB Recommendations:**

Recommendation 6/2014 (XII.17.) of the Magyar Nemzeti Bank on setting up and using internal safeguards and on the management and control functions of financial organisations

#### **Recommendations of the President and the Supervisory Board of the HFSA:**

1. Recommendation 10/2001 on the Security Conditions of the Operation of Financial Organisations;
2. Recommendation 2/2003 on the Data Management Rules of Credit Institutions, Investment Service Providers, Commodity Exchange Providers and Insurers;
3. Recommendation 10/2013 (VI. 28.) on the requirements of the performance of managed portfolios and the calculation and presentation of yields;
4. Recommendation 3/2008 on Preventing and Combating Money Laundering and Terrorism Financing;

#### **Nature of legal guidance provided herein:**

The list of legislation set out herein is informative only. Compliance with them shall not constitute exemption from the overall obligation of financial organisations to fulfil all applicable Hungarian laws in their entirety while pursuing operations in Hungary.

This guide on legal provisions does not apply to activities pursued in the territory of Hungary by financial enterprises not licensed in an EEA state. According to Hungarian law, such financial enterprises are required to apply for an operating licence from the MNB.

#### **Additional conditions:**

In matters not regulated in Hungarian law, the MNB, representing the interests of the public, may pose additional requirements for entities engaged in relevant financial activities pursuant to

- Directive 2013/36/EU of the European Parliament and of the Council;
- Directive 2004/39/EC of the European Parliament and of the Council;
- Directive 2007/64/EC of the European Parliament and of the Council;
- Directive 2009/110/EC of the European Parliament and of the Council;
- Article 146(3) of Directive 2009/138/EC of the European Parliament and of the Council;

## II. SECTOR-SPECIFIC REGULATIONS

### 2.1. Financial institutions, payment institutions and electronic money institutions

The MNB is providing the following legislative guidance on the basis of Section 42 of the ACI and Section 26 of the PSPA.

**Credit institutions, financial enterprises, payment institutions and electronic money institutions established in an EEA state and operating in Hungary as a branch office or cross-border service provider must pay special attention to compliance with the following legal provisions:**

#### **Laws:**

1. ACI;
2. the PSPA;
3. ACM;
4. AIFCD;
5. Act XXX of 1997 on Mortgage Loan Companies and on Mortgage Bonds (**Mortgage Act**);
6. Act CXIII of 1996 on Home Savings and Loan Associations (**HSA**);
7. Act LXXXV of 2009 on the Pursuit of the Business of Payment Services (**PSPA**);
8. Act CXXII of 2011 on the Central Credit Information System (**CCISA**).

In particular, knowledge of the following legal provisions is indispensable for the pursuit of business activities:

3. **ACI:** Sections 1; 4 - 5; 6; 14(4); 15(4); 36-42; 73-74; 140 (1) ; 141; 159 - 166; 209 - 216; 236; 208(7)-(8) ; 199; 268 – 284; 285; 286; 287, and Annex 2;
4. Act IV of 1978 on the Criminal Code effective until 30 June 2013: Sections 177/A; 298/D; 300; 303-303/C, and Act C of 2012 on the Criminal Code effective as of 1 July 2013; Sections 219, 399-402, 408, 413; 219; 408; 410 – 411; 399 – 402;
5. **Civil Code:** Sections 6:42 – 6:48; 5:86 – 5:144; 6:565 – 6:578; 6:221 – 6:226; 6:360 – 6:365; Heading XX (credit and account agreements)
6. **PSPA:** Sections 4(3)-(4)-(5); 71;

#### **Government Decrees:**

1. Gov. Decree 180/2001 (X.4.) on the forced collection of deposits and savings deposits;
2. Gov. Decree 82/2010 (III.25.) on calculating and announcing deposit interest rates and returns on securities;
3. Gov. Decree 250/2000 (XII. 24.) on the special provisions regarding the annual reporting and bookkeeping obligations of credit institutions and financial enterprises;
4. Gov. Decree 47/1997 (III. 12.) on the general contract terms and conditions of home savings associations;
5. Gov. Decree 297/2001 (XII. 27.) on money exchange services.

#### **Decrees of the Minister for National Economy:**

1. Decree 41/2013 (IX.30.) of the Minister for National Economy on the calculation of capital adequacy on the financial conglomerate level;
2. Decree 27/2012 (VIII. 27.) of the Minister for National Economy on the professional and examination requirements of qualifications in subject to the competence of the Minister for National Economy.

#### **MNB Decrees:**

1. MNB Decree 18/2009 (VIII.6.) on executing payments;

2. MNB Decree 48/2014 (XI.27.) on the obligations of money and credit market institutions to report data to the central bank's information system primarily to enable the Magyar Nemzeti Bank to carry out its basic duties;
3. MNB Decree 10/2005 (VI.11.) on the calculation, the method of allocation and placement of minimum reserves;
4. MNB Decree 51/2014 (XII. 9.) on the obligations of money and credit market institutions to report data to the central bank's information system primarily to enable the Magyar Nemzeti Bank to carry out its supervisory duties;

#### **Recommendations of the President and the Supervisory Board of the HFSA:**

1. Recommendation No. 2/2000 on asset and liability management at credit institutions and on the management of market risks;
2. Recommendation No. 8/2001 on managing credit risk;
3. Recommendation No. 4/2011 on recognizing external credit rating organisations and their ratings;
4. Recommendation No. 9/2006 (XI.7.) on the preliminary customer information and consumer protection principles of retail lending;
5. Recommendation No. 4/2008 (XII.4.) on the prevention of abuses related to the activities of intermediaries, on the inspection of intermediaries and on issues of money-management and documentation;
6. Recommendation No. 7/2006 on increasing the effectiveness of credit risk management.
7. Recommendation No. 1/2011 on the application of general consumer protection principles by financial organisations;
8. Recommendation No. 12/2012 on the treatment of customers with disabilities;
9. Recommendation No. 14/2012 on the consumer protection principles to be applied by debt collection agencies in the context of their workout operations;

#### **MNB Recommendations:**

Recommendation No. 4/2014 on fostering the mitigation of property market risks facing financial institutions

## **2.2. Investment firms**

The MNB is providing the following legislative guidance on the basis of Sections 171, 172, 173 and 174 of the AIFCD.

**Investment firms established in an EEA state and operating in Hungary as a branch office or cross-border service provider must pay special attention to compliance with the following legal provisions:**

#### **Laws:**

1. ACM;
2. AIFCD;
3. Act XXIII of 2003 on Settlement finality in payment and securities settlement systems;

In particular, knowledge and application of the following legal provisions is indispensable for the pursuit of business activities:

1. **ACM:** Sections 1 – 5; 58 – 62; 65 – 80/A; 199 – 205/H; 210 – 228; 364 – 375; 376; 404;
2. Act IV of 1978 on the Criminal Code effective until 30 June 2013: Sections 177/A; 298/D; 300; 303-303/C, and Act C of 2012 on the Criminal Code effective as of 1 July 2013; Sections 219, 399-402, 408, 413;
3. **Civil Code:** Sections 6:565-6:578;
4. **AIFCD:** Sections 52; 40 – 44; 67 – 68; 70.-72; 111 – 116; 117 – 120.

**Government Decrees:**

1. Gov. Decree 283/2001 (XII.26.) on the personnel-related, material, technical and security requirements for investment and commodity exchange services, custody and safekeeping of securities, securities deposit management and clearing house activities;
2. Gov. Decree 22/2008 (II.7.) on the mandatory elements of the business terms at business organisations providing investment services, auxiliary investment services and commodity exchange services;
3. Gov. Decree 251/2000 (XII.24.) on the peculiar obligations of investment enterprises regarding their financial statements and bookkeeping;
4. Gov. Decree 82/2010 (III.25.) on calculating and announcing deposit interest rates and returns on securities;
5. Gov. Decree 284/2001 (XII.26.) on the Mode of the Generation and Forwarding of Dematerialized Securities and the Relevant Rules on Safety, as well as on the Opening and the Keeping of the Security Account, the Central Securities Account and the Customer Account;
6. Government Decree 286/2001 (XII.26.) on treasury bills;
7. Gov. Decree 285/2001 (XII.26.) on bonds;
8. Gov. Decree 287/2001 (XII.26.) on deposit certificates;

**Decrees of the Minister of Finance:**

1. MF Decree No. 6/2002 (II.20.) on the notification obligation of investment service providers, organisations engaged in clearing house operations and the stock exchange;
2. MF Decree No. 7/2002 (II.20.) on the way and the extent of reserves generation at organisations engaged in clearing but not qualifying as a clearing house.

**MNB Decrees:**

1. MNB Decree 19/2010 (XII.10.) on the scope of information to be supplied for the central bank information system, on the scope of data suppliers and on the method and deadline of data supply;
2. MNB Decree 9/2009 (II.27.) on the requirements for the General Terms and Conditions and operating rules of organisations providing clearing house activities under the Act on Capital Markets;
3. MNB Decree 18/2009 (VIII.6.) on executing payments;
4. MNB Decree 52/2014 (XII. 9.) on the obligations of capital market institutions to report data to the central bank's information system primarily to enable the Magyar Nemzeti Bank to carry out its supervisory duties

**Recommendations of the President and the Supervisory Board of the HFSA:**

1. Recommendation No. 2 of 2008 (VIII. 14) on inside information and on delaying the publication of inside information for legitimate reasons and on the rules of maintaining insider lists;
2. Recommendation No. 5 of 2006 (VII. 6.) on reporting transactions indicative of insider trading or market influencing;
3. Recommendation No. 9/2012 (VIII. 9.) of the HFSA Board on the investment decision making process of those engaged in investment (asset) management, expectations related to their deals and the management of emerging risks;
4. Recommendation No. 1/2006 (I.27.) of the HFSA Board on the principles applicable in the course of informing clients using investment (asset) management services.

**2.3. Insurance undertakings, insurance intermediaries**

The MNB is providing the following legislative guidance on the basis of Sections 283 (1), 286 and 423 of the Insurance Act:

**Insurance undertakings and insurance intermediaries established in an EEA state and operating in Hungary as a branch office or cross-border service provider must pay special attention to compliance with the following legal provisions:**

**Laws:**

1. IA;
2. AIFCD;
3. ACI;
4. RA;
5. MTPL Act;
6. Act LVIII of 2003 on the Miklós Wesselényi Flood Control Emergency Relief Fund;
7. Act XXXI of 1996 on the protection against fire, technical rescue and the Fire Department;
8. Act CII of 2012 on Insurance Tax.

In particular, knowledge of the following legal provisions is indispensable for the pursuit of business activities:

1. **IA:** Sections 35-37; 407; 383, 422-423; 279-286; 121; 135-159; 288-290;
2. Act IV of 1978 on the Criminal Code effective until 30 June 2013: Sections 177/A; 298/D; 300; 303-303/C, and Act C of 2012 on the Criminal Code effective as of 1 July 2013; Sections 219, 399-402, 408, 413;
3. **Civil Code:** Book Six (Contract Law), Part Three (Certain Contracts), Heading XXII (Insurance Contracts), Sections 6:439-6:490.

**Government Decrees:**

1. Gov. Decree 44/2015 (III.12.) on the minimum content requirements of liability insurance contracts of multiple agents and brokers ;
2. Gov. Decree 259/2011 (XII. 7.) on fire protection authority organisations, fire protection fines and compulsory accident insurance for fire protection employees;
3. Gov. Decree 192/2000 (XI.24.) on the peculiar obligations of insurers regarding their financial statements and bookkeeping;
4. Gov. Decree 203/2011 (X.7.) on the exemption of certain groups of insurance contracts from the prohibition of restricting competition.

**Decrees of the Minister of Finance:**

1. Decree 33/2002 (XI.16.) of the Minister of Finance on the form and content of customer information provided in respect of unit-linked life insurance products;
2. Decree 45/1996 (XII.29.) of the Minister of Finance on the threshold limits of large exposures;

**Decrees of the Minister for National Economy:**

1. Decree 45/2011 (XII.21.) of the Minister for National Economy on accounting for the profit/loss of mandatory motor third party liability insurance products offered by insurers and on the related data provision;
2. Decree 61/2013 (XII. 17.) of the Minister for National Economy on the highest rate of technical interest rates;
3. Decree 27/2012 (VIII. 27.) of the Minister for National Economy on the professional and examination requirements of qualifications in subject to the competence of the Minister for National Economy.

**MNB Decrees:**

1. MNB Decree 49/2014 (XI.27.) on the obligations of money and credit market institutions to report data to the central bank's information system primarily to enable the Magyar Nemzeti Bank to carry out its supervisory duties;
2. MNB Decree 26/2013 (XII. 7.) on the rules of publication of on the Magyar Nemzeti Bank website of motorist third party liability insurance rates and the coverage charge calculated for each calendar year.

#### **MNB Recommendations:**

Magyar Nemzeti Bank Recommendation 2/2014 (V.26.) on pension insurance

#### **Recommendations of the President and the Supervisory Board of the HFSA:**

1. 5/2001 on the elaboration and application of the general contract terms and conditions of insurers;
2. Recommendation No. 8/2006 (X.12.) on the terms and conditions for the settlement of claims based on compulsory motor third party liability (MTPL) insurance and on the management of the MTPL insurance portfolio;
3. Recommendation No. 4/2008 (XII.4.) on the prevention of abuses related to the activities of intermediaries, on the inspection of intermediaries and on issues of money-management and documentation;
4. Recommendation No. 5/2012 (IV.3.) on the rules of returning the surplus-yield.

#### **CEO Letters issued by the HFSA:**

1. CEO Letter No. 1/2008 for the chief executive officers of insurance companies selling MTPL insurance;
2. CEO Letter No. 11/2007 about the contents and certain formal requirements of the insured person's consent that provides a legal basis for the insurer's handling their health-related data;
3. CEO Letter No. 10/2007 to the Chief Executive Officers of insurers selling unit-linked life insurance products;
4. CEO Letter No. 3/2007 for the Chief Executive Officers of insurance companies selling savings type life insurance and for Chief Executive Officers of independent insurance intermediaries;
5. CEO Letter No. 2/2008 on deferred acquisition costs in the life insurance branch;
6. CEO Letter No. 11/2009 on the public announcement of MTPL fleet contract premiums and on the expected conduct regarding the management of MTPL fleet contracts;
7. CEO Letter No. 6/2009 on the Expected Conduct Aiming at the Strengthening of Insurance undertakings;
8. CEO Letter No. 3/2009 to all credit institutions, financial enterprises, investment enterprises and insurance companies;
9. CEO Letter No. 1/2010 on accrued acquisition costs;
10. CEO Letter No. 5/2010 on HFSA requirements concerning MTPL insurance premium advertisements.

#### **Methodological manuals issued by the HFSA:**

1. Methodological manual No. 2/2006 on needs assessment and product presentation in respect of life insurance;
2. Methodological manual No. 4/2008 of the Hungarian Financial Supervisory Authority on managing situations that severely threat the liquidity and solvency of insurers and on the required content of the related orders of procedure.

## **2.4. Occupational pension providers**

#### **Laws:**

1. OP Act;
2. Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services (**SSA**);

#### **Government Decree:**

399/2007 (XII.27.) on the peculiar obligations of occupational pension providers regarding their financial statements and bookkeeping

**MNB Decree:**

MNB Decree 50/2014 (XI. 28.) on the obligations of funds and occupational pension provider institutions to report data to the central bank's information system primarily to enable the Magyar Nemzeti Bank to carry out its supervisory duties



## **CHAPTER 2**

### **RULES PERTAINING TO THE OPERATION OF BRANCH OFFICES AND THE SUPERVISION OF OPERATIONS PERFORMED THROUGH BRANCH OFFICES AND CROSS-BORDER SERVICES IN HUNGARY, AND THEIR NOTIFICATION AND DATA REPORTING OBLIGATION**

#### **I. GENERAL RULES PERTAINING TO THE OPERATION OF BRANCH OFFICES**

According to the definition of “branch office” under Section 2 (b) of the BOA, a branch office is an unincorporated organisational unit of a foreign enterprise. It is entitled to do business independently and is registered in the domestic corporate registry as the branch office of a foreign enterprise, which is a specific company form.

Pursuant to Section 13 of the BOA — unless provided otherwise by law —, branch offices qualify as foreign exchange residents. Pursuant to the principle of national treatment, the rules pertaining to domestic enterprises shall also apply to the operation, business activities and market conduct of branch offices. Owing to its foreign exchange resident status, a branch office is treated as a domestic entity when entering into a foreign trade contract, i.e. its business activities are subject to the same legal and administrative conditions as that of other businesses established in Hungary. For instance a guarantee issued by a credit institution operating in the form of a branch office shall be considered equal to a guarantee issued by a domestic credit institution and thus it does not require any additional guarantee.

A branch office may have premises (sites) in multiple cities (settlements).

As the first step in the registration procedure of a branch office, the competent foreign supervisory authority reports the establishment of the branch office. After confirming the foundation of the new entity, the MNB registers the branch office, independently of its entry into the company registry. A key obligation linked to the time of registration is the payment of the supervisory fee. Pursuant to Section 168 (1) of the MNB Act, payment of this fee is mandatory for all institutions that possess a license or are listed in the MNB’s registry as of the first day of the calendar year.

The branch office is entitled to launch operations once it receives confirmation of registration. Simultaneously, it shall file for registration in the company registry pursuant to Section 24 (2) of the BOA. The branch office is required to report the commencement of operations to the MNB. From that point on, the new company shall be subject to data provision obligation.

The deletion of a branch office from the registry must begin with the filing of a corresponding report by the competent supervisory authority of the home member state. Further, evidence must be supplied to the MNB that the relevant requirements are met. Then the MNB sends a confirmation note to the parent institution and the foreign supervisory authority and deletes the branch office from the registry. Simultaneously to that, the obligation of the branch office to pay supervisory fees and provide data is terminated.

Pursuant to Section 23 (1) of the BOA, the branch office shall be considered terminated upon deletion from the company registry.

## II. MONEY MARKET

### 2.1st Branch offices of credit institutions

Upon accession into the European Union, community legislation ensuring the obstacle-free operation of the internal market also entered into effect in Hungary. These laws provide a European Single Passport to all credit institutions established in an EEA state, allowing them to operate throughout the EEA on the basis of authorisation obtained from the supervisory authority of the home member state for financial and investment services subject to mutual recognition.

Prudential supervision of the founder credit institution (which the branch office is an integral part of) shall be the responsibility of the competent authorities in the institution's home member state, including the supervision of activities for which the credit institution has a licence. This way, the operations of a Hungarian branch office (e.g. rules of organisation and operation, internal auditing) are primarily subject to the legal provisions of the parent institution's home member state. The requirements set out in the ACI and other financial regulations should only be applied in cases where the ACI or other similar laws explicitly provide so.

As the competent supervisory authority of the host member state, the MNB is required to monitor the branch office's liquidity in cooperation with the competent authorities of the home member state. The competent supervisory authority of the host member state may require the branch offices of credit institutions registered in other member states to provide the same information that are required from domestic credit institutions for the supervision of liquidity. Further, the MNB scrutinizes whether the branch office fulfils provisions on consumer protection and the prevention and combating of money laundering and terrorism financing.

If the branch office violates — or there is a demonstrable risk of it violating — the requirements affected in Hungary, or if the MNB identifies any shortcomings in the operation of the branch office, the MNB shall, as a first step, notify the competent supervisory authority based on the home state, pursuant to Section 199 (3) of the ACI.

If the competent supervisory authority based on the home state subsequently fails to take the necessary action to resolve the identified infringements, the MNB may seek out the European Banking Authority.

The MNB is entitled to act directly if in its judgement the irregularity severely jeopardises the stability of the system or customer interests. The MNB shall notify the competent supervisory authority of the affected EEA state of the measures or extraordinary measures taken by it, and of the underlying reasoning. The measures or extraordinary measures shall be discontinued if

- a) the EEA home state endorses reorganisational measures that address the infringement,
- b) the infringement ceases and the measures or extraordinary measures are no longer warranted,

#### 2.1.1st Internal regulations of the Hungarian branch offices of member state credit institutions

- Internal rules of preventing and combating money laundering

Pursuant to the interpretative provisions of the APCML, branch offices qualify as financial service providers and as such they are required to develop internal rules and submit them to the MNB for approval. The branch office's activities to prevent and combat money laundering are subject to scrutiny by the MNB.

- Rules of generating, recording and forwarding dematerialized securities and on managing the related data

Pursuant to Section 2 of Government Decree 284/2001 (XII.26.) on the Mode of the Generation and Forwarding of Dematerialized Securities and the Relevant Rules on Safety, as well as on the Opening and the Keeping of the Security Account, the Central Securities Account and the Customer Account, dematerialized securities are only allowed to be generated, recorded and forwarded subject to rules approved by the MNB — proceeding in the context of its supervision of the system of financial intermediation — and using an approved computer system and storage media that ensures compliance with the referenced government decree. The same requirements apply to the related data management

efforts. Therefore, a branch office performing duties in relation to the generation, recording and forwarding of dematerialized securities must have MNB-approved rules in place.

- General Terms and Conditions, Business Terms, Rules of Complaint Management, Regulations on the Handling of Bank and Securities Secrets

According to Section 42 of the ACI, if the MNB is informed by the competent supervisory authority of another EEA state that a financial institution registered there is opening a branch office in Hungary, the MNB will inform the financial institution on the customer protection provisions set out in Chapter XXIX of the ACI. On this basis, branch offices are required to set out the general contract terms and conditions for their licensed and regularly pursued activities in their Business Terms.

- Rules of Data Protection and Data Security

According to Section 2 (1) of the Informational Act, said law shall apply to all data management and data processing activities carried out in Hungary which relate to data of natural persons, data of public interest or data that shall be made available to the public owing to public interest.

- Liquidity Regulations

As the competent authorities of the home member state (the MNB in Hungary) bear responsibility for the liquidity of business units and the monitoring of financial policies throughout the operation of a Hungarian branch office, branch offices must also have Liquidity Regulations in place.

## **2.1.2nd Other reporting/authorisation and data reporting obligations to the MNB**

- Outsourcing

Section 68 of the ACI and Sections 79-81 of the AIFCD set out mandatory provisions for outsourcing credit institutions which all financial service providers with a banking license operating in Hungary must fulfil. As the branch offices discussed herein operate in Hungary and serve Hungarian customers, in this respect they must also comply with regulations pertaining to outsourcing. The rule of outsourcing provides authorisation to the external company performing the outsourced activity to obtain, record, store and process, in a lawful manner, data generated in conjunction with the financial services provided. Naturally, some of these data qualify as banking secrets and therefore the branch office needs to report to the MNB on a regular basis the company name and principal office of their outsourcing partners along with the description of outsourced activities and the duration of outsourcing. The provisions defined in the Informational Act shall also be adhered to in the context of outsourcing.

- Intermediaries, agents

For the intermediation of its financial services, a branch office may use the services of tied or independent agents as defined in Section 10 of the ACI. In case an agent intermediates the non-competing financial services of one or more financial institutions, the entity is a tied agent. Independent agents intermediate the competing financial services of multiple financial institutions.

Tied agents employed for intermediating the services of a branch office may be:

- key agents (ACI, Section 10 (1), point aa); or
- agents (ACI, Section 10 (1), point ab).

Independent agents intermediating financial services are

- multiple key agents (ACI, Section 10 (1), point aa); or
- multiple agents (ACI Section 10 (1), point bb).

A *tied agent* acts on behalf of a financial institution based on a service agreement, for the benefit and at the risk of the institution concerned, striving to arrange for a contract with the customer on using a financial service or supplementary financial service offered by the institution. A tied agent can enter into commitments and sign the contract for, on behalf of and at the risk of the financial institution.

*Agent activities* are defined as efforts to arrange for a contract with the customer on using a financial service or supplementary financial service offered by the institution. Intermediaries acting in this capacity do not enter into commitments or sign contracts on behalf of the financial institution.

Branch offices are required to report to the MNB the names of tied and independent agents they use. This way, the branch office of a credit institution established in another EEA state does not need to seek permission from the MNB on using the services of key agents and multiple key agents (ACI, Section 14 (4)).

The rules pertaining to intermediaries must be applied accordingly to agents that carry out cross-border services in Hungary for credit institutions established in another EEA state.

It should be noted that branch offices are allowed to intermediate financial services themselves, both as tied or independent agents. In case they wish to act in the capacity of independent agents, they must apply for an MNB license for it (ACI, Section 10 (4)).

- Data reporting

Branch offices are required to perform regular, ad hoc and specific data reporting to the MNB pursuant to MNB Decree 51/2014 (XII. 9.) on the obligations of money and credit market institutions to report data to the central bank's information system primarily to enable the Magyar Nemzeti Bank to carry out its supervisory duties.

- Bank holidays

Branch offices are allowed to have a maximum of two bank holidays per year. Such suspension of financial service provision on a specific working day may also extend to accounting (accounting holiday) or cashier services (cashier holiday), or both (accounting and cashier holiday). A banking holiday must be announced to the public at least fifteen days in advance in at least two national dailies and must be reported to MNB. In addition, the MNB may order a bank holiday at the request of the branch office. The number of bank holidays shall not exceed three days per year.

### **2.1.3rd Deposit protection**

Credit institutions established in Hungary are required to join the National Deposit Insurance Fund (**NDIF**). Pursuant to Section 209 (3) of the ACI, the branch office of a credit institution established in another EEA state is not required to join the NDIF if it has taken out deposit insurance as per Directive 94/19/EC of the European Parliament and of the Council (**Directive 94/19/EC**). Vice versa, if said branch office does not have the deposit insurance as required under Directive 94/19/EC, it shall join the NDIF in order to take out supplementary insurance.

When notifying the MNB of the establishment of a branch office, the competent supervisory authority of the member state where the credit institution is established shall also inform the MNB of the scope of deposit insurance taken out by the founder credit institution. In case the branch office joins the deposit insurance system of its home member state, it must draw up a Hungarian-language guide outlining the range of deposit types insured by that other deposit insurance fund, the scope of insurance, the terms and conditions of indemnity payment and the procedure of enforcing claims.

Detailed regulations on the NDIF are set out in Sections 209-240 of the ACI. For additional information please refer to the NDIF website at [www.oba.hu](http://www.oba.hu).

### **2.2nd Branch offices of payment institutions and electronic money institutions**

The PSPA provides the option for payment institutions and electronic money institutions established in another EEA state to establish a branch offices in Hungary for the purpose of supplying payment services.

If a payment institution or electronic money institution supervised by the competent supervisory authority of another EEA state intends to set up a branch office in Hungary, the competent supervisory authority shall inform the MNB thereof. The MNB registers the establishment of the branch office and informs the payment institution on the conditions applicable to its planned operations, in particular the rules on the preliminary and subsequent notification of customers, and the execution of payment services and electronic money issuance.

Like with credit institution branch offices, the prudential supervision of the founder payment institution or electronic money institution shall be the responsibility of the competent authorities in the institution's home member state, including the supervision of activities for which the payment institution has a licence. The operation of a Hungarian branch office of a payment institution established in another member state is thus primarily subject to the legal provisions of the parent institution's home country. The requirements set out in the PSPA and other financial legislation should only be applied when explicitly stated by legislation.

Pursuant to Section 56 of the PSPA, the MNB, as part of its mandate, shall verify compliance with the provisions set out in Chapters II-IX of the PPSPA in respect of the Hungarian branch offices of payment service providers (payment institutions and electronic money institutions) licensed in another EEA member state.

According to Article 25 (2) of Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market and Article 3 (1) of Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending, the competent authorities of the home member state shall cooperate with the competent authorities of the host member state in order to carry out the controls and take the necessary steps in respect of a payment institution's and the electronic money institution's branch office located in the territory of another member state. Upon the assumed or actual breaching of laws by a branch office, the competent authorities shall share with each other all essential and/or relevant information.

#### **2.2.1. Internal regulations of branch offices of member state payment institutions and institutions located in Hungary**

- Internal rules of preventing and combating money laundering

Pursuant to the APCML, branch offices qualify as financial service providers and therefore they are required to develop internal rules and submit them to the MNB for approval. The branch office's activities to prevent and combat money laundering are subject to scrutiny by the MNB.

- General Terms and Conditions, business terms, Rules of Complaint Management

Branch offices are required to set out the general contract terms and conditions for their licensed and regularly pursued activities in a business terms document. In accordance with Section 70 (10) of the PSPA, branch offices must draw up a Rules of Complaint Management document, outlining the effective, transparent and quick management of customer complaints along with the related complaint management procedures. That document shall inform customers on the location, mailing address, e-mail address, phone number and fax number of the complaint management function concerned.

- Rules of Data Protection and Data Security

According to Section 2 (1) of the Informational Act, said law shall apply to all data management and data processing activities carried out in Hungary which relate to data of natural persons, data of public interest or data that shall be made available to the public owing to public interest.

#### **2.2.2. Other reporting/authorisation and data reporting obligations to the MNB**

- Outsourcing

Section 14 of the PSPA provides that payment institutions and electronic money institutions must report plans to outsource any activities relating to the operation of payment services or ancillary financial services to the MNB at least 30 days in advance. The payment institution or electronic money institution shall be responsible for ensuring that its outsourcing partner that takes over the outsourced activities shall perform said activities in compliance with all applicable laws, personnel-related and material conditions and with due care. Pursuant to these outsourcing rule, a branch office must report to the MNB in advance the outsourcing of any functions that relate to the operation of payment services.

- Intermediaries, agents

The Hungarian branch office of a payment institution or electronic money institution registered in another EEA state may use intermediaries for the provision of its payment services. Such intermediation shall qualify as the intermediation of payment services (Section 6 (1), item 90 c)).

*Supply of payment services by intermediaries:*

a) shall mean activities pursued under contract concluded with a financial institution or electronic money institution for the conclusion of a payment service contract on behalf, for the benefit and at the risk of the payment institution or electronic money institution,

b) activities pursued under contract concluded with an electronic money institution geared towards promoting the conclusion of a contract for the sale and redemption of electronic money on behalf, for the benefit and at the risk of the electronic money institution (Section 3, item 29 of the PSPA).

A branch office intending to financial services via a payment intermediary must notify the MNB within five working days after the conclusion of the service contract with said intermediary. The notification shall include the documents specified in Section 55 (3) of the PSPA.

A branch office is required to notify the MNB within three working days of any amendments to the service contract concluded with the intermediary.

- Data reporting

Branch offices are required to perform regular, ad hoc and specific data reporting to the MNB pursuant to MNB Decree 51/2014 (XII. 9.) on the obligations of money and credit market institutions to report data to the central bank's information system primarily to enable the Magyar Nemzeti Bank to carry out its supervisory duties.

### **2.3. The Central Credit Information System**

In addition to credit institution, payment provider and electronic money institution branch offices, the rules outlined below shall also be applicable to financial organisations providing cross-border services in Hungary. Pursuant to the CCISA, the Central Credit Information System (**CCIS**) is a closed database that is intended to supply reliable information for credit eligibility assessment, to foster responsible lending and reduce credit risk for the safety of debtors and reference data providers.

