

## ACT ON PAYMENT SERVICES

### The full text of Act No. 492/2009 Coll. on payment services and on amendments to certain laws, as amended by Act No. 130/2011 Coll.

The National Council of the Slovak Republic has adopted this Act:

#### Section I

#### PART ONE BASIC PROVISIONS

#### Article 1

(1) This Act regulates

- (a) the provision of payment services;
- (b) the conditions for establishing and operating payment systems;
- (c) the conditions for establishing and operating payment institutions;
- (d) the conditions for establishing and operating electronic money institutions;
- (e) handling of complaints and other claims and resolution of disputes relating to the provision of payment services or issuance and use of electronic money;
- (f) supervision of payment system operators, supervision of payment institutions and supervision of electronic money;

(2) This act shall apply to payment services provided by a payment service provider

- (a) in euros or the currency of a state that is party to the Agreement on the European Economic Area (hereinafter "Member State") within the European Economic Area;
- (b) in a currency other than that which falls under Subparagraph (a) within the European Economic Area, pursuant to Article 30 and Article 89 (7);
- (c) in any currency outside the European Economic Area pursuant to Article 30 and Article 89 (7).

(3) This Act shall not apply to

- (a) payment transactions made exclusively in cash directly from the payer to the payee without any intermediary intervention;
- (b) payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
- (c) physical transportation of banknotes and coins, including their collection, processing and delivery;
- (d) payment transactions made in cash within the framework of a non-profit or charitable activity;
- (e) services in which cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user immediately prior to the execution of the payment transaction through a payment for the purchase of goods or services;
- (f) money exchange business<sup>1</sup>);
- (g) payment transactions based on drafts and cheques,<sup>2</sup>) money orders, traveller's cheques or postal remittance orders<sup>3</sup>) in paper form;
- (h) payment transactions carried out within a payment system or financial instruments settlement system between settlement agents, central counterparties,<sup>4</sup>) clearing houses pursuant to Article 47 (4) or central banks and other participants of the payment system or financial instruments settlement system<sup>5</sup>) and payment service providers, without prejudice to this Act on payment systems;
- (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in Subparagraph (h), securities dealers providing investment services, asset management companies providing investment services, foreign collective investment undertakings<sup>6</sup>), or any other foreign entities pursuing an activity that corresponds to the activity of such persons;
- (j) services provided by technical service providers that support the provision of payment services without entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology and communication network provision, provision and maintenance of terminals and devices used for payment services;

<sup>1</sup>) Article 2 (l) of the Act of the National Council of the Slovak Republic No. 202/1995 Coll. the Foreign Exchange Act, amending the Act of the Slovak National Council No. 372/1990 Coll. on minor offences, as amended.

<sup>2</sup>) Act No. 191/1950 Coll. the Bills of Exchange and Cheques Act, as amended.

<sup>3</sup>) Article 4 (2) (d) of Act No. 507/2001 Coll. on postal services, as amended.

<sup>4</sup>) Article 3 (4) (o) of Act No. 429/2002 Coll. on the Stock Exchange, as amended by Act No. 209/2007 Coll.

<sup>5</sup>) Article 5 and Article 99 (3) (h) of Act No. 566/2001 Coll. on securities and investment services and on amendments to certain acts (Securities Act), as amended.

<sup>6</sup>) For example, Article 4 of Act No. 594/2003 Coll. on collective investment and on amendments to certain acts, as amended by Act No. 213/2006 Coll.

- (k) services based on payment instruments that can be used to acquire goods or services only in the premises used by the payment service provider or under a commercial agreement with the payment service provider either within a limited network of service providers or for a limited range of goods or services;
- (f) payment transactions executed by means of any telecommunication, digital or information technology device where the goods or services purchased are delivered to and are to be used only through a telecommunication, digital or information technology device, provided that the operator of such device does not act only as an intermediary between the payment service user and the supplier of the goods and services;
- (m) payment transactions carried out between payment service providers, their agents or branches for their own account;
- (n) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group;
- (o) services by payment service providers to withdraw cash by means of automated teller machines acting on behalf of one or more payment service providers, which are not a party to the framework contract with the consumer withdrawing money from a payment account, if such providers do not conduct the payment services referred to in Article 2 (1).

## Article 2

### (1) "Payment service" means

- (a) placement of cash on a payment account and all the operations required for operating a payment account;
- (b) cash withdrawals from a payment account and all the operations required for operating a payment account;
- (c) execution of payment transactions, including transfers of funds from or to a payment account with the user's payment service provider or with another payment service provider
  - 1. by credit transfer;
  - 2. through a payment card or another payment instrument;
  - 3. by direct debit;
- (d) execution of payment transactions with funds covered by a credit for a payment service user
  - 1. in the form of an authorised overdraft on the payment account, namely
    - 1a. by credit transfer;
    - 1.b through a payment card or another payment instrument;
    - 1.c by direct debit; or
  - 2. in form of a credit facility through a payment card or another payment instrument
- (e) money remittance;
- (f) execution of payment transactions in which the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or information technology device and the payment is made to the telecommunications, information technology system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services;
- (g) issuing or receiving a payment card or another payment instrument.

(2) "Payment transaction" means an act of placing, transferring or withdrawing funds based on an order given by the payer or by the payee, or through the payee, to a payment service provider, which is executed within the frame of payment services as referred to in Paragraph 1 (a) to (f).

### (3) "Payment service provider" means

- (a) a bank, a foreign bank or a branch of a foreign bank;
- (b) an electronic money institution within the meaning of Article 81, a foreign electronic money institution or a branch of a foreign electronic money institution;
- (c) a post office giro institution,<sup>7)</sup> if it is entitled under a specific law to provide payment services;
- (d) a payment institution within the meaning of Article 63, a foreign payment institution or a branch of a foreign payment institution;
- (e) National Bank of Slovakia, when not acting in its capacity as monetary authority, or when no activities related to securing public needs are involved;
- (f) the State Treasury, the Export-Import Bank of the Slovak Republic, local government authorities, municipalities and higher territorial units, when they are entitled under a specific law to provide payment services and when no activities related to securing public needs are involved.

(4) "Payer" means a person that gives a payment order to a payment service provider and pays the funds that are the subject of a payment transaction.

(5) "Payee" means a person that is the intended recipient of funds being the subject of a payment transaction.

(6) "Payment service user" means a person making use of a payment service in their capacity as either a payer or payee, provided that the payer and the payee may be the same person.

(7) "Consumer" means, for the purposes of this Act, a natural person who, when entering and performing a payment service contract,

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<sup>7)</sup> Article 5 of Act No. 507/2001 Coll., as amended.

does so for purposes other than his or her employment, profession or business, provided that a payment service provider may treat as a customer a person who, at the time of entering a framework payment service contract, employs less than ten persons and whose annual turnover or total annual balance does not exceed EUR 2,000,000.

(8) "Money remittance" means a payment service where funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and where such funds are received on behalf of and made available to the payee, without any payment accounts being created in the name of the payer or the payee.

(9) "Payment account" means a current account<sup>8)</sup> or another account held in the full name, in case of a natural person, or in the business name or business name, in case of a legal entity, of one or more payment service users, which is used for the execution of payment transactions.

(10) "Payment order" means any instruction by a payer or payee to his or her payment service provider requesting the execution of a payment transaction. The form and particulars of a payment order are to be defined by the payment service provider in accordance with Article 31 (5) (b), second point and Article 35 (1) (a).

(11) "Credit transfer" means a payment service in which an amount of funds that is the subject of a payment transaction is either debited from the payee's account or paid by the payee in cash and credited to the payer's account or paid out to the payer in cash against a payment order submitted by the payer to a payment service provider; a standing payment order is also understood as credit transfer.

(12) "Direct debit" means a payment service in which an amount of funds that is the subject of a payment transaction is debited from the payee's account against a payment order submitted on the basis of the payer's consent to such direct debit given to the payee, to the payee's payment service provider or to the payer's payment service provider; a standing debit order is also understood as direct debit.

(13) "Funds" means, for the purposes of this Act, banknotes and coins, scriptural money or electronic money.

(14) "Value date" means, for the purposes of this Act, a date used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account.

(15) "Reference exchange rate" means, for the purposes of this Act, the exchange rate used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source.

(16) "Reference interest rate" means, for the purposes of this Act, the interest rate used as the basis for calculating any interest to be applied and which comes from a publicly available source that can be verified by both the payment service provider and the payment service user.

(17) "Authentication" means, for the purposes of this Act, a procedure that allows the payment service provider to verify the use of a specific payment instrument, including its personalised security features, particularly the personal identifier and password.

(18) "Unique identifier" means, for the purposes of this Act, a combination of letters, numbers or symbols assigned to the payment service user by the payment service provider and to be provided by the payment service user to unambiguously identify another payment service user and/or his or her payment account for a payment transaction.

(19) "Payment instrument" means, for the purposes of this Act, any personalised device or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order, including without limitation a payment card, Internet banking or other electronic banking payment applications.

(20) "Payment card" means a payment instrument that provides a payment service user with access to withdraw financial funds up to a limit authorised by the payment service provider.

(21) "Branch" means, for the purposes of this Act, an organisational unit of a payment institution or electronic money institution situated within or outside the territory of the Slovak Republic.

(22) "Branch of a foreign financial institution" or "branch of a foreign electronic money institution" means, for the purposes of this Act, an organisational unit of a foreign financial institution or a foreign electronic money institution situated within the territory of the Slovak Republic, which directly provides payment services or issues electronic money; all branches of a foreign financial institution or a foreign electronic money institution set up in the Slovak Republic by a foreign financial institution or a foreign electronic money institution having its head office in another Member State shall be regarded as a single branch.

(23) "Group" means, for the purposes of this Act, a group of entities that consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries have a holding, as entities linked to each other by a close relationship.

(24) "Close links" means, for the purposes of this Act, any relationship between two or more entities in which one of the entities has at least a 20% direct or indirect holding in the registered capital or

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<sup>8)</sup> Article 708 of the Commercial Code.

voting rights of another entity or controls another such entity, whether directly or indirectly<sup>9)</sup>, or any relationship between two or more entities controlled by the same entity.

(25) "Home Member State" means, for the purposes of this Act, a Member State in which either of the following is situated:

- (a) the registered office of the payment service provider; or
- (b) if the payment service provider has, under its national law, no registered office, the head office of the payment service provider.

(26) "Host Member State" means, for the purposes of this Act, the Member State other than the home Member State in which a payment service provider has an agent or a branch or provides payment services.

(27) "Suitable person" means, for the purposes of this Act, a person who credibly evidences a transparent, trustworthy and legal origin of its registered capital and other sources of funds, and it is obvious that such person is able to ensure due and safe pursuit of activities under this Act.

(28) "Qualifying participation" means, for the purposes of this Act, a direct or indirect holding, or a sum of holdings amounting to at least 10% of registered capital or voting rights of a legal entity, or the ability to exert other significant control over management of such legal entity that compares to the control corresponding to such holding.

(29) "Indirect holding" means, for the purposes of this Act, a holding that is held through an intermediary, the same being either one or more legal entities over which the holding legal entities has control.

(30) "Professional competence" means, for the purposes of this Act, a completed second-degree university education and at least three years of managerial experience in the field of payment services, banking or other financial market sphere. The National Bank of Slovakia may also recognise as competent (a) a natural person with completed second-degree university education and at least three years of managerial experience in a different economic sphere, or

(b) a natural person with completed upper secondary education and at least seven years of experience in the field of payment services, banking, or another financial market sphere or another economic sphere, and at least three years of managerial experience in the field of payment services, banking, or another financial market sphere or another economic sphere.

(31) "Credible natural person" means, for the purposes of this Act, a natural person who

(a) has not been lawfully convicted of a property-related criminal offence, an economic criminal offence, a criminal offence of corruption, a criminal offence committed in connection with that person's employment, profession, position or function, or an intentional criminal offence, and where an intentional criminal offence has been committed, if such criminal offence has been obliterated or such person is deemed to have not committed any such offence<sup>10)</sup>; these facts shall be documented by a transcript from a criminal record<sup>11)</sup>; or, in the case of a foreigner, these facts shall be documented by a similar official record confirming personal integrity issued by the pertinent authority of the country of usual residence;

(b) in the past ten years

1. has not acted in the capacity of a statutory body or a member of a statutory body (hereinafter "member of a statutory body"), a member of a supervisory or audit body (hereinafter "member of a supervisory body"), confidential clerk, manager and employee having responsibility for internal audits, or in any other capacity in any payment institution, electronic money institution or another financial institution from which an authorisation for the pursuit of its activity was withdrawn at any time during the year preceding such withdrawal of the authorisation; the foregoing shall equally apply to acting in any such capacity in an autonomous financial agent<sup>12)</sup> or any other intermediary<sup>13)</sup> in the financial market sphere that was a legal entity, as well as acting in the capacity of an autonomous financial agent or any other intermediary in the financial market sphere who was a natural person, if an authorisation for the pursuit of the financial intermediation or another similar authorisation for the pursuit of the activity was withdrawn from such autonomous financial agent or other intermediary in the financial market sphere.

2. has not acted in any of the capacities referred to in Paragraph 1 or in any other similar capacity in any payment institution, electronic money institution or another financial institution, or a branch of an electronic money institution or a branch of another foreign financial institution that entered into liquidation or became insolvent, or over the property of which bankruptcy was declared, restructuring allowed, forced settlement confirmed, or a settlement permitted, or against which a bankruptcy petition was rejected, or bankruptcy proceedings dismissed or bankruptcy cancelled on grounds of insufficiency of assets and this at any time in the period of one year before such circumstances have arisen;

3. has not been deemed to be a trustworthy entity under specific provisions related to the financial<sup>14)</sup> market;

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<sup>9)</sup> Article 7 (19) of Act No. 483/2001 Coll. on banks and on amendments to certain acts; as amended.

<sup>10)</sup> Criminal Code.

<sup>11)</sup> Articles 13 (1) to (6) and Article 14 (3) (f) Act No. 330/2007 Coll. on the Criminal Register and on amendments to certain acts; as amended

<sup>12)</sup> Article 6 (2) (a) and Articles 7 and 18 of Act No. 186/2009 Coll. on the financial intermediation and financial counselling and on amendments to certain acts; as amended.

<sup>13)</sup> For example, Article 41 (1) to (3) of Act No. 186/2009 Coll., as amended.

4. reliably, honestly, and without violation of generally binding legal provisions has exercised his or her functions so far or has conducted his or her business, and with respect to these facts provides a guarantee that he or she would reliably, honestly, and without violation of generally binding legal provisions exercise the proposed function, including the fulfilment of duties arising from generally binding legal provisions, statutes and internal legal rules and management rules.

(32) "Financial institution" means, for the purposes of this Act, an asset management company, a securitiesdealer, a bank, an insurance undertaking, a reinsurance undertaking, a central securities depository, a stock exchange, a pension management company, a supplementary pension management company, an electronic money institution in relation to a payment institution, a payment institution in relation to an electronic money institution and entities located or having their head office outside the territory of the Slovak Republic with a similar scope of business, including their branches within the territory of the Slovak Republic.

(33) "Person" means, for the purposes of this Act, a natural person and a legal entity, unless the individual provisions of this Act do not refer only to a natural person or a legal entity.

## **PART TWO PAYMENT SERVICES**

### **Rights and Obligations in the Provision and Use of Payment Services**

#### Article 3

(1) A payment service provider shall execute payment transactions pursuant to an unambiguous order of a payment service user taking form of a paper or electronic payment order for the execution of a payment transaction.

(2) A payment service provider shall debit funds from a payment account even without a payment order (a) in the enforcement of a judicial ruling or in the fulfilment of a different obligation imposed by a specific law or under a specific law<sup>15</sup>;

(b) for payment of all fees and actual costs of services provided, the payment of payable debit interest or in other cases where the payment service provider is authorised to do so under a previously concluded agreement or

(c) in cases agreed in writing between the payment service provider and the payment service user;

(3) Payment transactions shall be executed in the currency agreed between the payment service provider and the payment service user.

(4) Where the payee offers the conversion service prior to the initiation of a payment transaction in a point of sale by means of a payment device, the payee shall disclose to the payer in advance all charges and the exchange rate to be used for the converting of the payment transaction. A payee may perform a conversion only with the payer's approval.

#### Article 4

(1) The point in time at which a payment order is received shall be understood as the time when the payment order submitted directly by the payer or indirectly by or through the payee is received by the payer's payment service provider. If the time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day. A payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received shall be deemed to have been received on the following business day.

(2) "Business day" means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business and which is not a non-working day or a public or bank holiday.<sup>16</sup>

(3) If the payment service user initiating a payment order and his payment service provider agree that the payment order shall be executed on a specific day or at the end of a certain period or on the day on which the payer has set funds at his payment service provider's disposal, the point in time of receipt of the payment order shall be deemed to be the agreed day. If the agreed day is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.

<sup>14</sup>) For example, Article 8 (b) of Act No. 566/2001 Coll., as amended; Article 6 (11) and (12) of Act No. 594/2003 Coll.; Article 3 (a) of Act No. 8/2008 Coll. on insurance and on amendments to certain acts pursuant to Act No. 186/2009 Coll.

<sup>15</sup>) For example, Article 76 (2), Article 175 r, Article 305, (a) and Article 307 (2) of the Rule of Civil Procedure; Article 96 (3) of the Act of the National Council of the Slovak Republic No. 233/1995 Coll. on judicial executors and execution activities (Rule of Execution) and on amendments to certain acts pursuant to Act No. 32/2002 Coll.; Article 83a (6) of Act No 511/1992 Coll. on the administration of taxes and fees and changes in territorial financial bodies, as amended by Act No 215/2007 Coll.; Article 78 (3) and (4) of Act No. 71/1967 Coll. on the administrative procedure (rule of Administrative Procedure), as amended by Act No. 527/2003 Coll.

