



## **INFORMATION**

**on the conditions of providing services in the territory of Hungary**

**2021**

## BRIEFLY ABOUT THIS GUIDE

This guide on the relevant legal provisions is for financial organisations with registered office in a member state (**EEA state**) of the European Economic Area (**EEA**) intending to operate in Hungary in the form of a branch office or by providing cross-border services. In accordance with the applicable laws, the purpose of this guide is to inform new market entrants on the terms and conditions applicable to providing services in Hungary, make them familiar with the local legal environment and to make it easier for them to apply the law.

From 1 October 2013, the Magyar Nemzeti Bank (**MNB**), within the scope of its duties specified in Article 4 (9) of Act CXXXIX of 2013 on Magyar Nemzeti Bank (**MNB Act**), performs the supervision of the organisations, persons and activities falling within the Acts<sup>1</sup> specified in Article 39(1) of the MNB Act.

### Structure of the guide

The **first part of this guide** lists the laws and other standards for the actors of the financial market, which any institution wishing to provide services in Hungary must pay special attention to. It should be noted that the recommendations issued by the MNB — and prior to 1 October 2013, by the Hungarian Financial Supervisory Authority (**HFS**) — and being in force at present as well, have no binding force, and thus the MNB may not impose any sanction for the departure from those. The main purpose of recommendations is to inform the public of the supervisory expectations that the MNB deems justified to adhere to. They are intended to present good practices that the individual institutions may depart from to a positive direction, and implement practices and internal regulations that best suit their specific risks, organisational structure and service profile.

For the sake of clarity, laws and other norms are grouped by type in this document; however, such categorisation should not be construed as an order of importance, since branch offices and cross-border service providers must comply with all norms that govern their activity.

After the general listing, the guide specifies the laws that are of special significance for the sector, individual organisations and their services.

In addition to the laws that define the basic rules of activities, this guide also mentions rules that

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<sup>1</sup> Pursuant to Article 39(1) of the MNB Act, the MNB – unless the law provides otherwise – acting within its duties specified in Article 4 (9) of the MNB Act, performs the supervision of the entities and their activities stipulated in:

- a) the Act on Voluntary Mutual Insurance Funds,
- b) the Act on the Hungarian Export-Import Bank Plc and the Hungarian Export Credit Insurance Plc,
- c) the Act on Credit Institutions and Financial Enterprises,
- d) the Act on Building Societies,
- e) the Act on Mortgage Loan Companies and on Mortgage Bonds,
- f) the Act on Private Pensions and Private Pension Funds,
- g) the Act on the Hungarian Development Bank Plc,
- h) the Act on the Capital Markets,
- i) the Act on Insurance Institutions and 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 Collective Investment Trusts and their Managers, and on the Amendment of Certain Financial Regulations
- n) the Act on Reinsurers,
- o) the Act on Payment Services,
- p) the Act on Compulsory Motor Third Party Liability Insurance,
- q) the Act on the Central Credit Information System,
- r) the Act on Settlement Finality in Payment and Securities Settlement Systems, and
- s) the Act on Payment Service Providers

determine the legal environment for services from a criminal and civil law aspects and presents the basics of consumer protection.

The guide calls the attention to Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing (**Anti-money Laundering Act**), in connection with the provisions of which it should be noted that those fully consider the requirements set forth in Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC<sup>2</sup>.

Similarly, the provisions related to money laundering, included in the prevailing Criminal Code (until 30 June 2013, Sections 303 –303/C of Act IV of 1978 on the Criminal Code, and from 1 July 2013 Section 399-402 of Act C of 2012) also take into consideration the expectations developed in the assessment practices of the organisations of the member states, operating on the principle of mutual assessment (FATF, Council of Europe Moneyval PC-R-EV), investigating the measures taken against money laundering by the countries participating in the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990.

It should be emphasised 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 the MNB, in its capacity as supervisory authority. 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.

The **second part of this guide** briefly outlines the most important rules pertaining to the establishment and operation of branch offices, the range of internal regulations to be prepared by them, the supervision of the operations performed in Hungary through branches or in the form cross-border services, the reporting, licensing and data supply obligations to the MNB, and presents key information on deposit insurance and the central credit information system.

The **third part of this guide** – considering that the consumer protection regulations bear special importance in respect of the financial organisations operating as branch offices or in the form of cross-border services – specifies the legal provisions that qualify as consumer protection regulations. 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.