*Reference data:* Any data, including the personal identification data of an individual registered in the system, which the financial enterprise managing the CCIS is authorised to handle pursuant to applicable laws.

The financial enterprise managing the CCIS is BISZ Central Credit Information Plc. (BISZ Plc.). The ongoing supervision of BISZ Plc. is carried out by the MNB.

*Reference data providers* are, among others:

- financial institutions, payment institutions and electronic money institutions that provide at least one financial service,
- a lender providing cross-border services and established in another member state, provided it has joined the CCIS.

After the financial service contract is concluded, the reference data provider shall submit to CCIS in writing the data of natural persons and businesses specified in Section 5 (2) of the CCISA and listed in the Annex of the Act.

BISZ Plc. is required to provide, without discrimination, the option to join CCIS to any lender established in another member state if it provides cross-border services in Hungary. The data provision obligation to CCIS in respect of lenders established in other member states is limited to the data of registered customers of their cross-border services as specified in the Annex inasmuch as said data relate to these cross-border services.

BISZ Plc. is exclusively allowed to accept reference data submitted by reference data providers. Furthermore, it can only transfer reference data that it manages in CCIS to reference data providers. This way, CCIS is loaded with data by the reference data providers and it is them who use these data in the credit eligibility assessment process.

For further information on CCIS and BISZ Plc. please visit the home page of BISZ Plc. at [www.bisz.hu](http://www.bisz.hu).

### **III. CAPITAL MARKET**

#### **3.1. Branch offices of investment enterprises**

Upon accession into the European Union, community legislation ensuring the obstacle-free operation of the internal market also entered into effect in Hungary. These laws provide a European Single Passport to all investment enterprises established in an EEA state, allowing them to operate throughout the EEA on the basis of authorisation obtained from their supervisory authority of the home member state for investment services and supplementary services subject to mutual recognition.

Prudential supervision of the founder investment enterprise (which the branch office is an integral part of) shall be the responsibility of the competent authorities in the institution's home member state, including the supervision of activities for which the investment enterprise has a licence. This way, the operations of a Hungarian branch office (e.g. rules of organisation and operation, internal auditing) are primarily subject to the legal provisions of the parent institution's home member state. The requirements set out in the AIFCD, the ACM and other financial regulations should only be applied where the legal provisions concerned explicitly provide so.

As the competent supervisory authority of the host member state, the MNB scrutinizes whether the branch office complies with regulations on consumer protection and on the prevention and combating of money laundering and terrorism financing. In cases referenced in Sections 176-178/B of the AIFCD, the MNB may take measures or notifies the competent supervisory authority of the home EEA state.

##### **3.1.1. Internal regulations of the Hungarian branch offices of member state investment enterprises**

- Internal rules of preventing and combating money laundering

Pursuant to the interpretative provisions of the APCML, branch offices qualify as investment service providers and as such they are required to develop internal rules and submit them to the MNB for approval. The branch office's activities to prevent and combat money laundering are subject to scrutiny by the MNB.

- Rules of generating, recording and forwarding dematerialized securities and on managing the related data

Pursuant to Section 2 of Government Decree 284/2001 (XII.26.) on the Mode of the Generation and Forwarding of Dematerialized Securities and the Relevant Rules on Safety, as well as on the Opening and the Keeping of the Security Account, the Central Securities Account and the Customer Account, dematerialized securities are only allowed to be generated, recorded and forwarded subject to rules approved by the MNB and using an approved computer system and storage media that ensures compliance with the referenced government decree. The same requirements apply to the related data management efforts. Therefore, a branch office performing duties in relation to the generation, recording and forwarding of dematerialized securities must have MNB-approved rules in place.

- General Terms and Conditions, business terms, Rules of Complaint Management

Pursuant to the provisions of Government Decree 22/2008 (II.7.), the branch office of an investment enterprise established in a member state must have in place General Contract Terms and Conditions, a business terms and a Rules of Complaint Management document, with the latter outlining the procedure for managing potential customer complaints.

- Rules of Data Protection and Data Security

According to Section 2 (1) of the Informational Act, said law shall apply to all data management and data processing activities carried out in Hungary which relate to data of natural persons, data of public interest or data that shall be made available to the public owing to public interest.

### **3.1.2. Other reporting/authorisation and data reporting obligations to the MNB**

- Outsourcing

Sections 79-81 of the AIFCD set out mandatory provisions for investment enterprises that outsource activities. As the branch offices discussed herein operate in Hungary and serve Hungarian customers, in this respect they must also comply with regulations pertaining to outsourcing. As provided by law, the branch office needs to report to the MNB on a regular basis the company name and principal office of its outsourcing partners along with the description of outsourced activities and the duration of outsourcing. Further, it must submit the outsourcing contract to the MNB within three days after signing it.

- Intermediaries, agents

Branch offices are entitled to use pending agents for their activities. In case a branch office already registered in the territory of Hungary intends to use, in the territory of the host member state, the services of a tied agent established or permanently residing in Hungary, it shall inform the competent supervisory authority of the home member state of this. The supervisory authority of the home member state shall pass on this information to the competent supervisory authority of the host member state. When a tied agent is contracted for the intermediation of investment services, the MNB must be notified of this within five days after contract conclusion. The notification must include the agent's name and principal office along with the description of intermediated services.

- Data reporting

Data reporting to the MNB shall be performed pursuant to MNB Decree 52/2014 (XII. 9.) on the obligations of capital market institutions to report data to the central bank's information system primarily to enable the Magyar Nemzeti Bank to carry out its supervisory duties.

### **3.2. Joining the Investor Protection Fund (IPF)**

The branch office of a service provider established in another EEA state is not required to join the IPF if it is a member to an investor protection system as per Directive 97/9/EC of the European Parliament and of the Council.

If the branch office of a service provider established in another EEA state does not have investor protection as specified in Directive 97/9/EC of the European Parliament and of the Council, it is required to join the IPF in order to obtain supplementary insurance.

If either the maximum amount or extent of indemnity granted by the IPF or the scope of insured receivables exceed the corresponding maximum amount, extent or scope of indemnification available to the service provider's branch office under the investor protection system it is a member to, the IPF will, on the a branch office's request, provide supplementary insurance on the excess part, provided the branch office complies with



conditions pertaining to IPF members. Indemnification pursuant to such supplementary insurance can only take place if the competent supervisory authority of the home member state of the branch office notifies the IPF that the preconditions of indemnification are fulfilled.

Detailed regulations on the NDIF are set out in Sections 210-228 of the CMA. Further information is available on the IPF website at [www.bva.hu](http://www.bva.hu).

## **IV. INSURANCE MARKET**

### **4.1. Special rules for insurance and reinsurance undertaking, insurance intermediation branch offices**

Upon accession into the European Union, community legislation ensuring the obstacle-free operation of the internal market also entered into effect in Hungary. These laws provide a European Single Passport to all insurers, insurance intermediaries and insurance consultants established in an EEA state, allowing them to operate throughout the EEA on the basis of authorisation obtained from their supervisory authority of the home member state for insurance, insurance intermediation and insurance consulting services subject to mutual recognition.

Prudential supervision of the founding insurance undertaking, insurance intermediary (which the branch office is an integral part of) shall be the responsibility of the competent authorities in the institution's home member state, including the supervision of activities for which the insurance undertaking, insurance intermediary has a licence. In accordance with the principle of home country control, the exclusive (financial) market supervision of the home member state covers solvency, the allocation of insurance technical reserves and their asset backing, the administrative and accounting procedures and internal audit mechanisms linked to the former.

This Guide provides general guidance on the effective Hungarian legislation governing the operations of insurance undertakings and insurance intermediaries pursuant to Sections 423 and 286 of the Insurance Act, including legislation on the general good, in the interest of which the MNB may take action against member state insurance undertakings (insurance intermediaries). The rules forming part of the concept of general good are defined in the Commission Interpretative Communication 2000/C 43/03 on the Freedom to provide services and the general good in the insurance sector.

As the supervisory authority of the host member state, the MNB is required to monitor, in cooperation with the competent authorities of the home member state, the branch office's compliance (first and foremost) with regulations on informing customers, consumer protection and complaint management. Pursuant to Section 288 of the Insurance Act — in accordance with the provisions set out in the 2009/138/EC (SII) directive —, the MNB may request the Hungarian branch office of an insurance undertaking established in another member state on the contract terms and conditions of insurance offerings supplied in Hungary and on the related documents in order to verify their compliance with Hungarian laws. Further, the MNB scrutinizes whether the branch office fulfils provisions on the prevention and combating of money laundering and terrorism financing.

### **4.2 Internal rules of the Hungarian branch office of insurers and insurance intermediaries on preventing and combating money laundering**

Pursuant to the interpretative provisions of the APCML, branch offices qualify as insurance or insurance intermediary service providers and as such they are required to develop internal rules and submit them to the MNB for approval. The branch office's activities to prevent and combat money laundering are subject to scrutiny by the MNB. The abovementioned provision does not govern dependent insurance intermediaries with the exception of multiple agents, independent insurance intermediary branch offices in case of their activities linked to non-life insurance contracts and insurance undertaking branch offices authorised to engage only in non-life insurance operations, and the non-life insurance operations of insurance undertakings authorised to engage in both life and non-life insurance operations.

### **4.3. Contract terms and conditions of the Hungarian branch offices of insurance undertakings**

The Hungarian branch office of an insurance undertaking established in another EEA state must draw up the documents proving the conclusion and existence of the insurance contract, including the standard contract terms and conditions, in Hungarian (IA, Section 36 (1)). Chapter 3 (Consumer Protection Provisions), Part II (Sector-specific regulations), Section 2.3 (Insurance), Subsection 2.3.1 (Terms and Conditions of Contract) of this Guide contains guidance on the detailed rules governing contract terms and conditions.

#### **4.4. Supervision of the operations in Hungary of member state insurance undertakings, independent insurance intermediaries through branch offices or in the context of cross-border services**

In case an insurance undertaking or an insurance intermediary seated in another member state and providing service in Hungary via a branch office or in the context of cross-border services violates effective Hungarian laws or if the MNB detects discrepancies in their operation, the MNB will require the branch office, or the insurance undertaking or the insurance intermediary to resolve non-compliance, pursuant to Section 289(1) of the IA. Should the branch office, insurance undertaking, insurance intermediary fail to fulfil this request, the MNB shall notify the competent supervisory authority of the home member state, asking them for appropriate action, and shall initiate the action specified in Section 291 (1) a)-g), i) and q) of the IA, or may refer the matter to EIOPA and may request its assistance in accordance with Article 19 of Regulation 1094/2010/EU.

The MNB is also entitled to take direct action in order to prevent the conclusion of further insurance contracts if it deems that the non-compliance severely threatens the security of the insurance market or the interest of customers, with the exception of the foregoing.

#### **4.5. Other reporting obligations to the MNB**

The MNB shall maintain a registry of insurance intermediaries licensed or registered pursuant to the Insurance Act (supervisory registry). Section 369 (2) of the IA states that subject to the exceptions set out in the IA, insurance intermediation is only allowed to be pursued by persons listed in active status in the MNB's registry and having satisfied the professional further training obligations defined in Section 376(2) of the IA. However, registration by the MNB is not necessary for the provision of insurance intermediation services for insurance intermediaries registered in another EEA state.

A natural person engaged in insurance intermediation is added to the registry after the insurer or independent insurance intermediary employing the person initiates such registration in a compliant manner as specified by the MNB. Therefore, if a branch office or insurance undertaking or independent insurance intermediary intends to use the services of an insurance intermediary established or residing in Hungary, it must apply for access to the MNB's registry of insurance intermediaries in order to fulfil the registration requirement. The employment of insurance intermediaries must be reported electronically to the supervisory registry within 2 working days after the commencement or the ending of such employment. (Section 412 (7) of the IA)

In respect of the employment of insurance intermediaries, the following limitations in Section 373 of the IA must be observed:

- a person working as an insurance agent for an insurance intermediary under an employment contract, service contract or other equivalent agreement is not allowed to enter into any similar employment, service or other work contract for insurance intermediation with another insurance undertaking or insurance intermediary,
- a person working as an insurance agent for an insurance intermediary under an employment contract, service contract or other equivalent agreement is not allowed to enter into any similar employment, service or other work contract (not qualifying as employment) for insurance intermediation with any other party.

#### **4.6 Insurance tax**

Pursuant to Sections 2-3 of Act CII of 2012 on Insurance Tax, the supply of insurance services (Casco insurance, property and accident insurance) defined in said Act is subject to taxation if the risk arises in Hungary within the meaning of Section 3 (1), item 36 b) of the IA<sup>2</sup>. The subjects of the tax are insurance undertakings. The

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<sup>2</sup>Section 4 (1), item 62 of the IA:

36. *member state of the commitment* shall mean the member state:

Hungarian branch offices of insurance undertakings established in another EEA state or a third country within the meaning of the IA, alongside the suppliers of cross-border insurance services are also subject to the tax with respect to their operations defined above (in Section 2 of the Act on Insurance Tax).

#### **4.7 Special rules for compulsory motor third party liability (MTPL) insurance**

An insurance undertaking not having its principal office or branch office in Hungary is only entitled to provide MTPL insurance in the form of cross-border services in the country via a contracted claim representative. The claim representative is required to have its permanent residence or principal office in Hungary. The insurance undertaking is required to report to the MNB the appointment of a claim representative, the representative's data or, subsequently, any changes thereto within eight days. The list of claim representatives appointed by insurance undertakings and any changes to the particulars of claim representatives are continuously published on the MNB's website. In the case of cross-border services, the insurance undertaking must submit to the MNB the Hungarian-language version of all contract-related documents, including its contract terms in conditions, 30 days prior to the commencement of said services (MTPL Act, Section 38).

The insurance undertaking is required to make its insurance terms and conditions and applicable tariffs available to the public on an ongoing basis in its customer reception spaces and on its home page. If the insurance undertaking provides MTPL insurance in the form of cross-border services without having an organisational unit in place in Hungary, it is required to ensure that the aforementioned information is on display for reference at the claim representative's principal office or at his place of residence (MTPL Act, Section 23 (4)-(5)).

## **V. OCCUPATIONAL PENSION PROVIDERS**

Within the meaning of the OP Act, cross-border operations refer to the acceptance of payments made by an employer having its registered office, other establishment, branch office or commercial representation in Hungary by an occupational pension provider institution established in another state, or service provided by an occupational pension provider institution established in another EEA state to a member residing in Hungary, payment made by an employer having its registered office, other establishment, branch office or commercial representation in another EEA state to an occupational pension provider institution established in Hungary or service provided to a member residing in another EEA state by an occupational pension provider institution.

Pursuant to the provisions of Section 83 of the OP Act, the MNB is in charge of supervising occupational pension provider institutions and employers registered in another EEA state as of the date specified in Section 83 (3) of the OP Act.

If the MNB receives notification from the competent authorities of the home state of an occupational pension provider institution registered in another EEA state to the effect that such occupational pension provider institution wishes to accept payment from an employer in the context of cross-border services, it shall inform the notifying authority within two months of receipt of the notification about the Hungarian social and labour law rules governing the operation of occupational pension provider institution registered in another EEA state, the notification obligation vis-à-vis members and the requirements pertaining to the investment of the occupational pension provider institution's assets.

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b) for risks covered under the non-life insurance branch:

ba) the member state in which the property is situated if the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy,

bb) the member state that is considered the State of the commitment by definition of the MVI for risks covering any type of motor vehicle,

bc) the member state where the policyholder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned,

bd) the member state where the policyholder has his normal place of residence or, if the policyholder is a legal person, the member state where the latter's establishment, to which the contract relates, is situated, in all cases not explicitly covered by the foregoing Subparagraphs *ba)*, *bb)* and *bc)*;

An occupational pension provider institution registered in another EEA state may commence its cross-border operations in Hungary once it has received notification from the competent authorities of its home state, but no later than upon lapse of the above specified time limit.

## **5.1. Applicable legislation on social security and employment law**

### **5.1.1 Membership in an occupational pension provider institution**

Within the meaning of the OP Act, members are natural persons acquiring eligibility for the occupational pension defined in the relevant statutes, membership agreement, employment agreement or collective agreement defining the conditions for occupational pension provision on the basis of their employment or employment under the laws of another EEA state, or is expected to conditionally acquire eligibility.

Pursuant to Section 26 (1)-(2) of the OP Act, members may be persons employed by a founder or an employer joining later in accordance with Section 2 (23)<sup>3</sup>, and whose employment agreement includes the employer's commitment to pay the contribution. The employer may undertake contribution in keeping with the provisions on equal treatment defined in legislation on employment. Membership starts with the conclusion or the amendment of an employment agreement with the employer. The employer shall notify the institution for occupational retirement provision immediately after the conclusion or the amendment of the employment agreement. The employer shall notify the employee that its personal data has been forwarded to the occupational pension provider institution.

Any employer may join the occupational pension provider institution in the manner defined in its statutes (**joining employer**). The joining employer shall enter into an agreement with the institution for occupational retirement provision, in which it undertakes to pay contribution for its employees. The employer that has joined an institution for occupational retirement provision may enter another one. In this case the agreement concluded with the original institution for occupational retirement provision may be terminated only after an agreement for joining the recipient institution for occupational retirement provision is entered into. In the agreement for joining another institution, the procedure to be followed for the transfer of the pension schemes shall also be provided for. When transferring to another institution, the eligibility of the members cannot be curbed.

Self-employers may also join the institutions for occupational retirement provision. The joining self-employers are treated in the same way as members; however, such persons shall also meet the obligations of the employers set forth under Section 55.

Pursuant to the OP Act, self-employer means persons listed by Section 4 b), items 1-6 of the SSA:

- Sole proprietor:
  1. any natural person listed in the register of sole proprietors as defined in the Act on sole proprietors and sole proprietorship,
  2. private persons who are authorised to engage in private practice providing veterinarian services, pharmaceutical services, private persons who are authorised to engage in community caretaker/administrator activities, farm caretaker/administrator activities, and in providing social services (medical contractor),
  3. attorneys covered by the Act on attorneys, and European Community jurists (attorney),
  4. private patent attorneys,

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<sup>3</sup>Pursuant to Section 2 (23) of the OP Act, employment relationship means: employment within the meaning of the Labour Code or any other legal relationships for the performance of work governed by the provisions of the Labour Code according to specific other legislation; civil service and public employment as described by the Act on the legal status of civil servants, public employment as described by Act XXXIII of 1992 on the Legal Status of Public Employees, prosecutorial service relations as described by Act LXXX of 1994 on the Prosecutorial Service Relations and Prosecutorial Data Management, service relations as described by Act LXVII of 1997 on the Legal Status and Remuneration of Judges, the service relations of law enforcement employees as described by Act LXVIII of 1997 on the Service Relation of Law Enforcement Employees, service relations as described by Act XLIII of 1996 on the Conditions of Service for Members of the Regular Armed Forces, service relations as described by the Act on the conditions of service for members of the regular and contractual armed forces; persons in the service of a church shall also be considered employed within the meaning of the Act.

5. public notaries performing their activities not on behalf of a notary's office,
6. independent court bailiffs performing their activities not on behalf of a court bailiffs' office.

- Business partnership shall mean:
  1. any general partnership,
  2. any limited partnership,
  3. any private limited-liability company,
  4. any joint company,
  5. any professional association, including European economic interest groupings,
  6. the business partnerships listed under Points 1-6 when functioning as pre-companies,
  7. any patent agency company or patent attorneys' office,
  8. any private driving school,
  9. any association of private educators,
  10. any law firm or notaries' office,
  11. any court bailiffs' office,
  12. any sole proprietorship.

Pursuant to Section 29 (1) of the OP Act, membership shall cease:

- a) in the event of the death of the member;
- b) upon termination of the member's employment during the term of conditional eligibility;
- c) upon transfer of the member to another occupational pension provider institution;
- d) if the provision of occupational pension to the member has ceased.

A settlement obligation with the members or its beneficiary arises in the event of the termination of membership.

Section 31 of the OP Act specifies the procedure applicable in the event of the member's death. In accordance with the operational rules and the OP Act, the member may designate a natural person as his beneficiary by a unilateral declaration in an authentic instrument or a private document with full probative force in the case of his death (death beneficiary). The declaration shall include the beneficiary's name, place and date of birth, mother's name and address.

The designation of the beneficiary is subject to be confirmed by the institution for occupational retirement provision and shall be effective retroactively as of the date when filed. In addition to the member's data the declaration shall include the name, data of the designated beneficiary, the rate of his/her eligibility, and the date of the designation of the beneficiary.

In case a member has designated more than one beneficiary without further instructions, the beneficiaries designated shall have an equal share of the account. The member may appoint a new beneficiary at any time.

The designation of the beneficiary shall be annulled, if

- a) the member cancels the designation of the beneficiary,
- b) the member designates another beneficiary,
- c) the beneficiary predeceases the member,
- d) the beneficiary is found guilty by a court of law for the murder of the member. In this case, the beneficiary may not benefit from the member's account.

When more beneficiaries are appointed and one of them dies, the share of the deceased payee shall be divided among the surviving beneficiaries in accordance with their respective percentage of eligibility.

If the member did not designate a beneficiary, or if the designation was terminated under Section 31 (5), a), c) and d) of the OP Act, the member's lawful heir shall be considered the beneficiary based on his share of the inheritance. If the member does not have a natural person who could become his lawful heir, the amount on the member's account shall be passed to the institution for occupational retirement provision, and the institution for occupational retirement provision will credit it on the accounts of the members in employment relation with the member's employer in proportion to the their balances outstanding when the amount is credited.

The beneficiary becomes the sole owner of the member's account upon the death of the member. The institution for occupational retirement shall accommodate the beneficiary's decision made according to Section 31 (9) of the OP Act within three working days upon proving his/her eligibility with checking the document held by the institution on the designation of the beneficiary.

The beneficiary shall declare in writing whether

- a) he/she uses the amount due to him/her as occupational pension plan benefits, or
- b) if the operational rules allows it, leaves the amount with the institution for occupational retirement provision, either continuing the aggregation or not, or
- c) transfers it to another institution for occupational retirement provision, or
- d) withdraws the amount on the member's account in a lump sum payment.

The beneficiary may make this declaration specified in Section 31 (9) at any time. If the beneficiary does not make a declaration within thirty days upon the documented receipt of the written request of the institution for occupational retirement provision, the institution for occupational retirement provision acts as if the beneficiary elected the procedure referred to in Section 31 (9) b).

If the beneficiary chooses the procedure specified in Section 31(9) b), he/she shall be treated similarly to members from the date of the declaration.

Without prejudice to Section 31 (1) to (11), the pension scheme may include provisions under which the member cannot appoint a beneficiary in the case of his death. In such a case, the amount on the member's account shall pass to the institution for occupational retirement provision, and the institution for occupational retirement provision shall credit it on the accounts of the members in the pension scheme of the deceased person in proportion to their balances outstanding when the amount is credited. If the employer links the payment of the contribution to the employee's additional voluntary contribution, the pension scheme cannot contain a provision stating that no beneficiary may be designated.

Pursuant to Section 32 (1) of the Act, if the defined benefit pension scheme provides for the eligibility of a relative, his eligibility becomes accessible upon the death of the member.

The member may designate a beneficiary for dependant's benefit in accordance with Section 31 (1) to (6). If the member does not designate a beneficiary, or the designation becomes void, the close relative of the member shall be eligible to receive the benefit. If the pension scheme does not provide for the eligibility of a relative, the eligibility for the benefit becomes void. If the employer links the payment of the contribution to the employee's additional voluntary contribution, the eligibility for a relative cannot be excluded.

Pursuant to the OP Act, 'conditional eligibility period' means the minimum period spent in labour relations after which the ownership of the credited contributions paid by the employer, the related yields and the eligibility generated during this period are transferred to the members.

The conditional eligibility period may not exceed five years. If the employer links the payment of the contribution to the employee's additional voluntary contribution, and the employment terminates before the conditional eligibility period expires, the institution for occupational retirement provision shall repay the additional voluntary contributions paid by the employee on the member's request in a lump-sum payment together with the yields on the additional voluntary contributions to the member's account in the case of defined contribution pension schemes, or together with the yield realized on the mathematical provisions in proportion to the additional amount paid by the employee in the case of defined benefit pension schemes.

If membership terminates during the conditional eligibility period due to the member's death, the amount specified in Section 27 (2) of the OP Act shall be paid to the beneficiary designated by the member or the heir, if no valid appointment was made.

If membership terminates during the conditional eligibility period, the institution for occupational retirement provision

- a) in the case of defined contribution pension schemes, shall credit the contribution paid by the employer together with the related yield on the accounts of the members belonging to the former member's pension scheme in proportion to the their balances outstanding at the time of crediting,
- b) in the case of defined benefit pension schemes, shall distribute the capital value of the former member's recorded eligibility to the members who have not received pension plan benefits yet in the form of an increase of their eligibility at an equal rate at the time of crediting, and transferred to the mathematical provisions

#### **5.1.2. Principles of additional voluntary contributions paid by the member**

The member may undertake to pay additional voluntary contributions in addition to the amount paid by the employer. Such additional voluntary contribution may be a lump sum payment or made on a regular basis. The member may suspend such payments at any time. The employer may link the payment of the contribution to the employee's additional voluntary contributions. This condition and the legal consequences of the failure to pay such additional contributions shall be ordered in the employment or the collective agreement. The member shall not be liable to pay additional voluntary contributions for periods when the employer does not pay the contribution referred to in the employment or the collective agreement.

The employer shall pay the contribution and the member shall supplement this as described in the previous paragraph until the employment is terminated. Neither the member's creditors, nor external third parties' creditors may lay claims to receivables recorded on the member's account. If the employer fails to meet its obligation undertaken in the employment contract or the collective agreement, the occupational pension provider institution and the member may enforce the claim in court.

#### **5.1.3. Collective agreement**

Pursuant to Section 276 (1) of the Labour Code, a collective agreement may be concluded:

- a) by employers, and by employers interest groups by authorisation of their members, and
- b) by trade unions or trade union associations.

The scope of collective agreements may cover:

- a) rights and obligations arising out of or in connection with employment relationships;
- b) conduct of the parties relating to the conclusion, implementation and termination of the collective agreement, and concerning the exercise of their rights and obligations.

A collective agreement of limited effect may derogate from one with a broader scope — unless otherwise provided therein — insofar as it contains more favourable regulations for the employees. Derogations for the benefit of employees shall be adjudged by a comparative assessment of related regulations. Collective agreements may only be concluded in writing.

The scope of the collective agreement applies to the employer that

- a) concluded the collective agreement, or
- b) is a member of the employers' organisation having concluded the collective agreement.

The effect of the provisions of the collective agreement governing the means of communication of the parties shall apply to the undersigning parties of the collective agreement. The effect of the provisions of the collective agreement governing employment relationships shall apply to all the workers employed by the employer. An employee's employment established by multiple employers shall, unless stipulated otherwise, be governed by the collective agreement concluded between the employer defined in Section 195 (2) of the Labour Code. The collective agreement shall enter into effect when published.

#### **5.1.4. Requirement of equal treatment**

Pursuant to the second paragraph of Section 26 (1) of the OP Act, the employer may undertake contribution in keeping with the provisions on equal treatment defined in legislation on employment.

Pursuant to Section 12 of the Labour Code, in connection with employment relationships, in particular remuneration, the principle of equal treatment must be strictly observed. Remedy of the violation of this requirement shall not result in any violation of or impingement upon the rights of any other employee. 'Wage' shall mean any remuneration provided to the employee directly or indirectly in cash or in kind, as well as social benefits, based on his/her employment.

The equal value of work for the purposes of the principle of equal treatment shall be determined based on the nature of work, its quality and quantity, working conditions, vocational training, physical and intellectual efforts, experience and responsibilities.

Pursuant to Section 21 f) of Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities, it is considered a violation of the principle of equal treatment in particular if the employer inflicts direct or indirect negative discrimination upon an employee, especially when establishing and providing allowances due on the basis of the employment relationship or other relationship related to work, particularly in establishing and providing wages/salaries defined in Section 12 (2) of the Labour Code.

#### **5.1.5. Time of payment**

Pursuant to Section 34 (3) of the OP Act, a member shall be eligible for occupational pension plan benefits when the retirement age defined in Section 2, item 25 of the OP Act is reached, a medical certificate in case of his/her disability the rate of which exceeds the degree specified in the pension scheme is submitted, and when the waiting period passes (if there is such provision in the pension scheme), or in case of pension plan benefits available to relatives, the relative shall be eligible when the member dies.

Within the meaning of the OP Act, waiting period means a time of membership defined by the pension scheme starting with the date when the person becomes a member, after which the member may have access to the occupational pension plan benefit the earliest, upon the fulfilment of other conditions.

#### **5.1.6. Pension provision**

Pursuant to Section 34 (1) and (2) of the OP Act, the occupational pension provider institution shall provide occupational pension as defined in its statutes.

The pension plan benefits may be

- a) a lump-sum pension plan benefit,
- b) a benefit for a defined period,
- c) an annuity, or
- d) a combination of the above.

#### **5.1.7. Pensionable age**

Pursuant to the OP Act, 'pensionable age':

- a) means the age specified by Act LXXXI of 1997 on Social Security Retirement Provision (**SSRPA**) as a precondition for old-age pension,
- b) shall be considered on an equal footing with the time from which the member receives social security pension, i.e. old-age pension (including pensions received in the case of early retirement or advanced retirement, miners' pension, old-age pension payable in certain fields of art, old-age pension provided by the Public Foundation for Art and Community Culture, and service pension), disability and accident-related disability pension (including regular disability benefits provided by the Public Foundation for Art and Community Culture), as well as increased old-age and disability pension,
- c) means the old-age retirement age relevant to the member under the social and labour laws of the state where the employer is headquartered in the case of cross-border activities;

#### **In case of old-age pension assessed for any period after 31 December 2008:**

Pursuant to Section 18(1) of the SSRPA, the pensionable age granting eligibility for old-age pension benefits under the social security system is:



- a) 62 years if born before 1 January 1952,
- b) 62 years plus 183 days if born in 1952,
- c) 63 years if born in 1953,
- d) 63 years plus 183 days if born in 1954,
- e) 64 years if born in 1955,
- f) 64 years plus 183 days if born in 1956,
- g) 65 years if born in or after 1957.

Full old-age pension benefits shall be granted to persons:

- a) having reached the applicable retirement age according to their year of birth, as defined in Section 18 (1) of the SSRPA (**pensionable age**), and
- b) with at least twenty years of service time, and
- c) who are not engaged in a relationship under Section 5(1), Points a)-b) and e)-g) of the SSA that is subject to insurance on the commencing day of their assessed full old-age pension benefits.

Pursuant to Section 18 (2a) of the SSRPA, women who meet the following conditions are eligible for full old-age pension benefits irrespective of their age:

- a) have at least 40 years of the time granting the right to benefits, and
- b) who are not engaged in a relationship under Section 5(1), Points a)-b) and e)-g) of the SSA that is subject to insurance on the commencing day of their assessed full old-age pension benefits.