<sup>16</sup>) Articles 93 to 95 of the Labour Code. The Act of the National Council of the Slovak Republic No. 241/1993 Coll. on bank holidays, non-working days and commemorative days, as amended.

## Article 5

(1) Where the payment service provider refuses to execute a payment order, that fact shall be notified to the payment service user. The payment service provider shall notify the payment service user of the reasons for the refusal of the payment order and, if possible, of the procedure for correcting any factual mistakes that led to the refusal of the payment order, unless a specific law provides otherwise.<sup>17)</sup>

(2) The payment service provider shall provide or make available the notification referred to in Paragraph 1 in an agreed manner without any undue delay, and in any case, within the periods specified in Article 15.

(3) It may be agreed in a framework contract that the payment service provider may charge for a notification referred to in Paragraph 1 if the refusal is objectively justified by reasons attributable to the payment service provider.

(4) In cases where all the conditions set out in the payer's framework contract are met, the payer's payment service provider shall execute a payment order authorised in accordance with Paragraph 8 irrespective of whether the payment order is initiated by a payer or by or through a payee, unless a specific law provides otherwise.<sup>17)</sup>

(5) A payment order of which execution has been refused shall be deemed not to have been received and shall be subject to Articles 15 and 22.

## Article 6

(1) A payment service user may not revoke a payment order once it has been received by the payer's payment service provider, unless otherwise provided for in Paragraphs 2 to 5.

(2) Where the payment transaction is initiated by or through the payee, the payer may not revoke the payment order for such operation after the payment order has been transmitted or the payer has given its consent to execute the payment transaction to the payee.

(3) In the case of a direct debit where the payer:

(a) has consented to the execution of the payment order directly to its payment service provider, the payer may revoke such payment order, revoking at the same its previous consent, at the latest by the end of the business day immediately preceding the day agreed for debiting the funds, which shall be without prejudice to the payer's right to refunds of its funds, unless otherwise agreed in a framework contract according to Article 13; or

(b) has consented to the execution of the payment order directly to the payee, the payer may revoke the payment order in respect of an individual payment transaction to be executed under its consent, at the latest by the end of the business day immediately preceding the day agreed for debiting the funds, which shall be without prejudice to the payer's right to refunds of its funds, unless otherwise agreed in a framework contract according to Article 13.

(4) In case of a payment order referred to in Article 4 (3), the payment service user may revoke a payment order at the latest by the end of the business day immediately preceding the agreed day.

(5) After the time limits specified in Paragraphs 1 to 4, a payment order may be revoked only if so agreed between the payment service user and its payment service provider; where a payment order is to be revoked in a case referred to in Paragraphs 2 and 3, the payee's consent shall also be required. If agreed in the framework contract, the payment service provider may impose a charge for revocation.

## Article 7

(1) The payment service provider of the payer, the payment service provider of the payee and any intermediaries of the payment service providers shall transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred, except as provided for in Paragraph 2. "Intermediary" means, for the purposes of this Act, any payment system operator or payment service provider other than the payment service provider of the payer or the payee.

(2) However, the payee and its payment service provider may agree that the payment service provider will deduct its charges from the amount transferred before crediting it to the payee. In such a case, the full amount of the payment transaction and that of the charges shall be separately indicated in the information given to the payee under Article 41.

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<sup>17)</sup> For example, Act No. 297/2008 Coll. on protection against the laundering of proceeds from criminal activity and protection against the financing of terrorism and on amendments to certain acts, as amended; Articles 89 to 93b of Act No. 483/2001 Coll., as amended.

(3) If any charges other than those referred to in Paragraph 2 are deducted from the amount transferred, the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer; in cases where the payment transaction is initiated by or through the payee, its payment service provider shall ensure that the full amount of the payment transaction is received by the payee.

#### Article 8

(1) If the payer has given consent to execute the payment transaction, that payment transaction shall be considered to have been authorised. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and its payment service provider, after the execution of the payment transaction.

(2) Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed in a contract for provision of a single payment service or a framework contract between the payer and its payment service provider. In the absence of such consent, the payment transaction shall be considered to be unauthorised.

(3) Consent may be withdrawn by the payer not later than the point of irrevocability under Article 6. Consent to execute a series of payment transactions may also be withdrawn with the effect that any future payment transaction is to be considered to be unauthorised.

(4) The procedure for giving consent shall be agreed in a contract for provision of a single payment service or a framework contract between the payer and the payment service provider.

#### Article 9

The payment service user shall obtain rectification from the payment service provider it notifies its payment service provider without undue delay upon becoming aware of any unauthorised or incorrectly executed payment transaction, but no later than 13 months after the date the funds have been debited from or credited to the payment account, of the unauthorised or incorrectly executed payment transaction giving rise to a claim, including claims referred to in Article 22. The time limit shall apply to the extent the payment service provider has provided or made available the information on that payment transaction in accordance with Articles 40 and 41.

#### Article 10

(1) Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, its payment service provider shall be required to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or any other deficiency.

(2) Where a payment service user denies having authorised an executed payment transaction, while use of a payment instrument has been recorded by the payment service provider, the use of the payment instrument in itself shall not be sufficient to prove either that the payment transaction was authorised by the payer, or that the payer caused the unauthorised execution of the payment transaction by a fraudulent act or failed, with intent or gross negligence, to fulfil one or more of its obligations under Article 26.

#### Article 11

(1) The payer's payment service provider shall immediately refund to the payer the amount of any unauthorised payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place at all; the foregoing is without prejudice to Article 9.

(2) The payer shall be entitled to financial compensation for any further evidenced loss, the amount of which shall be determined in accordance with the law applicable to the contract concluded between the payer and its payment service provider.

(3) The provisions of Paragraphs 1 and 2 shall not apply to electronic money if the payment service provider is not able to block the payment account or the electronic device in which the electronic money is held.

## Article 12

(1) A payer shall bear the losses, up to a maximum of EUR 100, relating to any unauthorised payment transactions resulting from the use of a lost or stolen payment instrument or from misappropriation of a payment instrument by an unauthorised person due to a payer's negligent failure to keep the personalised security features safe in accordance with Article 26 (c), unless otherwise provided in Paragraphs 2 to 4.

(2) The payer shall bear all the losses relating to any unauthorised payment transactions if it incurred them by acting fraudulently or by failing to fulfil one or more of its obligations under Article 26 with intent or gross negligence. In such cases, Paragraph 1 shall not apply.

(3) The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after notification given in accordance with Article 26(1) (b), except where it has acted fraudulently.

(4) If the payment service provider does not provide appropriate means for the notification of a lost, stolen or misappropriated payment instrument, as required under Article 27(1) (c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where it has acted fraudulently.

(5) The provisions of Paragraphs 1 to 4 shall not apply to electronic money if the payment service provider is not able to block the payment account or the electronic device in which the electronic money is held.

## Article 13

(1) A payer is entitled to a refund from its payment service provider of an authorised payment transaction initiated by or through a payee which has already been executed, if:

(a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and

(b) the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account its previous spending pattern, the conditions in its framework contract and relevant circumstances of the case.

(2) At the payment service provider's request, the payer shall provide specific information concerning the executed payment transaction, as referred to in Paragraph 1, within the time limit specified in Article 14(2); the refund shall consist of the full amount of the executed payment transaction.

(3) For direct debits the payer and its payment service provider may agree in the framework contract that the payer is entitled to a refund from its payment service provider even though the conditions for refund in Paragraph 1 are not met, except the direct debits referred to in Paragraph 5.

(4) For the purposes of Paragraph 1(b), the payer may not rely on currency exchange reasons if the reference exchange rate agreed with its payment service provider in accordance with the second point in Article 31(5)(c) and Article 35(1)(d) was applied in the conversion.

(5) It may be agreed in the framework contract that the payer is not entitled to a refund according to Paragraph 1 if:

(a) the payer has given its consent to execute the payment transaction directly to its payment service provider; and

(b) where applicable, information on the future payment transaction was provided or made available in an agreed manner to the payer by the payment service provider or by the payee at least four weeks before the date of debiting the amount of the payment transaction.

## Article 14

(1) A payer may submit its request for the refund of an authorised payment transaction initiated by or through a payee, as referred to in Article 13, within a time limit of eight weeks from the date on which the funds were debited from the account.

(2) Within ten business days of receiving a request for a refund, the payment service provider shall either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the entities to which the payer may refer the matter in accordance with Article 89 (1) and Articles 90 to 93 if it does not accept the justification provided.

(3) The payment service provider's right to refuse the refund shall not apply to cases agreed under Article 13 (3).

#### Article 15

(1) The payer's payment service provider shall ensure that the amount of the payment transaction is credited to the account of the payee's payment service provider at the latest by the end of the next business day after the point in time of receipt, except as provided for in Paragraph 2.

(2) Where the payment order is given on paper, the time limit referred to in Paragraph 1 may be extended by an additional business day.

(3) The payee's payment service provider shall credit the amount of the payment transaction to the payee's payment account and make the amount of the payment transaction so credited available to the payee on the same day when the payee's payment service provider has received the funds in accordance with Article 19.

(4) Where the payment order for a payment transaction is initiated by or through the payee, the payee's payment service provider shall deliver such payment order to the payer's payment service provider within the time limits agreed in the framework contract between the payee and the payment service provider so that the payment transaction, as far as direct debit is concerned, can be executed on the day agreed for the debiting of the amount of the payment transaction from the payment account of the payer.

#### Article 16

Where a payer transfers funds to a payee that does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds for the payee within the time limit specified in Articles 15 and 19 (2).

#### Article 17

(1) Where a consumer places cash into a payment account with a payment service provider in the currency of that payment account, the payment service provider shall ensure that the amount is credited to the payment account and made available without undue delay after the point of time of the receipt of the funds.

(2) Where a payment service user other than consumer places cash on a payment account with a payment service provider in the currency of that payment account, the payment service provider shall ensure that the amount is credited to the payment account and made available on the same day, or at the latest on the next business day after the receipt of the funds insofar as such funds are placed in cash by means of a technical device.

#### Article 18

In case of a credit transfer where the payer's payment service provider and the payee's payment provider provide the payment service within the territory of the Slovak Republic, the credit transfer shall be executed:

(a) within the time limits according to Article 15 (2) (1) and (3) and Article 19 (2);

(b) in such a manner that, after the point in time of receipt of the payment order, the payer's payment service provider shall ensure that the amount of the payment transaction is credited to the payment service provider's account of the payee on the same business day and the payee's payment service provider credits the amount of the payment transaction without undue delay in accordance with Article 15 (3) and makes the amount of the payment transaction available according to Article 19 (2) insofar as the payment transaction is executed within a payment system operated according to Article 45 (4) (a);

(c) in such a manner that, after the point in time of receipt of the payment order, the payment service provider shall credit the amount of the payment transaction to the payee's payment account on the day the amount of the payment transaction is debited from the payer's payment account or the day the amount of the payment transaction has been deposited in cash, if the payer's payment service provider and the payee's payment service provider are the one and the same person.

#### Article 19

(1) The credit value date for the payee's payment account shall be no later than the business day on which the amount of the payment transaction is credited to the account of the payee's payment service provider.

(2) The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the account of the payee's payment service provider.

(3) The debit value date for the payer's payment account shall be no earlier than the business day on which the amount of the payment transaction is debited from that payment account.

#### Article 20

(1) The provisions of Articles 15 to 19 shall apply to payment transactions executed in euros within the European Economic Area.

(2) The provisions of Articles 15 to 19 shall apply to payment transactions executed in a different currency of a Member State within the European Economic Area unless the payment service user and its payment service provider have agreed on different time limits; however, where the payment service user and its payment service provider have agreed on a time limit longer than that specified in Article 15 (1) to (3), such time limit shall not exceed four business days following the point in time of receipt of the payment order.

#### Article 21

(1) If a payment order is executed in accordance with a unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier.

(2) If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 22 for non-execution or defective execution of the payment transaction. The payer's payment service provider shall make reasonable efforts to refund the amount of the payment transaction to the payer.

A charge for such service may be agreed in the framework contract.

(3) If the payment service user provides information additional to that specified in Article 31 (5)(b), second point and Article 35 (1)(a), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user and shall not be liable under Article 22 for the additional information.

#### Article 22

(1) Where a payment order is initiated by the payer, its payment service provider shall be liable to the payer for correct execution of the payment transaction. Where the payer's payment service provider proves to the payer or to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with Article 15 (1), the payee's payment service provider shall be liable to the payee for non-execution or defective execution of the payment transaction. If:

(a) the payer's payment service provider is liable for non-execution or defective execution of the payment transaction, it shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the payment account to the state in which it would have been had the defective payment transaction not taken place.

(b) the payee's payment service provider is liable for non-execution or defective execution of the payment transaction, it shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account.

(2) In case of a non-executed or defectively executed payment transaction according to Paragraph 1, the payer's payment service provider shall, at the payer's request and regardless of its liability, make immediate efforts to trace the payment transaction and notify the payer of the outcome of the tracing of the non-executed or defectively executed payment transaction.

(3) Where a payment order is initiated by or through the payee, its payment service provider shall be liable to the payee for correct transmission of the payment order to the payment service provider of the payer within the time limit specified in Article 15 (3) and (4); the payee's payment service provider shall without undue delay retransmit the payment order to the payer's payment service provider.

(4) The payee's payment service provider according to Paragraph 3 shall be liable to the payee for the execution of the payment transaction according to Article 19 (1) and (2); the payee's payment service provider shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the account of the payee's payment service provider.

(5) In case of non-execution or defective execution of a payment transaction for which the payee's payment service provider is not liable under Paragraphs 3 and 4, the payer's payment service provider shall be liable to the payer; the payer's payment service provider shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and restore the payment account to the state in which it would have been had the defective payment transaction not taken place.

(6) In case of a non-executed or defectively executed payment transaction according to Paragraph 3, the payee's payment service provider shall, at the payee's request and regardless of its liability, make immediate efforts to trace the payment transaction and notify the payee of the outcome of the tracing of the non-executed or defectively executed payment transaction.

(7) Payment service providers shall be liable for any charges and any interest to which the payment service users are subject as a consequence of non-execution or defective execution of the payment transaction caused by the payment service provider.

(8) In case of a credit transfer according to Article 18, the framework contract may provide for corrective settlement where the payment service provider caused defective execution of the credit transfer due to which the payee received unjust enrichment. "Corrective settlement" means correction of defective execution of a credit transfer through a corrective credit to or debit from the payment account. The foregoing is without prejudice to the liability of the payment service provider or intermediary under Articles 21 to 24.

(9) Corrective settlement according to Paragraph 8 shall not be possible if the payment service provider of the payee receiving the defective credit transfer is the State Treasury. The payment service provider liable for the defective execution or the credit transfer shall request the State Treasury to arrange a refund of the amount of the defective credit transfer; such refund shall be subject to consent of the payee. If the payee does not give the State Treasury its consent to the refund of the defective credit transfer, the State Treasury shall provide the payee's identification data to the payment service provider which has requested the State Treasury to arrange the refund of the amount of the defective credit transfer.

### Article 23

Procedures regarding liability for loss or unjust enrichment and late payment interest<sup>18)</sup> in excess of the liability under Articles 21 and 22 shall be governed by the law applicable to the contract between the payment service user and the payment service provider.

#### Article 24

(1) Where the liability for non-execution or defective execution of a payment transaction under Article 22 is attributable to an intermediary, such intermediary shall compensate the payment service provider according to Article 22 any losses incurred or sums paid under Article 22.

(2) Procedures regarding liability for loss or unjust enrichment and late payment interest<sup>18)</sup> in excess of the liability under Paragraph 1 shall be governed by the law applicable to the contract between the payment service user and the intermediary.

#### Article 25

Liability for violation of obligations in the provision of payment services under this Act shall not apply if the payment service provider proves that the violation of obligations had been caused by circumstances excluding liability<sup>19)</sup> or by action under a specific provision.<sup>20)</sup>

#### Article 26

When using a payment instrument, a payment service user shall:

- (a) use the payment instrument in accordance with the terms and conditions regulating the issuance and use of the payment instrument;
- (b) without undue delay notify the payment service provider or a person designated by it any loss, theft, misappropriation or unauthorised use of the payment instrument;
- (c) as soon as it receives the payment instrument, take all reasonable steps to keep safe its personalised security features of the payment instrument.

#### Article 27

(1) When issuing a payment instrument, a payment service provider shall:

- (a) make sure that the personalised security features of the payment instrument are not accessible to parties other than the payment service user entitled to use the payment instrument;
- (b) refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;
- (c) create appropriate technical conditions for continuous receipt of notifications pursuant to Article 26(b) or requests for unblocking of a payment instrument pursuant to Article 28 (4); within 18 months after the receipt of such notification or request, the payment service provider shall, on request, provide the payment service user with an evidence proving receipt of such notification or request;
- (d) prevent any use of the payment instrument once notification pursuant to Article 26(b) has been received.

(2) The payment service provider shall bear the risk of sending to the payer a payment instrument or any personalised security features of it.

#### Article 28

(1) Where a payment instrument is used for the purposes of authorisation according to Article 8, the payer and its payment service provider may agree on a maximum spending limit for payment transactions executed through such payment instrument.

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<sup>18)</sup> Regulation of the Government of the Slovak Republic No. 87/1995 Coll. implementing certain provisions of the Civil Code, as amended by Regulation No. 586/2008 Coll.

<sup>19)</sup> Article 374 of the Commercial Code.

<sup>20)</sup> For example, Act No. 297/2008, as amended; Articles 38 and 39 of the Act of the National Council of the Slovak Republic No. 202/1995 Coll., as amended by Act No. 659/2007; Article 8 (6) of the Act of the National Council of the Slovak Republic No. 118/1996 Coll. on the protection of deposits and on amendments to certain acts, as amended; Article 55 (5) of Act No. 483/2001 Coll.; Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ L345, 8.12.2006).

