

# **RULES PERTAINING TO THE OPERATION OF BRANCH OFFICES AND TO THE SUPERVISION OF ACTIVITIES PERFORMED 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 data the branch office shall be subject to reporting requirements.

The deregistration of branch office 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 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. CAPITAL MARKET**

### **2.1. Branch offices of investment firms**

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 investment firms 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 investment services and supplementary services subject to mutual recognition.

Prudential supervision (including supervision of the activities for the performance of which the investment firm holds a license) of the investment firm establishing the branch office – which the branch office is an integral part of) – is the responsibility of the competent authorities of the member state of the registered office. Thus the operation of the Hungarian branch office of a member state's investment firm (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 investment firm's registered office, while the provisions of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (Investment Firms Act) and of Act CXX of 2001 on the Capital Markets (Capital Markets 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 inspects whether the branch office complies with regulations on consumer protection and on the prevention and combating of money laundering and terrorism financing. In the cases referenced in Sections 176-178/B of the Investment Firms Act, the MNB may take measures or notifies the competent supervisory authority of the home EEA state.

### **2.1.1. Internal regulations of the Hungarian branch offices of the member states' investment firms**

#### 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 investment 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 audited 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 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 Conditions, Business Regulation, Rules of Complaint Management

Pursuant to the provisions of Government Decree 22/2008 (II.7.) on the Compulsory content elements of the Business Regulations of the enterprises conducting investment service activities, supplementary investment service activities and commodity exchange services, the Hungarian branch office of an investment firm established in a Member State must have in place General Contract Terms and

Conditions, Business Regulations suitable for providing proper information to the consumers, as well as a complaints management regulation governing the procedure of managing the customers' potential complaints.

#### 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 the data of natural persons, records of public interest or data disclosed for public interest. The branch office must 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)

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

- Outsourcing

Sections 79-81 of the Investment Firms Act set out mandatory provisions for investment firms that outsource activities. The branch office operates in Hungary, serves Hungarian customers and in this respect it must also comply with regulations pertaining to outsourcing. The law prescribes that the branch office must regularly report to the MNB the name and registered office of the companies performing the outsourced activities, the nature of the outsourced activities and the duration of outsourcing, and submit the outsourcing contract to the MNB within three days after concluding it.

- Intermediary

Branch offices may use tied agents for pursuing their activity. If a branch office already registered in Hungary intends to use, in the territory of the host member state, a tied agent with registered office or place of residence in Hungary, it must report this intention to the competent supervisory authority of the home member state, which shall notify the competent supervisory authority of the host member state accordingly. 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 registered office along with the description of intermediated services.

- Data supply

Pursuant to the prevailing MNB Decree prescribing the reporting requirement – which at the time of publishing this Guide, is MNB Decree No 43/2020 (XI. 19.) on the Data reporting obligations of capital market organisations to the central bank's information system, primarily for the purpose of facilitating the fulfilment of the Magyar Nemzeti Bank's supervisory duties – it is mandatory to submit data

reporting to the MNB.

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

The branch office of a service provider established in another EEA state is not obliged to join the IPF, if it is a member of an investor protection system prescribed by 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 must 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, at the a branch office's request, provide supplementary insurance on the excess part, provided that the branch office complies with conditions applicable 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 IPF are set out in Sections 210-228 of the Capital Markets Act. For further information see the website of IPF at [www.bva.hu](http://www.bva.hu) .