In terms of Section 18 (2a) of the SSRPA, time spent in gainful occupation or an equivalent legal status, as well as the period when prenatal allowance and childcare allowance, maternity benefits, child-care allowance, child-care benefits, child-raising allowance or care allowance for a severely disabled blood or adopted child, or any equivalent status, completed prior to 1 January 1998 shall qualify as time granting the right to benefits.

On the basis of Section 18 (2a) of the SSRPA, full old-age pension cannot be established if the service time spent in gainful occupation or an equivalent legal status falls short of 32 years, or 30 years in case of women benefiting from a care allowance for a severely disabled blood or adopted child, or any equivalent status, completed prior to 1 January 1998.

The time granting the right to benefits specified in Section 18 (2a) of the SSRPA — if the beneficiary is raising five children in its household — shall be reduced by one year and by one additional year after each additional child, but by no more than a total of seven years. Child raised within the household refers to a blood or adopted child living with the beneficiary as his or her main dwelling and only regularly leaves their care during daytime at most, or a child satisfying the criteria defined in section 12 (2) of Act LXXXIV of 1998 on Family Support.

Partial retirement pension shall be granted to persons:

- a) over the retirement age, and
- b) with at least fifteen years of service time, and
- c) who are not engaged in a relationship under Section 5(1), Points a)-b) and e)-g) of the SSA that is subject to insurance on the commencing day of their assessed partial old-age pension benefits.

No old-age pension benefits, either full or partial, shall be granted to

- a) persons governed by the European Union regulations on the coordination of social security systems who, in an EEA state
  - b) persons governed by the social policy (social security) convention — unless stipulated otherwise in the convention — who in the contracting state
- based on the applicant's declaration or data supplied by the competent foreign organisation — who are engaged in a relationship under Section 5(1), Points a)-b) and e)-g) of the SSA that is subject to insurance on the commencing day of their assessed old-age pension benefits.

Pursuant to section 83/C (1) of the SSRPA, the disbursement of old-age pension shall be suspended — from the first day of the month with the legal relationship was established until the last day of the month when the legal relationship was terminated — if the pensioner is engaged in public sector employment having the status of public sector employee, government service employee, state leader service employee, civil servant or public

service assistant, is serving as a judge, as a judicial employee, as part of the prosecutor's office or a professional of the armed forces or a contracted or professional member of the Hungarian defence forces. The pension insurance organisation shall pass decisions on the suspension of old-age pension disbursement and the repayment of old-age pension collected without eligibility in the wake of reports filed by the beneficiary in accordance with section 97 (5) of the SSRPA or based on data reported by the state tax authority. The affected party shall have the status of pensioner during the duration of suspension of old-age pension. Old-age pension may be dispersed once again at the pensioner's request once the beneficiary has provided proof of termination of its legal relationship.

#### **5.1.8. Labour-related legal disputes**

Pursuant to section 285 of the Labour Code, workers and employer may pursue their claims arising from the employment relationship or out of this Act, and trade unions and works councils may pursue their claims arising out of this Act or a collective agreement or a works agreement by judicial process.

By derogation from the above, the employer may enforce its payment requests vis-à-vis the employee at a rate of three times the smallest mandatory wage related to employment (Section 153 (1) a)). Payment requests shall be stated in writing.

A claim may be filed against a decision adopted by the employer within its right of discretion if the employer has violated the provisions pertaining to such decisions.

The term of limitation for labour-law claims shall be three years.

The term of limitation for

- a) claims for compensation for damages caused by a criminal offense, or
- b) paying restitution in relation to the violation of rights relating to personality

shall be five years, or longer, as consistent with the statute of limitations for such criminal liability.

The lapse of a claim shall be recognized ex officio Furthermore, periods of limitation shall be governed by the relevant civil law provisions, where the term of limitation for the claims of employees may not be reduced by the parties.

An action shall be brought within thirty days of notification of the employer's act, in connection with:

- a) any amendment of the employment contract implemented by unilateral decision;
- b) wrongful termination of the employment relationship;
- c) the sanctions applied on account of a breach of obligation by the employee;
- d) a payment notice; and
- e) the provisions of Subsection (2) of Section 81.

Claims pertaining to the employee's

- a) termination of the legal relationship pursuant to Section 40 of the Labour Code, or
- b) termination of the legal relationship without notice pursuant to Section 78 of the Labour Code

may be forced within the term of limitation.

In the case of challenging the termination of the employment relationship by mutual consent, an action may be brought within thirty days from the date when the challenge was declared declined. The challenge shall be declined if the other party fails to respond within fifteen days from the date of delivery, or refuses to accept it.

The deadline for bringing an action shall be considered met if the statement of claim is dispatched on or before the last day of the deadline. A party that misses the deadline shall have the option to file an application for continuation. Claims may not be pursued after six months. Court action shall have no suspensory effect.

If conciliation is stipulated in the collective agreement or in the parties' agreement, this shall have no effect on the time limits specified in Section 287 of the Labour Code The employer, the works council or the trade union may bring an action within five days in the event of any violation of the provisions on information or consultation The court shall hear such cases within fifteen days in non-contentious proceedings. The decision of

the court may be appealed within five days from the date of delivery of the decision. The court of the second instance shall deliver its decision within fifteen days. Special provisions for the enforcement of claims on any grounds defined in the collective agreement may be laid down in the collective agreement.

## **5.2. Information provided to members**

Pursuant to Section 28 (1) of the OP Act, occupational pension provider institutions shall send an account statement on the registration of member eligibility and annual changes in the member's account to members at least once a year, by no later than 31 March of the year following the year under review.

The account statement shall state, in particular (Section 28 (2) of the OP Act):

- a) the contact details of the occupational pension provider institution,*
- b) the member's identification data,*
- c) the starting date of the member's membership,*
- d) the address of the MNB website, and*
- e) any legislative changes affecting members and occurring subsequently to the previous account statement.*

Over and above the stipulations of Section 28 (2) of the OP Act, the account statement shall also specify in case of pension schemes defined by the payment:

- a) opening balance of the year under review or claims transferred from another institution for occupational retirement provision in the year under review,*
- b) contribution paid by the employer in the year under review and additional voluntary contribution paid by the member in the year under review,*
- c) transferred claims credited by right of beneficiary (other incomes credited),*
- d) result for the year under review (share of the member account in net yield income from investment activities),*
- e) closing value of the member's claim as per record (market value),*
- f) valuation difference,*
- g) name of the investment portfolio selected by the member, and*
- h) amount of the yields accumulated from the start of the membership.*

In the case of defined benefit pension schemes, in addition to those referred in Section 28 (2) of the OP Act, the account statement shall include the following:

- a) contribution paid by the employer and additional voluntary contribution paid by the member in the year under review,*
- b) information about the expected amount of the occupational pension plan benefits,*
- c) information about the expected amount of the occupational pension plan benefits in case of the termination of the employment,*
- d) amount of increase in value from the valorisation of the previous year of pension eligibilities acquired in previous years,*
- e) the rate of the pension related provisions of the institution for occupational retirement provision in proportion to commitments related to pension schemes including biometric risks (coverage rate),*
- f) amount transferred from other institution for occupational retirement provision in the year under review and the value of the eligibility converted this way.*

In addition to those referred to in Section 28 (2) of the OP Act, the notification sent to the beneficiary shall include the following:

- a) amount of the pension plan benefits paid in the year under review, and*
- b) rate of the benefits expected for the following year.*

Upon request, the institution for occupational retirement provision shall provide the members, the beneficiaries and the staff representation bodies with the investment policy, the annual report and the financial statements, notify them about changes in legislation affecting the pension scheme, and disclose information about any pension schemes, if the institution for occupational retirement provision provides various pension schemes.

The employees and the staff representation bodies shall be informed about the contents of the statutes and the agreement between the employer and the institution and the investment policy before entering into an employment or collective agreement, respectively.

In addition to the general information outlined in Section 28, Paragraphs (1) to (5) of the OP Act, upon the member's or the beneficiary's request, the institution for occupational retirement provision shall provide information about the following:

- a) portfolios which may be selected in case of systems with optional portfolios, the related risk exposures, the portfolio chosen by the member and the cost of the portfolio selection,
- b) procedure to be followed if employment is terminated and the eligibility is transferred to another institution for occupational retirement provision, methodology for the calculation of the capital value of the eligibility in the case of defined benefit pension schemes.

Upon reaching the retirement age, the institution for occupational retirement provision shall inform the member about the available pension plan benefits, and the way these services may be used.

Information contained in Section 28, Paragraphs (1) to (9) shall be provided to the employees by the employer based on the agreement between the institution for occupational retirement provision and the employer. It shall be recorded in the agreement that every entitled person receives such information.

### **5.3. Rules of investment**

Pursuant to Section 45 of the OP Act, occupational pension provider institutions are authorised to manage their own investments or commission an organisation within the meaning of Section 5 (3) of the OP Act to perform management. In this context, the occupational pension provider institution shall have independent discretion over its investments constituting asset backing, and shall take steps to manage and reinvest the assets managed by it in accordance with the principles and rules defined in this Act and in its investment policy.

The occupational pension provider institution may charge a handling fee for its management of the pension scheme, deducted from the contribution paid by the employer.

The occupational pension provider institution may outsource all or part of its asset management operations to an asset manager organisation. The occupational pension provider institution's board of directors shall regularly monitor the asset manager's activities in the event of outsourced asset management.

The occupational pension provider institution may engage in asset management independently without commissioning an asset manager if

- a) it satisfies the adequate personal and material conditions defined in Sections 11 and 17 of the OP Act,
- b) such is allowed under the statutes or bylaws of the occupational pension provider institution,
- c) it has asset management and asset valuation regulations in place.

Keeping an invested investment assets in petty cash, on a current account or an investment account does not qualify as own asset management activity by the occupational pension provider institution.

#### **Investment policy**

The investment policy of an occupational pension provider institution shall be elaborated by its board of directors, in accordance with its statutes. The investment policy shall comprise the following substantive elements:

- a) the objective and core principles for investing the assets of the occupational pension provider institution,
- b) the range of assets that may be acquired by the occupational pension provider institution,
- c) the asset allocation (minimum and maximum ratios) and targeted yield indicators (reference indices) of the occupational pension provider institution's investment strategy defined based on its risk-assumption capacity, risk management and existing and expected obligations,
- d) the method of measuring investment risk and assessing investment performance, and
- c) the nature and term of the pension schemes managed by the occupational pension provider institution,

The board of directors shall decide on the maintenance or modification of its investment policy at least at an annual frequency, or within 30 days in the wake of legislative changes or other factors substantially impacting the investment policy. The board of directors shall immediately notify the members and annuitants of the occupational pension provider institution of its decision.

The occupational pension provider institution shall submit a portfolio report on the pension schemes managed by it to the MNB in the form and manner stipulated by the MNB on a quarterly basis.

The occupational pension provider institution may undertake a guarantee to protect capital and regarding the yield of the pension scheme (capital and yield guarantee). The yield guarantee incorporates a guarantee to preserve the capital invested. Capital and yield guarantees undertaken by the occupational pension provider institution shall be backed by sufficient collateral. Collateral shall be regarded as adequate if

- a) it is provided by a credit institution, insurance undertaking or reinsurance undertaking ,
- b) it is a commitment made out in writing,
- c) the insurance undertaking may seek out the collateral issuer directly to receive payment and may enforce its claim within a reasonable deadline,
- d) the amount of collateral is clearly corroborated in the currency of the pension scheme with adequate calculations,
- e) the collateral issuer shall not terminate its obligation with respect to the pension scheme to which the capital or yield a guarantee collateral applies,
- e) the collateral applies to the entire capital and yield a guarantee amount, and
- g) the collateral is valid and enforceable in all jurisdictions.

The occupational pension provider may make a promise to protect capital and regarding the yield of the pension scheme (capital and yield protection). The promised yield includes the guarantee to preserve the capital. The occupational pension provider shall corroborate its capital and yield promise with an investment policy on financial assets ensuring its yield, and provide detailed information to members and annuitants.

The occupational pension provider institution's invested assets shall be defined based on their market value. The investments of the occupational pension provider institution shall be in harmony with its short-term (under one year) and long-term (over one year) liabilities, maintaining the occupational pension provider institution's continuous solvency.

The occupational pension provider institution's investment activities shall endeavour to achieve the highest amount of pension provision, factoring in the level of risk assumed by the occupational pension provider institution and its liability structure.

The occupational pension provider institution's investment activities shall be performed in the best interest as members, with due care, responsibility and qualification.

In the context of investment activities, due care shall be taken to ensure sufficient diversification of the portfolio, correctly applied risk management, factors arising from the maturity structure of the liabilities and meeting liquidity needs. When using indirect investment instruments, the investment costs indirectly incurred for members or the employer relative to the costs incurred by direct investments shall be duly justified.

The MNB shall rate the adequacy of the credit rating procedures applied in the context of risk management taking into account the nature, scope and complexity of the institution's operations, including the role in investment policy of the credit ratings issued by the credit rating agencies defined in Article 3 (1) b) of Regulation No 1060/2009/EC of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

The investments of the occupational pension provider institution shall also be divided within the different asset groups by issuer.

The rules of investment shall be adhered to by each occupational pension provider institution.

The proportion of securities issued by single issuer — with the exception of government securities — shall not exceed 10% of total assets within the occupational pension provider institution's investments.

Deposits placed at a credit institution within a credit institution group — with the exception of payment accounts — and the aggregate value of securities issued by an entity forming part of this same group shall not exceed 20% of the occupational pension provider institution's total assets.

The proportion of securities issued by a joined employer within the occupational pension provider institution's portfolio shall not exceed 5%, while the aggregate proportion of securities issued by enterprises controlled by the joined employer shall not exceed 10%. When investing in securities issued by a joined employer, special care shall be taken and the prudential requirements pertaining to diversification complied with.

The occupational pension provider institution may conclude derivative transactions for purposes of hedging, arbitrage and efficient portfolio creation. In case of non-standardised futures and option transactions, extra care shall be taken when elaborating settlement conditions and determining counterparty risk to protect the customer from losses arising from the non-standardised nature of the transaction. Transactions for hedging purposes are those — pursuant to Section 3 (8), item 10 of Act C of 2000 on Accounting — concluded on the basis of assets already forming part of the occupational pension provider institution's portfolio and geared towards mitigating the associated risk. In case of hedging, an exposure necessitating hedging is necessary. A transaction shall be regarded as being geared towards arbitrage if it takes advantage of an exchange rate or interest spread extant in time or space in a way that does not create an open position and the transaction does not increase the portfolio's risk level.

If fluctuations in market rates or the adding of securities lending transaction collateral to the portfolio lead to the breach of the abovespecified rules, the occupational pension provider institution or the asset manager shall reduce the proportions to within the limits defined in Section 48 (1)-(3) of the OP Act within 30 calendar days. The occupational pension provider institution shall hold sufficient liquid assets investments to the extent necessary for meeting its pension provision obligations and in accordance with its regulations. Investment instruments not traded on a recognised securities market or other regulated market shall be kept at a carefully defined low level, taking into consideration exposure.

The occupational pension provider institution shall only manage the properties owned by in the context of letting, reselling or development.

The occupational pension provider institution may let property to a third party for the purposes of business activities, however the occupational pension provider institution shall not engage in any business endeavours in relation thereto incurring a risk over and above investment risk.

The letting, selling and development of property (property management) forms part of asset management activities. The outsourcing of investment operations does not affect decisions on ownership rights and the management of property, which remain solely in the hands of the occupational pension provider institution.

#### **5.4. Pension scheme descriptions**

Pursuant to Section 33 (5)-(6) of the OP Act, the maximum technical interest rate of pension schemes provided through the branch offices of occupational pension provider institutions established in another state or in the context of cross-border services is governed by the regulations of the home state. Occupational pension provider institutions engaging in cross-border operations in another EEA state shall also take into account the demographic conditions prevailing in the home state of the employer.

#### **5.5. Supervision of occupational pension providers registered in another EEA state and providing cross-border services**

Pursuant to Section 84 of the OP Act, the MNB may request ad hoc information from an occupational pension provider institution or employer registered in another EEA state on its contract terms and conditions and the related documents to verify that the contracts comply with the laws of Hungarian.

An occupational pension provider institution registered in another EEA state shall comply with the notification obligations defined in Section 28 of the OP Act with regard to its members whose membership is based on their employment in Hungary.

If the MNB perceives any infringing operation, it shall immediately notify the competent authorities of the home state. The MNB shall cooperate with the competent authorities of the home state in an effort to end the infringing operation of the occupational pension provider institution registered in another EEA state.

The MNB is entitled or, at the request of the competent supervisory authority of the home state, required to audits the operations of the occupational pension provider institution registered in another EEA state. In this context, the MNB may conducting on-site audit of the activities performed in Hungary in the context of cross-border services of the occupational pension provider institution registered in another EEA state and request the disclosure of data relevant to these activities from such occupational pension provider institution, in keeping with the legislation governing data protection.

The MNB shall, at the request of the competent supervisory authority of the home state, take action to forfeit the assets of the occupational pension provider institution registered in another EEA state held by its custodian established in Hungary.

If the operation inconsistent with Hungarian social security and labour laws continues despite or due to the absence of measures taken by the competent authorities of the home state, the MNB may apply the measures specified in section 84 (6) a)-f) of the OP Act for the purpose of fulfilling the obligations of the occupational pension provider institution registered in another EEA state and for protecting member interests and ensuring compliance with the OP Act, following prior notification of the competent authorities of the home state.

If the infringing occupational pension provider institution registered in another EEA state has an enterprise registered in Hungary with the registered office or establishment located in Hungary, the enforcement carried out at the MNB's initiated may be applied to this enterprise or its rights representing pecuniary value, in accordance with the relevant effective laws.

## CHAPTER 3

### CONSUMER PROTECTION PROVISIONS

#### I. COMMON REGULATIONS

##### 1.1. The common rules of DISTANCE SELLING

Pursuant to the ECIS Act, the provider of an information society service shall make the general contract terms and conditions pertaining to the information society service available in a manner that allows the recipient to store and retrieve such terms and conditions.

Before the consumer submits its order, the service provider shall disclose the following information to the consumer:

- a) the technical steps required to electronically conclude the contract;
- b) whether the contract to be concluded qualifies as a written contract, whether the service provider will file the contract and whether the files contract will be accessible;
- c) the available tools for identifying and correcting data entry errors prior to the submission of the contractual declaration;
- d) the available languages for contract conclusion;
- e) the code of conduct governing the service activity to which it is subjecting itself in terms of the specific service, where applicable; and where this code of conduct can be accessed digitally.

The service provider shall ensure, using the adequate, effective and accessible technical tools, that the customer is able to identify and correct any data entry errors prior to submitting its order electronically. In the absence of this option, the customer's order does not qualify as a contractual statement.

The service provider shall immediately confirm receipt of the customer's order electronically. The service provider shall acknowledge receipt of the offer to the recipient of the service without undue delay and by electronic means. If such acknowledgement is not received by the recipient of the service within 48 hours of sending the offer, the recipient of the service shall not be bound by the offer.

The offer and the acknowledgement of receipt will be deemed to be received when the parties to whom they are addressed are able to access them.

In the course of concluding the contract, the service provider and the recipients of the services who are not consumers may agree on derogation from the above.

The service provider shall be liable for any infringement and damage caused by making available unlawful information.

The intermediary service provider shall not be liable for infringement and damage caused to a third party by information originating from an external source and transmitted, stored or made accessible in the course of provision of an information society service, provided that the intermediary service provider fulfils the requirements on providing access to information.

The intermediary service provider shall not be obliged to verify the content of the information that it only transmits, stores and makes available and, further, it is not obliged to seek facts or circumstances implying the conduct of unlawful activity.

The intermediary service provider's exemption does not preclude the injured party from enforcing its claims arising from the unlawful information and aimed at the prevention or cessation of the infringement vis-à-vis the intermediary service provider, alongside the infringing party, in court.

The intermediary service provider shall not be held liable for damage caused by the removal of information or disabling access to information, provided that it has acted in compliance with the above.

The intermediary service provider shall not be held liable for the forwarded information if

- a) the service provider did not initiate the forwarding of the information;
- b) the service provider did not select the recipient of the forwarded information, and
- c) the service provider did not select or make any changes to the forwarded information.

The forwarding of and granting access to information includes the automatic intermediate and temporary storage of the forwarded information, if such storage only serves the purpose of forwarding the information in the information is not stored any longer than needed for forwarding.



The intermediary service provider shall not be held liable for damage caused by the automatic intermediate and temporary storage of information if

- a) the service provider does not change the information;
- b) access to the stored information complies with the mandatory conditions governing access to the information;
- c) the updating of the information on the intermediate storage medium complies with the broadly recognised and applied information updating practices;
- d) intermediate storage does not interfere with the legitimate use of the broadly recognised and applied technology used to glean information on the use of the information; and
- e) the service provider immediately removes the stored information or blocks access thereto as soon as it gains knowledge that the information has been removed from the network at its original location or that its removal or blocking of access thereto has been ordered by the court or another authority.

The intermediary service provider shall not be held liable for the information supplied by the customer if

- a) it has no knowledge of illicit conduct regarding the information or that the information impinges upon the rights or rightful interests of anyone;
- b) as soon as it gains knowledge of the circumstances specified in point a), it takes immediate action to remove the information or block access.

The intermediary service provider shall not be held liable for damage caused by making information accessible if

- a) it has no knowledge of illicit conduct regarding the information or that the information impinges upon the rights or rightful interests of anyone;
- b) as soon as it gains knowledge of the circumstances specified in point a), it takes immediate action to remove the information or block access.

The service provider shall not be exempt from liability if the customer acts on commission from or at the orders of the service provider.

The service provider may process personal data enabling identification of the user and their address for purposes related to the conclusion of contracts on information society services, the determination of their content, their amendment, the monitoring of fulfilment and the invoicing of the arising fees and the collection of such fees.

For the purpose of billing the fees arising under the contract for the information society service, the service provider may process personal data related to the use of such service, provided that such data are indispensable for establishing and billing the charge, thus, especially, the data regarding the time, duration and place of using the service.

The service provider may process personal data that is technically imperatively required for the purpose of providing the service. Should other conditions be identical, the service provider shall select and operate the means applied in the course of providing information society service at all times, so that personal data be processed only if it is absolutely indispensable for providing the service or achieving other objectives stipulated in the Act, and only to the required extent and duration.

The service provider may process data related to the use of the service for purposes other than those specified in subsection (3) — thus, in particular, for the purposes of enhancing the efficiency of the service, forwarding of electronic advertisements or other direct communications addressed to the recipient of the service, or market surveys — only with the prior specification of the objective thereof and subject to the consent of the recipient of the service.

The recipient of the services shall be allowed, at all times, prior to and during the course of using the information society service to prohibit the data processing.

The data may not be linked to the identification data of the recipient of the service nor may it be released to third parties without the consent of the recipient of the service.

Data processed for the purposes specified above shall be deleted if the contract is not concluded, is terminated and after the billing.

Data processed for the purpose defined above shall be deleted if the objective of data processing has ceased or upon the instruction of the recipient of the service to this effect. Unless provided otherwise in legislation, deletion of the data shall take place without delay.

The provision of an information society service may not be made subject to the consent of the recipient of the service to data processing for a purpose not mentioned in legislation if the given service is not available from other service provider.

In addition to the information obligations specified in a separate act, the service provider shall ensure that the recipient of the service of the information society service may, at any time prior to and in the course of using

the service, get acquainted with the types of data processed by the service provider and the objective of processing such data, including the processing of data directly not associated with the recipient of the service.

Specific rules apply to the notification of consumers in case of financial services supplied in the context of distance selling, which rules are defined in the DMA.

Before the consumer issues a declaration of intent to conclude a contract, the service provider shall disclose the following information to the consumer in due time, in function of the nature of service and the means of telecommunication used:

*a)* with regard to the service provider:

*aa)* the corporate name (name), registered seat, main scope of activity, company or court registration number and contact address of the service provider,

*ab)* the name, address and contact address of the service provider's representative (if any) established in the member state in which the consumer resides,

*ac)* the name, address and type of relationship with the service provider of the entity that is different from the service provider, or from the representative of the service provider contributing to contract signing, which entity maintains business relations with the consumer, and acts in the interest of the service provider, if this is necessary,

*ad)* the name and registered seat of the supervisory authority that authorises the service provider's activity or that registers the service provider,

*ae)* the professional or other organisation that keeps record of the service provider, as well as the registration number of the service provider;

*b)* with regard to the service:

*ba)* the material characteristics of the subject of the contract,

*bb)* the compensation, including other payment obligations, related to the service, and – in case compensation cannot be exactly determined – about the basis for fee calculation,

*bc)* possible payment obligations (including taxes) imposed on the consumer in addition to the payment of compensation,

*bd)* the possible special risks related to the service, as well as that the provision of the service and compensation depend on market fluctuations, and that past performances do not guarantee future performances,

*be)* the possible temporal restrictions of the validity of the given data,

*bf)* the conditions of payment and performance,

*bg)* the potential additional costs payable by the consumer for the use of the given means of telecommunication;

*c)* with regard to the contract:

*ca)* the right to cancel (terminate) the contract, or the lack of such right; the terms and conditions, ways and legal consequences of exercising the right to cancel (terminate) the contract, and the address (electronic mail address, fax number) to which the consumer must send his intention to cancel (terminate) the contract,

*cb)* the shortest term of the contract in case the services undertaken in the contract are provided on a continuous basis or repeatedly,

*cc)* the possibility and consequences of the unilateral termination of the contract before the expiration date,

*cd)* the legal regulations to be applied regarding the obligation of cooperation and information supply to be observed by the parties before contract forming, the language of the preliminary information supply,

*ce)* the language of the contract, the language or languages of communication with the consumer during the effective period of the contract (agreed upon with the customer), as well as

*cf)* the possible selection of the applicable law, the specification of an exclusive scope or jurisdiction;

*d)* with regard to the proceedings to be followed in case of legal disputes:

*da)* forums that are available for the out-of-court settlement of legal disputes arising from the contract,

*db)* the fact whether there exists a special guarantee fund (or other possible way of indemnification) – other than the National Deposit Insurance Fund and the Investor Protection Fund to which the consumer may turn to.

The service provider shall meet the information supply obligation in a clear, understandable and accurate manner, suitable for the means of telecommunication used for this purpose. The service provider shall clearly formulate its intention to contract.

If the service provider proposes the consumer contract signing or an invitation to bid over the phone, before doing so it must at least disclose its corporate name (name), registered seat and telephone number, and shall expressly call the consumer's attention to its intention to contract

When proposing contract forming or making an invitation to bid over the phone — provided the consumer gives his express consent — the service provider shall provide the following information, notwithstanding the provisions of the above section:

- a) the name of the person that maintains contact with the consumer, and the relationship between such person and the service provider,
- b) the material characteristics of the subject of the contract,
- c) the compensation, including other payment obligations related to the service, and – in case compensation cannot be exactly determined – the basis for fee calculation,
- d) possible payment obligations (including taxes) imposed on the consumer in addition to the payment of compensation,
- e) the conditions of payment and performance,
- f) the right to cancel (terminate) the contract, or the lack of such right; the terms and conditions, ways and legal consequences of exercising the right to cancel (terminate) the contract, including the stipulations of Section 8; and the address (electronic mail address, fax number) to which the consumer must send his intention to cancel (terminate) the contract,
- g) the fact that the consumer may request additional information, and the nature of such additional information.

Before the consumer makes his declaration of intent to contract, the service provider shall notify the consumer in due time — with regard to the nature of service and the means of telecommunication used — about the terms and conditions of the financial service contract to be formed in the framework of distance selling, and about the information specified in Sections 3 (2) and (4) in a paper format or on another permanent data carrier accessible by the consumer.

If upon the consumer's request the contract was concluded via a means of telecommunication that does not make preliminary information supply possible, the service provider shall provide the information specified in the above section immediately after contract forming.

Upon the consumer's request the service provider shall make the contract terms and conditions available on paper at any time during the term of the contract.

During the term of the contract the consumer has the right to change the means of telecommunication used, if this is compatible with the concluded contract and with the type of service.

(Sections 3 to 5 of Act XXV of 2005)

## **1.2. Rules pertaining to UNFAIR TRADING PRACTICES**

Unfair commercial practices are defined by and prohibited under the UBCCP Act:

A commercial practice shall be regarded as unfair if:

- a) it is contrary to the requirements of professional diligence, i.e. the trader acting in commercial practices fails to use the standard of special skill and care which a trader may reasonably be expected to exercise, commensurate with honest market practice and/or the general principle of good faith (hereinafter referred to as "requirements of professional diligence"), and
- b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, using this practice to impair the consumer's ability to make an informed decision and thereby causing the consumer to take a transactional decision that he would not have taken otherwise; (hereinafter referred to as "materially distort the economic behaviour of consumers")

The annex to the UBCCP Act contains the list of commercial practices regarded as unfair.

In accordance with the above written, deceptive or aggressive practices are *particularly* unfair.

*A commercial practice shall be regarded as misleading* if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

- a) the existence or nature of the goods, taking into account the statutory provisions relating to the names of products;
- b) the main characteristics of the goods, in particular:
  - ba) their execution, composition, technical features, accessories;
  - bb) their quantity;
  - bc) their geographical or commercial origin;
  - bd) their method and date of manufacture or provision;
  - be) their availability, delivery;
  - bf) their usage, facts regarding use and maintenance;
  - bg) their fitness for purpose, results to be expected from its use, benefits;
  - bh) their dangers, risks;
  - bi) their environmental impact;
  - bj) their impact on health; or
  - bk) the way they are controlled or tested and the results;
- c) the price of the goods or the manner in which the price is calculated, or the existence of a specific price advantage or discount;
- d) tax exemption, tax allowance or the use of other tax advantage provided in connection with the goods;
- e) the need for a service, part, replacement or repair in connection with the goods;
- f) after-sale customer assistance and complaint handling provided in connection with the goods;
- g) the nature, attributes and rights of the business entity or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
- h) the extent of the business entity's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to sponsorship or approval of the business entity or the product; or
- i) the consumer's rights or the risks of unfavourable legal outcomes he may face in connection with the transaction.

*A commercial practice shall also be regarded as misleading if it involves:*

- a) a commercial practice which creates confusion with any business entity or its corporate name, or with any products, trade marks, trade names or other distinguishing marks of such business entity;
- b) non-compliance by the business entity with commitments contained in codes of conduct by which the business entity has undertaken to be bound, where:
  - ba) the commitment is not merely aspirational but is firm and is capable of being verified; and
  - bb) the business entity indicates in a commercial practice that he is bound by the code,
 if taking account of the factual context it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

*A commercial practice shall be regarded as misleading if:*

- a) taking account of all its features and circumstances and the limitations of the communication medium, it omits or conceals material information that the average consumer needs, according to the context, to take an informed transactional decision, or provides such information in an unclear, unintelligible, ambiguous or untimely manner, or fails to identify the commercial intent of the commercial practice if not already apparent from the context; and
  - b) thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise
- (hereinafter referred to as "misleading omission").

Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader acting in commercial practices to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted, and whether it constitutes a misleading omission.

*A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence for exploiting a position of power in relation to the consumer so as to apply pressure, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct and the consumer's ability to*

make an informed decision with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

In determining whether a commercial practice is aggressive, account shall be taken of:

- a) the timing, location, nature or persistence of the commercial practice;
- b) the use of threatening, frightening or abusive language or behaviour in commercial practices;
- c) the exploitation by the trader acting in commercial practices of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;
- d) any onerous or disproportionate non-contractual barriers imposed by the trader acting in commercial practices where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;
- e) any threat to take any action that cannot legally be taken.

#### *Liability for any violation of the prohibition of unfair commercial practices*

Liability for any violation of the prohibition of unfair commercial practices shall lie with the business entity directly connected with the promotion, sale or supply of goods to which the commercial practice in question pertains, even if the commercial practice is carried out under contract by another person acting on behalf of or for the business entity in question.

By way of derogation from the foregoing, liability for any infringement arising in connection with the representation of commercial communication shall also lie with the person who uses means suitable for the publication of commercial communication to disseminate commercial communication, and with the person professionally involved in producing or creating commercial communication in the context of his economic activities, or in providing other related services, with the exception if the infringement originates from the carrying out of the instructions of the business entity. The aforesaid persons shall bear joint and several liability with the business entity for damages resulting from such unlawful commercial practices.

In the case of the infringement of the prohibition of unfair commercial practices, action shall be taken by the consumer protection authority in all cases but the one described below:

The MNB proceeding within its role of supervising the system of financial intermediation shall proceed if the affected commercial practice is related to the enterprise's activities supervised by the MNB.

Contrary to the above, action shall be taken by the Competition Office if commercial practice may significantly influence economic competition.

(Sections 3-10 of the UBCCP Act)

### **1.3. The common rules of HANDLING COMPLAINTS**

The financial service provider shall provide the client the opportunity to lodge complaints regarding its conduct, activities or omissions in verbal (in person or by telephone) or written form (in a written document submitted in person or by another party, by mail or e-mail).

The service provider shall

- a) accept oral complaints at premises open to all customers during business hours or in the absence thereof, at its registered office between 8:00 am and 4:00 pm on every working day,
- b) accept complaints made by telephone between 8:00 am and 8:00 pm at least one working day of the week,
- c) accept complaints lodged electronically on a continuous basis, providing an alternative avenue in the event of malfunction.

In the context of handling complaints by telephone, the service provider shall take calls and address complaints within a reasonable waiting time.

All complaints lodged by telephone and the conversation between the provider and the consumer shall be recorded, and the recording retained for a period of one year. The consumer shall be informed of this before the commencement of the phone conversation. The recording shall be made available to the consumer upon request, along with the official minutes of the conversation free of charge.

The service provider shall immediately investigate oral complaints and take the necessary corrective action. If the customer disagrees with how the complaint is handled, the service provider shall draw up minutes of the complaint and its relevant position and hand over one copy to the customer in case of oral complaints or send one copy to the customer in case of complaints lodged by telephone, and otherwise proceed in accordance with the provisions governing written complaints.

If the complaint cannot be immediately addressed, the service provider shall draw up minutes of the complaint and hand over one copy to the customer in case of oral complaints or send one copy to the customer in case of complaints lodged by telephone, and otherwise proceed in accordance with the provisions governing written complaints.

The service provider shall send its position regarding the complaint along with an explanation to the customer within 30 days of the lodging of the complaint.

If the complaint is rejected, the service provider shall notify the customer of its option to initiate consumer protection proceedings with the MNB in the event of the violation of the consumer protection provisions defined in the MNB Act, or seek out a court or open proceedings with the FAB in the event of a legal dispute concerning the conclusion, validity, legal effects or termination of the contract, as well as of a breach of contract and its legal effects. The service provider shall state the mailing address of the FAB.

The service provider shall archive the complaint in its reply issued thereto for a period of three years and present them at the MNB's request.

The service provider shall draw up complaint management regulations, outlining the effective, transparent and quick management of customer complaints, the related complaint management procedures and the related record-keeping. In these regulations, the provider shall inform customers on the location, mailing address, e-mail address, phone number and fax number of the complaint management function concerned.

The service provider shall keep records on customer complaints and the action taken to resolve and address the complaints.

The records shall include

- a) a description of the complaint, the underlying event or fact forming the grounds for the complaint,
- b) the date of lodging of the complaint,
- c) a description of the action taken to resolve or address the complaint, or the grounds for rejecting the complaint,
- d) the time limit for implementing the measures and the person responsible for implementation, and
- e) the date of reply to the complaint.

The service provider shall display its complaint management regulations in a clearly visible location at its premises, or in the absence thereof, at its registered office, and post them on this website.

The service provider shall not charge customers for the investigation of complaints.

The service provider shall appoint a contact person in charge of consumer protection matters and report any changes in the appointed person or their particular to the MNB within 15 days.

(Section 159 Subsection 16 of the IA, Section 288 of the ACI, Section 121 of the ISA, Section 29/A of the VMIFA, Section 77/C of the PPA)

The voluntary mutual pension fund, private pension fund insurance undertaking, independent insurance intermediary, occupational pension provider institution, investment enterprise, commodity exchange service provider, payment institution, electronic money institution, voucher issuing institution, financial institution, independent intermediary and the UCITS asset manager (service provider) shall conduct a comprehensive audit and issue a reply to the fund member, customer, member or investor (customer) on the complaint linked to the service provider's activities or omission (complaint) pertaining to the service provider's fulfilment prior to contract conclusion or the establishment of membership, at the time of contract conclusion or the establishment of membership or during membership, or to the termination of the contractual or membership legal relationship, or the contract or membership legal relationship following such termination.

If the service provider needs any additional information held by the customer to investigate the complaint — in particular necessary for identifying the customer or pertaining to the legal relationship affected by the complaint — it shall immediately contact the customer and acquire such information.

The service provider shall enable the customer to use the dedicated form — published on the MNB's website — to lodge written complaints. The service provider shall also make the form available to customers on its website. The service provider shall also accept written complaints accepted in a different form.

If the customer does not send its written complaint to the address of the organisational unit in charge of complaint management defined in the complaint management regulations, or if the customer does not submit its written complaint to the dedicated staff member at the service provider's premises open to customers, the service provider shall immediately forward the complaint following receipt to the organisational unit in charge of complaint management, which shall register the complaint.

In case of written complaints lodged in person at the service provider's premises open to customers, the service provider shall provide the contact details of the organisational unit in charge of handling the complaint to the customer.

If the customer does not file its complaint to the dedicated staff member in charge of complaint management, the service provider shall provide the contact details of the organisational unit in charge of handling the complaint to the customer.

A reply to the complaint, along with an explanation, shall be sent to the customer within 30 days of lodging of the complaint.

In case of oral complaints lodged by telephone, the service provider shall proceed as reasonably expected within five minutes to ensure access to a live operator within five minutes of the incoming call.

After examining the complaint, the service provider shall issue a reply presenting the outcome of the investigation in detail, measures taken to resolve or address the complaint or the reason for dismissing the complaint.

The service provider shall provide an accurate, clear and straightforward explanation to the outcome of the complaint's investigation, which explanation shall, depending on the subject-matter of the complaint, specify the exact wording of the contract term, regulations or statutes and shall make reference to the statements sent to the customer and all other information provided during the contractual or membership relationship.

In the event of the dismissal of a complaint, the service provider shall notify customers qualifying as consumers of whether the complaint and complaint handling:

*a)* were geared towards the resolution of a legal dispute pertaining to the conclusion of the contract or the establishment of the membership legal relationship, the validity, legal effects or termination thereof, or breach of contract and the legal effect thereof, or

*b)* were aimed at the violation of the consumer protection provisions defined in the MNB Act.

Customers qualifying as consumers shall also be notified of

*a)* their option to seek out to the FAB or a court of law pursuant to the Code of Civil Procedure,

*b)* initiate consumer protection audit proceedings with the MNB.

If the service provider deems that the complaint pertains to both points *a)* and *b)*, it shall notify the customer qualifying as a consumer of the entities it may seek out with regard to the different parts of its complaint.

In the event of the dismissal of a complaint, the service provider shall notify customers not qualifying as consumers of their option to seek out a court of law pursuant to the Code of Civil Procedure.

In the event of the dismissal of a complaint, the service provider shall notify customers not qualifying as consumers of their option to seek out the FAB or the MNB's Financial Consumer Protection Centre. The financial service provider shall state the FAB's mailing address and telephone number, the MNB's mailing address and telephone number and access on the MNB website, both electronic and at customer service

locations, to the dedicated forms required to initiate FAB proceedings and the MNB's consumer protection audit proceedings (financial consumer protection submittal), and also clearly state that the consumer is also entitled to request the sending of these dedicated forms from the financial service provider free of charge. The notification shall contain the service provider's telephone number, e-mail address and mailing address for lodging consumer requests for receiving the dedicated forms.

At the consumer's request to this effect, the service provider shall immediately send the dedicated forms free of charge, electronically to consumers with documented electronic access according to the data available to the service provider, or otherwise by postal mail.

The service provider shall publish this information in a clearly visible location suitable for adequate notification.

The service provider shall send its reply to the customer in a manner allowing the determination of the recipient and the recipient's address to which the reply was sent, furthermore conclusively certifying the fact and date of sending.

If legislation stipulates the drawing up of minutes, the minutes shall contain at least the following elements:

- a) the customer's name;
- b) the customer's address, registered office and mailing address, as necessary,
- c) the place, date and method of complaint lodging,
- d) a detailed description of the complaint, stating the objections made in the complaint separately,
- e) the number of the agreement targeted by the complaint, and the customer number or fund identification number, where applicable,
- f) a list of the documents and other evidence presented by the customer,
- g) if the complaint cannot be immediately investigated, the signature of the person taking the minutes, except in case of oral complaints lodged by telephone, and the customer,
- h) the location and time of the minutes, and
- i) the name and address of the service provider affected by the complaint.

The service provider shall furnish one copy of the minutes taken of oral complaints to the customer, and in other cases, send one copy of the minutes together with its reply to the complaint in the manner defined in Section 4 (10) of MNB Decree on the rules pertaining to complaint handling by financial organisations 28/2014 (VII.23.).

The service provider shall keep records on the handling of complaints in a manner allowing the clear determination of the response deadline and compliance therewith.

The records shall enable the service provider to

- a) to group complaints by topic,
- b) to present and identify the underlying facts and events of the complaint,
- c) to examine whether the facts and events specified in point b) could have any impact on other procedures, product or services,
- d) to initiate action to address the facts and events specified in point b) and
- e) to summarise recurring or systemic issues and legal risks.

The service provider shall publish its complaint management regulations in a clearly visible location suitable for adequate notification.

The service provider shall use plain language in the context of its complaint management with the customer.

In case of oral complaints, if the complaint cannot be immediately investigated with the investigation yields no result, the service provider shall state the identification data of the complaint to the customer.

(MNB Decree 28/2014 (VII. 23.) on the rules pertaining to complaint handling by financial organisations)

#### **1.4. The common rules of the ENFORCEMENT OF CONSUMER CLAIMS AND RIGHTS**

An unfair contractual term that has been incorporated into the contract as a standard contract condition may be contested by the injured party.



An unfair contractual term that has been incorporated into the contract shall be null and void. Nullity can only be cited in the interest of the consumer.

Action in the public interest may be taken to render null and void an unfair contractual term that has been incorporated into the contract between the consumer and the business entity

- a) by the prosecutor,
- b) by a minister, an autonomous public administrative body, a government office or the head of a central agency;
- c) by the head of a Budapest or county government office;
- d) by a chamber for economy and commerce or an advocacy group; and
- e) by an association representing a consumer interest group within the scope of the consumer interests protected by it and any organisation established to protect consumer interests based on the laws of any EEA state.

Action in the public interest may be sought on account of the establishment of an unfair general contract term defined and publicly disclosed in the context of contract conclusion with consumers even if the specific term has not yet been applied. If the court establishes the unfairness of the injurious general contract term, it shall issue a sentence prohibiting the publishing party from applying the term.

Litigation may also be initiated against entities openly recommending the application of an unfair general contract term defined and published for the purpose of contract conclusion with consumers. If the court establishes the unfairness of the injurious general contract term, it shall issue a sentence prohibiting the entity publicly recommending application of the general contract term from such recommendation.  
(Sections 6:102-6:105 of the Civil Code)

If the business entity's infringing conduct affects a broad group of consumers, not identified individually but constituting a definable group based on the circumstances of the infringement, or the infringement causes a substantial loss and the procedure is within the court's competence, the prosecutor or consumer interest group has the right to bring an action.

If the procedure opened on account of the violation of the legislative provisions transposing the European Union's legislative provisions listed in Annex to Directive 2009/22/EC of the European Parliament and of the Council is within judicial competence, the qualified entities established based on the laws of any EEA state listed in the Official Journal of the European Union pursuant to Article 4 (3) of Directive 2009/22/EC are qualified to bring an action within the scope of the protection of consumer interests.

Section 38 (2)-(6) of the CP Act governs action brought by the above specified organisations. The entities eligible to bring action may also claim the following in their action:

- a) for the infringing party to cease and desist from the infringement,
- b) the abolishment of the injurious situation and restoration of the condition preceding the injurious situation.

The action is without prejudice to the consumers' right to file civil action independently against the infringing party.

(Section 39 of the CP Act)

In the performance of its tasks set out in Section 4 (9), the MNB may file a civil action on behalf of consumers against a person engaged in any violation of the provisions of the acts listed under Section 39 of the MNB Act, legislation adopted under authorisation by such acts or Section 81(1) b) of the MNB Act, furthermore, who is allegedly engaged in the use of any unfair standard contractual clause as defined by the Civil Code in connection with his activities, where such illegal action affects a wide range of consumers which can be established relying on the circumstances of the infringement.

No action may be brought after the end of three years after the infringement was committed. Failure to meet this time limit shall result in the forfeiture of rights. For continuous infringements, the time limit shall commence at the time when the infringement is terminated. Where an infringement consists in the failure to

terminate a situation or circumstance, the aforementioned period shall not commence as long as such situation or circumstance continues to prevail.  
(Section 164 (1)-(2) of the MNB Act)

Consumers may also seek out the FAB.

(Sections 96, 102-104, 125-127, 129 (3) of the MNB Act)

According to Act LV of 2002 on *mediation*, the parties may also use the services of a mediator in order to promote the out-of-court settlement of civil law disputes. Mediators shall be responsible for mediating negotiations between the parties to the best of their abilities in an unbiased and conscientious manner in order to reach an agreement in conclusion of the process.

### **1.5. The common rules of ADVERTISING**

The code of conduct shall not incite any conduct that violates the provisions of the CAA Act.

Advertising may be disseminated only if the advertiser has provided at the time of placing the order for the advertisement to the advertising service provider — or failing this at the time of ordering publication of the advertisement to the publisher of advertising — its corporate name, or name, and registered address, or failing this his home address, and tax number.

In connection with advertising relating to products which are subject to prior quality control or conformity assessment in accordance with specific other legislation, the advertiser shall supply a statement to the advertising service provider — failing this, to the publisher of advertising — that the product has been inspected or certified, and found suitable for marketing. If the product is not subject to prior quality control or conformity assessment, the statement shall be supplied to this effect. In the absence of such statement, no advertising may be published.

The advertising service provider or the publisher of advertising shall keep records on the defined information and statements, and shall retain these records for a period of five years from the time of publication of the advertisement.

All outdoor advertising media shall explicitly indicate the corporate name or name and the registered office or home address of the publisher of advertising.  
(Section 4-5 of the CAA Act)

The consumer protection authority or — with respect to advertising far activities supervised by the MNB in the context of its supervisory role over the system of financial intermediation and the pertaining code of conduct — the MNB shall proceed in the event of the violation of the provisions governing economic advertising activities and prohibited sponsorship, with the exception of advertising through electronic communications.

The National Media and Infocommunications Authority shall have jurisdiction in accordance with the ECIS Act in connection with advertisements disseminated by information society services, exclusive of voice telephony services, and by way of electronic communication.

Proceedings conducted under the CAA Act shall not preclude the possibility for the aggrieved party to file a civil suit to enforce his claim arising in connection with any infringement of the provisions of the CAA Act.

Proceedings may not be opened after a period of three years following the time of the infringement. For continuous infringements, the time limit shall commence at the time when the infringement is terminated. Where an infringement consists in the failure to terminate a situation or circumstance, the aforementioned period shall not commence as long as such situation or circumstance continues to prevail.  
(Sections 24 and 25 of the CAA Act)

*Electronic advertising* Any disclosures made through services related to information society for the purpose of directly or indirectly promoting an enterprise, organisation, person engaging in commercial, industrial or craft

activities or a regulated profession, or the goods, services or activities thereof, or containing any information related to the achievement of a social objective.

The following does not in another itself qualify as electronic advertising:

- a) the sharing of information enabling direct access to the activities of the enterprise, organisation or person, in particular its domain name or electronic mail address,
- b) information independent of the enterprise, organisation or person pertaining to the goods or services supplied by or the corporate image of the enterprise, organisation or person, particularly if the information is shared without any financial consideration received in exchange.

The following *information* shall be presented clearly and unambiguously in connection with any electronic communication:

- a) it shall be clearly identifiable as such immediately when it is made accessible for the recipient of the service;
- b) the electronic advertiser, or the person on whose behalf the electronic communication is transmitted by way of electronic mail or equivalent individual communications shall be clearly identifiable immediately when it is made accessible for the recipient of the service;
- c) promotional offers, such as discounts, premiums and gifts shall be clearly identifiable as such, including the conditions which are to be met to qualify for them;
- d) promotional competitions or games shall be clearly identifiable as such, including the conditions for participation.

Advertisements may be delivered by *electronic mail* or an equivalent means of individual communication exclusively with the express prior consent of the recipient of the service.

The consent may be declared in any form allowing the identification of the person granting the consent as well as expressing that the consent has been given voluntarily after the receipt of adequate information.

The declaration of consent may be withdrawn free of charge, at any time without any restriction or justification. In such a case the name of the person having sent the declaration shall be forthwith deleted from the register and no further electronic advertisement may be transmitted to such a person.

Upon the transmission of an electronic advertisement described above the addressee shall be advised of the electronic mail address and other contact details where he may request the prohibition of the transmission of electronic advertisements by using information society services.

The electronic advertiser, the electronic advertisement service provider and the publisher of electronic advertisement shall keep a register on persons having granted their consent to receiving advertisements. The data — pertaining to the recipient of the service — entered in the register may be disclosed to any third party solely upon the prior consent of the recipient of the service.

Electronic advertisers, electronic advertisement service providers and publishers of electronic advertisements may only send electronic advertisements by electronic mail or an equivalent means of individual communication to those entities that are included in the register. The prohibition of transmission to entities that have not been entered into the register shall apply to all electronic advertisements delivered by electronic advertisers, electronic advertisement service providers and publishers of electronic advertisements.

(Section 14 of the ECIS Act)

Unless otherwise provided by specific other legislation, advertisements may be conveyed to natural persons by way of direct contact (hereinafter referred to as “direct marketing”), such as through electronic mail or equivalent individual communications, only upon the express prior consent of the person to whom the advertisement is addressed.

The statement of consent may be made out in any way or form, on condition that it contains the name and address of the person providing it, and — if the advertisement to which the consent pertains may be disseminated only to persons of a specific age — his place and date of birth, furthermore, any other personal data authorised for processing by the person providing the statement, including an indication that it was given freely and in possession of the necessary legal information.

The declaration of consent may be withdrawn free of charge, at any time without any restriction or justification. In this case all personal data of the person who has provided the statement must be promptly

erased from the records and all advertisements must be stopped. Advertisement material may be sent by mail to natural persons within the framework of direct marketing in the absence of the prior express consent of the person to whom it is addressed; the advertiser and the advertising service provider, however, are required to provide facilities for the person to whom the advertisement is addressed to unsubscribe at any time from receiving further advertisement material, freely and at no cost to the addressee. Such unsolicited advertisement material may not be sent by way of direct marketing to the person affected.

Advertisers, advertising service providers and publishers of advertising shall maintain records on the personal data of persons who provided the statement of consent to the extent specified in the statement. The data contained in the aforesaid records — relating to the person to whom the advertisement is addressed — may be processed only for the purpose defined in the statement of consent, until withdrawn, and may be disclosed to third persons subject to the express prior consent of the person affected.

The notice of withdrawal and the notice to unsubscribe may be transmitted by way of the postal service or by electronic mail, with facilities to ensure that the person sending the notice is clearly identifiable.

In the advertisement disseminated in the abovespecified manner, a clear and prominent statement shall be inserted to inform the person to whom it is addressed concerning the address and other contact information to which the statement of consent for receiving such advertisement and the aforesaid notice to unsubscribe has to be sent, furthermore the advertisement material must contain a return envelope for sending the notice to unsubscribe in the form of registered mail with postage prepaid and with notice of delivery.

The consignment sent for requesting the statement of consent may not contain any advertisement, other than the name and description of the company.

*General prohibitions and limitations on advertising:*

No advertisement may be disseminated if it contains violence, or if it encourages any conduct that is likely to jeopardize personal or public safety.

No advertisement may be disseminated if it encourages any conduct that is likely to jeopardize the natural or man-made environment.

No advertisement may be disseminated if it is capable of harming the physical, intellectual or moral development of children and young persons.

No advertisement addressed to children and young persons may be disseminated if it has the capacity to impair the physical, mental or moral development of children and young persons, in particular those that depict or make reference to gratuitous violence or sexual content, or that are dominated by conflict situations resolved by violence.

No advertisement may be disseminated if it portrays children or young persons in situations depicting danger or violence, or in situations with sexual emphasis.

No advertisement of any kind may be disseminated in child welfare and child protection institutions, kindergartens, grammar schools and in dormitories for students of grammar schools. This ban shall not apply to the dissemination of information intended to promote healthy lifestyles, the protection of the environment, or information related to public affairs, educational and cultural activities and events, nor to the display of the name or trademark of any company that participates in or makes any form of contribution to the organisation of such events, to the extent of the involvement of such company directly related to the activity or event in question.

No advertisement may be disseminated if it displays sexuality in a gravely indecent manner, meaning in particular the open display of sexual intercourse or genitals (pornographic advertisement).

No advertisement of sexual services may be disseminated. The definition of sexual services and additional restrictions pertaining to the advertisement of such services are laid down in specific other legislation.

No advertisement that is aimed to arouse sexual interest may be disseminated.

Advertising is prohibited for goods whose production or marketing is illegal.

The dissemination of subliminal advertising is prohibited.

(Sections 6-11 of the CAA Act)

## **1.6. The common rules of UNAUTHORISED ACTIVITIES**

### *Market surveillance procedure*

The MNB shall launch a market surveillance procedure

- a) if it perceives unauthorised investment fund management, venture capital fund management services, central depository services, clearing or settlement services, voluntary mutual insurance services, private pension services, reinsurance services, insurance services, insurance consulting services, occupational retirement provision, investment services, activities auxiliary to investment services or intermediation (agency) activities,
- b) if it perceives insider trading or market manipulation,
- c) for the purpose of verifying compliance with the obligation of notification and publication relating to insiders,
- d) for the purpose of verifying compliance with regulations relating to acquisitions,
- e) for the purpose of verifying compliance with regulations applicable to the obligation of notification and publication referred to in Articles 5 to 8 and to the restrictions on uncovered transactions referred to in Articles 12 to 14 of Regulation No 236/2012/EU of the European Parliament and of the Council [subsections a) to e) hereinafter collectively referred to as “market surveillance procedure”].

In proceedings opened to identify any operation conducted without proper authorisation or notification, suspected cases of insider trading or market manipulation, for the enforcement of the obligation of reporting and publication relating to insiders and the regulations relating to acquisitions, the administrative time limit shall be six months from the date of opening the proceedings ex officio. In justified cases, the administrative time limit may be extended once by a maximum period of three months.

At the MNB’s request stating the reason and purpose, the persons and entities shall, in connection with a market surveillance procedure and of the procedure as relating to a client:

- a) produce documents, electronically recorded data, signals or recorded phone conversations,
  - b) provide other information, and
  - c) disclose any personal data which the MNB is authorised to manage under separate legislation which they manage and which pertain to a party to the market surveillance procedure and relate to the case at hand.
- The provisions contained in Article 70(1) of Act CXLI of 1997 on real estate registration shall not apply to the MNB’s inquiries from the electronic real estate registration database made for reasons of market surveillance.

The MNB shall have the right to manage any data it has obtained

- a) until the conclusion of the proceedings if the MNB adopted no resolution based on the findings of the investigation and did not initiate criminal prosecution,
- b) until the resolution adopted in conclusion of the investigation without any sanctions becomes final, or until the implementation of the resolution if it contains any sanction, or until the term of limitation of enforceability,
- c) if the MNB’s decision was submitted for judicial review or if the MNB initiated criminal prosecution, until the final conclusion of the court proceedings unless a petition for extraordinary remedy is filed, following which the data must be destroyed forthwith but not later than in two working days.

If the MNB discovers any unauthorised activities, it shall

- a) prohibit further conduct of the unauthorised activity;
- b) file charges with the competent investigation authority if in the Authority’s opinion there is any criminal element involved in accordance with Act C of 2012 on the Criminal Code;
- c) take supervisory actions or shall order exceptional measures; and/or
- d) impose a fine.

In connection with any activity performed without notification, the MNB shall

- a) prohibit further conduct of the unauthorised activity;
- b) take supervisory actions or shall order exceptional measures; and/or
- c) impose a fine.

In the context of market surveillance proceedings

- a) the amount of fines imposed in connection with services provided without authorisation or in the absence of notification shall be between one hundred thousand forints and five hundred million forints,
- b) the amount of financial penalty imposed in connection with any infringement of the provisions on insider dealing, market manipulation and acquisitions shall be between one hundred thousand forints and five hundred million forints,

c) the amount of financial penalty imposed in connection with any infringement of the obligation of notification relating to insiders shall be between one hundred thousand forints and five million forints,

d) the amount of financial penalty imposed in connection with any infringement of the regulations relating to the obligation of notification and publication referred to in Articles 5 to 8 and to the restrictions on uncovered transactions referred to in Articles 12 to 14 of Regulation No 236/2012/EU of the European Parliament and of the Council shall be between one hundred thousand forints and five hundred million forints.

By way of derogation from point *b*), the maximum of the market surveillance fine shall be four hundred per cent of the exchange gain obtained or the exchange loss avoided, if the exchange difference can be identified, and if such difference is higher than the maximum of the market supervision fine set forth in point *b*).

(Sections 90 and 93 of the MNB Act)

#### **1.7. The common rules pertaining to PROCEEDS FROM FINES**

The proceeds from fines imposed by the MNB may be used exclusively for the following purposes:

a) promoting and supporting the training of specialists in economics and finances;

b) promoting and supporting economic, financial and interdisciplinary research;

c) strengthening and spreading financial culture, raising financial awareness and supporting such purposes, in particular, developing related educational and research infrastructures;

d) donations to foundations; and

e) charitable causes.

(Section 170 (3) of the MNB Act)

## **II. SECTOR-SPECIFIC REGULATIONS**

### **2.1. MONEY MARKET**

#### **2.1.1. BUSINESS TERMS**

Financial institutions (credit institutions and financial enterprises) are required to set out the general contract terms and conditions for their licensed and regularly pursued activities in their business terms. The business terms are the key document of the financial institution. In the case of certain business lines (e.g. deposit transactions, bank credits and loan transactions) the act specifies the mandatory minimum content of the business terms (Sections 276-278 of the ACI).

All contracts of financial institutions for financial services and auxiliary financial services must be made in writing, including in the form of electronic document executed with at least an advanced electronic signature. The financial institution must provide one original copy of each written contract to the customer. The agreement for financial services and auxiliary financial services must clearly indicate the interest rates, fees and all other charges and conditions, including the legal consequences of default payment, and the procedure for the enforcement of collateral obligations made in security of the contract and the legal ramifications involved. (Section 279 (1) and (3) of the ACI)

In loan agreements or financial lease agreements concluded with the consumer, only interest, charges or costs may be unilaterally modified to the disadvantage of the customer. Other terms, including the term listing causes warranting unilateral modification, cannot be modified unilaterally to the disadvantage of the customer. The creditor may exercise its unilateral amendment right if the contract defines in an itemised manner the objective circumstances warranting amendment, and the creditor has stated its pricing principles in writing.

The pricing principles shall contain at least the following elements:

- a) interests, charges or costs may only be amended on the basis of reasons stated in the contracts and exerting a real impact on the interest, charge or cost;
- b) if a change in terms warrants a reduction in interests, charges or costs, such reduction shall also be implemented;
- c) the causality terms affecting interests, charges or costs shall be taken into consideration together, in proportion to their actual impact;
- d) charges or costs may be increased at most once a year in accordance with change in the annual consumer price for the previous year as published by the Central Statistical Office.

The MNB shall verify the compliance and application of pricing principles. In the course of the audit, the MNB shall take into account the provisions of the code of conduct governed by the UBCCP Act and endorsed by the MNB.

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 agreement, to correspondence, statements and certificates, visiting clients, credit monitoring, termination, the appraisal and replacement of collateral, amendment of the agreement, 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.

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: their business terms including their general contract terms; their contract terms and conditions for financial services and financial auxiliary services (transactions) offered for customers; rates of

interest, service fees, and other costs charged to clients, interests on late payment and the method of the computation of interests.  
(Section 271(1) of the ACI).

The business terms containing the terms and conditions of deposit transactions shall include in particular

- a) the full name of the credit institution, the number and date of its authorisation,
- b) the method of computation of interests and average interests, and whether the interest rate is fixed or variable,
- c) the minimum amount accepted by the credit institution as a deposit,
- d) the minimum period during which the deposit may not be withdrawn at all, or during which the deposit may be withdrawn only when the interest is lost in part or in full,
- e) deductions, if any, by the credit institution from the interest to be paid,
- f) the procedure for the termination of the deposit account and any costs involved,
- g) information on the insurance coverage of deposits,
- h) in the case of registered deposits, the personal identification data recorded by the financial institution.

(Section 277 of the ACI).

The business terms containing the standard contract terms and conditions of bank credit and bank loan operations shall comprise at least

- a) the full name of the credit institution, the number and date of its authorisation,
- b) whether the interest rate is fixed or variable and, if so, how,
- c) method of computation of interests,
- d) other fees and costs,
- e) additional obligations in security of the contract,
- f) the regulations on data processing in connection with the Central Credit Information System and notification on the legal remedies available,
- g) in case of foreign currency denominated mortgage loan contracts, the calculation method selected and applied according to Section 267 of the ACI, and an indication of the time when conversion to forint is performed.