(2) It may be agreed in the framework contract that the payment service provider reserves the right to block the payment instrument:

- (a) for reasons related to the security of the payment instrument;
- (b) for reasons related to suspicion of unauthorised or fraudulent use of the payment instrument; or
- (c) in case of a payment instrument with a credit line, for reasons related to increased risk that the payer may be unable to fulfil its liability to pay.

(3) In the cases referred to in Paragraph 2, the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in the manner agreed in the framework contract, either before the payment instrument is blocked or without undue delay thereafter, unless giving such information would compromise security in the issuance or receipt of payment instruments or a specific law provides otherwise.<sup>17)</sup>

(4) The payment service provider shall unblock the payment instrument or replace it with a new payment instrument once the reasons for blocking no longer exist. Thereafter, it shall notify the payment service user of the unblocking.

#### Article 29

(1) It can be agreed in a framework contract that for low value payments or electronic money with a value not exceeding EUR 150 at any time:

- (a) the payer's liability for unauthorised payment transactions under Article 12 (3) and (4), the payment service user's obligation under Article 26 (b), and the payment service provider's obligation under Article 27 (1)(c) and (d) shall not apply if the payment instrument or electronic money does not allow its blocking or prevention of its further use;
- (b) Articles 10, 11 and Article 12 (1) and (2) shall not apply if the payment instrument or electronic money has been used anonymously, or the payment service provider is not in a position for other reasons that are intrinsic to the payment instrument or the electronic money to prove that a payment transaction was authorised;
- (c) the payment service provider is not required to notify the payment service user of the refusal of a payment order pursuant to Article 5 (1) if the non-execution of the payment order is apparent;
- (d) a payer may not revoke a payment order after execution of the payment transaction or after giving its consent to execute the payment transaction to the payee pursuant to Article 6;
- (e) payment transaction execution periods other than those specified in Articles 15 and 16 shall apply.

(2) "Low value payments" are payment transactions executed through a payment instrument that individually do not exceed EUR 30, or which are subject to a spending limit not exceeding EUR 150.

#### Article 30

(1) Payment services provided in a currency according to Article 1 (2) (b) or (c) shall be subject to:

- (a) the provisions of Articles 3 to 6, 8, 9, 11, 12, 26 to 28, Article 44 (1)(3) and (4) and Articles 90 to 95 equally;
- (b) the provisions of Article 10, Article 15 (3), Articles 19, 21 and 31 to 43 *mutatis mutandis*.

(2) Rights and obligations additional to those specified in Paragraph 1 may be agreed for payment services provided in a currency according to Article 1 (2) (b) or (c) in the framework contract.

(3) Where the payer's payment service provider and the payee's payment service provider are the one and the same entity, a credit transfer in a currency according to Article 1 (2) (b) or (c) shall be executed in accordance with Article 18 (c). Business terms and conditions and provision of information on payment services

#### Business terms and the provision of information on payment services

#### Article 31

(1) Payment services shall not be provided by any person other than a payment service provider pursuant to this Act.

(2) A payment service provider shall provide payment services to a payment service user on the basis of:

- (a) a contract for a single payment service; or
- (b) a framework contract.

(3) "Contract for a single payment service" means a contract governing the execution of a single payment transaction without any successive payment transactions.

(4) "Framework contract", which incorporates business terms and conditions for the provision of payment services or for the issuance and use of electronic money, means an agreement on:

- (a) provision of a payment service that governs the execution of individual and successive payment transactions that may contain the conditions for setting up and maintaining a payment account; or
- (b) issuance and use of electronic money in case of a service provider pursuant to Article 2 (3) (a) and (b).

(5) A framework contract according to Paragraph 4 shall contain information:

(a) on the payment service provider, including:

1. the business name and registered office of the payment service provider;
2. the full name and permanent address<sup>21)</sup> of the payment service provider's agent in case of a natural person, or the business name and registered office of the payment service provider's agent in case of a legal entity;
3. the registered office of the payment service provider's branch established in the Slovak Republic;
4. any other addresses, including the electronic mail address, that may be relevant for the communication with the payment service provider;
5. particulars of the authorisation for the payment services, the registration number of the authorisation for the payment services, particulars of the register of authorisation of the payment service provider or equivalent means of identification in that register, particulars of the relevant supervisory authorities;

(b) on the use of the payment services, including:

1. a description of the payment service to be provided;
2. information or a unique identifier that must be used by the payment service user in order for a payment order to be properly executed;
3. the form of and procedure for giving consent to execute a payment transaction and withdrawal of such consent in accordance with Articles 6 and 8;
4. a reference to the point in time of receipt of a payment order as defined in Article 4 and the cut-off time, if any, established by the payment service provider;
5. the maximum execution time for the payment service;
6. if agreed, maximum spending limits for the use of the payment instrument in accordance with Article 28 (1);

(c) on charges, interest and exchange rates, including:

1. the sum of any charges payable for a payment transaction and the breakdown of the amounts of all charges;
2. the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest, and the relevant date and index or base for determining such reference interest or exchange rate;
3. if agreed, the immediate application of changes in the reference interest rate or exchange rate and information requirements related to the changes in accordance with Article 32 (4);

(d) on communication, including:

1. the means of communication, including the technical requirements for the payment service user's equipment, agreed between the parties for the transmission of information or notifications under this Act;
2. the manner in and frequency with which information under this Act shall be provided or made available;
3. the language or languages in which the framework contract will be concluded and communication during this contractual relationship undertaken;
4. the payment service user's right to receive information in the manner provided for in Article 38;

(e) on safeguards and corrective measures, including:

1. instructions for proper and safe use and keeping of a payment instrument and the method of notifying the payment service provider for the purposes of Article 26 (b);
2. if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Articles 28 (2) and (3);
3. the payer's liability for unauthorised payment transactions under Article 12, including information on the specific amount pursuant to Article 12 (1);
4. the method and time limit for the notification by the payment service user to the payment service provider of any unauthorised or incorrectly executed payment transaction in accordance with Article 9, as well as the payment service provider's liability for unauthorised payment transactions in accordance with Article 11;
5. the liability of the payment service provider for non-execution or defective execution of payment transactions in accordance with Article 22;
6. the conditions for refunds in accordance with Articles 13 and 14;

(f) on changes in and termination of a framework contract, including:

1. if agreed, the assumption pursuant to Article 32 (2);
2. the duration of the contract;
3. if agreed, the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with Article 32 (1) and (3) and Article 33;

(g) on redress, including:

1. a contractual clause on the law applicable to the framework contract or the competent court;
2. complaint and dispute resolution procedures available to the payment service user in accordance with Articles 89 to 95.

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<sup>21)</sup> For example, Act No. 253/1998 Coll. on the reporting of residence of citizens of the Slovak Republic and on the register of population of the Slovak Republic, as amended; Act No. 48/2002 Coll. on aliens' stay and on amendments to certain acts, as amended.

## Article 32

(1) Any changes in the framework contract shall be submitted by the payment service provider to the payment service user in the manner provided for in Article 38 (2) and no later than two months before the contract's proposed date of entry into force.

(2) An assumption may be agreed in the framework contract that the payment service user will be deemed to have accepted changes in the conditions in accordance with Paragraph 1 if it does not notify the payment service provider that it does not accept them before their proposed date of entry into force.

(3) If the payment service user does not accept the changes according to Paragraph 1, the payment service user has the right to terminate the framework contract immediately and without charge before the proposed date of entry into force of such changes. This fact must be provided for in the framework contract.

(4) It may be provided in the framework contract that changes in the interest rate or exchange rate may be applied immediately and without notice and that the changes are based on the reference interest rate or exchange rate agreed on in accordance with second and third points of Article 31 (5)(c). The payment service user shall be informed of any change in the interest rate at the earliest opportunity and in the manner provided for in Article 38 (2), unless the parties have agreed on a specific frequency or manner in which the information on such change is to be provided or made available. A change in the interest rate that is more favourable to the payment service user may be applied without notice.

(5) Changes in the interest rate or exchange rate used in payment transactions shall be implemented and calculated in a manner that does not discriminate against the payment service user.

## Article 33

(1) A period of notice not exceeding two months may be agreed in a framework contract for termination of the framework contract by the payment service user. If no such period of notice has been agreed, the payment service user may terminate the framework contract with immediate effect.

(2) Termination of a framework contract concluded for a fixed period exceeding 12 months or for an indefinite period shall be free of charge for the payment service user after the expiry of 12 months. In all other cases charges for the termination shall be appropriate and in line with costs.

(3) The payment service provider may terminate a framework contract concluded for an indefinite period only if so agreed in the framework contract and by giving at least two months' notice in the manner provided for in Article 38 (2); the foregoing shall not apply if the payment service user has acted provably fraudulently when using the payment services.

(4) Charges for payment services levied on a regular basis shall be payable by the payment service user to the payment service provider only proportionally up to the termination of the framework contract. If such charges are paid in advance, they shall be reimbursed proportionally by the payment service provider to the payment service user.

(5) General legal provisions<sup>22)</sup> concerning termination of a credit agreement or an agreement on granting a credit, termination of a current account agreement or of any other similar agreement shall not apply to the termination of a framework contract pursuant to Paragraphs 1 and 3.

## Article 34

A payment service provider shall:

- (a) provide or make available information on single payment transactions pursuant to Articles 35 to 37 to which the framework contract does not apply;
- (b) provide information on the provision of payment services under a framework contract pursuant to Article 31 (5)

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<sup>22)</sup> For example, Article 1 (2), Article 269 (2), Article 500 (2) and Article 715 (2) of the Commercial Code; Article 582 (1) of the Civil Code

## Article 35.

(1) Before executing the single payment transaction, the payment service provider shall provide or make available to the payment service user the following information:

- (a) information or a unique identifier that must be used by the payment service user in order for a payment order to be properly executed;
- (b) the maximum execution time for the payment service;
- (c) the amount of any charges payable by the user to the payment service provider for the payment transaction and, where applicable, a breakdown of the amounts of all charges;
- (d) the exchange rate or reference exchange rate used in case of currency conversion.

(2) The payment service provider shall make available to the payment service user, in an easily accessible manner, the information specified in Paragraph 1 before making any single payment service contract or offer. At the payment service user's request, the payment service provider shall provide the information on paper or on another durable medium.<sup>23)</sup> The information shall be given in easily understandable words and in a clear and comprehensible form, in the state language or in any other language agreed between the parties.

(3) If the single payment service contract has been concluded at the request of the payment service user using a means of distance communication<sup>24)</sup> that does not enable the payment service provider to comply with Paragraph 2, the payment service provider shall fulfil such obligations immediately after the execution of the payment transaction.

(4) The obligations under Paragraph 2 may also be discharged by the payment service provider supplying a copy of the draft single payment service contract or the draft payment order including the information specified in Paragraph 1.

(5) The payment service provider shall also make available to the payment service user, in an easily accessible manner, any other information specified in Article 31 (5).

(6) When a payment order for a single payment transaction is executed by a payment instrument covered by a framework contract, the payment service provider shall not be obliged to provide or make available information that is already given to the payment service user on the basis of a framework contract with another payment service provider or that will be given to it according to that framework contract.

## Article 36

Immediately after receipt of a payment order for a single payment transaction, the payer's payment service provider shall, without undue delay, provide or make available to the payer, in the manner provided for in Article 35 (2), the following information:

- (a) information enabling the payer to identify the payment transaction or information relating to the payee;
- (b) the amount of the payment transaction in the currency used in the payment order;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of all charges;
- (d) the exchange rate used in the payment transaction by the payer's payment service provider and the amount of the payment transaction after the currency conversion;
- (e) the date of receipt of the payment order.

## Article 37

Immediately after the execution of the single payment transaction, the payee payment service provider shall, without undue delay, provide or make available to the payee, in the manner provided for in Article 35 (2), the following information:

- (a) information enabling the payee to identify the payment transaction or information relating to the payer and any information accompanying the payment transaction;
- (b) the amount of the payment transaction in the currency in which the funds are at the payee's disposal;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of all charges;
- (d) the exchange rate used in the payment transaction by the payee's payment service provider and the amount of the payment transaction before the currency conversion;
- (e) the credit value date.

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<sup>23)</sup> For example, Article 4 (g) of Act No. 186/2009 Coll.

<sup>24)</sup> For example, Article 9 of Act No. 108/2000 Coll. on consumer protection in doorstep selling and distance selling, as amended; Articles 1 and 2 of Act No. 266/2005 Coll. on consumer protection in distance financial services and on amendments to certain acts.

## Article 38

(1) At any time during the contractual relationship, the payment service provider shall provide to the payment service user in accordance with Paragraph 2 the information specified in Article 31 (5) on paper or on another durable medium.<sup>23)</sup>

(2) The payment service provider shall provide the information specified in Article 31 (5) to the payment service user on paper or on another durable medium<sup>23)</sup> in good time before making any framework contract or offer. The information shall be given in easily understandable words and in a clear and comprehensible form, in the state's official language or in any other language agreed between the parties.

(3) If the framework contract has been concluded at the request of the payment service user using a means of distance communication<sup>24)</sup> that does not enable the payment service provider to comply with Paragraph 2, the payment service provider shall fulfil such obligations immediately after the conclusion of the framework contract.

(4) The obligations under Paragraph 2 may also be discharged by the payment service provider supplying a copy of the draft framework contract including the information specified in Article 31 (5).

#### Article 39

When the payer initiates execution of a single payment transaction under a framework contract, before the execution of the single payment transaction, the payment service provider shall, at the payment service user's request, provide information on:

- (a) its maximum execution time and
- (b) any charges payable by the payer and, where applicable, a breakdown of the amounts of all charges.

#### Article 40

(1) After the amount of an individual payment transaction is debited from the payer's payment account or, where the payer does not use a payment account, after the receipt of the payment order, the payer's payment service provider shall provide the payer with the following information:

- (a) information enabling the payer to identify each payment transaction or information relating to the payee;
- (b) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used for the payment order;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of all charges or the interest payable by the payer;
- (d) the exchange rate used in the payment transaction by the payer's payment service provider and the amount of the payment transaction after the currency conversion;
- (e) the debit value date or the date of receipt of the payment order.

(2) The payer's payment service provider shall provide the information specified in Paragraph 1 to the payer without undue delay, free of charge and in the manner provided for in Article 38 (2), unless it has been agreed in the framework contract that such information is to be provided or made available to the payer by the payer's payment service provider periodically at least once a month and in a manner that allows the payer to store and reproduce the information unchanged.

#### Article 41

(1) After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee with the following information:

- (a) information enabling the payee to identify the payment transaction or the payer and any information transferred with the payment transaction;
- (b) the amount of the payment transaction in the currency in which the payee's payment account is credited;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of any charges, or the interest payable by the payee;
- (d) the exchange rate used in the payment transaction by the payee's payment service provider and the amount of the payment transaction before the currency conversion;
- (e) the credit value date.

(2) The payee's payment service provider shall provide the information specified in Paragraph 1 to the payee without undue delay, free of charge and in the manner provided for in Article 38 (2), unless it has been agreed in the framework contract that such information is to be provided or made available to the payee by the payee's payment service provider periodically at least once a month and in a manner that allows the payee to store and reproduce the information unchanged.

## Article 42

(1) It can be agreed in a framework contract that Articles 38 and 39 do not apply to low value payments or electronic money with a value not exceeding EUR 150; the payment service provider shall provide to the payer only information on:

- (a) the main characteristics of the payment service, the way in which the payment instrument can be used;
- (b) obligations;
- (c) the charges levied;
- (d) other material information needed to make an informed decision;
- (e) an indication of where any other information and conditions specified in Article 31 (5) are made available in an easily accessible manner.

(2) It may be agreed in the framework contract pursuant to Paragraph 1 that the payment service provider is not required to notify changes in the framework contract in the manner provided for in Article 38 (2).

(3) It may be agreed in the framework contract pursuant to Paragraph 1 that the payment service provider is not required to provide information pursuant to Articles 40 and 41 after the execution of a payment transaction. The payment service provider shall provide or make available only a reference enabling the payment service user to identify the payment transaction, the amount of the payment transaction and the amount of the charge or, in case of several payment transactions of the same kind made to the same payee, information on the total amount and charges for those payment transactions. The payment service provider shall not be required to provide or make available such reference if the payment of instrument or electronic money is used anonymously or if the payment service provider is not otherwise technically in a position to provide the reference. However, the payment service provider shall provide the payer with a possibility to verify the amount of funds stored.

## Charges

## Article 43

(1) A payment service provider shall not charge a payment service user for providing or making available information under Article 31 (5).

(2) A payment service provider shall not charge a payment service user for providing information under Articles 35 to 37, unless Paragraphs 3 and 4 provide otherwise.

(3) Charges may be agreed in a framework contract for provision of information under Articles 40 and 41 that is additional to or more frequent than that agreed in the framework contract, or for transmission of information under Articles 40 and 41 by means of communication other than those agreed in the framework contract at the payment service user's request.

(4) It may be agreed in a framework contract that the payment service provider may charge provision of information under Article 31 (5) that is additional to that agreed in the framework contract, or provision of more frequent information under Article 31 (5) on a durable media<sup>23)</sup> other than agreed in the framework contract, if the payment service user requests such additional or more frequent information.

(5) The charges according to Paragraphs 3 and 4 must be appropriate and in line with the payment service provider's actual costs.

(6) Where the payment service provider imposes a charge for use of a payment instrument, that fact shall be notified to the payment service user prior to initiation of the payment transaction.

