

# **RULES PERTAINING TO THE OPERATION OF BRANCH OFFICES AND TO THE SUPERVISION OF ACTIVITIES PERFORMED IN THE TERRITORY OF HUNGARY THROUGH BRANCH OFFICES, AS WELL AS TO THE FULFILMENT OF THE REGISTRATION AND REPORTING OBLIGATIONS**

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

The notion of branch office is defined in Section 2 b) of Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign Registered Companies (Branch Office Act), according to which, a branch office is an unincorporated organisational unit of a foreign enterprise, entitled to do business independently, registered in the domestic company register as the branch office of a foreign enterprise as an independent company form.

Pursuant to Section 13 of the Branch Office Act — unless provided otherwise by law — branch offices qualify as resident entities under the Foreign Exchange Act. 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 resident status (under the Foreign Exchange Act), 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 (business sites) in several towns (villages).

As the first step of 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 register. An important obligation connected to the date of the registration is the payment of the supervisory fee. Pursuant to Article 168 (1) of Act CXXXIX of 2013 on Magyar Nemzeti Bank, the supervisory fee must be paid by the institution that holds a licence on the first day of the calendar year and is included in the MNB's register.

The branch office may launch operations once it receives confirmation of registration. Simultaneously, it shall file for registration in the company register pursuant to Section 24 (2) of the Branch Office Act. The branch office is obliged to report the commencement of operations to the MNB, and from that date the branch office shall be subject to reporting requirements.

The deregistration of branch offices is conditional upon the notification of the competent foreign supervisory authority, and the confirmation of the necessary conditions to the MNB. Then the MNB sends a confirmation note to the parent company and to the foreign supervisory authority and deletes the branch office from the register. Simultaneously with that, the obligation of the branch office to pay supervisory fees and provide data is terminated.

Pursuant to Section 23 (1) of the Branch Office Act, the branch office shall be considered terminated upon deletion from the company register.

## **II. SPECIAL RULES APPLICABLE TO THE MONEY MARKET**

### **2.1. Branch offices of credit institutions**

When Hungary joined the European Union, the community legislation ensuring the obstacle-free operation of the internal market entered into force in Hungary as well. These laws provide a European Single Passport to all credit institutions with registered office in an EEA state, allowing them to operate across the EEA – without separate license – on the basis of the license obtained from the supervisory authority of the home member state for financial and investment services subject to mutual recognition.

Prudential supervision – including supervision of the activities for the performance of which the credit institution holds a license – of the credit institution establishing the branch office, which the branch office forms an integral part of, is the responsibility of the competent authorities of the home member state. Thus the operation of the Hungarian branch office of a member state’s credit institution (i.e. organisational and operational rules, internal audit) will be also primarily governed by the laws of the country determined on the basis of the credit institution’s registered office, while the provisions of Act CXXXVII of 2013 on Credit Institutions and Financial Enterprises (Credit Institutions Act) and of other laws on financial matters shall be applicable only if the respective law specifically stipulates 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 MNB, in its capacity as 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. In addition, the MNB inspects whether the branch office complies with regulations on consumer protection and on the prevention and combating of money laundering and terrorism financing

In respect of the Hungarian branch office of a financial institution with registered office in another EEA state, on behalf of the supervisory authority of the EEA state having competence on the basis of the registered office, the supervisory duties may also be performed by the MNB. The inspection of the branch office of financial institutions holding a licence in another EEA state must be conducted based on the laws effective in Hungary. (Section 199 (1) of the Credit Institutions Act)

If the branch office violates — or there is a provable risk of it violating — the requirements effective 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 of the home state, pursuant to Section 199 (3) of the Credit Institutions Act.

If the competent supervisory authority of the home state subsequently fails to take the necessary actions to resolve the identified infringements, the MNB may turn to the European Banking Authority.

The MNB is entitled to act directly if in its opinion the infringing situation severely jeopardises the stability of the financial system or the customers’ interests. The MNB shall notify the competent supervisory authority of the respective EEA state of the measures or extraordinary measures taken by it, and of the underlying reasons. The measures or extraordinary measures shall be cancelled if

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

When performing the supervisory duties related to the branch office of an intermediary holding a licence in another EEA state, performing mortgage loan intermediation activity, the MNB verifies whether or not the branch office complies with the requirements specified in the Consumer Credit Act and the implementing legislation.

