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

1. **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 otherwise provided 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. Pursuant to Article 168 (1) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank (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 Branch Office Act. 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 foreign supervisory authority. In addition, 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 Branch Office Act, the branch office shall be considered terminated upon deletion from the company registry.

**II. INSURANCE MARKET**

* 1. **On certain rules related to the operation of the Hungarian branch offices of insurers, reinsurers, insurance intermediaries, reinsurance intermediaries and ancillary insurance intermediaries established in other member states, and to activities performed in Hungary under cross-border services**

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, reinsurers, insurance intermediaries, reinsurance intermediaries and ancillary insurance intermediaries established in an EEA state. Based on that, any insurer, reinsurer, insurance intermediary, reinsurance intermediary or ancillary insurance intermediary established in an EEA state may operate in the territory of another member state on the basis of authorisation obtained from its supervisory authority of the home member state for insurance and insurance intermediation services subject to mutual recognition.

Prudential supervision of the founding insurance undertaking[[1]](#footnote-2), insurance intermediary or ancillary 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 or ancillary 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.

Pursuant to Section 286 and 423 (2) of Act LXXXVIII of 2014 on the Business of Insurance (**Insurance Act**) and Article 43 (2)(t) of the MNB Act, this Guide provides general guidance on the effective Hungarian legislation governing the operations of insurance undertakings, insurance intermediaries and ancillary insurance intermediaries, including legislation on the general good, in the interest of which the MNB may take action against member state insurance undertakings (insurance intermediaries or ancillary 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 line with the provisions set out in Directive 2009/138/EC on the taking-up and the pursuit of the Business of Insurance and Reinsurance (Solvency II) – the MNB may request information on ad-hoc basis from the Hungarian branch office of an insurer established in another member state or from an insurer established in another member state in connection with its activity carried out in Hungary as part of cross-border services, about the contractual terms and conditions of the distributed insurance products and the related documents to certify that they comply with the laws applicable to insurance contracts. Further, the MNB scrutinizes whether the branch office fulfils provisions on the prevention and combating of money laundering and terrorism financing.

* 1. **Internal rules of the Hungarian branch office of insurers and insurance intermediaries on preventing and combating money laundering, Internal regulations under the Identification Tasks Act**

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), 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 above-mentioned 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. According to the provisions of Act XLIII of 2021 on the Establishment and Operation of the Data Reporting Background for the Identification Tasks of Financial and Other Service Providers (**Identification Tasks Act**) service providers shall prepare internal regulations for the fulfilment of the tasks falling within the obligations set out in the Identification Tasks Act, which shall be governed by the special provisions of the AML Act applicable to internal regulations. The internal regulation under the Identification Tasks Act may also form part of the internal regulations under the AML Act (based on the service provider’s decision), but it may also be compiled as a separate document. The service provider shall submit the internal regulations under the Identification Tasks Act to the MNB for approval. Service provider’s compliance with the obligations specified in the Identifications Tasks Act shall be ensured by the MNB.

* 1. **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. 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)

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

Pursuant to Section 36 (1)-(2) and 39 (1)-(2) of the Insurance Act, the Hungarian branch office of an insurance undertaking established in another member state - and in the case of insurance business pursued in Hungary under cross-border services - must draw up the documents proving the conclusion and existence of the insurance contract - including the standard contract terms and conditions - in Hungarian. The document can be issued as follows:

1. at the customer's request, in the official language of the home member state, or
2. in any other language agreed by the customer and insurer.

The detailed rules related to the terms and conditions are included in point 1.1 of document No. 10 of this Guide (Terms and Conditions).

* 1. **Provisions related to the supervision of the operations in Hungary of member state insurance undertakings, insurance intermediaries or ancillary insurance intermediaries through branch offices or in the context of cross-border services**

2.5.1 Insurers seated in another Member State

Pursuant to Section 289 of the Insurance Act, in case an Insurance undertaking seated in another member state and providing services in Hungary through a branch or in the context of cross-border services violates effective Hungarian laws – relating to the branch office or the activity performed in the context of cross-border services –, or if the MNB detects discrepancies in their operation, the MNB will require the branch office or the insurer to resolve non-compliance.