## Article 44

(1) A payment service provider shall not charge a payment service user for fulfilling its information obligation or for any corrective or preventive action under Articles 3 to 30, except as provided for in Article 5 (1), Article 6 (5) and Article 21 (2). According to Article 5 (1), Article 6 (5) and Article 21 (2) may be agreed in a framework contract, provided that they must be appropriate and in line with the payment service provider's actual costs.

(2) Where a payment transaction does not involve conversion, the payer shall bear the charges levied by the payer's payment service provider and the payee shall bear the charges levied by the payee's payment service provider.

(3) The payment service provider shall not prevent the payee, including without limitation a person accepting payment cards, from offering to the payer a reduction for the use of the payment card or another payment instrument. The payee shall not request from the payer any charge for the use of a payment card or another

payment instrument and if the payee offers a reduction, it shall inform the payer thereof prior to initiation of the payment transaction.

(4) Where the payment service provider charges the payment service user for a single payment service provided pursuant to Article 2 (1) (a) to (f), or for the use of a payment service pursuant to Article 2 (1) (g), the payment service user shall not charge the payment service user for transaction in the payment account such as crediting or debiting the amount of the payment transaction to or from the payment account, respectively, insofar as such payment transaction is connected with the provision or use of a single payment service in accordance with this paragraph.

## **PART THREE**

### **PAYMENT SYSTEMS**

#### Types of Payment Systems

##### Article 45

(1) "Payment system" means a system facilitating the execution of payment orders based on an agreement made between participants of the payment system and on the common rules laid down in this Act, and in accordance with the common rules and procedures issued by the operator of the payment system for the operation of the payment system<sup>25)</sup> (hereinafter "rules of the payment system"). A payment system checks the formal correctness and completeness of data provided on transfers.

(2) "Order" means an instruction, in electronic form, given by a participant of the payment system to the operator of the payment system to transfer funds via such payment system to the participant of the payment system to which they are destined, and settle such funds in accordance with the rules of the payment system.

(3) "Payment system operated under this Act" means:

- (a) the payment system operated by National Bank of Slovakia;
- (b) a payment system operated on the basis of an authorisation for the operation of a payment system by a payment service provider being at the same time the settlement agent of the payment system;
- (c) a payment system operated on the basis of an authorisation for the operation of a payment system by a legal entity and having no settlement agent;
- (d) a payment system without an authorisation for the operation of a payment system.

(4) A payment system may be operated, in accordance with the rules of the payment system, particularly on the principle of:

- (a) real time settlement of individual items; or
- (b) settlement of differences calculated from mutual claims and liabilities of the participants of the payment system.

(5) The payment system settlement according to Paragraph 4 (a) shall be carried out continuously, on a real time basis, in the course of operation of the payment system on business days of the payment system by settling payment orders in accordance with the rules of the payment system, provided that individual items are settled immediately and irrevocably if, at the time of settlement, the participant being the payer has sufficient funds in its settlement account to cover those items.

(6) The settlement in a payment system pursuant to Paragraph 4 (b) shall be carried out by individual closings of the payment system during a business days of such payment system in such a way that on each closing, all claims and liabilities of the participants of the payment system shall be summarised; the resulting total difference of mutual claims and liabilities of the participants of the payment system calculated as of the closing shall be either their single mutual claim or their single mutual liability as of the relevant closing, depending on the resulting total difference calculated for the individual participants of the payment system. Mutual claims and mutual liabilities of the participants of the payment system so calculated as of individual closings shall be delivered without undue delay by the clearing institution to the settlement agent of the payment system who shall verify the claims and liabilities and settle them on the settlement accounts of the participants of the payment system.

(7) Where the payment service provider is a participant of more than one payment system, a payment service user may choose a payment system through which it shall execute the payment transaction, subject to conditions laid down in the framework contract.

(8) The operator or a payment system, the central securities depository and the payment service provider are required to submit to National Bank of Slovakia any information, derived from records kept by them, in the official state language, as National Bank of Slovakia may request for the purposes of assessing the payment system, the financial instruments settlement system, payment services,<sup>5)</sup> including without limitation credit transfers, direct debits, payment cards and electronic money; such assessment shall be carried out in accordance with the standards and policies issued by the European Central Bank, the National Bank of Slovakia, the European System of Central Banks or Eurosystem, including the Eurosystem policy principles on the location and operation of infrastructures settling euro-denominated payment transactions. For the above purposes, National Bank of Slovakia may, in cooperation with the European Central Bank, central banks in the European System of Central Banks or competent authorities of other Member States designated according to their respective national laws, carry out such assessment across borders.

(9) In case of payment systems according to Paragraph 3 (a) to (c), the operator of a payment system shall be liable for:

- (a) any loss incurred by a participant of the payment system on account of the operation of the payment system, insofar as it resulted from intentional conduct of gross negligence;
- (b) direct loss incurred by a participant, including the amount of the transaction in question or the loss of interest thereon, excluding any consequential loss, insofar as it resulted from the operation of the system and is due to ordinary negligence.

#### Article 46

A payment system pursuant to Article 45 (3) (a) and (b) shall:

- (a) have at least three participants, in addition to the payment system operators and the persons specified in Article 47 (3) and (4),
- (b) be operated on the basis of a payment system agreement made in writing between the operator of the payment system and the other participants of the payment system, if the participants of the payment system have agreed that the payment system agreement is governed by the law of the Slovak Republic;
- (c) execute orders of the participants of the payment system and arrange their settlement by the settlement agent in accordance with the rules of the payment system.

#### Article 47

(1) Participants of a payment system pursuant to Article 45 (3) (a) and (b) may, subject to the rules of the payment system, be the following:

- (a) the National Bank of Slovakia;
- (b) a bank and a branch of a foreign bank;
- (c) the central bank of another state;
- (d) the European Central Bank;
- (e) the central securities depository or another institution established under a specific provision,<sup>26)</sup> if it is authorised to carry out transfers of funds within its statutory operation;
- (f) a payment system pursuant to Article 45 (3) (a) to (c) or a payment system operated under law of another member State on the basis of accession rules stipulated in the rules of the payment system pursuant to Article 48 (2);
- (g) a payment institution or an electronic money institution on the basis of accession rules stipulated in the rules of the payment system pursuant to Article 48 (2);
- (h) a foreign person whose business corresponds to the business of the persons referred to in Subparagraphs (b) and (e) to (g).

(2) The same participant of a payment system may act within the payment system as its operator, settlement agent or a clearing institution, or this participant may perform two of these functions or all of these functions .

(3) A settlement agent is an entity that maintains settlement accounts for the participants of the payment system in which orders of the participants of the payment system are settled and carries out the settlement in such accounts, and which may for that purpose provide a credit to other participants of the payment system.

(4) A clearing institution is an entity that is responsible within the payment system for processing the orders of the participants of the payment system and for calculating the results of the processing of such orders.

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<sup>26)</sup> For example, Act No. 291/2002 Coll. on the State Treasury and on amendments to certain acts, as amended; Act No. 80/1997 Coll. on the Export-import Bank of the Slovak Republic, as amended; Act No. 566/2001 Coll., as amended.

(5) A participant of a payment system is required to submit to the operator of the payment system a current list, approved by its statutory body, of the persons responsible on behalf of the participant of the payment system for completeness and correctness of orders transmitted, and a current list of persons authorised to handle on behalf of the participant of the payment system the settlement account maintained by the operator of the payment system, if any, as well as specimen signatures or electronic signatures<sup>27)</sup> of such authorised persons. The operator of the payment system shall submit to the participants of the payment system a current list, approved by its statutory body, of the persons responsible on behalf of the operator of the payment system for the processing of orders received from the participants of the payment system, as well as specimen signatures or electronic signatures<sup>27)</sup> of such authorised persons.

#### Article 48

(1) The operator of a payment system pursuant to Article 45 (3) (a) and (b) shall make with each participant of the payment system, either on paper or in electronic form, a written payment system agreement with the same text. A payment system agreement shall incorporate a reference to the rules of the payment system. Not later than the time of conclusion of the payment system agreement, the operator of the payment system shall submit to the participants of the payment system, either on paper or in electronic form, the rules of the payment system in the state language. The rules of the payment system, including their changes, shall be binding on each participant of the payment system. The payment system agreement shall define how the operator of the payment system fulfils its obligation to inform a participant of the payment system, either on paper or in electronic form, of any change in the rules of the payment system.

(2) The rules of a payment system shall primarily define:

- (a) the operator of the payment system;
- (b) the payment system's settlement agent and the method of securing irrevocability of orders;
- (c) the participants of the payment system;
- (d) the conditions for participation in the payment system, including the conditions for suspension of participation in the payment system and for exclusion from the payment system;
- (e) the rights and obligations of the participants and the operator of the payment system;
- (f) the rules for transmission and delivery of orders, their form and structure;
- (g) the transmission method, form and structure of information on transactions on settlement accounts;
- (h) the method of securing data against misuse;
- (i) the method of providing funds for the settlement of orders delivered to the payment system;
- (j) the principle of operation of the payment system and the method of settlement of mutual claims and liabilities of participants of the payment system;
- (k) the point in time of receipt of an order by the payment system in connection with the irrevocability and indissolubility of an order and the period during which the payment system accepts or executes orders, in relation to situations referred to in Article 51 (3) (b) ;
- (l) the currency or currencies in which the payment system operates;
- (m) the list of charges;
- (n) the rules for claims;
- (o) particulars of other obligations and rules for payment system imposed by this Act or a specific provision;<sup>28)</sup>
- (p) rules of accession for participants of the payment system pursuant to Article 47 (1) (f) to (h).

#### Article 49

(1) Documentation concerning transfers submitted to a payment system pursuant to Article 45 (3) (a) to (d) shall be maintained by the participant of the payment system that has received the order.

(2) A participant and the operator of a payment system pursuant to Article 45 (3), (a) and (b) shall keep settled orders for at least five years from the time they are settled. In case of a settlement error, the participant or the operator of the payment system must be able during that period of time to present the payment orders submitted.<sup>29)</sup>

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<sup>27)</sup> Act No. 215/2002 Coll. on electronic signature and on amendments to certain acts, as amended.

<sup>28)</sup> For example, the Guideline of the European Central Bank No. ECB/2007/2 (2007/600/EC) of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (OJ L237, 8.9.2007).

<sup>29)</sup> Act No. 431/2002 Coll. on accounting, as amended.

Where the collateral is a claim arising from funds deposited in an account maintained with the settlement agent, the collateralising transfer to the settlement agent of the right to such claim shall not constitute cessation of the claim by amalgamation<sup>30)</sup> with the liabilities (debt) of the agent arising from the funds deposited in the same account maintained with the settlement agent, unless agreed otherwise.

## Article 50

(1) The settlement or orders within a payment system pursuant to Article 45 (3) (a) and (b) shall be carried out by the settlement agent in settlement accounts.

(2) The settlement agent may determine the minimum balance requirement for a settlement account.

(3) The participants of the payment system shall ensure sufficient funds in their settlement accounts required for the settlement of orders.

(4) In case of insufficiency of funds in a settlement account, the settlement agent may provide the participant with credit that is repayable during the same business day as it is provided; in line with the rules of the payment system, such credit must be secured by a sufficient collateral, provided that acceptable collaterals may include specified securities, funds, selected claims, or other assets serving as security for liabilities. Where the collateral is a claim arising from funds deposited in an account maintained with the settlement agent, the collateralising transfer to the settlement agent of the right to such claim shall not constitute cessation of the claim by amalgamation<sup>30)</sup> with the liabilities (debt) of the agent arising from the funds deposited in the same account maintained with the settlement agent, unless agreed otherwise.

(5) The settlement agent shall publish, in a form accessible to all participants of the payment system, a list of securities accepted as collateral.

## Article 51

(1) As of the time an order is received, neither the participant of a payment system pursuant to Article 45 (3) (a) and (b) nor any third party or public authority shall be able to validly revoke or dissolve the order received by the payment system, or otherwise prevent execution of such order.

(2) A declaration of bankruptcy<sup>31)</sup> over the property of a participant of the payment system, or a participant of the payment system in an interoperable system, permission of restructuring, or suspension or limitation of payments due to another action against a participant of the payment system or a participant of the payment system in an interoperable system (hereinafter "suspension of payments") shall not affect the right to use the funds in the settlement account for the purposes of closing settlements within the payment system on the date of the declaration of bankruptcy, permission of restructuring or suspension of payments.

(3) A declaration of bankruptcy<sup>31)</sup> over the property of a participant of the payment system or a participant of the payment system in an interoperable system, permission of restructuring, or suspension or limitation of payments shall be without prejudice to the obligation of the operator of the payment system to process and settle the orders of that participant of the payment system, nor the validity and enforceability of such orders against third parties if the orders were accepted by the payment system in accordance with the rules of the payment system adopted by that payment system or the payment system in an interoperable system:

- (a) prior to the time of the declaration of bankruptcy, permission of restructuring or suspension of payments;
- (b) at the time of the declaration of bankruptcy, permission of restructuring or suspension of payments and thereafter, if the orders have been executed on the date of the declaration of bankruptcy, permission of restructuring or suspension of payments, provided that the declaration of bankruptcy, permission of restructuring or suspension of payments was not known to the operator of the payment system and provided that the participants of the payment system whose orders are involved are able to prove that the declaration of bankruptcy, permission of restructuring or suspension of payments was not known to them irrespective of notifications given under Article 58 (5).

(4) A retrospective calculation of mutual claims and liabilities of the participants of the payment system within that payment system shall be prohibited. A retrospective calculation of mutual claims and liabilities of the participants of a payment system in an interoperable system shall also be prohibited.

(5) A declaration of bankruptcy<sup>31)</sup> over the property of a participant of the payment system, permission of restructuring, or suspension or limitation of payments shall be without prejudice to the right to a collateral provided by that participant of the payment system to another participant of the payment system or any other person in connection with its participation in the payment system; the right to exercise and enforce claims arising from the collateral shall also remain unprejudiced.

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<sup>30)</sup> Article 584 of the Civil Code.

<sup>31)</sup> Articles 11 to 23 of Act No. 7/2005 Coll. on bankruptcy and restructuring and on amendments to certain acts, as amended.

<sup>32)</sup> For example, Articles 53 to 62 of Act No. 483/2001 Coll., as amended; Articles 147 to 155 of Act No. 566/2001 Coll., as amended.

6) Funds in settlement accounts as well as collateral provided by a participant of a payment system to another participant of the payment system or any other person in connection with its participation in the payment system shall not be subject to and are excluded from the enforcement of a decision under specific provisions.<sup>33)</sup>

#### Article 51a

1) Two or more payment systems pursuant to Article 45 (3) (a) and (b) or the payment systems which were reported to the European Commission by the relevant authorities of the Member States, may create an interoperable system, which means the mutual interconnection of payment systems for the purpose of executing orders between these payment systems on the basis of agreed rules between the operators of these payment systems.

2) The rules referred to in Paragraph 1 hereto shall primarily define:

- a) the payment systems in an interoperable system and their operators,
- b) the point in time of receipt of an order by a payment system related to the irrevocability and indissolubility of an order, which point is harmonized within the payment system rules; rules of other payment systems in the interoperable system have no effect on the point in time of receipt of a payment order by the given payment system unless otherwise provided for by the rules of all payment systems,
- c) the rules of execution of orders between the payment systems in the interoperable system,
- d) the rights and obligations of operators of the payment systems in the interoperable system,
- e) details on other obligations and rules stipulated by this Act.

3) An interoperable system may also include any settlement system for financial instruments<sup>5)</sup> or the settlement system for financial instruments which was reported to the European Commission by the relevant authority of the Member State.

4) Interoperability between payment systems or settlement systems for financial instruments shall not necessarily create the payment system pursuant to this Act or the settlement system for financial instruments under a specific provision<sup>5)</sup>.

#### Article 52

(1) A payment system pursuant to Article 45 (3)(c) shall be operated on the basis of an authorisation for the operation of a payment system issued under this Act and a payment system agreement made in writing between the operator of the payment system and at least three other participants of the payment system, if the participants of the payment system have agreed that the payment system agreement is governed by law of the Slovak Republic.

(2) The operator of a payment system pursuant to Article 45 (3)(c) shall be a legal entity. A participant of such payment system shall be a payment service provider.

(3) Payment systems pursuant to Article 45 (3) (c) shall be subject, mutatis mutandis, to Articles 46 to 50 and Article 51 (1). Accession rules regulating the accession of payment service providers, which the payment systems are required to have, shall

- (a) be objective, non-discriminating and appropriate, and not hamper the participation in the system to an extent going beyond safeguards against specific hazards, including without limitation those connected with operating risk and business risk, and protection of financial and operational stability of the payment system;
- (b) not hamper participation in other payment systems;
- (c) not create limitations on account of an institutional position.

(4) Where the operator of a payment system pursuant to Article 45 (3)(c) is a participant of a payment system pursuant to Article 45 (3),(a) or (b), it shall deliver the order results arising from mutual claims and liabilities of the participants of the payment system to the settlement agent in the payment system pursuant to Article 45 (3) (a) or (b), which shall ensure their settlement in the settlement accounts.

#### Article 53

(1) A payment system pursuant to Article 45 (3)(d) is a payment system,

- (a) the participants of which are solely payment service providers belonging to a group of entities linked to each other by a close relationship, or
- (b) in which a payment service provider as a single person or group acts or may act as payment service provider of both payer and payee, and has exclusive responsibility for management of such system and gives approval to other payment service providers for their participation in the payment system; such other payment service

providers do not have the right to determine among themselves charges in relation to that system, but they may determine their own prices in relation to payers and payees.

(2) A payment system referred to in Paragraph 1(a) shall be governed by internal rules of the group of related parties and a payment system referred to in Paragraph 1(b) shall be governed by internal rules of the single person or group. The provisions of this Part of the Act shall not apply to such payment systems, except the provisions of Article 49 (1), Article 54 (1)(c) and Article 55 (2).