If the MNB finds that the intermediary’s branch office breached the requirements set force in the

Consumer Credit Act and in the implementing legislation, it obliges the branch to terminate the infringing situation. If despite the MNB's resolution the branch office fails to terminate the infringing situation, the MNB must take all necessary measures to eliminate the irregular situation, simultaneously informing the competent supervisory authority of the other EEA state.

If despite the MNB's measure the branch continues to breach the aforementioned requirements, the MNB may prohibit the branch office from continuing its mortgage loan intermediation services in Hungary, of which the MNB forthwith informs the European Commission.

If the cross-border services of the intermediary, pursuing mortgage loan intermediation activity in Hungary based on its licence issued in the other EE state, breaches the requirements effective in Hungary, or its branch office breaches the requirements beyond the aforementioned statutory requirements, or the MNB detects any shortcoming in the operation of the branch office, the MNB informs the competent supervisory authority of the other EEA state.

If the competent supervisory authority of the other EEA state fails to take the necessary measures within one month from receiving the aforementioned information or despite the measures taken by the competent supervisory authority of the other EEA state the infringing situation continues to exist and jeopardise the interest of the clients, the MNB

- a) with a view to terminating the infringing situation, after informing the competent supervisory authority of the other EEA state, may also take direct measures, of which it shall inform the European Banking Authority (EBA) immediately after taking the measure,
- b) pursuant to Article 19 of Regulation No 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, it may turn to EBA.  
(Section 199/A of the Credit Institutions Act)

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

- Internal regulation on the prevention and combating money laundering

Pursuant to the interpretative provisions of Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing (Anti-money Laundering Act), the branch office qualifies as a service provider rendering financial services, and as such it is obliged to prepare internal regulations and submit it to the MNB for approval. The branch office's activities to prevent and combat money laundering are subject to audit by the MNB.

- Regulation on the production, registration and forwarding of dematerialised securities and on managing the related data

Pursuant to Section 2 of Government Decree 284/2001 (XII.26.) on the Method of Production, Generation and Forwarding of Dematerialised 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, dematerialised securities are only allowed to be produced recorded and forwarded, and the related data may only be managed based on regulations approved by the MNB – acting within its duties related to the supervision of the financial intermediary system – and using an approved computer system and storage media that ensures compliance with the conditions set forth in the Government Decree. Accordingly, the branch office performing tasks related to the production, registration and forwarding of dematerialised securities must have internal regulations approved by the MNB.

- General Terms and Condition, Business Regulation, Complaint Management Regulation, Regulation on the Management of Bank and Securities Secret

According to Section 42 of the Credit Institutions Act, if the MNB is informed by the competent supervisory authority of another EEA state that a financial institution, pursuing mortgage loan intermediation activity, registered in its home country is opening a branch office in Hungary, the MNB will inform the financial institution on the customer protection provisions set out in Chapter XIII of the Credit Institutions Act. On this basis, the branch office is obliged to lay down the general contractual terms and conditions for the activity regularly pursued by it in the Business Regulations.

- Data Protection and Data Security Regulation

Pursuant to Section 2 (1) of Act CXII of 2011 on Informational Self-Determination and Freedom of Information (Information Act), the scope of the Act – in respect of personal data, as defined in paragraphs (2)-(6) of the Information Act – covers all data management and data processing activities performed in the territory of Hungary that relate to personal data, records of public interest or data disclosed for public interest.

Branch offices must also comply with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (GDPR). According to the GDPR, taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller branch office shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing of personal data is performed in accordance with the GDPR. The controller shall review these measures and update them where necessary. Where proportionate in relation to processing activities, the controller shall also apply appropriate internal data protection policies as part of those measures. Adherence to approved codes of conduct as referred to in Article 40 of GDPR or approved certification mechanisms as referred to in Article 42 of the same may be used as an element by which to demonstrate compliance with the obligations of the controller. (Article 24 of GDPR)

- Liquidity Regulations

Since during the operation of the Hungarian branch office of the member state's credit institution, the competent authorities of the host member state (in Hungary the MNB) are responsible for the oversight of the liquidity of the business lines and the financial policies, the branch office must also have Liquidity Regulations in place.

### **2.1.2. Other notification/licensing and data reporting obligations to be performed to the MNB**

- Outsourcing

Section 68/A of the Credit Institutions Act prescribes for the outsourcing credit institutions to report the fact of outsourcing, which all financial service providers operating in Hungary, with licence for banking activities, must comply with. The branch office operates in Hungary and serves Hungarian customers, and in this respect it must also comply with regulations pertaining to bank secrets. 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 relation to the financial services activity. 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 name and registered office of their outsourcing partners along with the description of outsourced activities and the duration of outsourcing. During the outsourcing, the branch office must comply with the provisions of the Information Act and the GDPR.

