Methodological Guideline No 4/2014 of the Financial Market Supervision Unit of Národná banka Slovenska of 15 December 2014 on the internal control system of payment institutions, electronic money institutions, branches of foreign payment institutions and branches of foreign electronic money institutions

Definitions

For the purposes of this Methodological Guideline, ‘Act’ means Act No 492/2009 Coll. on payment services and on amendments to certain laws, as amended;
‘company’ means any payment institution, electronic money institution, branch of a foreign payment institution or branch of a foreign electronic money institution.

Purpose of the methodological guideline

(1) Under Article 70(1) of the Act, payment institutions shall develop and maintain an efficient internal control system. For the purposes of the Act, ‘internal control’ means checking compliance with laws and other generally binding legal regulations, with the payment institution’s articles of association, with prudential rules, and with rules on anti-money laundering/combating terrorist financing (AML/CTF).

(2) Electronic money institutions, branches of foreign payment institutions and branches of foreign electronic money institutions shall regulate the internal control system and appoint an internal control officer responsible for the performance of internal control activities commensurate to the scope and complexity of the company’s activities.

(3) The objective of this methodological guideline is to lay down uniform rules governing the structure of the internal control system in companies.

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1. Definition of the internal control system and the main structure of control activities

(1) A company's internal control system means the sum of all the control procedures and mechanisms developed by the company's management, at all levels of the organisation, with the aim of ensuring:
  • the compliance of the company's activities with the relevant generally binding legal regulations, regulatory decrees, and internal regulations;
that activities are performed in accordance with the company's objectives and as cost effectively as possible;

that information used by the company for decision-making process is up-to-date, complete, and reliable;

the protection of the rights of the company's clients, owners and employees and the prevention of illegal and unethical practices.

Direct process control

Direct process control means all forms of ongoing control measures, procedures and mechanisms in a company's different departments which are directly integrated into work procedures on a daily basis and without which the work process would not be completed. Direct process control activities shall be performed by the staff members or organisational units that participate in the particular working procedures.

Indirect process control

Indirect process control means all forms of ongoing control measures, procedures and mechanisms in a company's different departments which are indirectly integrated (mediated) into work procedures. Indirect process control activities shall be performed by the managerial staff members of the company's different departments who are in charge of the processes subject to control, or by staff members appointed by them.

Extra-process control

Extra-process control means control independent of operational and commercial procedures. Extra-process control activities shall be performed by an independent internal control unit or by the internal control officer.

2. Responsibility of companies for their internal control system

(1) Under Article 69(1) of the Act, payment institutions are required, in their articles of association, to allocate and regulate powers and responsibilities in respect of their internal control system, including an autonomous and independent internal control unit.

(2) Under Article 69(3) of the Act, the organisational structure of a payment institution is to include an internal control officer. Payment institutions shall ensure that the internal control officers have access to all information and materials required for the proper performance of their duties.

(3) Responsibility for ensuring the proper performance of duties by the internal control officer lies with the statutory body.

(4) Under Article 70(2) of the Act, the supervisory board has the right to require the internal control officer to conduct, to the extent defined by the board, an internal audit of the payment institution.
Components (elements) of a company's internal control system

(1) The internal control system of a payment institution shall comprise the following components:

- the supervisory board;
- the statutory body;
- the independent internal control unit or internal control officer;
- the risk management unit or risk management officer,
- the AML/CTF officer,
- managerial staff members.

(2) Provisions applying to payment institutions shall apply also to electronic money institutions, branches of foreign payment institutions and branches of electronic money institutions, commensurate to the scope and complexity of their activities and organisational management.

Companies' internal regulations on their internal control system

(1) Companies internal regulations shall clearly regulate the organisational framework, relationship rules, responsibilities, competences, and conduct of activities within the internal control system. Internal regulations shall include, as a rule, the following:

- the articles of association;
- organisational rules and organisational structure;
- regulations on the risk management system;
- a regulation (manual) for the independent internal control unit or for the performance of activities by the internal control officer;
- the plan of activities of the obligated person pursuant to Article 20 of Act No 297/2008 Coll. on the prevention of money laundering and terrorist financing;
- an ethical codex;
- other regulations depending on the size of the company and on the scope and complexity of its activities; rules implemented by the parent company, etc.