#### Article 54

(1) National Bank of Slovakia shall maintain a list of:

- (a) payment systems pursuant to Article 45 (3) (a) and (b), including a list of the operators and participants of such payment systems for the purposes of a specific provision;<sup>34)</sup>
- (b) payment systems pursuant to Article 45 (3)(c), including a list of the operators and participants of such payment systems
- (c) payment systems pursuant to Article 45 (3)(d), including a list of the owners able to act as operator of the payment system;

(2) National Bank of Slovakia shall publish the information referred to in Paragraph 1, including publication that enables remote access.

(3) National Bank of Slovakia shall disclose to the European Commission information on the payment systems operated under Article 45 (3) (a) or (b) to the extent required by the European Commission.

(4) If National Bank of Slovakia receives from a bankruptcy court or another competent public authority of the Slovak Republic a notice of declaration of bankruptcy or permission of restructuring over property or suspension of payments, or of dismissal of the bankruptcy proceeding or cancellation of bankruptcy on grounds of insufficiency of assets of a participant of a payment system or a participant of a payment system in an interoperable system operated under this Act, National Bank of Slovakia shall without undue delay notify that fact to:

- (a) all participants of the payment system pursuant to Article 45 (3) (a) if the notice received concerns a participant of that payment system;
- (b) the operator of the payment systems pursuant to Article 45 (3) (b) if the notice received concerns a participant of that payment system, provided that the operator shall be required to immediately notify that fact to all other participants of the payment system;
- (c) competent authorities of other Member States designated according to their respective national laws.

#### Article 55

(1) The operator of a payment system pursuant to Article 45 (3), (b) or (c) shall without undue delay notify National Bank of Slovakia of:

- (a) any change in the business name, registered office or place of business of each participant of the payment system, as well as any reduction in the number of participants of the payment system;
- (b) any change in the rules of the payment system, made on paper or in electronic form in the state language, within one month before the date of its entry into force.

(2) The operator of a payment system pursuant to Article 45 (3) (d) shall without undue delay notify National Bank of Slovakia of the name of the payment system and the business name of the owner or operator of that payment system.

(3) Participants of a payment system shall, on written request, disclose information on the payment system of which they are participants and on the rules of that payment system to any person having a lawful interest in such disclosure.

(4) The operator of a payment system pursuant to Article 45 (3) (b) shall without undue delay notify National Bank of Slovakia of the establishment of an interoperable system.

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<sup>33)</sup> For example, the Act of the National Council of the Slovak Republic No. 233/1995 Coll., as amended; Articles 71 to 80 of Act No. 71/1967 Coll., as amended.

<sup>34)</sup> Article 177 of Act No. 7/2005 Coll., as amended.

## Article 56

(1) Where the payment system agreement is governed by the law of the Slovak Republic, all rights and obligations of the operator of the payment system or a participant of the payment system arising in connection with its participation in the payment system, including rights of third parties to any collateral provided by a participant of the payment system in connection with its participation in the payment system, shall be governed by the law of the Slovak Republic; the foregoing shall apply whether or not bankruptcy has been declared or restructuring permitted over property of the operator or participant of the payment system, or payments by the operator or participant of the payment system have been suspended, or bankruptcy proceedings have been dismissed or bankruptcy cancelled on grounds of insufficiency of assets of the operator or participant of the payment system. This provision shall equally apply to an interoperable system and to participants of a payment system in an interoperable system, if the interoperable system is governed by the law of the Slovak Republic.

(2) Legal relationships arising from collateral provided in the form of financial instruments or other securities which are not financial instruments, including collateral provided in the form of rights connected with financial instruments or other securities which are not financial instruments, shall be governed by the law of the state where the collateral is registered, which collateral is:

(a) provided to secure the rights of

1. a participant of a payment system pursuant to Article 45 (3) (a) or (b) in connection with that participant's participation in a payment system;
2. a participant of a payment system pursuant to Article 45 (3) (a) or (b) in connection with the participation of this participant of the payment system in an interoperable system, ,
3. an operator of a payment system pursuant to Article 45 (3) (a) or (b) in connection with the operation of this payment system, or
4. the National Bank of Slovakia, the European Central Bank, any National Central Bank of other Member States and

(b) registered to the benefit of a person referred to in Subparagraph (a) or a third party acting on behalf of a person referred to in Subparagraph (a), provided that such collateral has been duly entered in the appropriate register or in other equivalent records kept in the Slovak Republic, or in the appropriate register or in other equivalent records kept in any of the Member States.

(3) Election of a different law for the legal relationships referred to in Paragraphs 1 and 2 is excluded.

## Authorisation for the operation of payment systems

## Article 57

(1) A decision on the granting or change of an authorisation for the operation of a payment system pursuant to Article 45 (3) (b) or (c) shall be made by National Bank of Slovakia on the basis of an application filed in writing by the applicant with National Bank of Slovakia.

(2) Granting of an authorisation for the operation of a payment system pursuant to Article 45 (3) (b) shall be subject to the following conditions:

- (a) the applicant is a payment service provider having its registered office in the territory of a Member State;
- (b) the applicant satisfies the technical and organisational requirements for the operation of the payment system, including functional governance and control mechanisms and a risk management system that is appropriate to the scope of the payment system;
- (c) the applicant has prepared a strategy and a programme of operations for the payment system, supported by realistic economic calculations;
- (d) where the future operator of the payment system is concurrently the settlement agent in that payment system, the applicant shall propose how sufficient funds to cover and settle orders will be secured;
- (e) the payment system, together with the payment system agreement and rules of the payment system shall comply with the requirements for payment systems and the execution of orders laid down in this Act.

(3) Granting of an authorisation for the operation of a payment system pursuant to Article 45 (3) (c) shall be subject to the satisfaction of the following conditions:

- (a) the applicant is a legal entity having its registered office in the territory of a Member State;
- (b) the applicant satisfies the technical and organisational requirements for the operation of the payment system, including functional governance and control mechanisms and a specific risk management system in accordance with Article 52 (3) (a);
- (c) any person proposed as member of the statutory body or supervisory body or manager reporting directly to the statutory body is a professionally competent and credible person;
- (d) the applicant has prepared a strategy and a programme of operations for the payment system, supported by realistic economic calculations;
- (e) the payment system does not have a settlement agent;
- (f) the applicant shall propose how orders will be processed and settled by the settlement agent in the payment system pursuant to Article 45 (3) (a) or (b);

(g) the payment system, including the payment system agreement and rules of the payment system shall comply with the requirements for payment systems and the execution of orders laid down in this Act.

(4) An application pursuant to Paragraph 1 shall contain:

- (a) the applicant's business name, registered address, identification number, amount of registered capital and scope of business or activity;
- (b) a draft of or the final payment system agreement;
- (c) a draft of or the final rules of the payment system;
- (d) the operation schedule of the payment system;
- (e) an analysis of risks of the payment system and the risk management methodology;
- (f) the arrangements in place to ensure protection of the electronic processing and storage of data on transfers against disclosure, misuse, damage, destruction, loss or theft;
- (g) the applicant's excerpt from the Commercial register;<sup>35)</sup>
- (h) a description of any other relevant matters or references to other evidence that the applicant invokes, including enclosure of any documentary evidence or officially authenticated copies thereof;
- (i) an applicant's declaration that the submitted application and its enclosures are complete, correct, true and current;
- (j) indication of the place and date of the preparation of the application and the officially authenticated signature of the applicant's statutory body.

(5) The requirements in Paragraphs 2 and 3 must be complied with continuously throughout the validity term of the authorisation for the operation of the payment system.

(6) An authorisation for the operation of a payment system pursuant to Article 45 (3) (b) or (c) shall be granted for an indefinite period of time and shall not be transferable to another person nor assignable to a legal successor of the payment system or the operator of the payment system.

(7) The applicant shall file with the competent court of registration a petition for registration of the permitted operation of the payment system with the Commercial register within ten days from the date the authorisation comes into force. The operator of the payment system shall submit to the National Bank of Slovakia its excerpt from the Commercial register within ten days from the date the decision of the court of registration on the registration entry or a change in the registration entry in the Commercial register becomes final.

#### Article 58

(1) National Bank of Slovakia shall have the right to withdraw an authorisation for the operation of the payment system from an operator of a payment system pursuant to Article 45 (3) (b) or (c) if:

- (a) the authorisation was granted on the basis of incomplete or false information;
- (b) the operator of the payment system has not commenced the operation of the payment system within six months from the date the authorisation comes into force;
- (c) the operation of the payment system has been interrupted for a period longer than six months;
- (d) major changes have occurred in matters that are decisive for the granting of the authorisation;
- (e) irregularities in the operation of the payment system, as referred to in Article 62, have been established;
- (f) the operator of the payment system hinders the exercise of supervision of the payment system; or
- (g) sanctions imposed under this Act or the specific law<sup>20)</sup> have failed to result in correction of the irregularities established.

(2) When withdrawn, the authorisation for the operation of the payment system shall lapse on the date that the decision on withdrawal issued by the National Bank of Slovakia becomes final.

(3) National Bank of Slovakia shall deliver the decision on withdrawal of the authorisation to the operator of the payment system pursuant to Article 45 (3) (b) or (c).

(4) National Bank of Slovakia shall publish the decision on withdrawal of the authorisation in the Journal of National Bank of Slovakia or on its website.

(5) National Bank of Slovakia shall send the final decision on withdrawal of the authorisation for publication in the Commercial Journal<sup>36)</sup> within 30 days from the date at which the decision becomes final.

(6) The withdrawal of the authorisation shall be registered in the Commercial register.<sup>35)</sup> No later than 15 days from the date the decision on withdrawal of the authorisation becomes final, National Bank of Slovakia shall send the decision, accompanied by a petition for its registration, to the court keeping the Commercial register.

<sup>35)</sup> Act No. 530/2003 Coll. on the Commercial register and on amendments to certain acts, as amended.

<sup>36)</sup> Article 1 (2), Article 6 (3) and Article 8 (3) of the Regulation of the Government of the Slovak Republic No. 42/2004 Coll. on the Commercial Journal, as amended.

## Article 59

(1) An authorisation for the operation of a payment system granted under Article 57 shall lapse on the date:

- (a) on which the authorisation granted to the operator of the payment system under Article 64 (1), Article 82 (1) or under the specific law<sup>37)</sup> lapsed or was withdrawn;
- (b) as of which the operator of the payment system is dismissed on grounds other than withdrawal of the authorisation;
- (c) the decision to declare bankruptcy over property of the operator of the payment system or the decision to dismiss the bankruptcy proceeding or cancel bankruptcy on grounds of insufficiency of assets of the operator of the payment system becomes final;
- (d) as of which the operator of the payment system, pursuant to a resolution adopted by its general meeting, ceases to further operate the payment system;
- (e) as of which the number of participants of the payment system falls below the number specified in Article 46 (a);
- (f) as of which the time limit for filing a petition pursuant to Article 57 (7) elapses without the petition being filed.

(2) Starting from the time of delivery of the decision on withdrawal or from the date the authorisation lapses, the legal entity whose authorisation for the operation of a payment system has been withdrawn or has otherwise lapsed shall be allowed to carry out only such activities that are necessary for the termination of the operation of the payment system by that legal entity and for the settlement of that legal entity's claims and liabilities; the foregoing shall be without prejudice to the provisions of a specific law<sup>38)</sup> concerning the activities that a legal entity whose authorisation for business has been withdrawn or has lapsed is allowed to carry out.

### Supervision of an operator of a payment system.

## Article 60

(1) "Supervision of an operator of a payment system pursuant to Article 45 (3) (b) or (c)" means oversight of the operator's conduct in the operation of the payment system pursuant to Article 45 (3) (b) or (c) (hereinafter "supervision of an operator").

(2) The subject of supervision of an operator shall not be to decide disputes arising from contractual relationships between the operator and third parties pursuant to Paragraph 1, the negotiation and decision of which falls within the authority of competent courts or other authorities in accordance with specific provisions.

(3) Activities of operators shall be subject to supervision exercised by National Bank of Slovakia in accordance with this Act and the specific provisions<sup>39)</sup> unless this Act provides otherwise. Persons appointed by National Bank of Slovakia to exercise supervision of an operator shall not be liable to third parties for the consequences of the exercise of supervision of the operator; the foregoing is without prejudice to their liability under criminal law and their liability to National Bank of Slovakia under labour law.

(4) An operator of a payment system pursuant to Paragraph 1 shall permit the exercise of supervision, refrain from any action that might hamper the exercise of supervision and provide, in the state language, all information, documentation and assistance specified in this Act or required for the purposes of the exercise of supervision by National Bank of Slovakia or by persons appointed to exercise supervision; where the documentation is in a language other than the state language, the persons being subject to supervision shall also provide, at their own expense, an officially authenticated translation of the documentation in the state language. The operator of a payment system pursuant to Paragraph 1 shall permit persons appointed to exercise supervision to be present at sessions of its general meeting, board of supervisors, statutory body or any other body provided that the operator of the payment system delivers at least three days' prior notice of the time and agenda of each such session to National Bank of Slovakia.

(5) If during the exercise of supervision of an operator National Bank of Slovakia establishes any facts indicating that a criminal offence has been committed, it shall without undue delay report that fact to a competent law enforcement authority.

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<sup>35)</sup> Act No. 530/2003 Coll. on the Commercial register and on amendments to certain acts, as amended.

<sup>36)</sup> Article 1 (2), Article 6 (3) and Article 8 (3) of the Regulation of the Government of the Slovak Republic No. 42/2004 Coll. on the Commercial Journal, as amended.

<sup>37)</sup> Articles 7 to 20 of Act No. 483/2001 Coll., as amended.

<sup>38)</sup> For example, Articles 50 to 65 of Act No. 483/2001 Coll., as amended.

## Article 61

(1) Persons appointed to exercise supervision of an operator shall keep in confidence any facts established during the exercise of supervision of the operator; provisions of specific laws<sup>40)</sup> shall apply to this confidentiality obligation. Persons appointed to exercise supervision of an operator shall, based on information obtained during the exercise of supervision, disclose to third parties summary information from which the specific payment system or the specific person concerned cannot be identified, unless this Act or specific laws<sup>40)</sup> provide otherwise.

(2) Persons appointed to exercise supervision of an operator may use any information obtained during the exercise of supervision of the operator only for the purposes of performing their duties under this Act or duties of National Bank of Slovakia under specific laws,<sup>40)</sup> as well in a judicial proceeding regarding an action against a decision rendered by the National Bank of Slovakia in the exercise of supervision of the operator or a similar proceeding before an international authority.

(3) National Bank of Slovakia has the right to provide information obtained during the exercise of supervision of an operator to a supervisory authority in another state.

(4) National Bank of Slovakia also has the right to provide information obtained during the exercise of supervision of an operator to:

(a) authorities of the European Union or of the Member States of the European Union to the extent necessary in order to comply with obligations arising from Community law or from an international treaty that has been approved, ratified and promulgated in the statutory manner (hereinafter "international treaty") by which the Slovak Republic is bound;

(b) authorities of other states with which National Bank of Slovakia has made an agreement on mutual exchange of information.

(5) National Bank of Slovakia has the right to provide information obtained during the exercise of supervision of an operator to authorities and persons other than those referred to in Paragraphs 3 and 4 if the conditions laid down in the specific law<sup>41)</sup> are met.

(6) Information obtained during the exercise of supervision of an operator may be provided to the persons and authorities referred to in Paragraphs 3 to 5 only on the condition that a law imposes on such authorities and persons an obligation to protect information and respect its confidentiality to at least the same extent as provided for in this Act.

(7) The persons and authorities referred to in Paragraphs 3 to 5 to which National Bank of Slovakia has provided information obtained during the exercise of supervision of an operator shall use that information only for such purposes or such action for which the information was provided; in doing so they are obligated to respect the confidentiality of such information. The persons and authorities referred to in Paragraphs 3 to 5 may mutually disclose such information only for the same purpose as it was provided; any other disclosure shall be subject to prior written approval from the National Bank of Slovakia, which can be granted only if the conditions in Paragraphs 3 and 5 are met.

(8) Where information is requested under the specific law<sup>42)</sup> that is subject to the confidentiality obligation pursuant to Paragraphs 1 or 7, the obligated person<sup>43)</sup> shall not disclose such information.

<sup>39)</sup> For example, Act No. 747/2004 Coll. on the supervision of the financial market and on amendments to certain acts, as amended; Article 1 (3), Article 6 (2) (c) and (k), Articles 8, 34a, 34b, 36, 37, 41 and 44 of the Act of the National Council of the Slovak Republic No. 566/1992 Coll. on National Bank of Slovakia, as amended.

<sup>40)</sup> For example, the Act of the National Council of the Slovak Republic No. 566/1992 Coll., as amended; Act No. 483/2001 Coll., as amended; Act No. 747/2004 Coll., as amended.<sup>41)</sup> Article 34a (2) and (3) and Articles 41 and 44 (c) and (e) of the Act of the National Council of the Slovak Republic No. 566/1992 Coll., as amended. Article 2 (6), Articles 3 and 4, Article 27(7) and Article 37(1) (d) of Act No. 747/2004 Coll., as amended

## Article 62

(1) If National Bank of Slovakia establishes irregularities in the operation of a payment system pursuant to Article 45 (3) (b) or (c), it shall have the right, depending on the severity and nature of the irregularity so established, to:

- (a) impose on the operator of the payment system an obligation to correct the irregularity within a specified time limit;
- (b) order that the operator of the payment system arrange, at its own expense, an extraordinary audit of the payment system;
- (c) impose on the operator of the payment system a fine of up to EUR 300,000 or, in case of a repeated or severe irregularity, of up to EUR 600,000;
- (d) place the operator of the payment system under a special administration;
- (e) withdraw the authorisation pursuant to Article 57 from the operator of the payment system.