Item g) shall also apply in case of foreign currency denominated financial lease agreements.  
(Section 278 of the ACI)

All **home savings and loan associations** shall define the general contract terms and conditions of interim financing, loan extension and account management in their business terms, including at least the following:

- a) the extent and frequency of services to be performed by the home savings account holder and by the home savings and loan association, and the legal consequences of any delays of such fulfilment,
- b) the interest falling due on the sums to be deposited in accordance with the agreement,
- c) the conditions for receiving housing loans, minimum savings ratio, minimum savings value, aspects considered for credit rating, the cases for rejecting housing loan applications,
- d) interest rates and handling charges on housing loans,
- e) the method of determining the sequence among housing loan applicants, the determination of accounts to be disbursed, due date of housing loans and the execution of their disbursement,
- f) the conditions and legal consequences of extraordinary deposit placement and of amending the agreement, in particular of increasing or decreasing the contract amount,
- g) the cases and legal consequences of termination of the agreement,
- h) the conditions of the maximum duration of suspension of making deposits, and the conditions of transferring accounts,
- i) the instances of eligibility for interim financing,
- j) documents required to verify the use of the loan for housing purposes.

Home savings and loan associations are required to determine their general contract terms and conditions in a manner so as to provide for long-term harmony between the obligations assumed by the home savings and loan associations and those by home savings account holders.

Any amendment in the general contract terms and conditions shall require the permission of the MNB.  
(Section 18 of the HSA)



Business terms which have not been individually negotiated shall become part of a contract only if they have previously been made available to the other party for perusal and if the other party has accepted the terms. (Section 6:78 (1) of the Civil Code)

The other party shall be explicitly informed of any general contract term that differs substantially from legislation or the usual contract conditions, unless it is consistent with the prevailing practice among the parties. The other party shall be explicitly informed of any general contract term that differs from the term prevailing earlier among the parties. Such terms shall only become part of the contract if, upon receiving specific notification, the other party has explicitly accepted them. (Section 6:78 (2)-(3) of the Civil Code)

The provider of an information society service shall, prior to sending its offer for electronic contracting, make the general contract terms and conditions pertaining to the information society service available in a manner that allows the recipient to store and retrieve such terms and conditions. (ECIS Act)

### **2.1.2. PROVISION OF INFORMATION**

#### **General information to customers**

The financial institution shall *publish* the following *in the form of a posted notice* in the customer area of its 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) the contract terms and conditions for financial services and financial auxiliary services (transactions) offered for customers;
- c) rates of interest, service fees, and other costs charged to clients, interests on late payment and the method of the computation of interests.

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.

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. (Section 271(1)–(3) of the ACI).

#### **Statement (extract)**

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 at least once a year, and at the time the contract expires. 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. 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 to the client in writing within no later than ninety days. Unless otherwise agreed by the parties, credit institutions shall make out and supply the extract and the statement in the Hungarian language. (Section 275 of the ACI).

### **THE CENTRAL CREDIT INFORMATION SYSTEM (CCIS)**

Reference data provider is a financial institution, payment service provider institution, electronic money issuer institution, insurance firm or warehouse providing at least one of the financial services; Diákhitel Központ Zrt. (Student Loan Centre); the credit institution and investment firm providing investment loans; the investment firm, investment fund and investment fund manager engaged in securities lending, the organisation providing clearing services, the voluntary mutual pension fund, private pension fund, financial institution, central securities depository and insurance company, and the creditor residing in another Member State and providing cross-border lending services, provided that it is a member of the CCIS. (Section 2(1)f of the CCIS Act).

The CCIS is a closed database that may only contain the reference data specified in this Act. (Section 5(1) of the CCIS Act).

The financial undertaking operating the CCIS is responsible for the comprehensive and up-to-date registration of the reference data submitted by the reference data providers, and for the completeness and continuous maintenance of the database.

The financial undertaking operating the CCIS may only accept for transmission to the CCIS reference data submitted by reference data providers; furthermore, it can only transfer reference data that it manages in CCIS to reference data providers. Other than the reference data pertaining to the registered person indicated in the data request, no other data may be provided from the CCIS to the reference data provider. Other than those detailed in Section 15(8) of the CCIS Act, no reference data may be provided to Diákhitel Központ Zrt.

Data management in the CCIS is automated. Reference data submitted by the reference data provider pertaining to the same natural persons may be linked within the CCIS for the purposes of data takeover by the reference data provider.

(Section 5(4)–(6) of the CCIS Act).

The financial undertaking operating the CCIS is required to provide, without discrimination, the option to join CCIS to any creditor residing in another Member State (lender seated in another Member State) if it offers cross-border services in Hungary.

The financial undertaking operating the CCIS may provide data from the CCIS to a lender seated in another Member State strictly in relation to its cross-border activity, provided that the lender seated in another Member State:

- a) submits a written declaration to the financial undertaking operating the CCIS requesting membership in the CCIS;
- b) in the membership declaration it undertakes to use the data requested from the financial undertaking operating the CCIS only for the purposes specified in this Act; and
- c) submits a written declaration to the effect that, both in respect of the customer and the financial undertaking operating the CCIS, it will proceed in accordance with the rules pertaining to reference data providers as set forth in this Act, and fulfil all information provision, data transfer and other obligations.

The data provision obligation to CCIS in respect of lenders seated in other Member States is limited to the data of registered customers of their cross-border services as specified in the Schedule inasmuch as said data relate to these cross-border services. (Section 5(8)–(9) of the CCIS Act).

Upon signing the contracts constituting the subject of the data supply, the reference data provider informs the natural person concluding the contract in writing about the option that the financial undertaking operating the CCIS may, at the request of the registered natural person, continue to manage its data even after the expiration of the contractual relationship. Upon the conclusion of the contract or any time during the term of the contract, the registered natural person may request – through the reference data provider – the financial undertaking operating the CCIS to continue to manage its data for up to five years after the expiration of the contractual relationship. Consent to data management after the expiration of the contractual relationship may be revoked in writing at any time during the term of the contract through the reference data provider or, subsequently, by requesting the financial undertaking operating the CCIS directly. (Section 9(2) of the CCIS Act). In preparing the contract constituting the subject of the data supply, the reference data provider shall inform the natural person proceeding in respect of the contract conclusion about the rules applicable to the CCIS, the purpose of the data recording, the rights to which the registered person is entitled and about the fact that data managed in the CCIS may be used exclusively for the purposes defined in this Act, and that the data will be transferred in accordance with Section 5(2) and may be transferred in accordance with Sections 11–13 (Section 15(1) of the CCIS Act).

Prior to contract conclusion – and indicating the purpose of the data transfer, the scope of the data to be transferred and the fact that, following the data transmission to the CCIS, the financial undertaking operating the CCIS may forward the reference data to additional reference data providers for the purposes specified in Section 1 –, the reference data provider shall inform its corporate customers in writing about the fact that their reference data will be entered into the CCIS in the cases defined in Sections 14–14/B of the CCIS Act.

With the exception of the reference data listed in Section 6(5) of the CCIS Act, the reference data provider shall inform the registered natural person of each and every data transfer under the CCIS Act in writing, within no later than five working days following the data transfer to the financial undertaking operating the CCIS.

Anyone may request information from any reference data provider about their data contained in the CCIS and about the identity of the reference data provider that transferred the data. Persons registered in the CCIS are entitled to know, without restriction, the data kept on record about them, and on the identity of those who accessed the data and on what grounds. No cost reimbursement or fee of any kind may be charged for this information.

(Section 15(5)–(7) of the CCIS Act).

### ***Information requirements relating to certain deposit and loan contracts***

In the cases defined in the legislation adopted for the implementation of the ACI, the commercial communication shall contain information concerning the uniform 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 the ACI. (Section 268 of the ACI).

Information on interest payment on deposit contracts and debt securities:

In its standard service agreement the credit institution shall calculate, in addition to the fix interest calculation method used for deposit contracts it offers, the uniform deposit rate index (Hungarian acronym: **EBKM**), as well, and publish the figure in a pre-defined manner.

In the case of a deposit contract created specifically for one customer, the credit institution shall calculate the EBKM, and shall include the value thereof in the contract.

If the interest rate applied to the deposit is a variable rate under the contract but its rate cannot be specified at the time of the calculation of the EBKM, the calculation of the EBKM shall be based on the latest known interest rate up to the expiry of the deposit contract.

In the case of a deposit fixed for an indefinite period of time or a deposit not fixed, a one year fixing period shall be taken into account for the calculation; however, the credit institution shall also be entitled to disclose a ratio calculated for the fixing period considered by the credit institution as 'typical'. During the calculation of the index the blocking period stipulated in the contract shall be taken into account.

In the case of loan associations the value of the EBKM shall be determined in the commercial communication assuming that HUF 20,000 is deposited monthly on a continuous basis.

During the calculation of the EBKM, only the amount to be actually paid (credited) can be taken into account in the amount of the interest; if the interest payable is burdened with any deduction under any legal title (e.g. commission, fee) – excluding tax payment obligations –, the amount of the interest shall be reduced by the amount of the deductions.

(Sections 3–5 of Government Decree No. 82/2010 (III. 25.)).

The financial institution must publish the following information in the form of a posted notice in the customer area of its premises:

- a) the formula of interest calculation;
- b) the first and last day of interest payment;
- c) the date (dates) of crediting interest;
- d) the terms and conditions for the withdrawal of funds before the expiration date;
- e) all facts, information and conditions that affect the amount paid during, at or after maturity;
- f) by indicating the abbreviation, the value of the EBKM with an accuracy of two decimals. (Section 6 of Government Decree No. 82/2010 (III. 25.)).

If the institution applies a discount during the calculation of the EBKM and the discount is subject to some condition (whether on the part of the credit institution or on the part of the customer), the commercial

communication shall include, as a minimum, precise information about the availability of the detailed conditions.

In case of automatically renewed deposits offered with a preferential interest rate, the offer pertaining to contract conclusion and the commercial communication shall include, in addition to the value of the preferential EBKM, the value of non-preferential EBKM prevailing at the time of the announcement.

If the credit institution offers complex services where the customer is required to purchase, in addition to the deposit, investment units, the commercial communication or the offer pertaining to contract conclusion shall include, after the indication of the EBKM value pertaining to the deposit part and in the same typography, the following text: The yield on the mutual fund constituting the second part of the offer may vary, depending on the yields on the investment instruments included in the fund. The past performance of the fund does not guarantee future yields.

(Sections 3–6 of Government Decree No. 82/2010 (III. 25.) on the EBKM).

In the case of debt securities and investment units, if the interest or the yield on the paper has been established by the issuer for the whole of the remaining maturity period, the investment service provider, the credit institution, the investment fund manager, as well as the organisation that is authorised by law to offer its self-issued securities without engaging a dealer in debt securities, shall calculate and disclose as specified, the unified securities yield indicator (Hungarian acronym: **EHM**). (Section 8 of Government Decree No. 82/2010 (III. 25.)).

#### ***Information supply regarding the fees associated with loan agreements:***

The provisions pertaining to the calculation of the annual percentage rate (hereinafter: **APR**) are set forth in Government Decree No. 83/2010 (III. 25.) on the definition, calculation and publication of the Annual Percentage Rate indicator.

In calculating the APR, creditors shall take into account all fees (including interests, fees and commissions, costs and taxes) payable by the consumer in relation to the loan contract and the lease agreement (**loan contract**) and the costs of the ancillary services related to the loan and known to the creditor or the lessor (**creditor**), the use of which are required by the creditor, including, in particular:

- a) fee for the appraisal of the collateral offered by the customer;
- b) the site inspection fee of construction projects;
- c) the costs of account management and the use of cash substituting payment methods and other costs related to the payment transactions (other than those listed in Paragraph f) of Subsection (3);
- d) the fee payable to the loan intermediary;
- e) the real property registration fee; and
- f) the insurance premium and guarantee fee, other than the contents of Section 7(2).

The value of the APR shall be determined in accordance with the formula included in Schedule 1.

If the disbursements as well as the repayments are made in forint under an FX-denominated loan, when applying the formula specified in Schedule 1, the creditor shall regard payments made by the customer and by the creditor as payments made in HUF – as regards credit-installment taking into account the disbursement rate applied by the creditor for the specific transaction, and as regards repayment and payment of charges the repayment rate – with the following rates:

- a) the foreign currency rate laid down in the contract, defined not earlier than thirty days preceding the conclusion of the contract;
- b) the foreign currency exchange rate applied in the commercial communication of the creditor, which is the valid exchange rate of the first working day of the month prior to the current quarter.

If the disbursement or the repayment is transacted in foreign currency under an FX-denominated loan, when applying the formula specified in Schedule 1, the payments made in foreign currency shall be taken into consideration in HUF, in the agreement considering the official mid-rate as quoted by the MNB in the contract not earlier than thirty days in advance, in commercial communication valid on the first working day of the month prior to the current quarter.

In the case of foreign currency loans costs payable in HUF have to be considered upon calculating the APR in the currency of the loan, considering the rate of sale used by the Bank for payment of charges in the specific

transaction in the contract defined not earlier than thirty days in advance, in commercial communication valid on the first working day of the month prior to the given quarter.

In case of foreign currency loans and foreign currency denominated loans, the Bank shall include in the contract whether the calculation of the APR was based on HUF payments or payments made in the currency of the loan, and the valid date of the exchange rate considered during the conversion of the payments to another currency.

If the commercial communication includes the APR, its value shall be determined for loans repaid in equal instalments, provided with the following terms and conditions:

- a) for loans granted by building societies, the loan amount is HUF 1 million with a maturity of 5 years;
- b) for mortgage loans granted by other creditors, the loan amount is HUF 5 million with a maturity of 20 years;
- c) for loans linked to credit cards and payment accounts, the loan amount is HUF 375,000;
- d) for loans granted in an amount up to HUF 1 million – other than those specified in Paragraphs a)–c) –, the loan amount is HUF 500,000 with a maturity of 3 years;
- e) for loans granted in an amount above HUF 1 million – other than those specified in Paragraphs a)–c) –, the loan amount is HUF 3 million with a maturity of 5 years.

The conditions above must be also used for loans repaid in different instalment amounts; however, in this case the different repayment method shall be clearly and visibly indicated.

If the creditor does not offer the given loan with the conditions specified in Subsection (1) and the conditions applied by the creditor are substantially different, upon calculating the APR the amount and maturity closest to the conditions defined in Subsection (1) for the specific loan type shall be considered. This fact shall be clearly and visibly indicated in the commercial communication.

Loans repaid in equal instalments are loans with a grace period of maximum 6 years, repaid in equal monthly instalments. Equal instalments shall mean all loan instalments where the sum total of the repayment of principal and the interest, expressed in HUF or in a foreign currency, is permanent throughout the repayment period.

If the commercial communication pertaining to mortgage loans includes the interest rate, any associated costs and repayment instalments of the loan, or any other reference that can be associated with said elements, the value of the APR shall be included in the communication immediately after said information, with the indication of the abbreviation, at least in the same size and in the same visualisation and in an easily understandable manner.

The public notice and offer pertaining to the mortgage loan shall clearly and visibly show the APR with the following supplementary information:

- a) the APR has been determined in accordance with the latest conditions and the effective statutory provisions, and may change in the event of an amendment to these conditions or a change in the law;
  - b) the value of the APR does not reflect the exchange rate risk of the loan;
  - c) the value of the APR does not reflect the interest rate risk of the loan;
- Paragraph b) of Subsection (2) shall be applicable to foreign currency denominated loans, and Paragraph c) shall be applicable to loans with variable interest rates.

In the case of mortgage loans combined with a home savings agreement, the APR value included in the commercial communication shall be determined in consideration of the building society product of the shortest savings period, by assuming a continuous monthly new deposit payment of HUF 20,000. (Sections 9–10 of Government Decree No. 83/2010 (III. 25.)).

In commercial communications on loans the value of the APR shall be stated in a conspicuous manner, using the abbreviation and expressed with an accuracy of one decimal place (Section 4 of the Act on Consumer Credit).

Prior to the acceptance of any offer or the conclusion of any credit contract by the consumer, in due time, the creditor or the lending intermediary, as appropriate, shall provide the consumer with the information specified in Subsection (3) (including the annual percentage rate of charge with all terms and a representative example),

either on paper or on another durable medium based on the information provided by the consumer, with the exception defined in Subsection (8).  
(Section 10 of the Act on Consumer Credit).

***Information on the execution of payment orders:***

The payment service provider shall inform the payment service user before initiating the payment order for a single payment transaction on its website and also in customer areas by way of posting.

The payment service provider shall comply with the aforesaid obligation to provide information in easily understandable words and in a clear and comprehensible form, in the Hungarian language or in any other language agreed between the parties.

The payment service provider may fulfil the aforesaid obligation to provide information by providing a copy of the single payment service contract, if it contains the information specified below.

At the payment service user's request, the payment service provider shall provide the information and conditions on paper or on another durable medium.

If the single payment service contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with the requirements for prior information, the payment service provider shall fulfil this obligation immediately after the execution of the payment transaction.

The payment service provider shall provide the following information to the payment service user:

- a) a specification of the information or unique identifier that is necessary in order for a payment order to be properly executed;
- b) the maximum execution time for the payment services to be provided;
- c) the amount of any charges, fees and other payment obligations payable by the payment service user to the payment service provider and a breakdown of the amounts of such charges; and
- d) the actual or reference exchange rate to be applied to the payment transaction by the payment service provider.

In addition to the above, the payment service provider shall inform the payment service user concerning the data specified above on its website and also in customer areas by way of posting.

The payment service provider is not required to provide the information referred to in Paragraphs b) and c) if:

- a) the payment service provider of the payee is not situated in an EEA Member State, or the payment transaction is not executed in a currency of an EEA Member State; and
- b) the information is not available to the payment service provider.

(Sections 29–31 of the Act on Payment Services).

***Electronic distribution of information:***

The service provider providing services in connection with the information society, shall publish by electronic means, directly and on an ongoing basis, in an easily accessible manner, in the Hungarian language at least the following data and information:

- a) the service provider's name;
- b) the address of the service provider's residence, or head office and premises;
- c) contact details of the service provider, in particular its e-mail address regularly used for maintaining contact with the recipients of the services;
- d) when the establishment of the service provider or the commencement of the service provider's activity is subject to statutory public registration, the name of the court or authority that registered the action plan and the service provider's registration number;
- e) when the service provider's activity is subject to statutory licensing, certification or accreditation, a statement on this fact along with the name and contact details of the licensing authority, and the number of the licence;
- f) if the service provider is subject to VAT payment, the VAT registration number of the service provider;
- g) if the service provider is engaged in a regulated profession:

- ga) the name of the trade advocacy organisation (chamber) which the service provider joined, either under statutory regulation or voluntarily, as a member;
- gb) the qualification, professional or academic rank of the natural person service provider and the Member State where this qualification or rank was obtained;
- gc) reference to professional codes applicable to the regulated profession in the state of establishment of the service provider and their accessibility;
- h) in respect of the service provider storing information for the service provider as defined in Article 2 l) lc), the contact details of the service provider, in particular its e-mail address regularly used for maintaining contact with the recipients of the services except when such data are publicly available due to the nature of the hosting services provided to the service provider.

(Article 4 of the Act on Electronic Commerce Services).

### 2.1.3. ADVERTISING RULES

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 269 of the ACI).

Drawings, except for prize drawing deposits, may not be advertised. (Section 270 of the ACI).

In case of a violation of the above provisions, the Consumer Protection Authority shall proceed in accordance with the provisions of the CAA Act. Pursuant to Act CLV of 1997 on Consumer Protection, these provisions are consumer protection provisions.

Offers, advertisements and commercial communication related to **deposit contracts** shall call attention to the fact that the detailed description of the deposit contract is contained in the standard service agreement.

If the offer pertaining to the conclusion of the deposit contract or the commercial communication pertaining to the deposit includes the interest rate or any associated costs of the deposit, the value of the uniform deposit interest rate index (EBKM) shall be included immediately after said information, with the indication of the abbreviation, and with an accuracy of two decimals at least in the same size and in the same visualisation, in an easily understandable manner.

If a state subsidy is linked to the deposit and the offer pertaining to the conclusion of the deposit contract or the commercial communication pertaining to the deposit includes the interest rate, any associated costs of the deposit, or the rate or amount of the state subsidy, the EBKM value shall be provided both including and excluding the subsidy.

(Section 6(2)–(4) of Government Decree No. 82/2010 (III. 25.)).

It is prohibited to use any information relating to deposit insurance, the NDIF or the voluntary deposit and institutional protection fund for the purpose of increasing deposit holdings, in particular for advertisements. (Section 274 of the ACI).

If the commercial communication pertaining to mortgage loans includes the interest rate, any associated costs and repayment instalments of the loan, or any other reference that can be associated with said elements, the value of the APR shall be included in the communication immediately after said information, with the indication of the abbreviation, at least in the same size and in the same visualisation and in an easily understandable manner.

(Section 10(1) of Government Decree No. 83/2010 (III. 25.)).

### 2.1.4. CONFIDENTIALITY AND DATA PROTECTION

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 concluded with the financial institution shall be construed *bank secrets*.

For the purposes of the provisions of the ACI regarding bank secrets, any person or entity who (which) 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.

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) the 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.

(Section 161 of the ACI).

Further rules pertaining to bank secrets are provided in Section 161 of the ACI.

#### **2.1.5. PROTECTION OF CUSTOMER CLAIMS, THE NATIONAL DEPOSIT INSURANCE FUND (NDIF)**

Credit institutions shall provide depositors with readily intelligible information concerning the material issues that affect the depositors in regard to the NDIF 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 NDIF, 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 NDIF shall not cover an account under Section 213 or Subsection (4) of Section 239.

Unless otherwise agreed by the parties, credit institutions shall supply the information referred to in Subsection (1) in the Hungarian language.

A credit institution shall inform its depositors if its membership in the NDIF 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.

(Sections 272–273 of the ACI).

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; in other words, the deposits which are not covered by the insurance provided by the NDIF.

(Section 281(1) of the ACI).

The NDIF shall not cover the deposits specified in Section 213(1)–(2).

If a credit institution that is a member of the NDIF 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. 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 281(2)–(3) of the ACI).

The NDIF 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.



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.

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.  
(Section 214(1)–(3) of the ACI).

#### **2.1.6. RULES PERTAINING TO CERTAIN CONTRACTS**

A copy of the loan contract shall be given to the consumer. The loan contract shall include the contents of Section 16(1) of the Act on Consumer Credit with the exception defined in Subsection (4), which specifies the mandatory contents of the credit line agreement related to the payment account.

Any contract not including the mandatory content elements defined in Section 16 of the Act on Consumer Credit shall be deemed invalid. Invalidity may be invoked only in favour of the consumer.  
(Sections 15–16 of the Act on Consumer Credit).

Consumers may prepay the credit as a whole or in part in all cases. In the event of prepayment, the creditor shall reduce the total credit fee with regard to the portion prepaid by the credit interest and all other charges applicable to the remaining term of the credit contract pursuant to the original date of expiry. (Section 23 of the Act on Consumer Credit).

The consumer protection rules pertaining to the *circulation of money and to electronic payment instruments* are contained in a separate rule of law. These rules specify the deadlines for the performance of payment orders, the deadlines for the revocation or modification of the payment orders, the auxiliary rules of cost-bearing, the obligation to pay a default interest, as well as the obligation of immediate repayment in case the order is aborted.

Where a specific electronic payment instrument is used for the purposes of giving consent, the parties may agree in the framework contract on spending limits for payment transactions executed through that payment instrument. If agreed in the framework contract, the payment service provider may reserve the right to block the electronic payment instrument for reasons related to the suspicion of unauthorised or fraudulent use of the electronic payment instrument or the security of the electronic payment instrument.

In the case of an electronic payment instrument with a credit line, the payment service provider may, furthermore, reserve the right referred to in Subsection (2) to block the electronic payment instrument for reasons related to a significantly increased risk that the payer may be unable to fulfil his payment obligation to the payment service provider.

The burden of proof to verify the reasons for blocking the electronic payment instrument lies with the payment service provider.

In the case of blocking an electronic payment instrument, the payment service provider shall inform the payer of the blocking of the electronic payment instrument and the reasons for it in the manner agreed in the framework contract, before the payment instrument is blocked or immediately thereafter at the latest.

The payment service provider shall not be liable to provide the information referred to in Subsection (5) above, if giving such information would compromise the security of the payment service provider's operation or is prohibited by other relevant legislation.

The payment service provider shall – without undue delay – unblock the electronic payment instrument or shall provide a new electronic payment instrument to the payer once the reasons for blocking the electronic payment instrument no longer exist.

The payment service user shall have the obligation to use the electronic payment instrument in accordance with the terms and conditions laid down in the framework contract, and to take all reasonable steps to keep the electronic payment instrument and his personalised security features [personal identification code (PIN) or other code] safe.

The payment service user shall have the obligation to notify the payment service provider, or the entity specified by the payment service provider, without undue delay on becoming aware of loss, theft or misappropriation of the electronic payment instrument or of its unauthorised use.

In the case of a framework contract pertaining to a low value electronic payment instrument, the parties may agree that the payment service user is not required to notify the payment service provider according to Subsection (2), if the electronic payment instrument does not allow its blocking or prevention of its further use.

The payment service provider shall be authorised to issue an electronic payment instrument only upon the payment service user's express request, except where an electronic payment instrument already given to the payment service user is to be replaced.

The payment service provider shall ensure that the electronic payment instrument and the personalised security features are delivered – in the manner specified in the framework contract – to the payment service user only.

The payment service provider shall ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Subsection (2) of Section 40 or request unblocking pursuant to Section 39.

The payment service provider shall maintain a register of the notifications referred to in Subsection (2) of Section 40 so as to provide the payment service user with the means to prove, for 18 months after notification, the time and the contents of such notification.

Upon receipt of the notification referred to in Subsection (3), the payment service provider shall refuse the execution of any payment transaction based on a payment order initiated by the given electronic payment instrument.

In the case of a framework contract pertaining to a low value electronic payment instrument, the parties may agree that the payment service provider is not required to comply with the obligations set out in Subsections (3) and (5), if the electronic payment instrument does not allow its blocking or prevention of its further use. (Sections 39–41 of the Act on Payment Services).

## **2.2. CAPITAL MARKET**

### **2.2.1. STANDARD SERVICE AGREEMENT**

The standard service agreement of economic organisations (companies) engaged in investment service activities, in ancillary services relating to investment service activities (ancillary services), as well as in commodity exchange services defined under the IFCD Act shall contain:

- a)* the list of the investment service activities, ancillary services, commodity exchange services licensed by the MNB acting within its scope of authority for the supervision of the financial intermediation system, as well as the activities defined under Subsection (5) of Section 8 of the IFCD Act;
- b)* the number and date of the resolution issued by the MNB authorising the performance of the activities set out in point *a)*, the name, the contact address and website of the MNB;
- c)* the languages in which the client may communicate with the investment firm, as well as
- d)* the method and means of communication to be used between the client and the investment firm, including those for the sending and reception of orders.

In connection with the conclusion, performance, amendment and termination of the contract, the standard service agreement of the investment firm shall include:

- a)* the detailed rules for the identification of the client;
- b)* the list of documents and declarations that are suitable for carrying out the fitness and compliance tests prescribed for the companies, as well as the list of the rules for client classification;
- c)* the detailed rules for transactions that can be concluded within the framework of investment service activities, ancillary services or commodity exchange services, including the manner and detailed rules, by transaction, for the clients' access to the financial instruments and funds the companies manage for the clients;
- d)* the reasons for the refusal of contracting with the client, as defined by law;
- e)* the manner and deadline of settlement with the client;
- f)* the detailed rule for the amendment and termination of a contract, including the rescission and termination deadlines; and
- g)* the Schedules which are defined in Section 6 and constitute a part of the standard service agreement;
- h)* the manner of providing data protection information.

The standard service agreement of the company shall contain:

- a)* the general rules relating to account transfer;
- b)* the company's obligation towards the client – including the manner of extraordinary disclosure to clients – when the company's activity licence is withdrawn, the performance of certain activities is partially or fully suspended or limited and when the licences granted for pursuing the activity are withdrawn;
- c)* the obligation and risk assumption of the company and the client per transaction type when the activity of the company is limited or suspended by the exchange or by the Supervisory Authority, or if a measure by the clearing house or the central contracting party affects the client order.

When managing securities accounts and clients accounts, the standard service agreement shall contain:

- a)* the detailed conditions for opening an account;
- b)* the frequency and method of sending notification to the client concerning all transactions to and from the account as well as on the balance of the account.

If the company accepts orders from the client by way of telephone, fax or other electronic means, the standard service agreement shall provide for detailed rules thereof; thus, in particular:

- a)* the procedure to be followed when placing orders by way of telephone, fax or other electronic means (sound recording or written recording by the recipient of the order), the manner of preparing written contracts and the date of fixing them in writing;
- b)* the duration for which the sound recording should be retained.

If the company makes a sound recording of an order, the standard service agreement shall provide for the right of access to the sound recording.

The standard service agreement of the company shall contain that – save for the cases specified by law and for the client's serious breach of contract not settled in spite of a notice – the company may not restrict or exclude its liability for the performance of the contract. The standard service agreement shall contain, by type of transaction, the cases deemed as the client's serious breach of contract, as well as the rights and obligations of the parties in the event of a breach of contract by the parties.

The standard service agreement of the company shall contain the frequency and method of sending notifications and providing information to clients, and their cost effects.

When the company meets its obligation to provide information specified in the IFCD Act in a durable medium, its standard service agreement shall explicitly draw the attention of the client to the detailed rules relating to the method of providing information.

The standard service agreement of the company may not exclude the client's requesting information about the execution of orders the client has given and about the balance of the client's account the company manages in another manner than set out in the standard service agreement.

The standard service agreement of the company shall contain:

- a) the frequency, timing and nature of the report concerning the investment service activities performed, ancillary services or commodity exchange services provided for the client;
- b) when managing the client's financial instruments or funds, the summary of the measures ensuring the safeguarding of these assets, including information about the investor protection scheme available to the client and about its operation.

The standard service agreement of the company shall explicitly draw the attention of the client to

- a) the provisions set out in laws on the combating of money laundering;
- b) the governing law in the event of a legal dispute between an investment firm and a client.

Schedules to the company's standard service agreement:

- a) form sheets relating to contracts to be concluded between investment firms and clients;
  - b) the range of outsourced activities and the list of entities engaged in outsourced activities;
  - c) the list of intermediaries used by investment firms;
  - d) the list of fees applied by investment firms also containing the costs and fees charged to the client related to contracting as well as to the individual transactions in case of a formerly concluded contract and a contract in force (framework agreement);
  - e) the indication of the business hours;
  - f) the general terms and conditions of the contract;
  - g) the rules for complaints handling;
  - h) the execution policy of the investment firm;
  - i) summary description of the investment firm's conflict of interest policy.
- (Government Decree No. 22/2008 (II. 7.)).

With the exception set out below, all contracts between investment firms and their clients must be fixed in writing according to their standard service agreement.

Agreements for the execution of orders on behalf of a client under portfolio management services relating to financial instruments (order) shall not be made out in writing if placed under an existing framework agreement, if such framework agreement is made out in writing and the investment firm records the order electronically.