In case the branch office or the insurer fails to fulfil the request in the MNB's resolution, the MNB shall notify the competent supervisory authority of the home member state, asking them for appropriate action. Should the infringement still exist in spite of the actions taken by the supervisory authority of the home member state, the MNB - following a preliminary notice to the home member state - may apply the measures specified in Section 291 (1) a) - g), i) and q), or may refer the case to the European Insurance and Occupational Pensions Authority (EIOPA), and ask for help according to Article 19 of Regulation 1094/2010/EU.

In order to prevent the conclusion of new insurance contracts, if the Hungarian legal regulations are violated - the MNB may ignore Section 289 (1)-(3) of the Insurance Act and may take direct actions when the infringing situation seriously threatens the safety of the insurance market or the interests of customers.

If - based on the information available to it - the MNB finds that the operation of an insurer established in another member state performed through its Hungarian branch offices or under cross-border services threatens the financial security of the insurer, it will notify the supervisory authority of the home member state.

If the supervisory authority of the branch office of an insurer established in another member state withdraws the operation licence of the insurer and informs the MNB about that, the MNB shall take the necessary steps to prevent the affected insurer from continuing its insurance business.

If an insurer established in another member state carries out its activities in the territory of Hungary under cross-border services or through Hungarian branch offices, and its operation licence was withdrawn - partially or fully - by the supervisory authority of the home member state, the MNB - on learning about this - shall publish information on its website on the decision to withdraw the licence.

In the case of reinsurers established in another member state and operating through branch offices and offering cross-border services in Hungary, the rules specified in Section 289 (1) and (3)-(6) of the Insurance Act shall be applied, in a way that the MNB shall notify the supervisory authority of the home member state on the measures specified in paragraph (1) and on the findings of the supervisory proceedings behind the measures.

Pursuant to Section 290 of the Insurance Act, with a preliminary notification to the MNB, the supervisory authority of the insurer or reinsurer established in another member state and operating through branch offices or in the form of cross-border services in the territory of Hungary or the person authorized by the supervisory authority is entitled to inspect the cross-border services or the branch offices in Hungary, and the MNB may take part in this inspection.

At the request of the competent supervisory authority, the MNB is entitled to carry out on-site inspections regarding the operation of the insurer or reinsurer operating in Hungary through branch offices or in the form of cross-border services, and is entitled to ask for data supplies from the insurer.

According to Section 290/A of the Insurance Act, the MNB may notify the supervisory authority of the Member State having competence based on the registered office when it has serious and well-founded concerns with regard to consumer protection relating to the activity of an insurance or reinsurance company established in another Member State based on the freedom to provide services or the freedom of establishment. In this case, if the MNB and the supervisory authority of the other Member State do not come to a bilateral agreement, they may refer the case to EIOPA and apply for its assistance. The notifications shall be detailed enough to facilitate proper assessment. The notification has no impact on the MNB’s supervisory competence.

2.5.2 Insurance intermediaries or ancillary insurance intermediaries seated in another Member States

Section 426 of the Insurance Act stipulates that if the person established in another member state and operating in Hungary through branch offices or in the form of cross-border services, pursuing insurance intermediary or ancillary insurance intermediary activities violates the provisions valid for its activities and in force in the territory of Hungary, or if the MNB detects any deficiencies in its operation - excluding the case defined in Section 426 (6) of the Insurance Act - the MNB informs the supervisory authorities of the home member state and may initiate the necessary actions.

If, in spite of the actions taken by the supervisory authority of the home member state, or if these actions are not taken or not sufficient, and the infringement still exists, or when the infringement adversely affects the interests of a large number of consumers or the operation of the insurance or reinsurance market, the MNB - following the notification of the supervisory authority of the home member state - may apply the measures defined in Section 431 (1) a) - c), k) and m), of the Insurance Act or may refer the case to the European Insurance and Occupational Pension Authority (EIOPA), and may ask for its help according to Article 19 of Regulation 1094/2010/EU.

If the protection of the rights of consumers requires immediate action, for the termination of the infringement - ignoring Section 426 (1) and (2) of the Insurance Act - the MNB may apply the measures specified in Section 431 (1) a)–c), k) and m), provided, in the case of branch offices, that the equivalent actions of the home member state are not satisfactory or missing.

If the MNB takes steps according to Section 426 (2) and (3) of the Insurance Act, it will immediately inform the supervisory authority of the other member state, the EIOPA and the Commission on the resolution.