(2) "Irregularity in the operation of a payment system", as referred to in Paragraph 1, means

- (a) violation of this Act or other generally binding legal provisions that apply to the operation of the payment system, or the rules of the payment system;
- (b) a failure to implement decisions of the National Bank of Slovakia that are final;
- (c) jeopardising the security and stability of the payment system;
- (d) management of the payment system by persons who lack sufficient professional competence and credibility.

(3) Imposition of corrective measures, a fine or other sanction under Paragraph 1 shall be without prejudice to the liability of the operator of the payment system under specific laws.<sup>38)</sup>

(4) Corrective measures, fines or other sanctions pursuant to Paragraph 1 may be imposed concurrently and repeatedly. A fine shall be due in 15 days from the date the decision imposing the fine becomes final. A fine shall constitute state budget revenue.

(5) Corrective measures, fines or other sanctions pursuant to Paragraph 1 may be imposed within two years from the establishment of the irregularities, but no later than 10 years from their occurrence.

(6) Provisions of the special law concerning special administration of a bank<sup>44)</sup> shall equally apply to the placing under a special administration of an operator of a payment system pursuant to Article 45 (3) (b) or (c).

(7) National Bank of Slovakia shall have the right to discuss irregularities in the operation of the operator or participant of a payment system with members of its statutory body, members of its board of supervisors or managers directly reporting to its statutory body even outside a proceeding on imposition of corrective measures, a fine or other sanction pursuant to this Act, and such persons shall provide to National Bank of Slovakia all assistance it requires.

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<sup>42)</sup> Act No. 211/2000 Coll. on free access to information and on amendments to certain acts (Freedom of Information Act), as amended.

<sup>43)</sup> Article 2 of Act No. 211/2000 Coll., as amended.

<sup>44)</sup> Articles 53 to 62 of Act No. 483/2001 Coll., as amended.

## PART FOUR

### PAYMENT INSTITUTION

#### Article 63

A payment institution is a legal entity having its registered office in the territory of the Slovak Republic that is allowed to provide payment services referred to in Article 2 (1) on the basis of an authorisation for the payment services.

#### Article 64

(1) A decision on the granting or a change of an authorisation for payment services shall be made by National Bank of Slovakia on the basis of a written application. An application for authorisation for payment services shall be filed by the applicant that wishes to become a payment institution and an application for a change in the authorisation shall be filed by the applicant that is the payment institution.

(2) Granting of an authorisation pursuant to Article 1 shall be subject to the applicant satisfying the following requirements:

(a) the payment institution is a legal entity established as a business company liable to the obligation to create registered capital;<sup>45)</sup>

(b) the minimum paid-up contribution to the payment institution's registered capital shall be

1. EUR 20,000 if the payment institution is to provide only the payment service specified in Article 2 (1) (e); 2. EUR 50,000 if the payment institution is to provide only the payment service specified in Article 2 (1) (f);

3. EUR 125,000 if the payment institution is to provide any of the payment services specified in Article 2 (1) (a) to (d) and (g).

(c) a transparent, credible and legal origin of the monetary contribution to registered capital, as well as other sources of funds of the payment institution;

(d) suitability of persons with qualifying participation in the payment institution and transparency of those persons' relationships with other persons, particularly transparency of their holdings in registered capital and voting rights of other legal entities;

(e) professional competence and credibility of natural persons nominated as members of the statutory body, confidential clerk, members of the board of supervisors, managers and head of an internal control body;

(f) transparency of the group with close links to which the person with qualifying participation in the payment institution belongs;(g) the close links within the group referred to in Subparagraph (f) do not prevent the exercise of supervision of the payment institution;

(h) the law, the method of its application and its enforceability in the state within the territory of which the group has close links does not hinder the exercise of supervision;

(i) the articles of association of the payment institution;

(j) adequate and proportionate technical systems, resources and procedures for the sound provision of payment services;

(k) the payment institution's registered office, head office and the provision of payment services must be located in the territory of the Slovak Republic;

(l) proportionate, appropriate, sound and adequate organisational prerequisites for the payment institution's business, including prudential rules and rules of its operation;

(m) material and technical provisions for the pursuit by the payment institution of its business;

(n) the payment institution's general business terms and conditions, which must comply with this Act;

(o) persons with qualifying participation in the payment institution must provide evidence proving their financial ability to overcome any possible adverse financial situation of the applicant;

(p) systems to protect funds of payment service users pursuant to Articles 77 (7) and (8).

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<sup>45)</sup> Articles 56 to 75a and Articles 105 to 220a of the Commercial Code.

(3) An application for authorisation pursuant to Paragraph 1 shall contain:

- (a) the payment institution's business name, registered address, identification number, amount of registered capital and scope of business or activity;
- (b) a list of persons with qualifying participation in the payment institution and the amount of the qualifying holding; information in the list shall include:
  - 1. the full name, permanent address <sup>21)</sup> in the Slovak Republic or usual address abroad, if the person does not have permanent residence in the Slovak Republic (hereinafter "permanent address"), nationality and date of birth in case of a natural person;
  - 2. the full name, permanent address, nationality, date of birth, business name, address of the place of business and the identification number, if any, in case of a natural person being an entrepreneur;
  - 3. the business name, registered office and identification number in case of a legal entity;
- (c) the full name, permanent address, nationality, date of birth of the natural person nominated as member of the statutory body, confidential clerk, member of the board of supervisors, manager and head of the internal control body, and information evidencing his credibility and professional competence;
- (d) the type of envisaged payment services;
- (e) an applicant's declaration that the submitted application and its enclosures are complete, correct, true and current;
- (f) the place and date of the preparation of the application and the officially authenticated signature of the applicant;
- (g) the business name and office and identification number, or the full name, permanent address, nationality and date of birth of the person nominated as auditor if the applicant has a contract with an auditor.<sup>46)</sup>

(4) Enclosed with the application pursuant to Paragraph 3 shall be:

- (a) the applicant's excerpt from the Commercial register;<sup>35)</sup>
- (b) a document evidencing that the monetary contribution to registered capital pursuant to Article 64 (2)(b) has been paid up in full;
- (c) the deed of foundation, foundation agreement or memorandum of association;
- (d) draft articles of association of the payment institution;
- (e) a concise professional curriculum vitae and a document evidencing the level of education and years of practice, and documentary proof of credibility of the persons referred to in Article 2 (e), not older than three months, and a solemn declaration of their compliance with the requirements laid down in this Act;
- (f) a draft of organisational structure and draft of organisational regulations of the payment institution;
- (g) draft internal rules regulating the governance mechanisms and internal control mechanisms, and internal rules regulating the mechanisms to ensure protection against the laundering of proceeds from criminal activity and protection against the financing of terrorism;
- (h) a proposal of procedures for the preparation, entering into, execution and settlement of transactions, including a pricing mechanism and rules if the payment institution wishes to execute or intermediate transfers of funds in a foreign currency the subject of which is purchase or sale of funds in one currency for funds in another currency at own account or a third-party account;
- (i) a business plan, based on the payment institution's proposed business strategy, including a forecast budget calculation for the first three fiscal years that demonstrates that the payment institution is able to employ the appropriate and proportionate technical systems, resources and procedures to provide the payment services soundly;
- (j) a detailed description of the payment institution's participation in the payment system;
- (k) a detailed description of the intended use of payment service agents and branches in the provision of payment services, if the applicant plans to use payment service agents and branches;
- (l) a detailed description of outsourcing arrangements, if the payment institution plans to employ such arrangements;
- (m) a description of measures to protect funds of payment service users pursuant to Articles 77 (7) and (8);
- (n) general business terms and conditions;
- (o) documentary evidence credibly demonstrating and proving the financial ability of the payment institution's shareholders or members to overcome any possible adverse financial situation.

(5) the National Bank of Slovakia shall decide on the application for the granting or a change of an authorisation no later than three months from the date on which the complete application for authorisation is filed.

(6) National Bank of Slovakia shall refuse an application for authorisation pursuant to Paragraph 1 if the applicant has failed to satisfy or prove satisfaction of any of the requirements in Paragraph 2, or to file the application in accordance with Paragraphs 3 and 4. Refusal of an application shall not be justified by the economic needs of the market. Refusal of an application for the granting of an authorisation may be justified by maintenance of stability of the payment system.

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<sup>46)</sup> Act No. 540/2007 Coll. on auditors, audits and supervision of audits and on amendments to Act No. 431/2002 Coll. on accounting, as amended.

(7) The requirements in Paragraph 2 must be complied with continuously throughout the validity term of the authorisation.

(8) Before a payment institution commences the provision of payment services, it shall credibly prove to National Bank of Slovakia its technical, organisational and personal readiness for sound and safe provision of the payment services, existence of a functional, efficient and prudent management and control system of the payment institution.

(9) The payment institution may commence the pursuit of the activities listed in the authorisation only after receipt of notification from the National Bank of Slovakia on the satisfaction of requirements in accordance with Paragraph 8.

#### Article 65

(1) The authorisation pursuant to Article 64 (1) shall be granted for an indefinite period of time and shall not be transferable to another person nor assignable to a legal successor of the payment institution.

(2) In addition to the general essentials of a decision pursuant to the specific law,<sup>47)</sup> the statement part of the decision authorising the provision of payment services shall also contain:

- (a) a list of the payment services to be lawfully provided by the payment institution;
- (b) the full name, permanent addresses and dates of birth of the natural persons who shall act as members of the statutory body, members of the board of supervisors or confidential clerks.

(3) The authorisation pursuant to Article 64 (1) may also lay down requirements that must be satisfied by the payment institution prior to taking up the payment services business or complied with in the course of the pursuit of the payment services business.

(4) The payment institution shall without undue delay notify National Bank of Slovakia in writing of any change in the information specified in Paragraph 2(b) and on any change in any other information and matters that are decisive for the granting of authorisation.

(5) The payment institution shall file with the competent court of registration a petition for registration of the authorised activities with the Commercial register within 30 days from the date the authorisation comes into force. The payment institution shall submit to National Bank of Slovakia its excerpt from the Commercial register within 10 days from the date the decision of the court of registration on the registration entry or a change in the registration entry in the Commercial register becomes final.

(6) A payment institution and a branch of a foreign payment institution shall be an obligated person pursuant to the specific law.<sup>48)</sup>

#### Article 66

(1) Prior approval from the National Bank of Slovakia shall be required for:

- (a) acquiring or exceeding an amount of holding in the payment institution's registered capital or voting rights of 10%, 20%, 33%, 50% and 66% through a single transaction or a series of transactions or by concerted action;
- (b) election or designation of persons nominated as members of the payment institution's statutory body, board of supervisors or confidential clerk, appointment of a manager or a manager responsible for internal control;
- (c) a change in the articles of association of the payment institution;
- (d) renouncement of the authorisation for payment services;
- (e) dissolution of the payment institution with liquidation;
- (f) change of the payment institution's business name or office.

(2) Granting of prior approval:

- (a) pursuant to Paragraph 1(a) shall be subject to the satisfaction of requirements in accordance with Article 64 (2) (c) (d) (f) and (h) and provision of evidence of a transparent and credible origin, adequacy and appropriate structure of funds for such action;
- (b) pursuant to Paragraph 1(b) shall be subject to satisfaction of requirements in accordance with Article 64 (2)(e);
- (c) pursuant to Paragraph 1(c) shall be subject to submission of a draft amendment to the articles of association in accordance with this Act;
- (d) pursuant to Paragraph 1(d) shall be subject to submission of credible documents and a written declaration of the payment institution evidencing that by the date of renouncement of the authorisation it shall fulfil its liabilities to its payment service users;

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<sup>47)</sup> Article 27 of Act No. 747/2004 Coll., as amended.

<sup>48)</sup> Act No. 297/2008 Coll., as amended.

(e) pursuant to Paragraph 1(e) shall be subject to submission of the resolution of the payment institution's statutory body on the proposed dissolution,<sup>49)</sup> the extraordinary financial statements<sup>29)</sup> and any other document evidencing the facts related to the dissolution of the payment institution.

(3) An application for prior approval shall be filed:

- (a) by the legal entities or natural persons intending to acquire a holding in the payment institution's registered capital in cases pursuant to Paragraph 1(a);
- (b) by the payment institution or a shareholder or member with qualifying participation in the payment institution which is, pursuant to the payment institution's articles of association, authorised to such legal act in cases pursuant to Paragraph 1(b);
- (c) by the payment institution in cases pursuant to Paragraph 1 (c) to (e).

(4) National Bank of Slovakia shall decide on an application referred to in Paragraph 1 (a) and (c) to (e) within three months from delivery of the complete application. National Bank of Slovakia shall decide on an application referred to in Paragraph 1 (b) within 15 days from delivery of the complete application.

(5) In its decision on the granting of prior approval pursuant to Paragraph 1 (a) and (c) to (e), National Bank of Slovakia shall determine the time limit upon expiry of which the prior approval shall lapse if the act for which the prior approval was granted is not carried out. Such time limit shall not be shorter than three months and longer than one year from the date at which the decision becomes final.

(6) National Bank of Slovakia may, for the purposes of a proceeding on the application for prior approval, request the payment institution to submit an additional report prepared by an auditor or auditing

(7) Within 10 days from registration of changes in the Commercial register or deletion of information entered in the Commercial register for which the National Bank of Slovakia has granted its prior approval,

(8) Execution of any act for which prior approval from National Bank of Slovakia is required under this Act without such approval shall render that act void.

#### Article 67

(1) The authorisation granted to a payment institution pursuant to Article 64 (1) shall lapse:

- (a) on the date of dissolution of the payment institution on grounds other than withdrawal of the authorisation granted under Article 64 (1);
- (b) on the date at which the decision to declare bankruptcy over property of the payment institution or the decision to dismiss the bankruptcy proceeding or cancel bankruptcy on grounds of insufficiency of assets of the payment institution under the specific law<sup>50)</sup> becomes final;
- (c) on the date the authorisation is renounced; an authorisation may be renounced only in writing and with prior approval granted in writing in accordance with Article 66 (1) (d);
- (d) if the payment institution has failed to file a petition for its registration in the Commercial register within the time limit specified in Article 65 (5).

(2) the National Bank of Slovakia shall have the right to withdraw an authorisation granted under Article 64 (1) if

- (a) it was granted on the basis of information which is incomplete or false;
- (b) major changes have occurred in matters that are decisive for the granting of the authorisation;
- (c) the payment institution has repeatedly or grossly violated the conditions on which the authorisation was issued;
- (d) the payment institution did not commence its activity for which the authorisation is granted within 12 months from the granting;
- (e) the payment institution has ceased the activity for which the authorisation is granted for a period of six consecutive months;
- (f) the payment institution hinders the exercise of supervision; or
- (g) sanctions imposed under this Act or a specific law<sup>39)</sup> have failed to result in correction of the irregularities established.

(3) National Bank of Slovakia shall withdraw the authorisation granted under Article 64 (1) from the payment institution if the payment institution's engagement in the payment services business might jeopardise stability of the payment system.

(4) In cases referred to in Paragraph 2 (d) or (e), the payment institution shall apply to National Bank of Slovakia for a change in or renouncement of the authorisation.

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<sup>49)</sup> Articles 68 to 75a and Articles 105 to 220a of the Commercial Code.

<sup>50)</sup> Article 20 of Act No. 7/2005 Coll., as amended.

(5) A person with qualifying participation in the payment institution or the payment institution itself shall without undue delay notify the National Bank of Slovakia in writing of the matters referred to in Paragraph 1 (b) and in Paragraph 2 (b), (d) and (e).

(6) National Bank of Slovakia shall publish a notice of lapse or withdrawal of an authorisation in the Journal of the National Bank of Slovakia or on its website.

(7) As of the date of lapse of the authorisation pursuant to Paragraph 1 or the time of delivery of the decision on withdrawal of the authorisation pursuant to Paragraph 2, the legal entity whose authorisation was withdrawn or lapsed shall not be allowed to provide payment services and carry out any other activities, except those that are necessary for the settlement of its claims and liabilities or business operations pursuant to Article 77 (1)(c); such legal entity shall carry out the payment services to settle the existing claims and liabilities through an account opened with another bank or payment institution.

(8) When carrying out activities pursuant to Paragraph 7, the legal entity from which the authorisation granted under Article 64 (1) was withdrawn or lapsed shall act as payment institution within the meaning of this Act until final settlement of its claims and liabilities. The obligation to submit financial statements, statistical statements and reports concerning business requirements and prudential requirements for payment institutions shall not apply to such legal entity.

(9) National Bank of Slovakia shall send the decision on withdrawal of the authorisation granted pursuant to Article 64 (1) for publication in the Commercial Journal<sup>36)</sup> within 30 days from the date on which the decision becomes final.

(10) Where the decision on withdrawal of the authorisation granted pursuant to Article 64 (1) is issued to a legal entity having a branch in another Member State, the National Bank of Slovakia shall notify that fact to the supervisory authority of the state where the legal entity from which the authorisation was withdrawn has its branch.

(11) Withdrawal of an authorisation granted pursuant to Article 64 (1) shall be registered in the Commercial register<sup>35)</sup> within 15 days from the date the decision on withdrawal of the authorisation granted pursuant to Article 64 (1) becomes final. National Bank of Slovakia shall send the decision, accompanied by a petition for the registration, to the court keeping the Commercial register.

(12) When the decision on withdrawal of the authorisation granted pursuant to Article 64 (1) becomes final, National Bank of Slovakia shall without undue delay file with the competent court a petition for dissolution and liquidation of the payment institution and for appointment of a liquidator. The court shall not determine a time limit before rendering the decision on dissolution of the payment institution for remedy of the reason on grounds of which the dissolution was proposed.<sup>51)</sup>

(13) National Bank of Slovakia shall dismiss the proceeding on withdrawal of an authorisation granted pursuant to Article 64 (1) if bankruptcy has been declared.<sup>31)</sup>

## Article 68

(1) Where the payment institution is to be dissolved with liquidation, only National Bank of Slovakia shall have the right to submit a proposal for appointment and removal of a liquidator.

