

Licensing the foundation of insurance companies

	Q&A
Prior to submission	<ul style="list-style-type: none"> Who may submit an application for the foundation of an insurance company to the MNB? <p><i>Any legally capable person is entitled to submit an application for the foundation of an insurance company to the MNB.</i></p> May an already established company submit a foundation licence application to the MNB? <p><i>No, this is not possible. The foundation of an insurance company is subject to the MNB's prior licence. (Section 237 (1)a) of the Insurance Act)</i></p> Is it possible to submit to the Court of Registration an application for registration during the foundation licensing procedure being in progress at the MNB? <p><i>No. The application for the registration must be submitted to the Court of Registration within 15 days from the receipt of the licence issued by the MNB; the MNB licence must be submitted as an annex to the application for the registration of the company, in the absence of which the Court of Registration rejects the application for registration without call for supplementation. (Section 34 (1) of the Companies Act, Annex 1)</i></p> Is it possible to reserve a name at the Court of Registration during the licensing procedure conducted by the MNB? <p><i>It is possible to reserve a name in parallel with the foundation procedure in progress; however, the MNB calls the attention to the fact that the time required for the assessment of the foundation procedure is not influenced by the fact that the applicant has reserved a name.</i></p> Is it necessary to pay any administrative service fee for the procedure? <p><i>Yes. In the case of insurance and reinsurance joint stock company or cooperative society an administrative service fee of HUF 1,100,000, while in the case of mutual insurance associations HUF 300,000 must be paid to the MNB's account no. 19017004-01673000-30900007 and the document confirming the</i></p>

	<p><i>payment must be submitted as an annex to the application for the start of the procedure.</i></p> <ul style="list-style-type: none"> • May the insurance company commence operation following the receipt of its foundation licence? <p><i>No, for that the activity licence must be also obtained.</i></p> <ul style="list-style-type: none"> • What kind of activities may be performed in possession of the foundation licence? <p><i>The supervisory authority's resolution authorising the foundation provides the founder with limited rights: in possession of the licence it is only permitted to found the insurance or reinsurance company, and to make preparations for starting the performance of the activity (particularly to ensure the conditions for the operation, and develop the operational framework). The restriction is connected to the fact that the licensing of the activity takes place in a separate procedure, and prior to the issuance of the activity licence the insurance or reinsurance company may not operate de facto.</i></p>
Application and annexes	<p>IMPORTANT NOTICE! Prior to submitting the application you are kindly advised to read the general Q&A on the MNB's website on the Licensing/General information tab.</p>
Application	<ul style="list-style-type: none"> • What form should I use for the submission of the application? <p><i>The application for licensing the foundation of the insurance company shall be submitted on electronic form No BIZA_1017 entitled "Application for licensing the foundation of an insurance company" available under the Foundation/transformation menu item of the E-administration/Licensing service.</i></p> <ul style="list-style-type: none"> • Does a non-resident founder need an agent for the service of process? <p><i>If there are non-residents as well among the founders (foreign natural person without place of residence in Hungary or foreign non-natural person), the declaration on the agent for the service of process of such person must be also attached.</i></p> <ul style="list-style-type: none"> • Who may be an agent for the service of process and what rights does he have?

	<p><i>The agent for the service of process is entitled to receive (and is obliged to forward) documents – e.g. the call for supplementation – to be delivered to the non-resident person. During the supervisory licensing procedure, such agent – in accordance with Section 4(1)58 of the Insurance Act – may only be a lawyer, lawyer’s office registered in Hungary, or the applicant’s insurer, reinsurer or insurance intermediary registered in Hungary, and the employee or such entities.</i></p>
<p>Memorandum of Association</p>	<ul style="list-style-type: none"> <p>In what legal form may the insurance or reinsurance company may be established?</p> <p><i>In the territory of Hungary an insurance company may be established in the form of a joint stock company, Societas Europaea (SE), cooperative society, mutual association, Hungarian branch office of an insurance company with registered office in another Member State or the Hungarian branch office of third-country insurance company. In respect of the form of operation of reinsurance companies that may be established in the territory of Hungary, the Insurance Act applies only one difference compared to the insurance companies: it does not allow the establishment of reinsurance companies in the form of mutual association. (Section 6 (1)-(2) of the Insurance Act)</i></p> <p><i>The Insurance Act permits the pursuance of insurance activity for all forms of operation, uniformly in all insurances branches and sectors.</i></p> <p>Which legal provisions are applicable to the individual forms of organisation?</p> <p><i>The Insurance Act defines, for all organisational forms of insurance companies, the laws governing their activity, to be applied with the derogations stipulated in the Insurance Act, as special law. Accordingly, the issues not regulated by the Insurance Act, shall be governed by the provisions of the Civil Code applicable to companies in the case of insurance and reinsurance companies, by the provisions of Act XLV of 2004 on European Public Limited Liability Companies in the case of insurance and reinsurance companies operating in the form of Societas Europaea and by the provisions of Civil Code applicable to cooperative societies in the case of insurance cooperative societies. Although the Insurance</i></p>

Act does not mention it separately, the foundation, organisation, operation and termination of insurance and reinsurance companies operating as Societas Europaea the provisions of Council Regulation No 2157/2001/EC of 8 October 2001 on the Statute for a European company (SE) shall be applicable directly as well. In the case of mutual insurance associations, in addition to the Civil Code, the provisions of Act CLXXV of 2011 on the Freedom of Association, Non-profit Status and the Operation and Support of Civil Organisations shall be also applicable. In the case of branch offices, including the branch office of Member State and third-country insurance companies, unless the Insurance Act provides otherwise, the provisions of Act CXXXIII of 1997 on the Hungarian branch offices and representative offices of enterprises registered abroad shall be applied.