Investment firms may not use for the identification of a client a pseudonym or any other reference suitable to conceal the identity of the client or to obscure the identification procedure.

(Section 52 of the IFCD Act).

In connection with carrying out commodity exchange services, where commodity dealers have carried out an order on behalf of a client, they shall – with the exception set out below – promptly provide the client with the essential information concerning the execution of that order in the manner laid down in the standard service agreement.

The above shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by a third party.

In addition to the requirements above, commodity dealers are required to supply the client, on request, with information about the status of his order. (Section 90 of the IFCD Act).

The securities intermediary shall record all transactions to and from a securities account in a statement and shall send this confirmation to the account holder as stipulated in the standard service agreement. A power of attorney supplied to the securities intermediary shall be accepted only if made out in the form and with the information content stipulated in the standard service agreement. The signature specimen of authorised signatories shall be supplied to the securities intermediary in the manner stipulated in the standard service agreement. (Sections 142–143 of the ACM).

*Rules particular to investment fund managers:*

The rules pertaining to investment fund managers shall be laid down in the fund operating regulations, to be approved by the MNB in case of public investment funds and submitted to the MNB in case of non-collective investment funds. The fund operating regulations shall contain all information necessary for investors to make an informed judgement of the operation, investment strategy and management of the investment fund. In case of alternative investment funds (AIFs), the operating regulations shall contain references to any agreements concluded by the fund manager for the purpose of contracting a discharge of its liabilities, in accordance with Section 64(16) of the CI Act. The operating regulations shall be drawn up with the contents defined in Chapter I of Schedule 3 to the CI Act in the case of public investment funds, in Chapter II of Schedule 3 in the case of non-collective investment funds, and in Chapter III of Schedule 3 in the case of venture capital funds or private equity funds.

When purchasing investment units, investors shall supply a statement of acknowledgement of the terms and conditions contained in the fund operating regulations, in particular, the risks associated with the investment units, and that he complies with the risk-bearing capacity of the investment.

Fund managers shall be permitted to unilaterally amend the terms contained in fund operating regulations of public funds, subject to the MNB's consent. (Section 72(1)–(3) of the CI Act).

Fund managers shall, at all times, proceed in the client's best interest in compliance with legal provisions and with their own internal regulations, and as stipulated in the fund operating regulations.

Upon purchasing or redeeming investment units, consideration for the investment units may be paid in cash or – provided that the fund operating regulations expressly permit it and define the relevant terms and conditions – it may be paid, either in part or in full, in other instruments complying with the investment policy of the fund. In the latter case, upon redemption the composition of the instruments constituting the consideration for the investment units shall be determined in proportion to the share of the given instrument in the fund's portfolio. In respect of continuous issue, the investor may be charged a sales or redemption (purchase, repurchase) fee or commission, payable – in part or in full, in accordance with the operating regulations – to the fund, the broker/dealer involved in the continuous issue, or the fund manager. The principle of equal treatment shall not be deemed violated if the amount of the fees and commissions charged to the investor for the continuous issue is determined by brokers/dealers, or if the investment fund manager agrees with individual brokers/dealers on different contractual terms.

In the case of open-ended investment funds, if the fund's assets have become illiquid in excess of 5 per cent of its total assets, in order to ensure compliance with the principle of the equal treatment of investors and to maintain the continuous issue, the investment fund manager may decide to segregate the illiquid assets within the fund's portfolio or the investment units embodying such illiquid assets within the portfolio of investment units.

(Section 109(1)–(2) of the CI Act).

The fund operating regulations shall contain all information necessary for investors to make an informed judgement of the operation, investment strategy and management of the investment fund.

(Section 72(1) of the CI Act).

Investment units issued under the name of an investment fund as part of one or more series, must be of the same face value and must have the same rights attached within the same series. The operating regulations must specify in detail the features in which individual series differ from one another. (Section 71(1) of the CI Act).

The investment fund manager must manage and register the assets of investment funds and clients segregated from its own assets.

## **2.2.2. INFORMATION TO CLIENTS**

Investment firms are required to post their operating rules in their customer areas. Where commercial services are provided through electronic channels, the operating rules shall be posted in electronic format to permit easy access and retrieval for clients at any given time.

(Section 5(1) of Government Decree No. 22/2008 (II. 7.)).

### General provisions for information to clients

Investment firms shall make available to clients and potential clients information in a comprehensible form – including any investment research and advertisement, that is fair, clear and accurate, and shall not supply any information to clients and potential clients that is misleading.

As regards the information provided to retail clients and potential clients after they are bound by any agreement, the investment firm shall:

- a) indicate the name of the investment firm;
- b) not withhold any essential information, or provide any misleading information intentionally, and shall not present any essential information, fact or circumstance as immaterial;
- c) not emphasize any potential benefits of any investment service activities, ancillary services or a specific financial instrument without simultaneously specifying their disadvantages, and without also giving a fair and prominent indication of any relevant risks;
- d) not use terms or any grammatical structures which are clearly incomprehensible or unintelligible for clients and potential clients, and shall set the length of the information as appropriate to the nature and extent of the service; and
- e) proceed in accordance with Subsections (3)–(10) of the IFCD Act, taking into consideration the contents of Schedule 3.

The above provisions shall also apply in connection with information – including investment research and advertisements – that is prepared for others, however, it becomes accessible to retail clients and potential clients after they are bound by an agreement.

If the information made available by an investment firm contains a comparison between investment firms, investment service activities, ancillary services or financial instruments:

- a) the comparison must be meaningful and presented in a fair and balanced manner;
- b) the sources of the information used for the comparison must be specified; and
- c) the key facts and assumptions used to make the comparison must be included separately from the facts.

Where the information made available by an investment firm contains an indication of past performance of a financial instrument, a financial index or indicator, or an investment service, or any changes in such, the following conditions shall be satisfied:

- a) that indication may not be the most prominent feature of the communication;
- b) the information must include appropriate performance information which covers the immediately preceding five calendar years relating to the financial instrument, a financial index or indicator in question, or any changes in such index, or performance information which covers the immediately preceding five calendar years in the case of investment services;
- c) the investment firm shall ensure that the reference period and the source of information and data providing the basis for the assessment are clearly stated;
- d) the information must contain a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results, yield, changes and performance;
- e) where the indication relies on figures and information denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident, or where his home address or

registered office is located, the investment firm shall ensure that the currency be clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

*f)* where the indication is based on gross performance, figures and information covering commissions, fees or other charges, the investment firm shall ensure that the effect of commissions, fees or other charges on the return is disclosed.

In connection with the obligation referred to in Paragraph *b)* above, if there is no information available relating to the financial instrument, financial index or indicator in question which covers their yield or performance during the immediately preceding five calendar years, or performance information which covers the immediately preceding five calendar years in the case of investment services:

*a)* but information is available for at least one year, information on yield or performance shall be provided for the entire twelve-month period for which such information is available;

*b)* and information is not available for any full twelve-month period either, no comparison of performance may be applied relating to the financial instrument, financial index or indicator in question, nor to investment service activities.

Where the information made available by an investment firm contains a simulation of past yield or performance, or reference thereto, of a financial instrument, a financial index or indicator, or an investment service, or any changes in such index, the information shall also contain a reference to the financial instruments, financial index or indicator underlying the financial instruments or financial index or indicator to which it pertains, and:

*a)* the simulation of past yield or performance, or changes therein, must be based on the specific past yield or performance, or changes therein, of the financial instruments, financial index or indicator underlying the financial instruments or financial index or indicator in question;

*b)* where the specific past yield or performance of the underlying product referred to in Paragraph *a)* is applied, the provisions contained in Paragraphs *a)–c)*, *e)* and *f)* of Subsection (5) and also in Subsection (6) of Section 40 of the IFCD Act must be satisfied as well;

*c)* the information must contain a prominent warning that the figures and information refer to simulated past yield or performance, or changes therein, and that past performance is not a reliable indicator of future results, yield and performance, or changes therein.

If the information provided by the investment firm relates to the future yield or performance of the financial instruments, financial index or indicator, or changes therein, or to the future performance of the investment service:

*a)* the information must not be based on or refer to simulated past yield or performance of the financial instruments, financial index or indicator, or changes therein, nor to simulated past performance of the investment service;

*b)* it must be based on reasonable and objective assumptions supported by objective data;

*c)* where the indication is based on gross performance figures and information covering commissions, fees or other charges, the investment firm shall ensure that the effect of commissions, fees or other charges on the return is disclosed;

*d)* the information must contain a prominent warning that the figures and information refer to simulated performance and that such forecasts are not a reliable indicator of future results, yield, changes and performance.

Where the information made available by the investment firm refers to a particular tax treatment or tax implication, it shall prominently state that the tax treatment or implication depends on the individual circumstances of each client and may be subject to change in the future.

The information made available by the investment firm shall not use the name of any competent supervisory authority in such a way that would indicate or suggest endorsement or approval by that supervisory authority of the products or services of the investment firm, its activities or specific financial instruments.

In connection with carrying out investment service activities and the provision of ancillary services, investment firms shall provide – taking also into consideration the provisions of Section 43 of the IFCD Act – information to clients and potential clients about:

*a)* the investment firm in general;

*b)* the policies of the investment firm governing operations and activities;

- c) the rules for the management of financial instruments and funds held for or belonging to a potential client;
- d) the financial instruments involved in transactions executed under contract;
- e) the transactions executed under contract, including any publicly available information that concerns the transaction in question and the risks involved;
- f) the execution venues referred to in Paragraph i) of Subsection (2) of Section 62;
- g) contractual costs and associated charges, and the costs and associated charges of transactions relating to previous contracts which are still in effect (framework agreement) and charged to clients.

The information above shall be made available in due time, having regard to the urgency of the situation and the time necessary for the client to absorb and react to the specific information provided, the client's need for sufficient time to read and understand it before taking an investment decision.

Where, according to the IFCD Act, investment firms are required to provide information in a durable medium, it shall be provided:

- a) in writing; or
- b) in another form of durable medium.

Where information is required to be provided in a durable medium under the IFCD Act, investment firms shall be permitted to provide that information in a durable medium only if:

- a) the provision of that information in that medium is appropriate to the contractual context in which the business between the investment firm and the client or potential client is, or is to be, carried on; and
- b) the client or potential client specifically chooses the provision of the information in the medium referred to in Paragraph b) above.

In the cases defined in the IFCD Act, an investment firm may be allowed to provide information – in compliance with the requirement to provide information – to a client or potential client by means of a website, where that information is not addressed personally to the client or potential client, subject to the following conditions:

- a) the provision of that information in that medium is appropriate to the contractual context in which the business between the firm and the client or potential client is, or is to be, carried on;
- b) the client or potential client must specifically consent to the provision of that information in that form;
- c) the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
- d) the information on the website must be up to date; and
- e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

(Sections 40–42 of the IFCD Act).

The securities intermediary shall record all transactions to and from a securities account in a statement and shall send this confirmation to the account holder as stipulated in the standard service agreement. The securities intermediary shall supply an account statement indicating the transactions in the securities account whenever one is requested by the account holder. (Section 142(1) of the ACM).

#### *Obligation to provide prior information*

1.) Pursuant to Section 43(1) of the IFCD Act, in the context of carrying out investment service activities and the provision of ancillary services, investment firms shall provide – save where Subsection (12) of Section 43 of the IFCD Act applies – information no later than the signature of the contract to potential clients and retail clients after they are bound by any agreement, concerning:

- a) the conditions of the contract, and
- b) the data which are directly relating to the provisions of the contract and are specified in Section 43(3)–(4) and Section 43(5)a)–c) of the IFCD Act.

2.) Pursuant to Section 43(2) of the IFCD Act, in the context of carrying out investment service activities and the provision of ancillary services, investment firms shall provide – save where Subsection (12) of Section 43 of the IFCD Act applies – information prior to the contractual performance of the service specified in Subsection (1) of Section 43 of the IFCD Act to:

- a) retail clients concerning the provisions contained in Section 43(3)–(5) and (7)–(9) of the IFCD Act; and
- b) professional clients concerning the provisions contained in Section 43(8)d)–e) of the



IFCD Act.

3.) The information that investment firms are required to provide under Section 41(1)*a*) of the IFCD Act to retail clients or potential retail clients after they are bound by any agreement shall include:

- a*) the name and registered address of the investment firm, including any other means of contact;
- b*) the languages in which the client may communicate with the investment firm;
- c*) the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;
- d*) the number of the investment firm's authorisation to engage in investment service activities and to provide ancillary services, and the name and contact address of the competent supervisory authority that has issued the authorisation; and
- e*) where the investment firm is acting through a tied agent, a statement of this fact specifying the EEA Member State in which that agent is registered.

4.) Where investment firms propose to provide portfolio management services to retail clients or potential retail clients after they are bound by any agreement, they shall provide, in addition to the information required under Subsection (2), the following to the clients:

- a*) information on the method and frequency of valuation of the financial instruments in the client portfolio, as specified in the contract;
- b*) details of any delegation of the discretionary portfolio management of all or part of the financial instruments or funds in the client portfolio;
- c*) a specification of any benchmark against which the performance of the financial instruments in the client portfolio will be compared;
- d*) the types of financial instruments that may be included in the client portfolio and types of transactions that may be carried out in such instruments, including any limits;
- e*) the management objectives, the level of risk to be reflected in the portfolio manager's exercise of discretion, and any specific constraints in connection with the portfolio manager's exercise of that discretion.

5.) The information that investment firms are required, under Section 41(1)*b*) of the IFCD Act, to provide relating to the policies of the investment firm governing operations and activities to retail clients or potential retail clients after they are bound by any agreement shall include:

- a*) the nature, frequency and timing of the reports on the performance of investment service activities or the provision of ancillary services by the investment firm to the client;
- b*) if the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which is available to the clients;
- c*) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm in accordance with Section 110(1) of the IFCD Act; and
- d*) details concerning the firm's execution policy referred to in Section 63(1)*a*)–*c*) of the IFCD Act relating to the execution of client orders under the general provisions set out in Section 63 of the IFCD Act.

6.) Investment firms are required to provide further details of the conflicts of interest policy referred to in Paragraph *c*) of Subsection (5) to retail clients or potential retail clients after they are bound by any agreement at any time that the client requests it.

7.) In connection with the management of financial instruments and funds held for or belonging to a client according to Section 41(1)*c*) of the IFCD Act:

- a*) the investment firm shall inform the retail client where the financial instruments or funds of that client may be held by a third party on behalf of the investment firm of the responsibility of the investment firm under the applicable national law for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party;
- b*) where financial instruments of the retail client may, if permitted by the national law of the investment firm or the third party acting on behalf of the investment firm, be held in an pool account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks;
- c*) the investment firm shall inform the retail client where it is not possible under national law or under the legal system of the country where the third party is established for client financial instruments held with a third

party to be separately identifiable from the proprietary financial instruments of that third party or of the investment firm and shall provide a prominent warning of the resulting risks;

d) the investment firm shall inform the client where accounts that contain financial instruments or funds belonging to that client are or will be subject to the law of a jurisdiction applicable to the contract between the investment firm and the client and shall indicate that the rights of the client relating to those financial instruments or funds may differ accordingly;

e) the investment firm shall inform the client about the existence and the terms of any security interest or lien which the firm has or may have over the client's financial instruments or funds, or any right of set-off it holds in relation to those instruments or funds, or – where applicable – it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or funds;

f) the investment firm, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a retail client, or before otherwise using such financial instruments for its own account or the account of another client, shall in good time before the use of those instruments provide the retail client with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

Investment firms shall provide the information prescribed in writing, some other form of durable medium or by means of a website specified by the investment firm.

Investment firms are required to notify their clients in good time about any material change to the information provided relating to a transaction or financial instrument. That notification shall be given in a manner in which the original information was given, or in durable medium if the information to which it relates is given in a durable medium.

(Section 43 of the IFCD Act).

#### *Obligation to obtain prior information*

Any investment firm that is engaged in providing investment advice or portfolio management services shall, to the extent required for such activities under Section 44(2) of the IFCD Act prior to the signature of the contract or – in the case of a framework agreement – before the execution of orders:

a) obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the financial instrument or transaction, his risk profile to determine whether it is appropriate to enable the client to make informed investment decisions; and

b) obtain the necessary information regarding the client's or potential client's financial situation and his investment objectives, so as to enable the firm to recommend to the client or potential client the transactions and financial instruments that are suitable for him.

Having in possession the information obtained according to the above ("fitness test"), the investment firm providing investment advice or portfolio management services to the client shall assess as to whether:

a) the specific type of service recommended is suitable for the client's or potential client's investment objectives;

b) the degree of risk related to the specific type of service recommended, even though it meets the investment objectives of the client or the potential client in question, is such that the client is able financially to bear it; and

c) in terms of the nature of the service recommended and risk assessment, the client or potential client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

As regards the investment objectives referred to in Paragraph a) of the Subsection above, the investment firm shall, as a minimum, obtain information:

a) on the length of time for which the client or potential client wishes to hold the investment;

b) the client's or potential client's preferences regarding risk taking, his risk profile; and

c) the purposes of the investment.

In the context of the fitness test, the investment firm shall have authority to request the client or potential client:

a) to provide a written statement of his financial situation;

b) documentary evidence to support the statement mentioned in Paragraph a); or

c) to disclose any relationship with other investment service providers or commodity dealers.  
(Section 44 of the IFCD Act).

*Reporting obligations in respect of execution of orders*

Investment firms shall, where they have carried out an order within the framework of investment service activities, other than for portfolio management, on behalf of a client, take the following action in respect of that order:

a) the investment firm must promptly provide the client, in writing or in a durable medium, with the essential information concerning the execution of that order;

b) in the case of a retail client, the investment firm must send the client a notice in writing or in a durable medium confirming execution of the order as soon as possible and no later than the first trading day following execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

(Section 67(1) of the IFCD Act).

Investment firms, which provide the service of portfolio management to clients within the framework of investment service activities, are required to provide each such client with a periodic statement prepared at least at six-month intervals – with the exceptions set out in Section 68(2) and (6) of the IFCD Act – in writing or in a durable medium.

(Section 68(1) of the IFCD Act).

Investment firms which carry out the service of *portfolio management* may guarantee to protect the capital invested (*capital guarantee*) and may undertake to guarantee the earnings (*yield guarantee*), where the yield guarantee incorporates a guarantee to preserve the capital invested. The capital and yield guarantee offered by investment firms shall be accompanied by a bank guarantee.

Investment firms which carry out the service of *portfolio management* may pledge to preserve the capital invested (*capital protection*) and make a pledge for earnings (*yield protection*), where the promise of yield incorporates a pledge to preserve the capital invested. Investment firms shall have an adequate investment policy in place concerning the financial instruments held to secure earnings to support the pledge to preserve the capital invested and a pledge for earnings.

Investment firms which carry out the service of portfolio management may not conduct any transactions financed from the client portfolio relating to securities which are not traded on a regulated market or on multilateral trading facilities with any person or body in which the investment firm holds a qualifying interest or that is holding a qualifying interest in the investment firm.

(Section 71 of the IFCD Act).

A securities account contract is to stipulate the securities intermediary's commitment to keep the account holder informed concerning all transactions to and from the account, as well as on the balance of the account. The securities intermediary shall record all transactions to and from a securities account in a statement and shall send this confirmation to the account holder as prescribed in the standard service agreement. The securities intermediary shall supply an account statement indicating the transactions in the securities account whenever one is requested by the account holder. (Sections 140 and 142 of the ACM).

When securities are lent under a framework contract, the investment service provider participating in the transaction shall notify the owner of the securities that his securities have been transferred under lending arrangements, indicating the quantity and the duration. Any investment service provider who fails to abide by the restrictions stipulated by the owner of the securities in question (the lender in fact), shall be subject to unlimited liability for damages caused by such negligence. (Section 170(3) of the ACM).

*Unified securities yield indicator*

In the case of debt securities and – as specified in Section 8(4) of Government Decree No. 82/2010. (III. 25.) – investment units, if the interest or the yield on the paper has been established by the issuer for the whole of the remaining maturity period, the investment service provider, the credit institution, the investment fund

manager, as well as the organisation that is authorised by law to offer its self-issued securities without engaging a dealer in debt securities, shall calculate and disclose – as specified in Section 9 of Government Decree No. 82/2010. (III. 25.) – the unified securities yield indicator (Hungarian acronym: **EHM**). (Section 8(1) of Government Decree No. 82/2010. (III. 25.)).

*Publication of the yields on securities*

Investment firms, credit institutions and investment fund management companies in cases specified in Section 8(4) of Government Decree No. 82/2010 (III. 25.) as well as organisations authorised by law to offer their self-issued securities without engaging a dealer in debt securities shall place in the client reception room:

- a) the concrete formula for the calculation of securities yield;
- b) the dates of interest and yield payment;
- c) the percentage value of the unified securities yield indicator to be indicated with the accuracy of two decimals;
- d) all facts, information and conditions that have an effect the amount paid on the securities.

(2) If interests, actual yields or any charges relating to transactions are given in an offer or commercial communication relating to securities transactions, immediately after that the value of the unified securities yield indicator (USYI) must also be indicated – along with the abbreviation, with an accuracy of two decimal places – in a display equivalent in size and format, or it must be presented in an easy-to-understand wording. (Section 9 of Government Decree No. 82/2010. (III. 25.)).

*As regards the public offering and trading in the domestic territory of collective investment instruments issued by foreign issuers*, foreign investment funds and other collective investment organisations shall comply with the *obligation to provide information*, including the requirements relating to the content structure and regular publication of the public-offer prospectus.

The condition for the marketing of open-ended investment units is for the investment fund manager to publish, prior to the subscription procedure, the operating regulations specified in Chapter I of Schedule 3 the CI Act, a prospectus compiled in accordance with the content defined in Schedule 5, the Key Investor Information defined in Section 130 of the CI Act, and the public announcement defined in Section 104 of the CI Act, as approved by the MNB. The subscription of the investment unit shall be deemed null and void if the investment unit was publicly marketed, save for the contents of Section 105(1) of the CI Act, in the absence of a prospectus, operating regulations, Key Investor Information or public announcement approved by the MNB. Selection of investors by drawing among investors having subscribed investment units in the marketing process is prohibited, as well as the publication of any information to that effect in the marketing documents and in the investment fund's commercial communication.

Prior to the marketing of publicly offered open-ended investment units, a public announcement shall be displayed including the following details:

- a) the number and date of the supervisory authorisation for the publication of the relating prospectus;
- b) description of the investment units offered and the name of the issuer investment fund;
- c) the quantity of investment units offered, their face value (number) and selling price or the applied pricing method;
- d) the approved duration of the marketing procedure and the locations where the investment units can be subscribed;
- e) the method of offering and the terms of payment;
- f) information as to where the prospectus is published or circulated, and the location, date and method of access.

The subscription procedure is not mandatory for the marketing of a new investment unit series of an already registered open-ended investment fund. (Sections 103–105 of the CI Act).

The investment fund manager shall regularly inform the public in respect of the financial standing, income situation and operational details of the collective investment fund managed by it.

The investment fund manager shall discharge its obligation to provide regular information in respect of the close-ended collective investment funds managed by it in accordance with Chapter V of the CMA.

In respect of open-ended collective investment funds, the investment fund manager shall discharge its obligation to provide regular information in the form of:

- a) an annual report on each closed fiscal year;
- b) a semi-annual report pertaining to the first six months of the fiscal year;
- c) a monthly portfolio report

Annual and semi-annual reports and monthly portfolio reports shall be disclosed by the following dates calculated from the last day of the review period:

- a) annual reports: within 4 months;
- b) semi-annual reports: within 2 months;
- c) monthly portfolio reports: by the 10th working day of the following month; and

action shall be taken to ensure that annual and semi-annual reports are publicly available for at least five years.

The annual report of open-ended collective investment funds shall include the profit and loss statement of the investment fund, a report outlining the activities performed in the specific period, any other details specified in Schedule 6 to the CI Act and, in case of real estate funds, in Schedule 7 to the CI Act, and any other important information which enables investors to formulate an informed opinion on developments in the activities of the investment fund and the fund's results.

The semi-annual report of the publicly available open-ended investment fund shall contain the data defined in Chapters I–IV of Schedule 6 to the CI Act and, in case of real estate funds, those defined in Sections 2 and 3 of Schedule 7. If the investment fund pays interim yields, the balance sheet shall include after-tax half-yearly profits and the interim yields paid or offered.

The monthly portfolio report includes, based on the last net asset value of the month:

- a) description of the portfolio in accordance with the investment objectives and main limit categories stated in the investment policy (main asset types, geographic diversification, currency distribution) or, if no such limits are stated in the investment policy, broken down by main asset type (shares, bonds, investment units, deposits, other instruments);
- b) the level of net consolidated exposure (leverage) of the investment instruments, including derivative transactions;
- c) a list of instruments (issuers) with a share of more than 10 per cent in the portfolio;
- d) the consolidated net asset value of the fund and NAT per unit.

Investors shall be provided with regular information in the manner defined in the prospectus, the fund's operating regulations and the Key Investor Information and, upon request, the fund shall forward a copy of these documents to investors free of charge. Parallel to providing information to investors, the fund shall also forward the information to the MNB and, upon request, to the supervisory authority of the Member State in which the investment fund manager registered.  
(Sections 131–135 of the CI Act).

In case of the public offering of an investment unit, in addition to the contents specified in Schedule 5 to the CI Act, the prospectus shall include all information required for investors to take informed decisions on the investment opportunity offered and the risks involved. The prospectus shall contain a clear and easily understandable explanation of the risk factors surrounding the investment fund.

The prospectus shall indicate all asset categories in which the investment fund can make investments. If the investment fund is authorised to apply derivative transactions, this fact shall be stated specifically.

When derivative transactions are applied, the prospectus shall indicate whether transactions in derivative instruments are authorised for hedging purposes or for the implementation of investment objectives, and the potential impact of the use of derivative transactions on the risk factors.

Where an investment fund does not invest fundamentally in the asset categories of negotiable instruments or financial instruments, or replicates a specific index, its prospectus and commercial communication shall include a prominent statement drawing attention to that fact.

Where the net asset value of an investment fund is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and commercial communication shall include a prominent statement drawing attention to that characteristic.

The prospectus shall contain allocation information for the event of reaching the issue limit, the closing date of the allocation procedure and method of notification concerning the results of the allocation.

The prospectus shall be made continuously available for investors in a durable medium or any other means of publication used by the investment fund, and a printed copy of the prospectus shall be also provided upon request.

The prospectus shall remain valid until the termination of the investment fund.

(Section 129 of the CI Act).

In the context of extraordinary disclosure of information, in relation to the open-ended investment funds they manage, investment fund managers shall post on their website, make available in printed form at the dealer offering the fund's investment units and simultaneously submit to the MNB the following information:

a) announcements concerning transformation and merger, within thirty days prior to the effective date of the transformation or merger;

b) any modification to the operating regulations that may imply a change in investment regulations, within thirty days prior to the effective date of the change to which it pertains;

c) any modification to the operating regulations that may imply a reduction of a fixed maturity, within thirty days prior to the effective date of the change to which it pertains;

d) any modification of the operating regulations which may result in a detrimental change for investors in the redemption costs of the investment units or entail an increase in the redemption period, within thirty days prior to the effective date of the change;

e) any modification of the operating regulations that would impose a restriction on the redemption option of investment units – including the intermittence or suspension of their trading –, within at least thirty days prior to the effective date of the change, allowing investors to redeem their investment units before the change takes effect;

f) any other modifications to the fund's operating regulations on or before the effective date;

g) if the fund management company's license is revoked, within two working days of the entry into force of the resolution on the revocation of the license;

h) when management of the investment fund is transferred, within fifteen days before it takes effect;

i) the date and the manner of payment of capital and dividends (if the operating regulations do not stipulate automatic payment of dividends), on or before the due date;

j) any suspension of trading of the investment units, and when trading is restored, the segregation of the illiquid portion of financial instruments and termination thereof, immediately;

k) if the fund management company is adjudicated in liquidation, within two working days of the effective date of the ruling ordering the liquidation;

l) the notice of dissolution if the investment fund is terminated, at the same time when it is sent to the MNB;

m) the net asset value of each unit (except when dividends are paid) as compared to the previous net asset value, and, if a significant (more than twenty per cent) drop occurs within three days if evaluated daily, an explanation for such a decline, within two working days from the time of occurrence;

n) any change in the location of publication employed in compliance with the obligation of publication, within no later than 10 days preceding the effective date of the change;

o) any change in the list of points of sale, on or before the business day immediately preceding the effective date of the change;

p) any change in the list of agents, on or before the working day immediately preceding the effective date of the change, or within two working days following the effective date of the change if the fund manager is informed of the reduction of the list subsequently;

q) any changes in key investor information, where applicable, at the same time when investors are informed of the change;

r) any deviation from the terms and conditions specified in the license granted by the MNB or the approved operating regulations, within two days of the deviation.

Whenever warranted, the MNB shall be entitled to determine the deadline of disclosure obligations on an ad hoc basis, in consideration of the investors' interests.

If, after disclosure, the change does not take effect within sixty days of receipt of the MNB's permission, the change may only enter into force after a repeated authorisation procedure.

(Section 139 of the CI Act).

*Method of discharging the disclosure obligation:*

Unless otherwise provided for by the relevant statutory regulation, the investment fund manager shall discharge the disclosure obligations pertaining to itself and to the investment fund under the CI Act

- a) on the website of the investment fund manager and the affected investment fund, and
- b) if the MNB provides such a service for the purposes of disclosure under the CI Act, by publishing the information – with the exception of net asset value data – in the officially designated information storage system.

Custodians and distributors shall discharge their disclosure obligations under the CI Act on their own websites or, if the MNB provides such a service for the purposes of disclosure under the CI Act, by publishing the information in the officially designated information storage system.

(Section 141 of the CI Act).

The investment fund manager or its appointed custodian shall publish the net asset value of each investment unit of a collective investment fund managed by it according to the specifications of its operating regulations, for each day pertaining to which it was evaluated, within two working days of the evaluation.

The investment fund manager or its appointed custodian shall make available the net asset value figure recorded for a previous period for each investment unit of a collective investment fund managed by it. If an investment fund has been operating for more than five years, it will suffice to make available the net asset value per investment unit for the previous five years.

At the investor's request, the investment fund manager shall provide information in respect of quantitative restrictions imposed on the risk management of the UCITS, the selected methods, as well as developments in the risks and yields of asset categories.

All commercial communication to investors shall be fair, clear and not misleading, and shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information. The commercial communication shall indicate that a prospectus exists and that the key investor information relating to the marketing and distribution of investment units is available. It shall specify where the prospectus and such commercial communication may be obtained by investors, and in which language they may obtain them in the case of collective investment trusts established in other EEA Member States.

The MNB may ban the publication of a commercial communication if it contains any information that is in contrast with the draft version of the prospectus submitted and approved for publication, as well as any information that is misleading, or that falls within the scope of Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices (UBCCP Act).