(2) The regulation (manual) for the independent internal control unit or for the performance of activities by the internal control officer shall regulate the procedural side of internal control. This internal regulation shall incorporate a standard Professional Practices Framework of Internal Auditing, including, for example, provisions on the principle of independence, processes for the planning and performance of inspections and audits and for the communication of inspection/audit results, a procedure for making proposals and recommendations to remedy deficiencies, monitoring the removal of deficiencies identified, follow-up audits, and the form of audit reports.

3. Independent internal control unit / internal control officer

Tasks of the independent internal control unit or internal control officer

(1) Control activities of the independent internal control unit or the internal control officer shall cover all operational and business procedures of the company. The unit or officer shall be responsible for inspecting and evaluating:
• the functionality, effectiveness and adequacy of the overall internal control system;
• the functionality, effectiveness and adequacy of individual management and control systems and components of the internal control system;
• the functionality, effectiveness and adequacy of the risk management system;
• compliance with laws and other generally binding legal provisions;
• compliance with the company's internal regulations.

(2) Under Article 70(3) of the Act, the internal control officer shall without delay notify in writing the supervisory board and Národná banka Slovenska of any facts he/she ascertains during the course of his/her activities which indicate that the payment institution has breached its obligations imposed by law, by its articles of association or by prudential rules, such that may affect the proper performance its activities.

(3) The internal control unit or internal control officer shall be responsible for monitoring the removal of deficiencies identified and for making proposals (recommendations) to remedy deficiencies. The activities of the unit or officer shall also include performing specific functions that support the company's managerial levels; these may include providing advice to the company's senior management (supervisory board, management board) or to individual organisational units, providing the independence of the unit/officer is guaranteed.

Independence

(1) The internal control unit or internal control officer shall be an independent internal organisational unit of the company, which when authorised to do so by the company's management, shall perform extra-process internal control activities under Section 1.

(2) The internal control unit or internal control officer shall be independent of the company's operational and business procedures subject to internal control. The unit/officer shall therefore as a matter of principle:
1. not be charged with tasks and activities which are not related to internal control and are not in line with their control activities;
2. not be involved in any operational and business procedures of the company;
3. not be responsible for the outcome of the processes audited.

(3) Staff members of other units of the company shall in principle not be assigned tasks related to internal control; this does not, however, preclude authorising staff members of other units to perform activities for the internal control unit, on grounds of their special knowledge in warranted cases.

(4) Under the second sentence of Article 70(3) of the Act, the internal control officer may not simultaneously hold the position of AML/CTF officer.

(5) The internal control officer may not simultaneously hold the position of risk management officer. Under Article 77a(4) of the Act, a payment institution's risk management function is to be performed by one or more of its staff members, or by other persons on a contractual basis, independent of its other organisational units and bodies.

(6) The internal control officer shall report directly to the statutory body, which will ensure the officer's independence, necessary authority, and communication with other organisational units.
(7) Internal control units and internal control officers shall have the right, autonomously and independently, to:

1. specify their duties; this is without prejudice to the right of the supervisory board to require the internal control officer to conduct an audit, to the extent defined by the board, pursuant to Article 70(2) of the Act;
2. produce reports and evaluations of audit results.

**Expertise (ongoing professional development)**

1. The qualifications (knowledge and skills) of the internal control officer shall conform to the state of the art and be appropriate to the risks associated with operational and business procedures subject to internal control.

2. The internal control officer shall participate at least once a year in courses related to the Professional Practices Framework of Internal Auditing.

**4. Independent internal control**

**Planning**

1. Under Article 70(4) of the Act, internal control officers are required, by not later than 31 December of each calendar year, to submit to Národná banka Slovenska an internal control programme for the next calendar year.