If the supervisory authority competent at the registered seat of the person operating as insurance intermediary or ancillary insurance intermediary established in another member state deleted the insurance intermediary or the person performing the insurance intermediary activity from its registration, and informed the MNB about it, the MNB shall take the necessary steps to stop any further activities by the affected insurance intermediary or person performing ancillary insurance activities.

In order to comply with the legal requirements specified in Section 130/A, Section 131/A, Section 152, Section 153, Section 158/A-158/C, Section 166/A-166/F, and Section 378 of the Insurance Act, the MNB is entitled to inspect the Hungarian branch office of the insurance intermediary or ancillary insurance intermediary established in another member state, and in the case of violating these provisions, to apply the measures in Section 431 (1) a)–c), k) and m) of the Insurance Act.

Pursuant to Section 427 of the Insurance Act, the supervisory authority of the insurer established in another member state and performing insurance intermediary or ancillary insurance intermediary activities through branch offices or in the form of cross-border services in the territory of Hungary, or the person authorized by the supervisory authority is entitled to inspect the cross-border services or the branch offices in Hungary - with a preliminary notice to the MNB -, and the MNB may take part in this inspection.

At the request of the competent supervisory authority, the MNB is entitled to carry out on-site inspections regarding the operation of the insurance intermediary or ancillary insurance intermediary established in another member state and operating in Hungary through branch offices or in the form of cross-border services, and ask for data supplies.

If the head office of the person established in another member state and performing insurance intermediary or ancillary insurance intermediary activities is in Hungary, the MNB may agree with the competent authority of the home member state that the MNB will act as a competent authority in the respect of the organisational requirements, information requirements and business regulations regarding the sale of insurance products - including further requirements related to insurance-based investment products - and sanctions and other actions to be applied in the course of selling insurances.

Pursuant to Section 427/A of the Insurance Act, if the MNB finds that an insurance intermediary or ancillary intermediary established in another member state breaches any legal regulations through its Hungarian branch office or cross-border services in Hungary, as stipulated in Article 43 (2) *t)* of the MNB Act, the measures specified in article 431 (1) *a)-c), k)* and *m)* may be applied.

If in the case of the insurance intermediary or the person performing ancillary intermediary activities

*a)* the activities performed through branch offices or under cross-border services in Hungary are fully or partially directed to the territory of Hungary,

*b)* the exclusive objective of establishing its registered seat in another member state is to escape from compliance with Hungarian legal regulations, and

*c)* its activity seriously threatens consumers' interests,

the MNB - following the notification of the competent authorities of the other member state - may apply the measures specified in Article 431 (1) a) - c), k) and m), or may refer the case to the European Insurance and Occupational Pension Authority (EIOPA), and may ask for its help according to Article 19 of Regulation 1094/2010/EU.

* 1. **Other reporting obligations to the MNB**

The MNB shall maintain a registry of insurance intermediaries licensed or registered pursuant to the Insurance Act, on their managers responsible for sales activities, and on enterprises involved in ancillary insurance intermediary activities, the persons responsible for their sales activities, for the performance of licensing and supervisory tasks related to them. The form for the notice related to registration shall be available on the MNB website for direct completion and submission.

The registration contains the records of natural persons involved in insurance intermediary activity, the records of enterprises involved in insurance intermediary activity, the records of enterprises involved in ancillary insurance intermediary activity and the records of deleted insurance intermediaries.

Article 369 (2) of the Insurance Act says that insurance intermediary activities may be carried out for insurers or insurance intermediaries in the territory of Hungary by an insurance intermediary who - with the exceptions specified in the Insurance Act - is included in the registration kept by the MNB with an active status.

Pursuant to Article 369 (2a) ancillary insurance intermediaries (including the persons specified in Section 368 (1) of the Insurance Act) may engage in the pursuit of insurance distribution activities on behalf of insurance companies, brokers, multiple agents and ancillary insurance intermediaries only if - depending on the person - they are included in the registers defined in Section 407 (6), Section 412 (5) and Section 412 (6) of the Insurance Act.

An insurance intermediary with a permanent address or registered seat in another member state is allowed to perform its activities in Hungary in the frames of cross-border activities or through its Hungarian branch offices if it has been registered in its own state.