The operating regulations and prospectuses of the collective investment funds managed by the investment fund manager may also be prepared as consolidated operating regulations and consolidated prospectuses by the proper application of the contents specified in Chapter I of Schedule 3 to the CI Act and in Schedule 5 to the CI Act. In this case, the mandatory contents of the operating regulations and the prospectus that are identical for more or all investment funds shall be incorporated into the document only once, referring, as appropriate, to more or all investment funds, while the parts of the operating regulations and the prospectus which pertain to individual funds, shall only contain the features specifically characterising the given fund.

(Sections 136–138 of the CI Act).

Where a UCITS authorised in another EEA Member State markets or distributes its collective investment instruments in Hungary, such UCITS must comply with the provisions of its home Member State, with the proviso that it shall provide to investors within the territory of Hungary all information and documents which it is required to provide to investors in the UCITS home Member State. Key investor information shall be made available in Hungarian; other information and documents shall be provided, at the choice of the UCITS, in Hungarian or translated into the language approved by the MNB, or into a language customary in the sphere of international finance. Key investor information shall be provided at the investors' request at the time of conclusion of the contract free of charge and in writing. (Section 119(1) of the CI Act).

Members of the Fund shall be required to provide investors with readily intelligible information in Hungarian concerning the extent of protection offered by the Investor Protection Fund and the conditions of settlement.

(Section 214(3) of the ACM).

Contract terms which have not been individually negotiated shall become part of a contract only if they have previously been made available to the other party for perusal before the conclusion of the contract, and if the other party has accepted those terms.  
(Article 6:78(1) of the Civil Code).

The other party shall be explicitly informed of any standard contract terms that differs substantially from the relevant legislation and from usual contractual practice, except if they are in line with any practice the parties have established between themselves. The other party shall be explicitly informed of any standard contract terms that differs substantially from any stipulations previously applied by the same parties.  
(Article 6:78(2) of the Civil Code).

### **2.2.3. ENFORCEMENT OF CONSUMER CLAIMS AND RIGHTS**

The special professional forum of money and capital market disputes is the *Money and Capital Markets Arbitration Tribunal*, which may be jointly established and operated by the trade organisations of exchange markets, credit institutions and investment enterprises.

The Arbitration Tribunal shall have exclusive jurisdiction in any disputes and proceed in all cases if the parties concerned have stipulated to resort to arbitration in an arbitration agreement and if they are able to freely dispose over the subject of the proceeding. Its consumer protection role is limited to the costliness of its procedure and the operations of financial market service providers. (Section 376 of the ACM).

### **2.2.4. RULES OF ADVERTISEMENT**

Any information conveyed in advertising or by some other means – other than a prospectus, abridged prospectus, a public announcement or the information document (commercial communication) defined in Section 21(6) of the CMA – relating to an offer to the public of securities published by the issuer, the offeror, an investment firm or credit institution functioning as a dealer or underwriting subscription guarantees, or by the person requesting admission of the securities to trading on a regulated market for the information of investors, shall be considered as advertisement.

The information contained in the commercial communication must be consistent with the information contained in the prospectus and the information document specified in Section 21(6) of the CMA.

Before the conclusion of the marketing procedure and the commencement of trading in the regulated market, the draft commercial communication shall be submitted to the MNB at the same time when it is made available to the public. The MNB may ban the publication of a commercial communication if it contains any information that is in contrast with the draft version of the prospectus submitted and approved for publication, as well as any information that is misleading, or that falls within the scope of the UBCCP Act.  
(Section 35 of the ACM).

Any corporation that is engaged in activities governed by the ACM must include its license number and exchange membership in all business correspondence, documents and advertisements published in a written form (printed or electronic format). (Section 364 of the ACM).

It is forbidden to convey any information relating to investor protection or to the Fund by way of advertisement for the purpose of soliciting more investments. (Section 214 of the ACM).

If interests, actual yields or any charges relating to transactions are given in an offer or commercial communication relating to securities transactions, immediately after that the value of the unified securities yield indicator (USYI) must also be indicated – along with the abbreviation, with an accuracy of two decimal places – in a display equivalent in size and format, or it must be presented in an easy-to-understand wording.  
(Section 9(2) of Government Decree No. 82/2010 (III. 25.)).

### **2.2.5. CONFIDENTIALITY AND DATA PROTECTION**



*Securities secret:* all data and information that is at the disposal of an investment firm, an operator of multilateral trading facilities or a commodity dealer concerning specific clients relating to their personal information, financial standing, business operations and investments, ownership and business relations, and their contracts and agreements with any investment firm or commodity dealer, and to the balance and money movements on their accounts.

(Section 4, Point 27 of the IFCD Act).

All data and information that are at the disposal of an investment fund manager, private equity fund manager, exchange, clearing house, central securities depository or a central counterparty concerning specific clients relating to their personal information, financial standing, business operations and investments, ownership and business relations, and their contracts and agreements with any investment fund manager, private equity fund manager, exchange, clearing house, central securities depository and central counterparty and to the balance and money movements on their accounts shall be construed as securities secrets.

For the purposes of legal provisions pertaining to securities, any person who receives services from an investment fund manager, private equity fund manager, an exchange, a clearing house, a central securities depository or central counterparty providing clearing or settlement services shall be considered a client. (Section 369 of the ACM).

Investment firms and commodity dealers and the executive officers and employees of investment firms and commodity dealers, and any other person affected shall keep confidential any securities secrets made known to them in any way without any limitation in time.

Investment firms and commodity dealers may disclose securities secrets to third parties, upon notifying the client affected, only if:

- a) so requested by the client to whom it pertains, or his legitimate representative in an authentic instrument or in a private document with full probative force expressly indicating the particular data, which are considered securities 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 investment firm or the commodity dealer;
- b) the regulations contained in Section 118(3)–(4) and (7) of the IFCD Act provide an exemption from the requirement of confidentiality concerning securities secrets; or
- c) deemed necessary in light of the interests of the investment service provider or commodity dealer for selling its receivables due from the client or for the enforcement of its outstanding receivables.

(Section 118(1)–(2) of the IFCD Act).

Any person holding any business or securities secrets shall be subject to the requirement of confidentiality indefinitely, unless otherwise prescribed by law. All facts, information, solutions or data classified as business or securities secrets may not be disclosed to any third person, other those authorised under the ACM, without the consent of the client to whom it pertains, and may not be used for any purposes other than those authorised under the ACM.

Any person who is in possession of business secrets or securities secrets may not use them to acquire any advantage, either for himself or for any third party, whether directly or indirectly, or to cause any injury to an investment fund manager, private equity fund manager, exchange, clearing house, central securities depository or central counterparty, or to their clients. (Section 371 of the ACM).

#### **2.2.6. PROTECTION OF CUSTOMER CLAIMS**

Investment firms must use the financial instruments and funds held for or belonging to their clients for the purposes as instructed by the clients. Investment firms may not use the financial instruments and funds they manage and those held for or belonging to clients as their own in any way or form, and shall provide adequate facilities to ensure that their clients have access to their financial instruments and funds at any given time.

(Section 57(1)–(2) of the IFCD Act).

With the exception set out in Section 58(2) of the IFCD Act, investment firms may not use financial instruments held for or belonging to a client.

An investment firm may be allowed to use the financial instruments of a client if having in possession of the client's prior written consent for use of the financial instruments, covering also the specific purpose of use.

A investment firm may be allowed to enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in a pool account maintained by a third party, or otherwise use financial instruments held in such an account for their own account or for the account of another client unless, in addition to the conditions set out in Section 58(2) of the IFCD Act, if:

- a) each client whose financial instruments are held together in a pool account has given prior express consent in accordance with Section 58(2) of the IFCD Act; or
- b) the investment firm has in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with Section 58(2) of the IFCD Act are so used.

The records of the investment firm shall include:

- a) details of the client on whose instructions the use of the financial instruments has been effected; and
- b) the number of financial instruments used belonging to each client who has given his consent; so as to enable the accurate assessment and correct allocation of any loss.

(Section 58 of the IFCD Act).

Investment firms are required, on receiving any client funds under an agreement within the framework of investment service activities or ancillary services or upon the execution of a client order, promptly to place those funds – held for or belonging to the client – into one or more accounts opened with any of the following:

- a) a central bank;
- b) a credit institution;
- c) a credit institution authorised in a third country to engage in the activities of credit institutions; or
- d) a qualifying money market fund.

(Section 60(1) of the IFCD Act).

Client accounts and securities accounts shall contain separate columns for receivables and liabilities arising in connection with spot transactions, options and forward transactions. (Section 209(4) of the ACM).

#### **2.2.7. RULES PERTAINING TO CERTAIN CONTRACTS**

*Securities lending contracts* may only be concluded for a fixed term.

Investment service providers shall be able to lend securities only if they have a securities lending and/or borrowing framework contract with the owners of such securities, or securities lending contracts.

Securities lending and/or borrowing framework contracts and securities lending contracts cannot be incorporated into any other contract made between the owner and the borrower of securities.

Securities lending and/or borrowing framework contracts and securities lending contracts must contain:

- a) the description, ISIN code and series of the securities lent or proposed to be lent;
- b) the quantity of the securities lent or proposed to be lent;
- c) with respect to framework contracts, the period to which the securities lending contract pertains;
- d) the duration (term) of lending;
- e) lending charges;
- f) a clause stipulating that the lender shall not be entitled to exercise the right attaching to the securities in question under the life of the contract; and
- g) in case of shares, an agreement of the parties in respect of exercising the right to vote.

(Sections 168 and 170 of the ACM).

Although the rules and principles for the assessment, documentation and disclosure of earnings achieved in a portfolio managed by a body providing portfolio management services (Schedule 3 to the IFCD Act) should be included in the rules pertaining to the provision of information to clients, their specificity lies in the fact that

the activities of such bodies are related to a single invested asset portfolio rather than specific investment instruments.

#### **2.2.8. PROVISIONS ON INTERMEDIARIES**

Investment firms and commodity dealers may carry out investment service activities or provide commodity exchange services through intermediaries. The intermediaries may be *tied agents* or *investment firms*.

Investment firms and commodity dealers shall bear full responsibility for the activities of their intermediaries and for compliance with the provisions of the IFCD Act.

Investment firms may enter into an agreement with a tied agent

a) who has a registered office, permanent or temporary residence in the territory of Hungary, and who is listed in the MNB's register described in Section 159(2) of the IFCD Act; or

b) who has a registered office, permanent or temporary residence in another EEA Member State, who is authorised by the competent supervisory authority of the country where established for the activities in question, or who is registered by the MNB under Section 159(3) of the IFCD Act.

Investment firms and commodity dealers shall notify the MNB upon entering into an agreement for the mediation of investment service activities, ancillary services or commodity exchange services – if it involves a tied agent – within five working days following the signature of the agreement.

Subject to the exception set out in Section 114(2) of the IFCD Act, activities for the intermediation of investment service activities, ancillary services or commodity exchange services may be carried out by a tied agent, acting as such, who is listed in the MNB's register and who is able to meet the conditions set out in Sections 111–116 of the IFCD Act.

Intermediaries established in other EEA Member States may engage in operations in the territory of Hungary in the form of cross-border services, or may set up a branch if authorised by the competent supervisory authority of the country where established for the activities in question, or if registered by the MNB under Section 159(3) of the IFCD Act.

The MNB shall register – upon request – any tied agent who is able to meet the conditions laid down in the IFCD Act and in specific other legislation adopted by authorisation of the IFCD Act. (Section 111–114 of the IFCD Act).

### **2.3. INSURANCE**

#### **2.3.1. CONTRACT CONDITIONS**

One special document in the insurance business is the *product plan*. The product plan must be prepared for each product to be marketed and must include contract conditions, premium calculation and all additional data, i.e. the total contracted value calculated for three years, budget utilisation, expected premium revenues and payments. This document is not a public document. (Sections 132-133 of the IA and Schedule No. 3 to the IA).

For consumers, the most important element is the stipulation of *minimum contents of insurance policies*. All insurance contracts must contain the following:

- a) the definition of the insured peril and any exclusions;
- b) the procedure and deadline for reporting losses;
- c) the rules pertaining to premium payment, the contractual rights and obligations of the insured party, the contracting party and the beneficiary, the manner and time of performance, and the consequences for failure to perform such rights and obligations;
- d) a description of the services provided by the insurance company; the manner, time and special conditions of performance; and the conditions under which the insurance company is exempt from liability or its services are limited;
- e) the rules for inflation escalation, where applicable;

f) a description of the rights of the insured, the contracting party, and the beneficiary and the obligations of the insurance company that apply when the contract is terminated, including information on the provisions contained in Section 122 of the IA concerning the termination of a contract;

g) rules for the capitalisation of regular payments of benefits in connection with health, accident and liability insurance, if applicable;

h) the term of limitation on claims;

i) the detailed rules for the provision of residual rights (thus, in particular, the redemption value), and/or a life assurance policy loan, if it is available in the case of life assurance policies;

j) method of daily access to information concerning the placement and value of unit-linked life assurance policies;

k) theoretical and practical information on the handling of personal data if the contracting party or the policyholder is a natural person or, in part or in full, a group entity consisting of natural persons;

l) address of the insurance company;

m) procedure for crediting the surplus yield,.

n) in case of unit-linked life assurance policies, detailed rules pertaining to the suspension and separation of managed funds as specified in accordance with Section 127 of the IA.

o) in case of life assurance, accident and health (medical) insurance products, the option of changing the technical interest rate during the term of the insurance policy, with the proviso that the rate may only be changed if the highest permissible level of the technical interest rate set out in the legislation on the highest permissible technical interest rate is modified.

(Section 121-122 of the IA).

### **2.3.2. INFORMATION**

If the contracting party is a consumer, the contract shall be executed also if the insurance company does not respond to the offer within fifteen days of the time of receipt thereof, or sixty days if a health risk assessment is required for the evaluation of the offer, provided that the offer was made on the insurance company's own standard offer sheet for the type of policy in question, upon receipt of the relevant statutory information, containing the tariffs applicable.

In the case provided for above, the contract shall be executed – under the conditions contained in the offer – with retroactive effect to the date on which the offer is conveyed to the insurance company on the day following the expiry of the risk assessment period.

If an insured event occurs during the risk assessment period, the insurance company shall be entitled to refuse the offer only if the offer sheet contains an express warning to that effect, and it is instantly clear from the nature of the insurance cover requested or from other circumstances of risk coverage that the individual risk assessment is necessary for accepting the offer.

If a contract that is concluded without the explicit statement of the insurer deviates in material circumstances from the insurance company's standard contract terms, the insurance company shall be entitled to make a proposal within fifteen days from the date of conclusion of the contract to have the contract amended in accordance with the standard contract terms. If the contracting party does not accept the proposal or does not respond to it within fifteen days, the insurance company shall be entitled to terminate the contract in writing with thirty days' notice within fifteen days of receiving the refusal or the proposal for amendment. (Section 6:444 of the Civil Code).

If the contract is not executed in writing, the insurance company shall make out a document so as to verify insurance cover.

If the document verifying insurance cover differs from the contracting party's offer and if this difference is not contested by the contracting party without delay upon receipt of the document, the contract shall take effect in accordance with the contents of that document. This provision applies to significant discrepancies if the insurance company expressly points out such discrepancies to the contracting party in writing at the time the document verifying insurance cover is delivered. In the absence of a warning notice, the contract shall be executed in accordance with the contents of the offer.

The offeror shall be bound by the offer for a period of fifteen days from the time when it was made, or for sixty days if a health risks assessment is required for the evaluation of the offer.

(Section 6:443 of the Civil Code).

The written information provided with insurance contracts shall contain at least the following:

1. the period and duration of coverage;
2. starting date of coverage;
3. description of the insured event;
4. terms of payment of premium and the manner by which to amend the premium, if allowed for the basic coverage and for supplementary risks; and information as to whether insurance brokers are entitled – and if yes, under what conditions – to receive insurance premium from the client and participate in paying the amount due from the insurance company to the client;
5. description of the insurance company's services and the time of performance, the options available;
6. termination clauses;
7. conditions for cancellation;
8. conditions under which the insurance company is released from liability, exclusions;
9. mode and rate of inflation escalation;
10. extent and manner of refunding surplus yield;
11. the information referred to in Section 159 (1) of the IA, facilities for lodging complaints with the MNB or with the arbitration bodies, according to the nature of the complaint, and information about the judicial process;
12. in respect of the branch offices of third-country insurance companies, in addition to what is laid down in this Schedule, the country where legal disputes are settled, description of the material and procedural provisions and the language of such proceedings;
13. list of the organisations to which the insurance company is entitled to disclose client data pursuant to Sections 134-142 and Section 146-151 of the IA;
14. an indication of the governing law under which the contract is concluded; and as regards the governing law in respect of non-life insurance contracts to be concluded with natural persons, where it can be decided by the parties, an indication of the law recommended by the insurance company as the governing law;
15. for mutual associations, description of the cases serving grounds for calling up additional contributions, and/or the possibility of any cutback in services;
16. for mutual associations covering risks in connection with compulsory motor third party liability insurance, description of the cases serving as grounds for calling up additional contributions;
17. tax laws relating to life assurance contracts;
18. for life assurance contracts, the amount to be retained by the insurance company from the premium paid in by the policyholder if the contract is cancelled by the policyholder within thirty days;
19. whether the insurance company offers any capital or yield guarantees on life assurance contracts.
20. in case of unit-linked life assurance policies, detailed rules pertaining to the suspension and separation of managed funds as defined in Section 127 of the IA.

Minimum contents of the product information of life assurance policies:

1. Brief description of the reasons, as determined by an interview, for offering the type of policy for the particular
  - a) services,
  - b) term, and
  - c) amount.
2. An indication in the manner illustrated under Point 3 of the following applicable for the duration of the proposed life assurance policy – meaning the end of the term fixed for insurance policies under classes I and II of the life assurance branch or for at least 20 years if the term is not specified, or the end of the term fixed for insurance policies under class III of the life assurance branch or a maximum of five years – provided the policy features the option of surrender or premium – free reduction, for each year on the first day of the year insured:
  - a) cash surrender value,
  - b) discount value.
3. The following provisions shall be observed when determining the cash surrender value and the discount value:

3.1. The contracting party shall be advised that the data shown in the manner expressed below are provided for information purposes only as they are, to some extent, based on assumptions.

3.2. In the case of unit-linked life assurance policies, the client shall be advised that the value of the underlying units may show a gain or loss. Furthermore, the client must also be notified as to who is to bear the risks from changes in the value of these units determined in accordance with the provisions of the insurance contract pertaining to capital guarantees or capital and yield guarantees.

3.3. Where the premium is to be regular, at the beginning of the year the status before the premium is paid shall be taken into consideration.

3.4. The contract shall be concluded under the assumption that the key figures of the policy (premium, sum insured, various deductions etc.) remain constant during the term of the contract unless otherwise prescribed in the contract.

3.5. In addition to what is contained in Point 3.4, unit-linked life assurance policies shall be contracted under the assumption that the value of the underlying units remain unchanged. Where the insurance company offers capital guarantees or capital and yield guarantees, the cash surrender value shall be determined accordingly.

3.6. In the case of insurance policies under classes I and II of the life assurance branch with no technical interest rate, the provisions of Point 3.5 shall apply as appropriate.  
(Schedule No. 4 to the IA).

In the insurance sector, insurance brokers have a key consumer protection role in keeping customers appropriately informed.

Before concluding the insurance contract and upon the amendment or renewal of the contract relating to any change in the data contained in the information as provided, *insurance intermediaries* – unless otherwise provided by law – *shall disclose the following information* in the official language of the Member State of the commitment or in the language stipulated in the agreement concluded with the given client:

- a) the name of the insurance intermediary if a natural person, or the corporate name and registered office if an economic operator on whose behalf the insurance intermediary is acting, and the designation of the competent supervisory authority;
- b) the register of insurance intermediaries in which registered, including an indication as to where the register may be inspected;
- c) any qualifying interest the insurance intermediary may have in the insurance company in question;
- d) any qualifying interest the insurance company in question or the parent company of this insurer may have in the insurance intermediary;
- e) the procedure for lodging complaints and the body vested with powers to hear such complaints;
- f) the person to be held liable for any damage caused in his capacity as an insurance intermediary;
- g) whether the insurance intermediary is acting as an independent or a tied insurance intermediary;
- h) if a tied insurance intermediary the name of the insurance companies on whose behalf he is acting or authorised to act.
- i) the types of insurance products the insurance intermediary is entitled to market;
- j) whether the insurance intermediary is permitted to receive a fee or advance fee from the client during the mediation of the insurance product;
- k) whether an independent insurance intermediary is permitted to receive an amount due to the client from the insurance company and if yes, whether there are any restrictions in respect of such sums; and
- l) in case of a tied insurance intermediary the fact that the intermediary may not receive any amount due to the client from the insurance company in advance;
- m) in case of tied insurance intermediaries or multiple-insurance agents the right of representation based on the agreement concluded with the insurance company, with special regard to whether they can conclude insurance contracts on behalf of the insurance company.

The information shall be supplied to persons who will be potential policyholders, beneficiaries of insurance (re-insurance) coverage or parties to the insurance (re-insurance) contract if concluded.  
(Section 378 of the IA).

Insurers are *bound by rather extensive information obligations prior to concluding any life insurance contracts*. Before a life assurance contract is concluded – with the exception of net risk life assurance policies that contain no savings elements, which are offered by the financial institution in connection with financial services it provides, or where the sum insured is less than one million forints – the insurance company and the insurance

intermediary shall assess customer demand or shall interview the client in order to ascertain the needs and requirements of the client.

Unless otherwise provided by law, before a life assurance contract is concluded, insurance companies and insurance intermediaries must furnish the policyholder with easily intelligible, clearly written and detailed information that is verifiable and documented - written in an official language of the Member State of the commitment - about the insurance company or the insurance intermediary (name of the company and its legal form, address of its head office, name of the Member State in which the head office is located and the competent Commission there, and, where appropriate, the address of the branch office concluding the contract) and the particulars of the assurance contract. This information may also be provided in a language specified in the agreement concluded with the client and also on durable medium subject to the client's explicit prior consent. The insurance company's obligation to supply information to policyholders shall apply during the term of the contract with respect to any changes in the above-specified information apart from the particulars of tied insurance intermediaries and the data contained in Point 17 of Part A) of Schedule 4. Unless otherwise prescribed by law, the insurance intermediary referred to in Section 368 of the IA is only required to communicate information about the insurance company and the terms and conditions of the insurance contract. The type of information to be provided in connection with insurance contracts is contained in Part A) of Schedule 4.

Insurance companies and insurance intermediaries are required to supply – in connection with life assurance policies where the customer survey referred to in Section 153(1) of the IA is required – information, supported by sufficient evidence, in addition to that listed in Subsection (2) in the form of a product information guide – Part B) of Schedule 4 to the IA – containing the results of the customer survey referred to in Section 153(1) of the IA before the life assurance policy is issued.

The insurance company shall not be under the obligation referred to in Section 152(1) of the IA in connection with any insurance contract concluded by way of an independent insurance intermediary representing the client or in connection with reinsurance or for insurance contracts covering large exposures.

Where insurance services are provided through electronic commerce, insurance companies and insurance intermediaries shall be required to provide unlimited easy access for the client information through electronic channels. If the insurance company's declaration of acceptance is endorsed by a qualified certificate defined in Act XXXV of 2001 on Electronic Signatures, the insurance company shall be required to provide unlimited easy access for the client to the information specified in Section 152(1) of the IA through electronic channels.

The information provided in accordance with Section 152(1) of the IA shall be sufficient to focus attention on the conditions under which the insurance company is released from liability or entitled to limit its services, the exclusions stipulated in the insurance contract, and all other terms and conditions that differ substantially from common contractual practice, contracting regulations or any contract clause previously accepted by the parties, thus, for example, if some law other than Hungarian is stipulated as authoritative or if Hungarian courts are not vested with exclusive jurisdiction.

Unless otherwise prescribed by law, before concluding a contract, the insurance company shall obtain a statement from the client, supported by sufficient evidence, to the effect that he has received the information specified in Section 152(1) and 153. In the statement, the client shall also state any other information received in connection with the insurance policy in question prior to concluding the contract.

If the insurance company's declaration of acceptance is endorsed by a stamp, certification note or a seal, the insurance company shall post the information sheet containing the information specified in Section 152(1) of the IA at the place of contracting.

Once a life assurance contract has been concluded – other than net risk life assurance policies with no residual rights attached, supplementary insurance against disability resulting from an accident or sickness covered under the life assurance branch – the insurance company shall provide written information to the policyholder at least once a year on the service value of the life assurance policy, its current cash surrender value and the amount of any surplus yield to be refunded.

In connection with an inflation escalation clause in an insurance contract, the client is to be clearly informed concerning the components to which the inflation escalation clause pertains. The insurance company shall be required to emphasize the existence of inflation escalation clauses, including the rights of the client relative to such clauses.

As regards unit-linked life assurance policies, the insurance company must provide the contracting party with access to information on the placement of investments, to wit, the cross rate of the various investment forms used to cover the contracting party's investment, the types of each form of investment and the current value of the contracting party's investments. The form and content requirements regarding the information to be supplied to clients in connection with unit-linked life assurance policies shall be decreed by the minister.

If a medical examination of the prospective policyholder is required for the conclusion of an insurance contract – life assurance and non-life insurance alike – the insurance company must inform the client of his/her right to obtain the results of such tests and examination pursuant to the Act on Health Care.  
(Section 156 (4) of the IA).

As regards *unit-linked life assurance policies*, the insurance company must provide the contracting party with access to information on the placement of investments, to wit, the cross rate of the various investment forms used to cover the contracting party's investment, the types of each form of investment and the current value of the contracting party's investments.

Pursuant to Decree No. 33/2002 (XI. 16.) of the Minister of Finance (**MF Decree**) on the form and content of customer information provided in respect of unit-linked life insurance products, with this type of life insurance, the insurer is required to provide the contracting party with written information on the items specified below at least annually and on the same calendar day of each year, encompassing a 12-month period:

- a) actual balance of the customer's insurance contract (this balance must be itemised showing the number of investment units per asset funds and stating the purchase price of investment units as of the date when the information is provided or based on other finalised data);
  - b) in the period elapsed since the signing of the insurance contract or the issue of the last mandatory balance statement:
    - ba) insurance premiums received on the insurance contract,
    - bb) expenses related to the insurance contract,
    - bc) value of services and remaining rights used up by the contracting party under the insurance contract,
    - bd) time and ratio of reallocations between asset funds implemented on the instructions of the contracting party;
  - c) purchase price of investment units as of the date when the information is provided;
  - d) actual service value(s) and repurchase value of the insurance contract as of the date of the balance statement under this decree; value of additional returns if the contract stipulates payment of such returns.
- The insurer must not charge any extra fee for the written balance statement issued once per year. This written statement must be sent to the contracting party within 15 days of the date it is generated and this date must be shown clearly on the document.

If the insurance contract is terminated, the insurer is required to provide the customer with the aforementioned information in writing within 15 days after termination for the period elapsed between the signing of the contract or the date of the last written statement and the date of termination.

With the exception of the cases defined in Section 2(1) and (4) of the MF Decree, upon request from the contracting party submitted in writing or in any other identifiable form, the insurer is required to inform the customer in detail as described above, either in writing or electronically, within 15 days. The insurer may not charge any extra fee for this service.

Regarding insurance premiums received, the statement must show regular and ad-hoc payments separately along with the respective receipt and investment dates. All cost types and deductions chargeable to the insurance contract must be stated for the period elapsed since the signing of the contract or since the date of the last written statement, showing, in particular, the following:

- a) insurance premium received but not invested, itemised per title (registration/investment asset fund management fee, risk fee, additional insurance premiums, other);



- b) expenses charged upon converting received insurance premiums (difference between purchase and selling price) per insurance premium paid;
- c) itemised per title, sum of expenses collected by the insurer by deducting investment units (asset fund management or registration fee, additional insurance premiums, initial cost, investing expenses, cost of transactions implemented on the contracting party's request, other).

Payments made by the insurer based on the insurance contract must be shown in the statement. In particular, the following payments may belong to this category:

- a) payment due to an insurance event;
- b) full or partial repurchase, including the regular withdrawal of sums.

Besides the amounts paid, deductions due to expenses must also be shown.

Mandatory expenses not yet charged by the insurer must also be stated along with the actual value of the bond loan taken out by the contracting party (the latter as a debt chargeable to the contracting party's account).

In addition to the elements described above, the written information provided annually must also include the following data:

- a) name of asset funds selected by the contracting party which actually relate to the contract;
- b) specification of the medium where the regular, mandatory information to customers specified in Section 5(1) of the MF Decree is published;
- c) name and contact information of the contracting party's insurance broker or the description and contact information of the insurer's organisational unit where the contracting party can turn to for detailed information on his insurance contract.

On each business day, the insurer is required to publish regular information on the purchase price of investment units of unit-linked investments and on the net value of asset funds through one of the following channels:

- a) in a national daily;
- b) on the home page of the insurer, updated daily;
- c) offering a hotline service during business hours;
- d) announcements displayed on the wall at the insurer's customer service offices.

The insurer is required to publish on a monthly basis the composition of its assets found broken down by form of investment (stock, government bond, cash, other) through one of the channels cited above.

Following conclusion of the life assurance contract, the *insurance company* shall notify – and provide sufficient evidence to – the policyholder within thirty days of the operative date of the contract – in an official language of the Member State of the commitment or in another language if the policyholder so requests and if there is an agreement to that effect – that the contract has entered into existence. In the notification the insurance company shall inform the client – if the client is a natural person entering into the life assurance contract in a capacity other than self-employment or business activities – of the provisions contained in Section 122 of the IA; thus, in particular, that he is entitled to cancel the life assurance contract in writing – without having to show cause – within thirty days from the date of receipt of the notification. Within thirty days following receipt of the client's written cancellation, the insurance company shall account for any and all payments made by the client in connection with the insurance contract in question. (Section 157 of the IA).

*Independent insurance intermediaries (brokers)* shall act at all times in observation of the rules of professional conduct. Independent insurance intermediaries shall be held liable for any failure to fulfil the above-specified obligation (independent insurance intermediary misconduct), particularly for wrong or misleading advice, irregular handling of premiums and any defect or delay in forwarding statements and declarations. This liability shall apply to all persons acting in the name of the independent insurance intermediary. (Section 402 of the IA).

The activities of *insurance brokers* preparatory to the conclusion of insurance contracts shall include the analysis of other insurance contracts available on the market to the extent necessary. Prior to conclusion of the insurance contract, the insurance broker shall interview the client so as to ascertain the needs and requirements of the client, as well as the reasons underlying the advice given by the intermediary in connection with the insurance product in question. (Section 398(5) of the IA).

Compulsory motor third party liability insurance providers are subject to separate disclosure obligations, insurance companies are required, in respect of each contract, to announce on the MNB's website, in accordance with the decree of the Governor of the MNB, the tariffs to be applied from a pre-defined date (that is at least sixty days from the date of announcement); furthermore, in parallel with the announcement, they are required to post the tariffs on the home page of the Association of Hungarian Insurance Companies (**MABISZ**). In case of any discrepancies, the tariff announced on the MNB's website shall be applicable.