2. Internal control programmes shall be appropriate to the scope and complexity of the company's activities, take into account all types of risk that the company undertakes within its activities, and be based on the assessment of suggestions made by the statutory body, supervisory board and staff members of the company.

3. Internal control programmes shall be discussed and approved by the supervisory board and by the statutory body. Where a meeting of the supervisory board or statutory body discusses and approves an internal control programme, the minutes of that meeting shall state this fact.

4. All operational and business procedures of companies shall be subject to internal audits at intervals of not longer than three years. Operational and business procedures with specific risks shall be subject to an internal audit control at least once a year.

   Companies shall include in each annual internal audit programme an independent and comprehensive audit of their AML/CTF activities.

5. Companies shall ensure that special internal control activities outside the internal control programme can be performed at any time.

**Focus of control activities**

The focus of control activities is determined by the tasks of the independent internal control unit or internal control officer. Control activities shall cover all operational and business procedures of the company, in particular the internal control system itself, the accounting and reporting system, the information system, the risk management system, and AML/CTF activities. The type, scope, frequency and methods of control activities shall be targeted so as to enable the internal control unit or internal control officer to identify and describe correctness and
appropriateness of the company's operational and business procedures subject to internal control, and identify the causes of any deficiencies identified.

**Performance of control activities**

(1) Under the second sentence of Article 69(3) of the Act, payment institutions are required to ensure that their internal control officer has access to all information and materials required for the proper performance of his/her duties.

(2) Company shall ensure that their internal control officer is able to participate at the meetings of its decision-making bodies. It is essential that this officer is allowed unrestricted access to the company's documents, information, data, materials, and operational and business procedures, to all its instructions and decisions, as well as to persons and material assets which are or could be directly or indirectly relevant for internal control.

(3) In the event of serious deficiencies, all organisational units of the company shall provide the internal control officer with all required documents and information.

**Written audit reports**

**Reports on individual audits**

The internal control officer shall produce a written report on each audit performed and submit it to the management of the company. Each audit report shall state:

a) the subject-matter of the audit (organisational unit, operational and business procedure, etc.);

b) the audit findings, in particular a description of any material deficiencies identified;

c) risks to the company;

d) an evaluation of the audit results, in particular proposals (recommendations) to remedy the deficiencies;

e) the standpoints given by competent staff members of the unit audited on the deficiencies identified and on the proposals and recommendations made.

**Annual report on control activity results**

(1) Under Article 70(5) of the Act, the internal control officer is required at least once a year to submit to the payment institution's statutory body and supervisory board a written report on the fulfilment of the control activity programme.

(2) After the end of each calendar year, the internal control officer shall prepare a report on his/her performance for the previous calendar year.

(3) The annual report on control activity results shall state:

a) the extent of compliance with the control activity programme for the calendar year;

b) information on all audits performed during the calendar year;

c) information on any serious deficiencies identified by the internal control officer, and on remedial measures adopted and their implementation.

(4) The statutory body shall pay due attention to audit reports and to the implementation of recommendations.
Monitoring (checking the removal of deficiencies)

Internal control officers (or independent internal control units) shall be responsible for monitoring the removal of deficiencies identified and for implementing recommendations to remedy the deficiencies. Where deficiencies are not addressed and recommendations to remedy them are not implemented within a reasonable time, the officer shall inform the statutory body and the supervisory board of the fact without delay.

Documentation and archiving

Internal control officers (or independent internal control unit) shall ensure that each audit they perform is documented so as to enable retrospective verification of control activities performed, audit findings (deficiencies) and the evaluation of audit results. Companies shall ensure that audit reports and documentation are kept for at least ten years; the procedure and conditions shall be determined in the company’s internal regulations governing the internal control system and internal audits.

Final provisions

This methodological guideline shall become applicable on the day of its approval by the Director of the Financial Market Supervision Unit of Národná banka Slovenska. Legal regulations related to the subject-matter of this methodological guideline are available on the website of Národná banka Slovenska (www.nbs.sk).

Ing. Vladimír Dvořáček
Member of the Bank Board and
Executive Director of the Financial Market Supervision Unit