## Intermediary

The branch office may rely on the services of tied and independent intermediaries, regulated in Section 10 of the Credit Institutions Act, for the intermediation of the financial services rendered by it. If the intermediary intermediates non-competing financial services of one or several financial institutions, it is referred to as tied agent. Independent intermediaries intermediate competing financial services of several financial institutions.

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

- a) special services intermediaries (Section 10(1) aa) of the Credit Institutions Act)
- b) agents (Section 10 (1)ab) of the Credit Institutions Act)

The financial services intermediation activity are performed in their capacity as independent intermediaries by:

- multiple special service intermediaries (Section 10(1)ba) of the Credit Institutions Act)
- multiple agents (Section 10(1)bb) of the Credit Institutions Act)

According to the interpretative provisions of the Credit Institutions Act:

- notion of *special intermediary activity*: an activity performed on behalf of a financial institution based on an agency agreement, for the benefit and at the risk of the institution concerned, aimed at fostering the conclusion of contracts for financial services or supplementary financial services, including also the commitments made or the contracts concluded on behalf, for the benefit and at the risk of the financial institution;
- notion of *agent's activity*: an activity performed based on an agency agreement concluded with the financial institution, aimed at fostering the conclusion of contracts for financial services or supplementary financial services, in the course of which the agent makes no commitments, nor does it conclude any contracts independently at the risk of the financial institution,

Branch offices are required to report to the MNB the names of the tied and independent agents they use. Accordingly, the branch office of a credit institution with registered office in another EEA member state, does not need to apply for licence to the MNB for using special intermediaries or special multiple intermediaries (Section 14 (4) of the Credit Institutions Act).

The aforementioned rules pertaining to intermediaries shall also apply, *mutatis mutandis*, to the intermediaries engaged by credit institutions with registered office in another EEA member state in respect of their cross-border services performed in Hungary.

It should be noted that the branch offices may also pursue financial services intermediation activity, either as independent or tied agents performing mortgage loan intermediation activity; however, if they wish to pursue such activity they need to apply to the MNB for a license (Section 10 (4) of the Credit Institutions Act).

- Data Supply

Based on MNB Decree No 42/2020 (XI. 19.) on the obligations of money and credit market institutions to report data to the central bank's information system primarily to enable the MNB to carry out its supervisory duties, the branch offices are obliged to perform regular, ad hoc and designation-based data reporting to the MNB.

- Bank holiday

Branch offices are allowed to have maximum two bank holidays per year. Such suspension of financial services on a specific working day may also extend to accounting (accounting holiday) or cashier services (cashier holiday), or both (accounting and cashier holiday). The bank holiday must be announced to the public at least fifteen days in advance in at least two national dailies and it 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 ordered shall not exceed three days per year.

### **2.1.3. Deposit protection**

Credit institutions with registered office in Hungary are required to join the National Deposit Insurance Fund (**NDIF**). Pursuant to Section 209(9) of the Credit Institutions Act, the indemnification of the depositors of a branch office – established in the territory of Hungary – of a credit institution with registered office in another EEA state is paid by NDIF on behalf of the home country's deposit insurance scheme and from the funds transferred by it, with the proviso that it is not responsible for conducting the procedure in accordance with the provisions of the home country's deposit insurance scheme. NDIF informs the depositors affected by the indemnification on behalf of the deposit insurance scheme of the home country.

When notifying the MNB of the establishment of a branch office, the competent supervisory authority of the home member state shall also inform the MNB of the scope of deposit insurance taken out by the founder credit institution. If 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.

For the rules related to NDIF see Sections 209-240 of the Credit Institutions Act. For additional information please refer to the NDIF website at [www.oba.hu](http://www.oba.hu)

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

Act CCXXXV of 2013 on Certain Payment Service Providers provides the option for payment institutions and electronic money institutions with registered office in another EEA state to establish branch offices in Hungary for the purpose of rendering 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 related to the preliminary and subsequent notification of customers, and the execution of payment services and electronic money issuance.

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 Payment Service Provider Act and other financial legislation should only be applied when explicitly stated by legislation.