(2) The persons involved in the liquidation of the legal entity whose authorisation granted under Article 64 (1) was withdrawn or lapsed shall, throughout and after the liquidation process, respect confidentiality of all matters concerning the liquidation in relation to any persons, except the National Bank of Slovakia in connection with carrying out its duties under this Act or the special law.<sup>40)</sup>

(3) The liquidator shall without undue delay submit to National Bank of Slovakia the accounting statements and documents processed during the liquidation,<sup>52)</sup> as well as any other inputs as National Bank of Slovakia may request for the purposes of reviewing the liquidator's conduct and the liquidation process.

(4) The liquidator shall be required to enforce surrender of any benefits obtained through void or voidable legal acts by which the payment institution or its creditors have been disadvantaged. The liquidator shall also carry out all other activities that are necessary for the liquidation of that legal entity. Such activities shall be subject to approval from the National Bank of Slovakia ; the granting of approval shall not be subject to provisions concerning proceedings before National Bank of Slovakia under the specific law<sup>53)</sup> or the general provision concerning the administrative procedure.<sup>54)</sup>

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<sup>51)</sup> Article 68 (7) of the Commercial Code.

<sup>52)</sup> Articles 70 to 75a of the Commercial Code.

(5) The liquidator shall publish the statement part of the decision on liquidation of the legal entity whose authorisation is granted under Article 64 (1) was withdrawn or lapsed in the Official Journal of the European Union and at least two national daily newspapers in each Member State where a branch of that legal entity is located; such publication shall be in the state language and the official language of the Member State concerned.

#### Article 69

(1) A payment institution shall regulate in its articles of association the relationships and cooperation between its statutory body, board of supervisors and managers and the manager responsible for internal control. In its articles of association the payment institution shall also allocate and regulate powers and responsibilities within the payment institution in respect of:

- (a) the development, implementation, monitoring and control of the payment institution's business plans;
- (b) the internal control system, including an autonomous and independent internal control body;
- (c) the information system;
- (d) protection against the laundering of proceeds from criminal activity and the financing of terrorism.<sup>55)</sup>

(2) A payment institution shall develop and respect its internal rules and procedures to ensure compliance with prudential rules.

(3) The organisational structure of a payment institution shall include a position in charge of internal control. The payment institution shall ensure that the person in charge of internal control have access to all information and inputs required for proper performance of his duties. Proper performance of duties by the person in charge of the execution of internal control shall be the responsibility of the statutory body.

(4) A payment institution shall submit its organisational structure to National Bank of Slovakia within 10 days after any change.

(5) The statutory body of a payment institution shall have at least three members. Validity of legal acts made in writing on behalf of the payment institution shall be subject to signing by at least two members of the payment institution's statutory body, if the body acting on behalf of the payment institution is the statutory body.

(6) Members of the statutory body and a confidential clerk who have caused damage through acting in their capacity as members of the statutory body and confidential clerk shall have joint and several liability for such damage.

#### Article 70

(1) A payment institution shall develop and maintain an efficient internal control system. "Internal control" means, for the purposes of this Act, control over compliance with laws and other generally binding legal provisions, the payment institution's articles of association, prudential rules and rules for protection against the laundering of proceeds from criminal activity and the financing of terrorism.

(2) The board of supervisors of a payment institution shall have the right to request the person in charge of internal control to carry out an audit, to the extent defined by the board, of the payment institution.

(3) The person in charge of internal control shall without undue delay notify the board of supervisors and National Bank of Slovakia in writing of any facts he or she ascertains during his or her operation that indicate violation by the payment institution of its obligation imposed by laws, the payment institution's articles of association and prudential rules which might affect sound performance of the payment institution.

(4) The person in charge of internal control shall submit to the National Bank of Slovakia no later than 31 December of a calendar year a programme of control activity for the next year.

#### Article 71

(1) A payment institution shall keep a register of contracts and records relating to the provision of payment services. On request, such records shall be made available to the National Bank of Slovakia without undue delay.

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<sup>53)</sup> Articles 12 to 34 of Act No. 747/2004 Coll., as amended.

<sup>54)</sup> Act No. 71/1967 Coll., as amended.

<sup>55)</sup> For example, Act No. 297/2008 Coll., as amended; Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006.

(2) Where the payment institution executes or intermediates transfers the subject of which is purchase or sale of funds in one currency for funds in another currency, as referred to in Article 1 (2), executed on instruction given to the payment institution by the payer or the payee at the payment institution's own account or at the account of the payment service user, the payment institution shall provide separate organisational arrangements and personnel for each of the negotiation of transactions involving such transfers, settlement and internal control of such transactions; the payment institution shall also keep separate sub-records of such transactions in its accounting system.

(3) The payment institution shall keep the documentation pursuant to Paragraph 1 for a period of at least five years from the termination date of the contracts or the origination date of the records to which it relates.

(4) The payment institution may keep the documentation pursuant to Paragraph 1 and any other documentation relating to the provision of payment services either on paper or in electronic form on durable media, if the traceability requirement is met and the payment institution has in place a data protection system, including safeguards against loss of data.

#### Article 72

(1) The payment institution's own funds must not fall below the amount of its paid-up contribution to registered capital, as defined in Article 64 (2)(b). The foregoing is without prejudice to Paragraph 2.

(2) A payment institution is required to have own funds amounting to at least 10% of its fixed overheads of the previous year. Where the payment institution did not pursue its business in the previous year, it shall have own funds amounting to at least 10% of its fixed overheads as projected in its business plan.

(3) A payment institution shall continuously calculate and monitor the amount of its own funds.

#### Article 73

(1) A payment institution may outsource, on the basis of a contract made in writing, operational functions related to the provision of payment services (hereinafter "operational functions") to another entity that carries out the outsourced functions within the frame of its scope of business. The payment institution may outsource its operational functions only on the condition that it has given National Bank of Slovakia prior notice of such intent and the outsourcing of operational functions does not result in:

- (a) a change in the payment institution's relationships and obligations towards payment service users under this Act;
- (b) a change in the facts constituting preconditions for the granting of authorisation for payment services;
- (c) transfer of liability for the provision of payment services from the payment institution to the entity to which operational functions have been outsourced;
- (d) impairment of the quality of internal control of the payment institution; and such outsourcing shall not hinder the exercise of supervision of the payment institution, including oversight of its operational functions.

(2) A payment institution shall ensure that payment service users be informed of the outsourcing of operational functions pursuant to Paragraph 1.

(3) The conditions and requirements in Paragraphs 1 and 2 must be complied with throughout the duration of the outsourcing of operational functions.

(4) Liability for any damages caused during the provision for payment services by the entity to which operational functions have been outsourced shall be borne by the payment institution. Outsourcing of operational functions shall not affect the compliance of the payment institution with its obligations under this Act. A payment institution acting pursuant to Paragraph 1 shall prepare in advance and maintain internal rules to ensure compliance with the provisions of this Act.

#### Article 74

(1) the National Bank of Slovakia shall maintain a list of:

- (a) the payment institutions to which an authorisation has been granted pursuant to Article 64 (1), and their payment service agents;
- (b) branches of payment institutions and their payment service agents;
- (c) branches of foreign payment institutions and their payment service agents.

(2) The list shall also indicate the payment services for which the payment institution, branch of a payment institution or branch of a foreign payment institution is authorised, as well as the payment services provided by the payment service agent.

(3) National Bank of Slovakia shall publish the information referred to in Paragraphs 1 and 2 on its website.

## Article 75

(1) "Payment service agent" means, for the purposes of this Act, a person that provides payment services in accordance with Article 2 (1) on behalf of a payment institution on the basis of a contract made in writing with the payment institution.

(2) A payment institution that intends to provide payment services through a payment service agent shall notify National Bank of Slovakia of:

- (a) the full name, personal ID and permanent address, or place of business if different from the permanent residence, of the payment service agent if the agent is a natural person;
- (b) the business name, registered office, legal form and identification number of the payment service agent, and the full name, personal ID and permanent address of the payment service agent's statutory body or its members and the full names, personal IDs and permanent addresses of the payment service agent's managers responsible for the provision of payment services if the agent is a legal entity;
- (c) the payment services which the payment institution intends to provide through the payment service agent;
- (d) a declaration that the notification and its enclosures are complete, correct, true and current.

(3) The payment institution shall enclose with notification referred to in Paragraph 2:

- (a) the contract in writing with the payment service agent;
- (b) documents evidencing professional competence and credibility of the persons referred to in Paragraph 2 (a) and (b) engaged in the provision of payment services;
- (c) a description of internal control mechanisms of the payment service agent established in order to comply with obligations in relation to protection against the laundering of proceeds from criminal and the financing of terrorism.

(4) If the notification given under Paragraph 2 is complete and the information in it is true, National Bank of Slovakia shall enter the payment service agent in the register of payment service agents within 30 days from receipt of the complete notification pursuant to Paragraph 2. National Bank of Slovakia shall refuse to enter the payment service agent in the register if the notification pursuant to Paragraph 2 is incomplete or proves to be false, or the payment service agent's internal control mechanisms fail to ensure compliance with obligations in relation to protection against the laundering of proceeds from criminal activity and the financing of terrorism.

(5) If the payment institution intends to provide payment services through a payment service agent in another Member State, it shall notify the National Bank of Slovakia of its intent. The notification shall contain the information defined in Paragraph 2.

(6) If the notification given under Paragraph 2 is complete and the information in it is true, National Bank of Slovakia shall notify the competent supervisory authority of the host Member State of its intent to enter the payment service agent in the register of payment service agents. The notification of the intent to enter the payment service agent in the register of payment service agents shall contain the information and documents defined in Paragraph 2 (a) to (c).

(7) When entering a payment service agent in the register of payment service agents, National Bank of Slovakia shall take into account the opinion of the host Member State's supervisory authority. National Bank of Slovakia shall enter a payment service agent in the register of payment service agents within 15 days from receipt of the opinion of the host Member State's supervisory authority, and no later than 60 days after receipt of the notification pursuant to Paragraph 5. National Bank of Slovakia shall refuse to enter the payment service agent in the register if the notification pursuant to Paragraph 5 is incomplete or proves to be false, or if the opinion of the Member State's supervisory authority indicates that the provision of payment services through that agent might lead to the laundering of proceeds from criminal activity or the financing of terrorism.

(8) The payment institution shall without undue delay inform National Bank of Slovakia of any change in the facts specified in Paragraphs 2 and 3.

(9) National Bank of Slovakia shall annul registration of a payment service agent in the register of payment service agents if:

- (a) the payment service agent was entered in the register of payment service agents on the basis of information which is incomplete or false;
- (b) it establishes that the payment service agent was or has been engaged in the laundering of proceeds from criminal activity or the financing of terrorism;
- (c) a person referred to in Paragraph 2 (a) and (b) engaged in the provision of payment services is no longer credible.

(10) Within 30 days from receipt of notification from the home Member State's supervisory authority of the intent to enter in the register of payment agents kept by the home Member State's supervisory authority a payment service agent through which a foreign payment institution will provide services in the territory of the Slovak Republic, National Bank of Slovakia shall send its opinion to the home Member State's supervisory authority; if National Bank of Slovakia suspects that the provision of payment services through that agent in the territory of the Slovak Republic might lead to the laundering of proceeds from criminal activity or the financing of terrorism, National Bank of Slovakia shall indicate that fact in its opinion.

(11) Liability for any damages caused during the provision of payment services by the payment service agent shall be borne by the payment institution.

#### Article 76

(1) A payment institution shall submit to National Bank of Slovakia a report on the audit of its financial statements under the specific law<sup>29)</sup>, which shall be submitted no later than 30 June of the year following the calendar year to which the audit relates.

(2) A payment institution shall keep accounting books in accordance with the specific law;<sup>29)</sup> every accounting transaction related to its payment operations or any other operations shall be recorded in the accounting books on the date such accounting transaction has occurred.

(3) The auditor shall without undue delay inform National Bank of Slovakia in writing of any facts established during the auditing that may lead to possible expression of reservations to the payment institution's financial statements or affect the continuous functioning of the payment institution, and on any established violation of generally binding legal provisions or the conditions laid down in the authorisation granted under Article 64 (1).

(4) A payment institution shall ensure through provisions in the agreement made in writing with the auditor or auditor firm<sup>46)</sup> that an auditor's report be prepared on the audit of information in the reports requested by National Bank of Slovakia in accordance with the generally binding legal provision adopted pursuant to Article 96. The payment institution shall submit such report to National Bank of Slovakia no later than 30 June of the year following the calendar year to which the audit relates.

(5) A payment institution shall at no charge and in a timely manner prepare and submit to National Bank of Slovakia comprehensible and clear statements, notifications, reports and other information and documents on facts related to its economic and financial situation, property circumstances and the transacting and provision of payment services both at the request of National Bank of Slovakia and in accordance with the generally binding legal provision adopted pursuant to Article 96 (1) (i). Information in the statements, notifications, reports and other information and documents so submitted shall be complete, current, correct, true and provable. Where the statements, notifications, reports and other information and documents submitted fail to contain the required information, comply with the specified methodology, or where a reasonable doubt arises as to their completeness, currentness, correctness, veracity, provability or authenticity, the payment institution shall, on request, submit to National Bank of Slovakia the supporting documents and explanations within the time limit defined by National Bank of Slovakia. The payment institution shall be equally obligated to submit to National Bank of Slovakia its financial statements and, in cases to which the specific law applies, consolidated financial statements.

#### Article 77

(1) In addition to the provision of payment services pursuant to Article 2 (1), a payment institution may also pursue the following activities:

- (a) provision of operational services and pertaining supplementary services, in particular facilitation of the execution of payment transactions, money exchange business, data safekeeping and data storage and processing;
- (b) operation of payment systems under this Act;
- (c) business activities.

(2) For the purposes of execution of a payment transaction by a payment institution, "transfer of funds" shall also refer to purchase or sale of funds in one currency for funds in another currency pursuant to Article 1 (2), executed on instruction given to the payment institution by the payer or the payee at the payment institution's own account or at the account of the payment service user, or intermediation of such a transfer; in case of investment services provided under the specific law,<sup>56)</sup> such transfer shall not be subject to authorisation pursuant to Article 64 (1).

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<sup>56)</sup> Act No. 566/2001 Coll., as amended.

(3) Where the payment institution provides any of the payment services specified in Article 2 (1) and at the same time pursues other business activities in accordance with Paragraph 1, National Bank of Slovakia shall have the right to request that an autonomous payment institution be established if the activities pursued by the payment institution that are not linked to the provision of payment services impair or may impair financial stability of the payment institution or the ability of competent authorities to supervise whether the payment institution complies with all obligations laid down in the Act.

(4) A payment institution shall hold payment accounts for the provision of payment services that shall be used solely for payment transactions. Any funds received by the payment institution from payment service users with a view to the provision of payment services shall not constitute a deposit<sup>57)</sup> or electronic money.

(5) A payment institution may grant credit related to payment services referred to in Article 2 (1) (d) (f) and (g) only if the following conditions are met:

(a) the credit is ancillary and granted exclusively in connection with the execution of a payment transaction; the foregoing shall be without prejudice to specific laws or other generally binding legal provisions relating to the granting of credits to consumers<sup>58)</sup>;

(b) the repayment term is not longer than 12 months;

(c) such credit is not granted from the funds received for the purpose of executing a payment transaction;

(d) the own funds of the payment institution are at all times and to the satisfaction of the supervisory authorities appropriate in view of the overall amount of credit granted.

(6) A payment institution shall not take deposits.<sup>57)</sup>

(7) A payment institution shall not commingle funds which have been received from payment service users with the funds of any persons other than the payment service users; where such funds have not been delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, the payment institution shall deposit them in a separate account in a bank or a branch of a foreign bank or invest them in secure, liquid low-risk assets.

(8) Where the payment institution does not act in accordance with Paragraph 7, it shall have an insurance policy or some other comparable guarantee from an insurance company, bank or electronic money institution that does not belong to the same group as the payment institution itself, for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

(9) Any funds received by the payment institution from payment service users shall not constitute part of the payment institution's assets nor be subject to enforcement of a decision under special provisions,<sup>33)</sup> and shall be excluded therefrom.

## Article 78

(1) Activities of payment institutions, payment service agents and persons to which operational functions have been outsourced shall be subject to supervision exercised by National Bank of Slovakia in accordance with this Act and specific provisions,<sup>39)</sup> unless this Act provides otherwise.

(2) Where the National Bank of Slovakia establishes irregularities in the operation of a payment institution that rest in non-compliance with the conditions laid down in the authorisation, requirements and obligations arising from other decisions of National Bank of Slovakia imposed on the payment institution, non-compliance with or circumvention of the provisions of this Act, legally binding acts of the European Communities and the European Union concerning payment services, specific laws<sup>20)</sup> or other generally binding legal provisions concerning payment services, depending on the severity, extent, duration, consequences and nature of the irregularities so established, National Bank of Slovakia shall:

(a) impose on the payment institution an obligation to adopt corrective measures;

(b) impose on the payment institution a fine of up to EUR 300, 000 or, in case of a repeated or severe irregularity, of up to EUR 600,000;

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<sup>56)</sup> Act No. 566/2001 Coll., as amended.

<sup>57)</sup> Article 3 (1) and Article 5 (a) of Act No. 483/2001 Coll.