The insurer is required to make its insurance terms and conditions and applicable tariffs available to the public on an ongoing basis in its customer reception areas and on its home page.  
(Section 23(3)–(4) of the MTPL Act).

The MNB may, periodically request information from the branches of insurance companies established in other member States, or from insurance companies established in other Member States in connection with their activities performed in the form of cross-border services concerning the *contract terms and conditions* for the insurance policies they provide with the related documents in order to verify their compliance with laws pertaining to insurance contracts.

(Section 288 of the IA).

### **2.3.3. ENFORCEMENT OF CONSUMER CLAIMS AND RIGHTS**

The insured party shall be entitled, under a liability insurance policy, to request the insurance company to exempt him, in the manner and up to the limit specified in the policy, from paying for damages, or paying restitution, for which he is legally liable.

The policy covers procedural costs, if incurred under the insurance company's guidance or upon its prior consent. The insurance company shall be liable to advance the expenses when so requested by the insured person.

The insurance company shall be liable to cover the legal expenses, including interests, of the insured person if he is responsible for the damage, even if they exceed the amount of coverage together with the settlement payment.

The insured person shall – within a time limit stipulated in the contract – notify the insurance company in writing, under liability for any breach of the obligation of reporting, if a claim has been filed with respect to his activity specified in the contract, or if he becomes aware of any circumstance that is likely to give rise to such a claim. A time limit of at least thirty days shall be provided for the notification of an insured event.

The insurance company shall pay the amount of settlement to the injured party. The insured person shall only be entitled to request the insurance company to pay him if he settled the injured party's claim.

If the insured person disputes his liability for claims lodged against him, or the amount of his payment obligation on grounds which are manifestly unfounded, the insurance company shall pay the amount of settlement to the injured party. The additional costs arising out of said objection on unfounded grounds shall be borne by the insured person.

Unless otherwise provided for by law, the injured party shall not be entitled to lodge his claim directly to the insurance company.

This rule shall not preclude the injured party's right to bring action against the insurance company asking the court to determine whether the insured person's liability insurance coverage applied to the injured party at the time of the occurrence of the damage.

The insured person's acknowledgement and settlement of the injured party's claim, and any related composition shall be considered effective with respect to the insurance company only if the insurance company has granted prior consent or acknowledged it after the fact.

The insurance company may not allege that the insured person's acknowledgement and settlement of the injured party's claim, and any related composition has no legal force in respect of the insurance company, if the claim is manifestly well founded.

If the court has ruled against the insured person, it shall apply with respect to the insurance company if it has participated in the lawsuit, provided for the insured person's legal representation, or he has waived the above.

(Sections 6:470–6:474 of the Civil Code).

#### **2.3.4. CONFIDENTIALITY AND DATA PROTECTION**

In the insurance sector, specific data protection and secrecy rules apply which derive from the characteristic features of the insurance business. *Insurance secrets* shall comprise all of the data – other than classified data – in the possession of insurance companies, reinsurance companies, insurance intermediaries that pertain to the particulars and financial situations (or business affairs) of their clients (including claimants), and the contracts of clients with insurance companies and reinsurance companies. (Section 412. of the IA).

Unless otherwise provided by law, the owners, directors and employees of insurance companies, insurance intermediaries and all other persons having access to insurance secrets in any way or form during their activities in insurance-related matters shall be required to maintain professional confidentiality with no time limit whatsoever.

(Section 135(3) of the IA).

Pursuant to the Act on the Protection of Personal Data in the Field of Medicine, insurance companies shall be authorised to process any data pertaining to clients' health only for the reasons set out in Section 135(1) of the IA and only in possession of the express written consent of the data subject. (Section 135 (3) of the IA).

Insurance companies and insurance intermediaries shall be allowed to process the insurance secrets of clients only to the extent that they relate to the insurance contract, with its creation and registration, and to the service. Processing of such data shall take place only to the extent necessary for the conclusion, amendment and maintenance of the insurance contract and for the evaluation of claims arising from the contract or for any other purpose specified in the IA. Insurance companies and insurance intermediaries must obtain the data subject's prior consent for processing data for purposes other than what is contained above. The client shall not suffer any disadvantage if the consent is not granted, nor shall any advantage shall be given if it is granted. (Section 135 (1) (2) of the IA).

Other than the cases specified in the IA, insurance secrets may only be disclosed to third parties under the express prior consent of the client to whom they pertain. Besides the enforcement of regular public authority powers, exemptions from the requirement of confidentiality include, among others, the cases of portfolio transfer arrangement and outsourcing and, with respect to the information required for settlement and for the enforcement of compensation claims, the body operating the Compensation Fund and/or the Claims Guarantee Fund, the Information Centre, the Claims Organisation, claims adjustment representatives and the ombudsman acting within the bounds of his responsibilities. (Sections 137–138 of the IA).

Insurance companies shall be entitled to process personal data relating to any unconcluded insurance contract as long as any claim can be asserted in connection with the failure of the contract. Insurance companies and insurance intermediaries shall be required to delete all personal data relating to their current or former clients or to any unconcluded contract in connection with which the data in question is no longer required, if the data subject has not given consent, or if it is lacking the legal grounds for processing such data. (Section 143 of the IA).

For the protection of the interests of the risk group, during the performance of its statutory or contractual obligations, for the purpose of delivering services in compliance with legislation, performing its contractual obligations and preventing fraud related to insurance policies, the insurance company may turn – in accordance with Section 135(1) of the IA and in consideration of the characteristics of the insurance product – to another insurance company (responding insurer) in relation to the data managed by the responding insurer and defined in Section 149(3)–(6) of the IA, provided that the inquiring insurer has been authorised to do so in the insurance contract.

The responding insurer shall supply the data requested by the inquiring insurer via legitimate inquiry by the relevant deadline or, in the absence of such a deadline, within fifteen days of the initial inquiry.

In relation to the performance of contracts included in the classes of insurance specified in Points 1 and 2 of Part A) of Schedule 1 to the IA and in Schedule 2 to the IA, the inquiring insurer may request the following data:

- a) identification data of the contracting party, the insured and the beneficiary;
- b) health information of the insured relevant to contractual risk as at the time of data recording;
- c) data relating to previous insurance events in relation to a contract within the branch defined in this Section pertaining to the person defined in Paragraph a);
- d) data required for the assessment of risks arising in connection with the conclusion of the contract with the responding insurer; and
- e) data required for the assessment of the legal basis of the services to be provided under the contract concluded with the responding insurer.

In relation to the performance of contracts included in the classes of insurance specified in Points 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 17 and 18 of Part A) of Schedule 1 to the IA, the inquiring insurer may request the following data:

- a) identification data of the contracting party, the insured, the beneficiary and the injured party;
- b) data required for the identification of the insured property, claims or property rights;
- c) data pertaining to insurance events related to the insured property, claims, or property rights defined in Paragraph b);
- d) data required for the assessment of risks arising in connection with the conclusion of the contract with the responding insurer; and
- e) data required for the assessment of the legal basis of the services to be provided under the contract concluded with the responding insurer.

In relation to the performance of contracts included in the classes of insurance specified in Points 10, 11, 12 and 13 of Part A) of Schedule 1 to the IA, with the prior consent of the injured party, the inquiring insurer may request the following data:

- a) subject to the injured party's prior consent, the identification data of the injured party;
- b) the identification data of the policyholder, the insured person, the beneficiary, and the data referred to in Paragraphs *b)-e)* of Subsection (4);
- c) subject to the injured party's prior consent, data pertaining to the state of health at the time of recording of any insured person enforcing claims for personal injury or demanding restitution due to the infringement of personality rights relating to previous insurance events under a contract in the class of insurance specified in this Subsection;
- d) information, with all personal data removed, concerning the insurance history related to the damaged property or asset, listing previous settlements under the branch to which this (149.§ (5) Subsection pertains;
- e) subject to the injured party's prior consent, information concerning the insurance history of the persons seeking settlement for personal injury or restitution for any violation of rights relating to personality, listing previous settlements under the branch to which this (149.§ (5) Subsection pertains.

In relation to the performance of contracts included in the classes of insurance specified in Points 3 and 10 of Part A) of Schedule 1 to the IA, based on the identification data (registration plate and chassis number) of the vehicle, in case of damages falling within the classes defined in Point 10 of Schedule 1 to the IA, the inquiring insurer shall be entitled to request, even without the prior consent of the injured party, the following data:

- a) data pertaining to the insurance events occurred in relation to the specific vehicle; thus, in particular, data pertaining to the time and legal basis of the event, the damages to the vehicle and the related indemnification data, including damages to the vehicle specified by the inquiring insurer not inflicted by another vehicle;
- b) information pertaining to the facts of the claim reports filed by the insurer in respect of the given vehicle and the amount concerned.

The inquiry shall include all data required for the identification of the person, the property or property right specified in the inquiry, as well as the type of the data requested and the purpose of the data request. Neither the inquiry nor its fulfilment is considered to be a violation of insurance secrets. The inquiring insurer shall be accountable for the existence of the entitlement to inquiry.

The inquiring insurer may process the data obtained as a result of its inquiry for ninety days following receipt.

If the details obtained by the inquiring insurer as a result of its inquiry are required for the enforcement of the insurer's rightful interests, the permitted data processing period shall be extended until the conclusion of the procedure commenced in relation to the enforcement of the claim.

If the details obtained by the inquiring insurer as a result of its inquiry are required for the enforcement of the insurer's rightful interests, and the procedure in relation to the enforcement of the claim does not commence for a year following the receipt of the details, the data may be processed for a year after having been obtained.

At least once during the insurance period, the inquiring insurer shall inform the client affected by the inquiry about the inquiry, the receipt of the response and the details contained in the response.

If the client requests information about his data pursuant to the Act on Information Self-Determination and Freedom of Information and the inquiring insurer, with a view to Section 149 (8)–(10) of the IA, no longer processes the data affected by the request, it shall inform the client of this fact.

The inquiring insurer may not link the data obtained as a result of the inquiry to other data obtained or processed by it or to data not relevant to the interests of the insured party for purposes other than stated in Subsection (1).

The responding insurer shall be responsible for the accuracy and correctness of the data provided in response to the request.

In relation to the contracts included in the classes of insurance specified in Points 3, 4, 5 and 6 of Part A) of Schedule 1 to the IA – in respect of the insurance contract –, with a view to protecting the risk group and for the purposes of identifying potential fraud in connection with insurance contracts and ensuring the contractual performance of the services and their compliance with legal regulations, insurance companies may set up a common database (Database) containing the following:

- a) identification data of the contracting party;
- b) identification data of the insured property;
- c) data pertaining to prior insurance events related to the contracting party or property specified in Paragraphs a) and b); and
- d) name of the insurance company and policy particulars (number);

The insurer shall transmit the records defined above to the Database within thirty days of the origination of the record.

For the protection of the interests of the risk group, during the performance of its statutory or contractual obligations, for the purpose of delivering services in compliance with legislation and its contractual obligations and preventing fraud, the insurance company may request data from the Database.

The operator of the Database shall furnish the requesting insurer with the records requested in line with legal regulations within eight days of the request.

The insurer shall not be bound by a confidentiality obligation toward the Database and in respect of data transfers to the Database, and shall not be bound by the obligation borne by the operator of the Database to protect the insurance secret in respect of the insurer requesting the data in accordance with legal regulations.

As regards the confidentiality obligation borne by the operator of the Database pertaining to the records maintained in the Database and supplying the data requested, the rules relating to insurance secrets shall be applied as appropriate.

If the operator of the Database is unable to respond to the request properly in the lack of the data requested, it shall forward the requests addressed to him under Section 138(1)b), f), q) and r) and under Subsection (3) of the IA to the insurance companies licensed to engage in the classes of insurance affected by the request. The operator of the Database shall notify the requestor about forwarding the request immediately.

The requesting insurer may not link the data obtained as a result of the request to other data obtained or processed by it or to data not relevant to the interests of insured party or the potential insured party for purposes other than stated in Subsection (3).

The insurer forwarding the data shall be responsible for the accuracy and correctness of the data transmitted through the database.

The data specified in Section 150(1) of the IA may be processed, with the exception of the data listed in Section 150(11), for a period of five years following the registration.

After the insurance contract has been concluded, the data defined in Section 150(1) of the IA may be kept on record during the term of the contract until the limitation on claims expires. The insurer shall inform the operator of the Database of the termination of the contract and the expiration of the limitation period. The insurer requesting data from the Database may process the records thus obtained for ninety days following receipt.

If the records obtained by the requesting insurer as a result of its request are required for the enforcement of the insurer's rightful interests, the permitted data processing period shall be extended until the final conclusion of the procedure commenced in relation to the enforcement of the claim.

If the records obtained by the requesting insurer as a result of its request are required for the enforcement of the insurer's rightful interests, and the procedure in relation to the enforcement of the claim does not commence for a year following the receipt of the records, the records may be processed for a year after having been obtained.

The insurer requesting data from the Database may process the records thus obtained strictly for the purposes defined in Section 150(1) of the IA.

At least once during the insurance period, the requesting insurer shall inform the client about the data included in – and supplied in response to – the request and, at the client's request, provides information to the client in accordance with the Act on Information Self-Determination and Freedom of Information.

Insurance companies may set up the Database referred to in Section 150(1) of the IA if, based on their market share preceding the arrangement, two thirds of the insurance companies engaged in the insurance classes defined in Section 150(1) of the IA agree on setting up the Database, the conditions for participating in its operation and the coverage of the maintenance costs of the Database.

Moreover, the Database may only be established if the insurance companies transmitting data to the Database stipulate the possibility of forwarding and querying the data transmitted to the Database in the terms and conditions of the affected contracts.

(Sections 149-151 of the IA).

The *Information Centre* is a significant exception from the aspect of data protection and the protection of insurance secrets. It is an organisation operated by insurance companies offering motor third party liability insurance, designed to disclose data with a view to enforcing claims arising from damages caused to third parties and perform other tasks defined in separate legislation. The tasks of the Information Centre are carried out by MABISZ.

Upon request, the Information Centre shall immediately provide the injured party, or the information centre of any Member State or – subject to the relevant cooperation agreement – the information centre of a third country with the following information:

- a) the name and address of the insurance company carrying the policy of the vehicle at fault;
- b) description of the insurance policy (policy number);
- c) the name and address of the insurance company's claims adjustment representative in the injured party's state of residence;
- d) the name and address of the owner and/or operator of the vehicle at fault, where the injured party may have a legitimate interest in being informed about the identity of the owner and/or the operator.

The Information Centre shall cooperate with the information centres of other Member States in order to ensure that the injured party is entitled for a period of seven years after the accident to obtain without delay the information referred to in Section 54 (2) of the MTPL Act

- a) from the information centre of the Member State where he resides;
- b) from the information centre of the Member State where the vehicle is normally based; or
- c) from the information centre of the Member State where the accident occurred.

Data pertaining to the insurer and the insurance contract shall be communicated as of the date of the claim event while the data pertaining to the claims adjustment representative shall be communicated as of the date of the answer to be given in response to such request. If the Information Centre cannot, for any reason, provide the information so requested, by the deadline specified in the agreement concluded between the

information centres concerned, this fact shall be communicated to the requesting party not later than the date of expiry of such deadline, providing the reasons.

If the motor vehicle involved in the claim event did not have a valid liability insurance contract at the time of the claim event this fact shall be communicated by the Information Centre along with the data of the Compensation Fund, to the party requesting the data.

When satisfying the data requests specified in the MTPL Act, the Information Centre is entitled to transfer personal data to Member States and to any other states which have data protection regulations in place that ensure the same level of protection as provided by Hungarian legislation.

The data of the claims adjustment representatives of the insurers and any change to such data shall be promptly communicated by the Information Centre to the information centres of the other Member States and to the information centres of third countries with which such agreements have been concluded. The insurer designating the claims adjustment representative shall be in charge of ensuring the validity of such data. The list of the claims adjustment representatives shall be made accessible on the Internet as well, through the home page of MABISZ.

If the motor vehicle involved in the claim event was exempted from liability under Section 57/A(1) of the MTPL Act at the time of the claim event, in relation to the damages inflicted by the exempted vehicle, the Information Centre shall inform the party requesting the data of the name and contact information of the body held liable for paying the damages and the body performing claim settlement.

The Information Centre is responsible for performing the duties of the claims registration body. (Sections 54–55 of the MTPL Act).

*The body operating the register of compulsory motor vehicle liability insurance policies* (bureau of insurance policy records) shall keep records of all motor vehicle liability insurance policies purchased for registered motor vehicles, and on the preliminary certificates of coverage issued by insurance companies (central policy records).

For the purposes of verifying the existence of the insurance cover and providing the data required for the enforcement of requirements and compensation claims related to insured events, the bureau of insurance policy records shall keep records of the data contained in the insurance documents of the insurance policies taken out for motor vehicles included in the motor vehicle register, as well as data related to risk inception as defined in Section 46(2)e) of the MTPL Act (central policy records).

The central policy records shall contain the following data of insured motorists, the vehicle and the contract:

- a) name of the insured motorist (name of the legal person, sole proprietor, individual corporation and the relevant company registration number or registration number), date and place of birth, mother's name and address (registered office, site);
- b) registration plate and chassis number of the vehicle;
- c) if the registration plate is replaced, the date when replaced and the number of the previous plate;
- d) name of the insurance company and policy particulars (number);
- e) starting date of coverage, or – when the insurance contract is concluded during the period of suspension – the starting date of the insurance period, date and reason of termination of coverage where applicable;

The bureau of insurance policy records shall have authority to process the data referred to above for seven years following termination of the insurance contract.

Pursuant to Section 47 of the MTPL Act, data may be requested from the central policy records by:

- a) the insurance company in respect of the data specified in Section 46(2)b)–e) of the MTPL Act, for the performance of its obligations under the MTPL Act, pertaining to data effective at the time of the data request or as at a specific date preceding the data request;
- b) the manager of Compensation Fund in respect of the data specified in Section 46(2) of the MTPL Act, for the purposes of reclaiming all of its expenditures and expenses incurred in relation to indemnifying the claimant and reimbursing the damages caused by the vehicle of an uninsured or unknown vehicle operator or by an unknown vehicle, pertaining to data effective at the time of the data request or as at a specific date preceding the data request;

c) the National Bureau in respect of the data specified in Section 46(2) of the MTPL Act, for the purposes of carrying out the coordination, claim settlement, and account settlement duties defined in the MTPL Act, pertaining to data effective at the time of the insured event;

d) the correspondent in respect of the data specified in Section 46(2) of the MTPL Act, for the purposes of handling and settling the claims, pertaining to data effective at the time of the insured event;

e) the Information Centre in respect of the data specified in Section 46(2) of the MTPL Act, for the purposes of data disclosure for the enforcement of compensation claims and the performance of other tasks defined in the MTPL Act, pertaining to data effective at the time of the insured event;

f) the MNB in respect of the data specified in Section 46(2) of the MTPL Act, for the purpose of carrying out the statutory audit procedures and procedures of financial supervision, pertaining to data effective at the time of the data request or as at a specific date preceding the data request;

g) the court in respect of the data specified in Section 46(2) of the MTPL Act, for the purpose of conducting the statutory judicial procedures, pertaining to data effective at the time of the data request or as at a specific date preceding the data request;

h) the public prosecutor's office in respect of the data specified in Section 46(2) of the MTPL Act, for the purposes of investigating criminal offences, conducting criminal proceedings or executing criminal sanctions and conducting procedures of legal compliance supervision, pertaining to data effective at the time of the data request or as at a specific date preceding the data request;

i) the investigating agency in respect of the data specified in Section 46(2) of the MTPL Act, for the purposes of investigating criminal offences, conducting criminal proceedings or executing criminal sanctions, pertaining to data effective at the time of the data request or as at a specific date preceding the data request;

j) national security services in respect of the data specified in Section 46(2) of the MTPL Act, for the purposes of national security protection, defence, intelligence gathering, national or industry security inspections, pertaining to data effective at the time of the data request or as at a specific date preceding the data request;

k) the police department in respect of the data specified in Section 46(2) of the MTPL Act, for the purposes of conducting statutory administrative procedures related to misdemeanours and procedures related to road transport duties, pertaining to data effective at the time of the data request or as at a specific date preceding the data request;

l) in respect of the data specified in Section 46(2) of the MTPL Act, for the purposes of procedures related to road transport duties

la) the transportation authority and administrative authority, pertaining to data effective at the time of the data request or as at a specific date preceding the data request; and

lb) the control authority specified in the Act on Road Transport in respect of vehicles operated in traffic, pertaining to data effective at the time of the data request;

m) health insurance and pension insurance organisations in respect of the data specified in Section 46(2) of the MTPL Act, for the purpose of enforcing the reimbursement claims payable to the Health Insurance Fund and the Pension Fund, pertaining to data effective at the time of the insured event;

n) any natural person, legal entity, sole proprietor or individual company, up to a reasonable limit, in respect of the data specified in Section 46(2)a) of the MTPL Act, for the purpose of enforcing their rights or legitimate interests, subject to certifying the purpose and legal basis of the use of data.

The bureau of insurance policy records supplies the data requested by the parties specified in Paragraphs a)–e), l) and m) of Section 47(1) of the MTPL Act via electronic means, by using the electronic communication connection between the bureau of insurance policy records and the requesting party.

In exchange for the data supply, the requesting parties specified in Section 47(1)n) of the MTPL Act shall pay a fee to the bureau of insurance policy records in an amount identical with the prevailing general item procedural duty.

For the provision of the information defined in Section 47(1) of the MTPL Act, for the continuous operation of the required electronic registry and data reporting system and for the data request, insurance companies shall pay a fee to the bureau of insurance policy records. The rate of the fee payable by the insurance companies shall be 0.5 per cent of their quarterly premium from the third party liability insurance of motor vehicles registered in Hungary, transferred to the bureau of insurance policy records by the last day of the month following the current quarter.

Data provision to the requesting parties listed in Section 47(1)b)–m) of the MTPL Act is free of charge.

The bureau of insurance policy records shall monitor the validity of motor vehicle liability insurance policies on a quarterly basis by checking the records of the motor vehicle register against the central policy records. The



bureau shall compile a list of vehicle operators with no valid insurance coverage, and forward the data to the borough office having jurisdiction at the operator's address (registered seat, site) in order to facilitate the procedure referred to in Section 45(2)–(3) of the MTPL Act.

The dataset created by the link stated in Section 48(1) of the MTPL Act may not be used for any other purpose and must be destroyed within 90 days after the procedural duties have been completed.

The insurer shall notify the bureau of insurance policy records of the conclusion and – save for the exception defined in Section 21(4) of the MTPL Act – termination of insurance contracts and any changes in the data of the document certifying the insurance coverage and constituting the data content of the central policy records within fifteen days of the change through its IT system, by indicating the data specified in Section 46(2) of the MTPL Act.

In respect of the personal data processed in the central policy records, the bureau of insurance policy records shall act as data manager. For the performance of data processing tasks relating to the central policy records, the bureau of insurance policy records may only appoint a public administrative body, or a legal entity in full state ownership.

Data supply from the central policy records shall be prohibited or restricted if the competent body, in accordance with statutory provisions, banned or restricted data provision for the external and internal safety of the government; thus, in particular, serving the interests of national defence, national security, crime prevention and law enforcement. The bureau shall be notified of any restrictions and prohibitions and of their removal.

Section 50(2) of the MTPL Act shall not be applicable if the person concerned requests information in respect of the processing of his own personal data. If, citing law enforcement, crime prevention or national security interests, the data request by the court, public prosecutor's office or investigating agency, the national security service or a body authorised by specific legislation for clandestine intelligence gathering explicitly stipulates it, the bureau of insurance policy records may not inform the person concerned of the transmission of his personal data.

(Sections 46–50 of the MTPL Act).

### **2.3.5. PROTECTION OF CUSTOMER CLAIMS**

The protection of customer claims is a specific aspect in the insurance business as the actual provision of insurance services is a customer interest to be protected.

While the investment rules discussed above directly protect capital and return payments owed to policy owners, the Compensation Fund is indented to protect customer interests regarding liability for the insurance service, being a fund created and funded by the insurance companies covering risks in connection with compulsory motor vehicle liability insurance policies offered in the territory of Hungary by making regular contributions for the purpose of providing compensation for damage to property or personal injuries caused by a vehicle for which the insurance obligation provided for by law has not been satisfied or by an unidentified vehicle subject to the limits laid down by legal regulation.

(Point 22 of Section 33 of the MTPL Act).

Brokers shall maintain separate accounts for handling funds paid by the client to the order of insurance companies, or the funds paid by insurance companies to clients, and may not handle them as deposits. By way of derogation from the provisions of the Bankruptcy Act, in the event of the broker's liquidation those funds shall not comprise a part of the assets which are subject to liquidation.

If the broker does not forward the funds referred to in Subsection (1) to the order of the payee by the end of the next working day following the date of payment, such funds shall be placed in a discretionary account opened at a credit institution established in a Member State (segregated client account).

The broker shall lay down the detailed rules for handling client accounts in his cash handling policy. (Section 404 (1)–(3))

Any damage caused by an insurance agent or any other person in the employ of the insurance agent for mediating insurance by contract or otherwise while engaged in mediating insurance shall be the liability of the insurance company. If the insurance agent is involved with more than one insurance company, liability for damages caused by the agent while engaged in mediating insurance shall fall upon the insurance company on whose behalf the mediation took place.  
(Section 358.(1)-(2) of the IA).

### **2.3.6. RULES PERTAINING TO CERTAIN CONTRACTS**

While each branch of the non-life sub-sector can be regarded as a special insurance field, there are two insurance types which are discussed extensively in relevant laws: compulsory motor third party liability insurance and legal protection insurance.

With a *vehicle liability insurance contract*, the aggrieved party is entitled to enforce his indemnification claim under the insurance contract directly at the insurer of the vehicle operator who caused the damage and, in the cases defined in the MTPL Act, at the manager of the Compensation Fund. The aggrieved party is required to report the damage event to the insurer within thirty days of the event or of becoming aware of the event. In case of a failure to meet this deadline, except when the aggrieved party proves that such failure stemmed from reasons beyond his control, the legal consequences of late fulfilment cannot be applied, for the period between the claim event and the report, against the insurer, the claims adjustment representative, the correspondent, the manager of the Compensation Fund, the claim representative and the National Bureau.  
(Sections 28–29 of the MTPL Act).

If the insurer provides *legal protection insurance* and assigns another company in the legal protection insurance contract to settle the damages submitted to the legal protection branch and to provide legal advice in relation to that, such assignment can only be given to a joint stock corporation, limited liability company or the Hungarian branch office of a foreign enterprise dealing with settling legal protection insurance damages. As a precondition of any such assignment, the assignee must not have any financial, commercial or administrative relationship with the insurer, or any other direct or indirect relationship with them which could influence the impartiality of the indemnification process. Furthermore, the assignee must not be engaged in any other activities which could impact the impartiality of indemnification. The settlement of legal protection insurance damages and the provision of legal advice to that effect must not be assigned to another insurer whose insurance services are not limited to legal protection insurance. Any data transfer between the legal protection insurer and the other company assigned to settle damages must be implemented in a way that prevents the use of such data by the legal protection insurer for settling any damages related to other insurance contracts.

In addition to the minimum content requirements for insurance contracts (Section 121-122 of the IA), the contract conditions for *legal protection insurance* contracts must state the following:

The right of the policy holder to freely select his legal representative in any court or public administration proceedings or prior to such proceedings during efforts to help avoid the legal proceedings in case such legal representation is necessary for protecting and representing the policy holder's interests; the definition of a reconciliation procedure designed to ensure impartiality which the insurer and the policy holder must follow upon any difference of opinion between them regarding the insurer's services. (In case the outcome of the reconciliation procedure is favourable for the policy holder, the costs of proceedings shall be borne by the insurer; otherwise each party shall bear its own costs. Unless regulated otherwise in the insurance contract, the policy owner is entitled to use the services of an attorney of his choice upon a difference of opinion. In case the attorney accepts the standpoint of the policy holder, the insurer is required to act accordingly). The contract must state the policy holder's right to freely select his legal representative in case the reconciliation procedure is not successful. It must also include advice for the insured person in writing or in some other verifiable manner of his/her rights defined in Section 165(1)*b*) and *c*) of the IA in case of any conflict with the insurance company; the rules of the procedure to be followed by the parties if two or more adverse parties have legal expenses or liability insurance coverage with the same insurance company in connection with an event that serves as the basis of the insurance company's obligation to provide services; furthermore, information concerning the requirements defined under Section 165(1)*a*)–*c*) of the IA that prevails in connection with legal expenses insurance policies.

(Section 165 of the IA).

If legal expenses coverage is provided as part of an insurance contract covering other risks as well, the legal expenses section of the insurance contract shall be clearly separated so that it may be easily identified by the clients. The insurance company shall be required to emphasise the existence of legal expenses coverage on all of the documents that are supplied to the client; furthermore, the premium payable for legal expenses insurance shall be shown separately from all other premiums in the currency in which the policyholder is required to pay the insurance premium. (Section 166 of the IA).

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Act CXXXIX of 2013 on Magyar Nemzeti Bank	Supervisory tasks	Articles 39-44
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Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities	General provisions	Sections 1-6
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Act XXV of 2005 on Distance Marketing of Financial Sector Contracts	Scope	Section 1
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Act CXVII of 2007 on Occupational Pension and the Related Institutions	General provisions, scope	Section 1
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	Operational and reporting rules of the Fund	Section 40
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<b>Decrees</b>		
Decree 33/2002 (XI.16.) of the Minister of Finance on the form and content of customer information provided in respect of unit-linked life insurance products	Information requirements	Sections 1-5

Bonus-malus system, classification into the bonus-malus system, Decree No. 21/2011 (VI. 10) of the Ministry for National Economy on the rules of the issuance of claims history certificate	Classification	Sections 4-8
MNB Decree No. 28/2014 (VII. 23) of the Governor of the Magyar Nemzeti Bank on the rules pertaining to complaint handling by financial organisations		Sections 1-9
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MNB Decree No. 56/2015 (XII.22) on the Content elements of the life insurance needs analysis form (Authorisation decree: Section 439, point g) of the New Insurance Act)	Content requirements	Sections 1-3
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MNB Decree No. 55/2015 (XII . 22) on the Calculation and publication of the total cost indicator (Authorisation decree: Section 439, point h) of the New Insurance Act)	General rules	Sections 1-12
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	Recommendations	
Recommendation 13/2015 (X.16.) of the Magyar Nemzeti Bank on the Complaint handling procedure of financial organisations		



Recommendation 2/2014 (V.26.) of the Magyar Nemzeti Bank on pension insurance

Recommendation 5/2015 of the Magyar Nemzeti Bank on the Electronic interfaces serving the presentation and comparison of insurance products and used during insurance intermediation