Pursuant to Section 56 of Act CCXXXV of 2013 on Payment Service Providers (Payment Service

Provider Act), the MNB, within its supervisory competence, shall verify compliance with the provisions set out in Chapters II-IX of the Payment Service Provider Act 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 Section 80/A of the Payment Service Providers Act, without prejudice to the responsibility of the competent supervisory authorities of the home EEA state, where the MNB ascertains that a payment institution or an electronic money institution with payment services intermediaries or branches does not comply with the relevant provisions of the Payment Service Providers Act, the Payment Services Act or the Decree of the Governor of the MNB on Payment Services Activities, it shall inform the competent supervisory authority of the home EEA state without delay.

Where immediate action is necessary to address a serious threat to the collective interests of the payment service users, the MNB – contrary to the provisions of the previous paragraph – may take measures, in parallel with the cross-border cooperation between competent authorities, pending the measures taken by the competent supervisory authorities of the home EEA state. These latter measures shall be appropriate and proportionate to their purpose to prevent a serious threat to the collective interests of the payment service users. The measures shall not result in giving preference to payment service users of a payment institution or electronic money institution in Hungary over those using such services in another EEA state. Such measures shall be temporary and shall be terminated when the serious threats have been duly addressed, including – among other things – with the assistance of or in cooperation with the home EEA state’s competent supervisory authorities or with European Banking Authority

When the crisis situation so permits, the MNB shall inform the competent supervisory authorities of the home EEA state and those of any other EEA state concerned, the European Commission and the European Banking Authority in advance and without undue delay, of the aforementioned measures and the reasons for those.

Pursuant to Section 80/B of Payment Service Providers Act, the MNB shall cooperate with the competent authorities of other EEA states in order to facilitate the exchange of information required for the purposes of supervising the payment institutions and electronic money institutions.

### **2.2.1 Internal regulations of the Hungarian branch offices of payment institutions and institutions of the member states**

- Internal regulation on the prevention and combating money laundering

Pursuant to the Anti-money Laundering Act, branch offices qualify as financial service providers and therefore they are required to develop internal regulations and submit them to the MNB for approval. The branch office’s activities to prevent and combat money laundering are subject to audit by the MNB.

- General Terms and Condition, Business Regulation, Complaint Management Regulation, Regulation on the Management of Payment Secret

Branch offices are required to set out the general contractual terms and conditions for their licensed and regularly pursued activities in the Business Regulations.

- Data Protection and Data Security Regulation

Pursuant to Section 2 (1) of the Information Act, the scope of the Act – in respect of personal data, as defined in paragraphs (2)-(6) of the Information Act – covers all data management and data processing activities performed in the territory of Hungary that relate to personal data, records of public interest or data disclosed for public interest.

Branches shall also comply with the provisions of GDPR, according to which, taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller branch office shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing of personal data is performed in accordance with the GDPR. The controller shall review these measures and update them where necessary. Where proportionate in relation to processing activities, the controller shall also apply appropriate internal data protection policies as part of those measures. Adherence to approved codes of conduct as referred to in Article 40 of GDPR or approved certification mechanisms as referred to in Article 42 of the same may be used as an element by which to demonstrate compliance with the obligations of the controller. (Article 24 of GDPR)

### **2.2.2 Other notification/licensing and data reporting obligations to be performed to the MNB**

- Outsourcing

Section 14 of the Payment Service Provider Act 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 rules, the branch office must notify the MNB in advance, if it intends to fulfil the tasks related to the operation of payment services through outsourcing. The payment institution or electronic money institution shall forthwith report to the MNB any material change in the outsourcing contract.

- Data Supply

Based on MNB Decree No 42/2020 (XI. 19.) on the obligations of money and credit market institutions to report data to the central bank's information system primarily to enable the MNB to carry out its supervisory duties, the branch offices are obliged to perform regular, ad hoc and designation-based data reporting to the MNB.

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

In addition to the branch offices of credit institutions, payment provider and electronic money institution offices, the rules outlined below shall also be applicable to financial organisations providing cross-border services in Hungary. Pursuant to Act CXXII of 2011 on the Central Credit Information System (CCIS Act), the central credit information system (**CCIS**) is a sandbox database that is intended to supply reliable information for creditworthiness assessment, to facilitate 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 process pursuant to the 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 include, among others:

- financial institutions, payment institutions and electronic money institutions that provide at least one type of financial service,
- lenders 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 enterprises specified in Section 5 (2) of the CCIS Act and listed in the Annex to the Act.

BISZ Plc. is required to provide, free from discrimination, the option to join CCIS to any lender established in another Member State if it provides cross-border services in Hungary. The obligation of lenders established in other Member States to provide data to CCIS 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. Thus CCIS is loaded with data by the reference data providers and it is them who use these data in the credit assessment process.

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