- **What sort of activities may the insurer pursue?**

In line with the licensing principles, the insurer may pursue its activity in full within the authorised insurance branch and sector. Pursuant to the principle related to the exclusivity of the insurance activity, insurance activities may only be pursued by insurers; at the same time, apart from the insurance and reinsurance activity and the activities closely related to those, insurers shall not pursue any other professional activity (Section 40 (1) of the Insurance Act).

- **What sort of activity may the reinsurer pursue?**

Reinsurers may only pursue reinsurance activity and activities closely related to it, and they are not entitled to pursue direct insurance activity.

- **What kind of special provisions does the Insurance Act prescribe in relation to the draft statutes?**

The Insurance Act stipulates expressly only that it must contain the clear definition of the institutional form and scope of activity of the institution to be established.

In respect of certain elements of the statutes the provisions of the laws applicable to the individual forms of organisation should be taken into consideration. At the same time, the Insurance Act also formulates requirements

	<p><i>with regard to the statutes; for example, in the case of cooperative societies and mutual insurance associations mandatory content elements are prescribed by Section 12(1) and Section 21(1) of the Insurance Act, respectively.</i></p>
Start-up capital	<ul style="list-style-type: none"> What amount of capital is necessary for the commencement of the insurance activity? <p><i>The funds mentioned in Section 93 (2) of the Insurance Act (minimum amount of the funds required to cover the costs of setting up the insurance organisation) must be provably available to the insurance companies already during the foundation licensing procedure. (Section 238 b) of the Insurance Act)</i></p> <p><i>In accordance with Section 93 (2) of the Insurance Act, the minimum amount of such funds is one hundred million forints for insurance and reinsurance joint stock companies and for branches of third-county insurance companies, fifty million forints for cooperative insurance and reinsurance companies, and one million forints for mutual associations.</i></p> <p><i>The applicant must prove the availability of the organisation capital by the confirmation of the credit institution and – until the issuance of the activity licence – these funds may only be used for creating the conditions of the operation specified in the Insurance Act (Section 93 (3) of the Insurance Act).</i></p> Within the subscribed capital for organisation purposes, what should be the ratio of cash contribution in the case of insurance joint stock companies? <p><i>According to Section 7(3) of the Insurance Act, at the start of the activity, within the subscribed capital of the insurance and reinsurance joint stock company, serving the organisation purposes mentioned above, the ratio of the cash contribution may not be less than 70 percent, while at the start of the activity, with a view to preserving liquidity, no intangible assets, specified in the Accounting Act, may be included in the subscribed capital. Pursuant to this provision of the Insurance Act, the cash and non-cash ratio of the subscribed capital must be maintained continuously even upon amending the amount of the subscribed capital.</i></p>

	<ul style="list-style-type: none"> • Is it necessary to pay up the cash contribution in full by the time of the registration of the company? <p><i>As regards the payment of the cash contribution, Section 3:252(1)a) of the Civil Code prescribes that the registration of the joint stock company – i.e. in the company register – may take place when the founders who agreed to provide contributions in cash have paid at least 25 percent of the nominal value or accounting par value of the shares which they have committed to subscribe for in the statutes prior to the submission of the application for registration. The rules of the Insurance Act applicable to insurance joint stock companies contain stricter provisions than this: the insurance joint stock company may only be registered in the company register if prior to the submission of the application for registration the cash contribution has been paid up in full, the purpose of which is to ensure the financial stability of the insurance joint stock company at the start of its operations.</i></p> <ul style="list-style-type: none"> • Is it possible to take into consideration intangible assets as non-cash contribution? <p><i>No, the non-cash contribution may not include the intangible assets specified in the Accounting Act. The exclusion of the intangible assets from the non-cash contributions also precludes that the insurance or reinsurance company takes into consideration at the start of its activity its insurance portfolio contribution for the purposes of calculating its required subscribed capital.</i></p>
Personnel conditions	<ul style="list-style-type: none"> • What kind of personnel conditions should be proved in the foundation licensing procedure? <p><i>During the procedure aimed at the issuance of the foundation licence, the fulfilment of the personnel conditions have to be proved only partially: in respect of the senior executives to be registered in the company register, the personal identification data of the natural persons must be provided, and it must be proved that they satisfy the requirements prescribed in respect of such persons in Section 54 (1) of the Insurance Act (e.g. related to qualifications and experience, professional suitability and business reliability).</i></p> <ul style="list-style-type: none"> • What kind of requirements, related to the governance system, should be taken into consideration during the foundation?

	<p><i>Although the Insurance Act prescribes the proof of the existence of a proper governance system (with the exception of small insurance companies) in connection with the activity licensing, in certain issues – thus in respect of the senior executive – the requirements pertaining to the governance system and in connection with that the EIOPA Guidelines on the System of Governance (EIOPA-BoS-14/253) must be taken into consideration already during the foundation procedure. Within the fit and proper requirements Guideline 11 stipulates that the members of the insurance company's administrative, management or supervisory body should collectively possess appropriate qualification, experience and knowledge about at least:</i></p> <ul style="list-style-type: none"> <i>(a) insurance and financial market;</i> <i>(b) business strategy and business model;</i> <i>(c) governance system;</i> <i>(d) financial and actuarial analysis;</i> <i>(e) regulatory framework and requirements.</i>
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