However, registration by the MNB is not necessary for the provision of insurance intermediation services for insurance intermediaries registered in another member state [Section 371 (2) of the Insurance Act]

 The enterprise performing insurance intermediary and ancillary insurance intermediary activities shall be registered by the report of the insurer, multiple agent or broker - in the way stipulated in the order issued by the President of the Magyar Nemzeti Bank - for which it performs insurance intermediary activities. Therefore, based on the above, if a branch office or an insurer wishes to employ an insurance intermediary or ancillary insurance intermediary with a registered seat or permanent address in Hungary, then, for the performance its reporting obligations, it has to register in the MNB's electronic administration information system (Electronic System to Receive Certified Data - ERA).

In the employment of insurance intermediaries and ancillary insurance intermediaries, the restrictions defined in Sections 373 and 373/A (1)–(2) and (4) of the Insurance Act shall be observed, which are as follows:

* Any person employed by an insurance intermediary under legal relationship for performing insurance mediation activities may not enter into any other legal relationship with another insurance company or insurance intermediary for the pursuit of insurance mediation activities.
* Any person employed by an insurance intermediary - under an employment contract, service contract or other equivalent agreement - may not enter into any other employment, service or other work contract (not qualifying as employment) with any other party for performing insurance intermediation activities.
* Ancillary insurance intermediaries may only be employed by insurance companies, brokers or multiple agents.
* Ancillary insurance intermediaries may carry out insurance distribution activities on behalf of one employer only at a given time.
* An ancillary insurance intermediary may not enter into any other employment, agency or other legal relationship - which are not considered an employment relationship - with others for the pursuit of ancillary insurance mediation activities.
	1. **Insurance tax**

Pursuant to Sections 2–3 of Act CII of 2012 on Insurance Tax, the provision of insurance services (Casco insurance, property and accident insurance) defined in the Act is subject to taxation if the risk arises in Hungary within the meaning of Section 4 (1), point 62 b) of the Insurance Act[[2]](#footnote-3). The subjects of the tax are insurance undertakings. The Hungarian branch offices of insurance undertakings established in another EEA state or a third country within the meaning of the Insurance Act, alongside the suppliers of cross-border insurance services are also subject of the tax with respect to their operations defined above (in Section 2 of the Act on Insurance Tax).

* 1. **Peculiar rules for compulsory motor third party liability (MTPL) insurance**

Pursuant to Act LXII of 2009 on compulsory motor vehicle liability insurance (**MTPL Act**), an insurer without a registered seat or a 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 registered seat in Hungary. The insurer 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 and conditions, 30 days prior to the commencement of said services. (Section 38 of the MTPL Act)

Insurers that are not members of the Association of Hungarian Insurance Companies (MABISZ) may commence their operation related to MTPL insurances upon stating their commitment related to the payments according to MTPL insurances and the submission of this commitment to the MNB (Section 57 (4) of the MTPL Act).

Insurance companies are required to make available their policy conditions and their premium tariff rates in their customer areas and on their websites and shall keep them accessible continuously at all times. In the provision of the above information, the insurer shall indicate - in a way that attracts attention, about the tariffs - that the tariffs may include a differentiation for the benefit of the contract holder only, from the aspect whether or not the contract qualifies as new or modified contract. If the insurance undertaking provides motor vehicle liability 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 registered seat or at his place of residence (Section 23 (4)–(5) of the MTPL Act).

* 1. **Permanent presence**

For the purposes of Sections 279–281 of the Insurance Act, the permanent presence of the insurer in another member state qualifies as the establishment of a branch office in the other state if the permanent presence is not realized in the form of a branch office, but in the form of an office operated by the company's own employees or by a person who is independent, but has a permanent authorization to act on behalf of the company in the same way as a branch office would.

The permanent presence of the person involved in insurance intermediary or ancillary insurance intermediary activities in another member state in a way that is equivalent to a branch office shall be governed by the rules applicable to branch offices - unless the permanent presence is realized in another legal form allowed by the laws of the other member state. In particular, such a permanent presence could be an office that is operated by the insurance intermediary or ancillary insurance intermediary person's own employees or by a person who is independent, but has a permanent authorization to act on behalf of the insurance intermediary or ancillary insurance intermediary person in the same way as a branch office would.

1. The provisions shall be applied for reinsurers, too, as relevant, therefore where the present information says insurer, it covers reinsurers, too. [↑](#footnote-ref-2)
2. Section 4 (1)(62) of the Insurance Act:

62. Member state of the commitment shall mean the member state:

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

ba) the member state in which the property is situated if the insurance relates 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 MTPL Act 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); [↑](#footnote-ref-3)