Article 81(1) of the MNB Act defines consumer protection regulations when specifying the MNB's consumer protection control competence, according to which:

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<sup>2</sup> In accordance with Article 39 (3) of the MNB Act, the MNB shall – within the framework of its responsibilities set out in Article 4(9) of the same – perform, in respect of the service providers pursuing the activities specified in Section 1(1)a-e and m) of the Money Laundering Act, the supervisory tasks provided for in Act LII of 2017 on the Implementation of Financial and Proprietary Restrictive Measures ordered by the European Union and the UN Security Council.

- a) the acts referred to in Article 39 laying down requirements concerning the conduct of the persons and entities covered by the acts defined in Article 39 of the MNB Act in respect of consumers using their services as well as the provisions of regulations adopted for the implementation of these acts, and further the provisions of directly applicable EU legal acts, and
- b) the provisions of Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices,
- c) the provisions of Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities, and
- 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 the laws belonging to the MNB's competence, 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 include various requirements related to providing information to customers, e.g. the requirements presented in the terms and conditions, or those specifying the procedures of institutions related to customers (including requirements on the provision of financial services), along with the restrictive regulations related to interest rates, charges and fees to be applied in respect of the customers. In addition, provisions of the Acts on the Prohibition of Unfair Business-to-Consumer Commercial Practices, on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities and on Certain Issues of Electronic Commerce Services and Information Society Service, mentioned above, also qualify as consumer protection regulations along with the provision setting out obligations related to financial consumer disputes.

The MNB verifies compliance with the obligations related to consumer protection and financial consumer legal disputes within the framework of consumer protection procedures, and takes actions upon breaching those. It should be noted that the MNB's competence does not extend to the determination of the conclusion, validity, legal consequences and termination of the contract, or the breach of contract and the legal consequences thereof.

### **Financial Arbitration Board**

The Financial Arbitration Board (**FAB**) is an out-of-court, alternative financial dispute resolution forum operated by the MNB. FAB is engaged in the out-of-court settlement of disputes (**financial consumer dispute**) between the consumer and the organisations and persons specified in Article 39 of the MNB Act (**financial service provider**), concerning the establishment and fulfilment of the legal relationship related to the use of services. FAB primarily attempts to mediate a compromise, failing which – with the exception of equity petitions – it passes a resolution on the matter in order to enforce consumers' rights in a simple, fast, effective and cost-efficient manner.

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

The provisions related to the procedures of FAB are set out in Chapter VIII of the MNB Act. According to the main rule, when making its resolution the FAB proceeds in a three-member panel, except – since 1 January 2015 – if the financial consumer dispute relates to an amount not exceeding fifty thousand forints or represents a dispute subject to simple judgement or contains a petition of equity, when a single board member will proceed. To ensure unbiased proceeding, the members must not be instructed in connection with their decision-making competence related financial consumer disputes. Proceedings before the FAB are not public unless both parties consent. Proceedings are initiated at the written

request of a consumer, provided he has already attempted to settle the dispute directly with the financial service provider concerned. If a financial service provider rejects the 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 there is no pending mediation, civil lawsuit or enforcement procedure.

In the course of the proceedings, the chair of the panel attempts to mediate a compromise between the parties. If the parties reach a compromise and it complies with the laws, the acting panel approves it by a resolution; otherwise it continues the proceeding. If no compromise is reached and the claim is substantiated, the FAB passes a binding resolution or recommendation, depending on whether or not the service provider had acknowledged the decision of FAB as binding on it. The financial service providers may submit a written declaration of submission to FAB, in which it commits to submitting itself to the proceeding of the arbitration board and to the resolution passed in the proceeding. Since 1 January 2017, in the absence of a compromise, the panel may also pass a binding resolution if the financial service provider have made no declaration of submission, but the petition is substantiated and the consumer's claim does not exceed one million forint either in the petition or when the binding resolution is passed.

The procedure of FAB is free of charge and no procedural fee or duty is imposed either on the consumer or on the financial service provider. The panel's resolution or recommendation does not prejudice the consumer's right to enforce the claim in court proceedings, if he or she is dissatisfied with FAB's decision.

### **FAB procedures in cross-border financial disputes**

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

One case 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 registered office, premises or place of abode 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 the domestic settlement procedures, cross-border procedures always take place in writing, but based on the consideration of the circumstances, the chair of the acting panel may initiate a hearing subject to the prior consent of both parties. Another special rule is that the chair of the FAB may, on the proposal of the chair of the acting panel, prolong the deadline of the procedure in justified cases on one occasion by 90 days per case. The language of the procedure is English. The acting panel also delivers its judgement in this language, unless the petitioner requests that the language of the disputed contract and/ or of the communication between the respective service provider and the consumer be used.