<sup>58)</sup> For example, Act No. 258/2001 Coll. on consumer credits and on amendments to the Act of the Slovak National Council No. 71/1986 Coll. on the Slovak Trade Inspection, as amended; Act No. 483/2001 Coll., as amended; Act No. 455/1991 Coll. on small trade business (Small Trade Business Act), as amended; Commercial Code, as amended.

- (c) impose on the payment institution an obligation to submit special statements, notifications, reports and other information;
- (d) limit or suspend the pursuit by the payment institution of any of the activities listed in the authorisation for payment services;
- (e) withdraw the payment institution's authorisation for the pursuit of any of the activities listed in the authorisation for payment services;
- (f) impose on the payment institution an obligation to make corrections in its accounting records or other records in accordance with the findings of the National Bank of Slovakia or the auditor;
- (g) impose on the payment institution an obligation to publish correction of any incomplete, incorrect or false information previously published by the payment institution regarding its business or other activity, its economic or financial situation or its property circumstances;
- (h) impose on the payment institution an obligation to recognise in its accounting losses from management:
  - 1. of its retained profits of previous years, reserves created from profits and capital reserves;
  - 2. of the payment institution's registered capital;
- (i) withdraw the payment institution's authorisation for payment services.

(3) Imposition of corrective measures, fine or other sanction under Paragraph 2 shall be without prejudice to the liability of the payment institution under specific laws.<sup>38)</sup>

(4) Corrective measures, a fine or other sanctions pursuant to Paragraph 2 may be imposed concurrently and repeatedly. A fine shall be due in 15 days from the date the decision imposing the fine becomes final. A fine so imposed shall constitute state budget revenue.

(5) Corrective measures, a fine or other sanctions pursuant to Paragraph 2 may be imposed within two years from the establishment of the irregularities but no later than 10 years from their occurrence. Irregularities specified in the Protocol on the carried out on-site supervision shall be considered to be established from the day when the on-site supervision was finished in accordance with the specific law<sup>58a)</sup>.

(6) National Bank of Slovakia shall have the right to discuss irregularities in the operation of the payment institution with members of its statutory body, members of its board of supervisors, its managers or the head of its internal control body even outside a proceeding on imposition of corrective measures, a fine or other sanction pursuant to Paragraph 2. Such persons shall provide the National Bank of Slovakia with all assistance it requires.

#### Article 79

(1) A payment institution may also provide payment services referred to in Article 2 (1) in another Member State through its branch or without establishing a branch, subject to the conditions laid down in this Act.

(2) A payment institution wishing to provide payment services in another Member State for the first time shall notify to National Bank of Slovakia:

- (a) the name and registered office of the payment institution;
- (b) the host Member State in the territory of which it intends to provide payment services;
- (c) the type of payment services it intends to provide in the territory of the host Member State;
- (d) where a branch is to be established, also:
  - 1. the registered office of the branch in the Member State;
  - 2. the full name and permanent address of the person responsible for management of the branch;
  - 3. the organisational structure of the branch.

(3) National Bank of Slovakia shall submit such information to the host Member State's supervisory authority within one month from receipt of notification pursuant to Paragraph 2, and inform the payment institution accordingly.

(4) The payment institution shall notify the National Bank of Slovakia and the host Member State's supervisory authority in writing of any changes in the information specified in Paragraph 2 no later than 30 days before the date when the intended changes become effective.

(5) A foreign payment institution having its registered office in the territory of another Member State may provide payment services referred to in Article 2 (1) in the territory of the Slovak Republic through its branch or, without establishing a branch, through a payment service agent if it has authorisation for such payment services granted in another Member State, subject to delivery to the National Bank of Slovakia of written notification from the competent supervisory authority of the home Member State. A foreign payment institution having its registered office in the territory of another Member State shall be liable for any damage caused by the foreign payment institution's branch or payment service agent. Supervision of the branch of the foreign payment institution in the territory of the Slovak Republic shall be exercised by the supervisory authority of the home Member State.

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<sup>58a)</sup> Article 10 (5) of Act No. 747/2004 Coll.

(6) If National Bank of Slovakia wishes to carry out on-site supervision at a branch or an agent of a payment institution or a person to which operational functions have been outsourced in the territory of a host Member State, National Bank of Slovakia shall notify the competent supervisory authority of that State and cooperate with it. National Bank of Slovakia may agree with the competent supervisory authority of the host Member State that the on-the-spot supervision be carried out by that supervisory authority.

(7) National Bank of Slovakia may agree with the competent supervisory authority of the home Member State that it will carry out on-site supervision at the branch or agent of the foreign payment institution or the person to which operational functions have been outsourced in the territory of the Slovak Republic.

(8) National Bank of Slovakia shall provide competent supervisory authorities of other Member States with all necessary information, particularly in cases where violation of obligations by a branch or agent of a foreign payment institution or a person to which operational functions have been outsourced in the territory of the Slovak Republic has occurred or is suspected.

## **PART FIVE**

### **ELECTRONIC MONEY AND AN ELECTRONIC MONEY INSTITUTION**

#### Article 80

(1) Electronic money shall be issued only by a provider of payment services referred to in Article 2 (3) (a) and (b). A provider of payment services pursuant to Article 2 (3)(a) may issue electronic money only on the basis of a banking licence<sup>37)</sup> and a provider of payment services pursuant to Article 2 (3)(b) may issue electronic money only on the basis of an authorisation to issue electronic money granted under this Act.

(2) "Electronic money" means a monetary value in electronic form representing a liability of the payment service provider referred to in Paragraph 1. Electronic money is stored on an electronic device and allows the payment service user to execute payment transactions with an entity other than the payment service provider being the issuer of the electronic money.

(3) Electronic money may be issued only on previous receipt of funds of an amount not less in value than the electronic money issued. Any funds received for which the payment service provider referred to in Paragraph 1 has immediately issued electronic money shall not constitute a deposit.<sup>57)</sup>

(4) A payment service provider referred to in Paragraph 1 shall issue electronic money to a payment service user on the basis of an agreement on issuance of electronic money or a framework contract if the value of electronic money issued does not exceed EUR 150 pursuant to Articles 29 and 42 regulating the issuance and use of electronic money. Execution of payment transactions with electronic money shall be governed by a framework contract.

(5) A provider of payment services pursuant to Article 2 (3) (a) and (b) shall:

- (a) provide the payer with the possibility to verify the last five payment transactions executed by means of electronic money, as well as the balance of electronic money stored on the electronic device, which shall be considered as compliance with the obligation laid down in Article 40;
- (b) provide the payee with information on individual payment transactions in accordance with Article 41;
- (c) be liable for correct execution of the exchange of funds for electronic money and the redemption of electronic money, as well as for the storage of electronic money;
- (d) at the payment service user's request redeem electronic money at par value in cash or by cashless transfer to a payment account at no charge for such service except expenses that are necessary to carry out the redemption.
- (e) may agree in a contract with the payment service user a minimum threshold for the redemption pursuant to Subparagraph (d), provided that such threshold shall not exceed 10 euros.

#### Article 81

An electronic money institution is a legal entity having its registered office in the territory of the Slovak Republic that is authorised to issue electronic money on the basis of an authorisation to issue electronic money:

- (a) to the full extent, or
- (b) to a limited extent pursuant to Article 87.

## Article 82

(1) Decision on the granting or a change of an authorisation to issue electronic money shall be made by the National Bank of Slovakia on the basis of an application filed in writing. An application for authorisation to issue electronic money shall be filed by the applicant wishing to become an electronic money institution and an application for a change in the authorisation shall be filed by the applicant being the electronic money institution.

(2) Granting of an authorisation to issue electronic money shall be subject to satisfaction by the applicant of the following requirements:

- (a) the electronic money institution is a joint stock company<sup>59)</sup> in case of an electronic money institution pursuant to Article 81(a), or a legal entity established as business company liable to the obligation to create registered capital<sup>45)</sup> in case of an electronic money institution pursuant to Article 81(b);
- (b) the paid-up contribution to the electronic money institution's registered capital is at least EUR 1,000,000;
- (c) a transparent, credible and legal origin of the monetary contribution to registered capital, as well as other sources of funds of the applicant and its shareholders or members;
- (d) suitability of persons with qualifying participation in the payment institution and transparency of those persons' relationships with other persons, particularly transparency of their holdings in registered capital and voting rights;
- (e) professional competence and credibility of natural persons nominated as members of the statutory body, confidential clerk, members of the board of supervisors, managers and head of an internal control body;
- (f) transparency of the group with close links to which the shareholder with qualifying participation in the electronic money institution belongs;
- (g) the close links referred to in Subparagraph (f) do not prevent the exercise of supervision of the electronic money institution and its operation;
- (h) the law, the method of its application and its enforceability in the state within the territory of which the group has close links does not hinder the exercise of supervision;
- (i) the applicant's articles of association;
- (j) adequate and proportionate technical systems, resources and procedures for the sound issuing and administering of electronic money;
- (k) the electronic money institution's registered office, head office and the issuing and administering of electronic money must be located in the territory of the Slovak Republic;
- (l) an analysis of risks involved in the electronic money institution's operation, the risk management system and a safe risk management methodology;
- (m) the arrangements to ensure protection of the electronic processing, storage and backup of data on payment service users and on the issuing of electronic money and to ensure protection of such data against disclosure, misuse, damage, destruction, loss or theft;
- (n) shareholders or other members of the electronic money institution must provide evidence of their financial ability to overcome any possible adverse financial situation of the institution;

(3) An application for authorisation pursuant to Paragraph 1 shall contain:

- (a) the applicant's business name, registered address, identification number, amount of registered capital and scope of business or activity;
- (b) a list of shareholders with qualifying participation in the electronic money situation and the amount of the qualifying holding; information in the list shall include:
  - 1. the full name, permanent address, nationality and date of birth in case of natural persons;
  - 2. the full name, permanent address, nationality, date of birth, business name, address of the place of business and the identification number, if any, in case of a natural person being an entrepreneur;
  - 3. the business name, registered office and identification number in case of a legal entity;
- (c) the full name, permanent address, nationality and date of birth of the natural person nominated as member of the statutory body, confidential clerk, member of the board of supervisors, manager or head of the internal control body and information proving his or her credibility and professional competence;
- (d) an applicant's declaration that the submitted application and its enclosures are complete, correct, true and current;
- (e) the place and date of the preparation of the application and the officially authenticated signature of the applicant;

(4) Enclosed with the application pursuant to Paragraph 3 shall be:

- (a) the applicant's excerpt from the Commercial Register,<sup>35)</sup>
- (b) a document evidencing that the monetary contribution to registered capital has been paid up;

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<sup>59)</sup> Articles 154 to 220a of the Commercial Code.

- (c) the deed of foundation, foundation agreement or memorandum of association;
- (d) draft articles of association of the electronic money institution;
- (e) a concise professional curriculum vitae and a document evidencing the level of education and years of practice, and documentary proof of credibility of the persons referred to in Article 2 (e), not older than three months, and a solemn declaration of their compliance with the requirements laid down in this Act;
- (f) a draft of organisational structure and draft of organisational regulations of the electronic money institution;
- (g) draft internal rules regulating the governance and internal control mechanisms of the electronic money institution, including risk management procedures;
- (h) a business plan, based on the electronic money institution's proposed business strategy and supported by realistic economic calculations, including a forecast budget calculation for the first three fiscal years that demonstrates that the electronic money institution is able to employ the appropriate and proportionate technical systems, resources and procedures to issue and administer electronic money soundly; such plan shall indicate the total target sum of financial liabilities related to the issuing of electronic money for at least the first six months of the issuing of electronic money starting from the taking up of business;
- (i) documentary evidence credibly demonstrating and proving the financial ability of the payment institution's shareholders or members to overcome any possible adverse financial situation of the applicant.

(5) The National Bank of Slovakia shall decide on the application for the granting or a change of an authorisation no later than three months from the date the complete application for authorisation is filed.

(6) The National Bank of Slovakia shall refuse an application for authorisation if the applicant has failed to satisfy or prove satisfaction of any of the requirements in Paragraph 2. Refusal of an application shall not be justified by economic needs of the market.

(7) The requirements in Paragraph 2 must be complied with continuously throughout the validity term of the authorisation.

(8) Before an electronic money institution commences the issuing of electronic money, it shall credibly prove to National Bank of Slovakia:

- (a) its technical, organisational and personal readiness for sound and safe issuing of electronic money, existence of a functional, efficient and prudent management and control system, including a risk management system and an internal control and internal audit body;
  - (b) adjustment, where appropriate, of the total target sum of financial liabilities related to the electronic money issued, as indicated in the business plan submitted under Article 4(h);
  - (c) the regulation of relationship with members of the electronic money institution's statutory body through a contract in writing to which provisions of labour law<sup>60)</sup> do not apply;
- Such contract in writing shall neither exclude nor limit the liability of the members of the electronic money institution's statutory body for any damage caused during the acting in its capacity owing to a breach of its obligation as a member of the statutory body arising from generally binding legal provisions or the electronic money institution's articles of association, internal legal rules and management rules.

(9) The electronic money institution may commence the pursuit of the activities listed in the authorisation to issue electronic money only after receipt of notification from the National Bank of Slovakia on the satisfaction of requirements in accordance with Paragraph 2.

### Article 83

(1) The authorisation pursuant to Article 82 (1) shall be granted for an indefinite period of time and shall not be transferable to another person nor assignable to a legal successor of the electronic money institution.

(2) In addition to the general essentials of a decision pursuant to the specific law,<sup>47)</sup> the statement part of the decision authorising the issuing of electronic money shall also contain:

- (a) the full name, permanent addresses and dates of birth of the natural persons who will act as members of the statutory body, members of the board of supervisors and confidential clerks;
- (b) approval of the electronic money institution's articles of association.

(3) The authorisation may also lay down requirements that must be satisfied by the electronic money institution prior to taking up the issuing and administering of electronic money or complied with in the course of the issuing and administering electronic money.

(4) Article 82 shall apply mutatis mutandis to an application for a change in authorisation. The electronic money institution shall notify National Bank of Slovakia in advance of any changes in the facts on which the granting of authorisation was based.

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<sup>60)</sup> For example, the Labour Code.

(5) The electronic money institution shall file with the competent court of registration a petition for registration of the authorised activities with the Commercial Register within 30 days from the date the authorisation comes into force. The electronic money institution shall submit to National Bank of Slovakia its excerpt from the Commercial Register within 10 days from the date the decision of the court of registration on the registration entry or a change in the registration entry in the Commercial Register becomes final.

(6) The requirements in Paragraphs 1 to 5 and Article 82 must be complied with by the electronic money institution continuously throughout the validity term of the authorisation for the issuing of electronic money. The electronic money institution shall provide National Bank of Slovakia with credible evidence of the compliance in accordance with Paragraph 7.

(7) An electronic money institution or a branch of a foreign electronic money institution shall at no charge and in a timely manner prepare and submit to National Bank of Slovakia comprehensible and clear statements, notifications, reports and other information and documents on facts related to its economic and financial situation, property circumstances and the transacting and issuing of electronic money both at the request of National Bank of Slovakia and in accordance with the generally binding legal provision adopted pursuant to Article 96 (1) (c). Information in the statements, notifications, reports and other information and documents so submitted shall be complete, current, correct, true and provable. Where the statements, notifications, reports and other information and documents submitted fail to contain the required information or comply with the specified methodology, or where a reasonable doubt arises as to their completeness, currentness, correctness, veracity, provability or authenticity, the electronic money institution or the branch of a foreign electronic money institution shall, on request, submit to National Bank of Slovakia the supporting documents and explanations within the time limit defined by National Bank of Slovakia. An electronic money institution and a branch of a foreign electronic money institution shall be equally obligated to submit to National Bank of Slovakia its financial statements and, in cases to which the specific law applies, consolidated financial statements.

(8) An electronic money institution or a branch of a foreign electronic money institution having its registered office in another Member State, which has established a branch in the territory of the Slovak Republic, shall be an obligated person pursuant to the specific law.<sup>48)</sup>

#### Article 84

(1) The authorisation granted under Article 82 (1) shall lapse:

- (a) on the date of dissolution of the electronic money institution on grounds other than withdrawal of the authorisation granted under Article 82 (1);
- (b) on the date the decision to declare bankruptcy over property of the electronic money institution or the decision to dismiss the bankruptcy proceeding or cancel bankruptcy on grounds of insufficiency of assets of the electronic money institution under the specific law<sup>50)</sup> becomes final;
- (c) on the date the authorisation is renounced; an authorisation may be renounced only in writing and with prior approval from National Bank of Slovakia ;
- (d) if the electronic money institution did not file a petition for its registration in the Commercial Register within the time limit laid down in Article 83 (5).

(2) The National Bank of Slovakia shall have the right to withdraw an authorisation granted to an electronic money institution under Article 82 (1) if:

- (a) it was granted on the basis of information that is incomplete or false;
- (b) major changes have occurred in matters that are decisive for the granting of the authorisation;
- (c) the electronic money institution has repeatedly or grossly violated the conditions on which the authorisation was issued;
- (d) the electronic money institution did not commence its activity for which the authorisation is granted within 12 months from the time at which it was granted;
- (e) the electronic money institution has ceased the issuing of electronic money for a period of six consecutive months;
- (f) the electronic money institution hinders the exercise of supervision; or
- (g) sanctions imposed under this Act or a specific law<sup>39)</sup> have failed to result in correction of the irregularities established.

(3) In cases referred to in Paragraph 2 (d) or (e), the electronic money institution shall apply to National Bank of Slovakia for a change in or renouncement of the authorisation.

(4) The founder of the electronic money institution or the electronic money institution itself shall without undue delay notify National Bank of Slovakia in writing of the matters referred to in Paragraph 1 (b) and in Paragraph 2 (b), (d) and (e).

(5) The National Bank of Slovakia shall publish a notice of lapse or withdrawal of an authorisation in the Journal of the National Bank of Slovakia or on its website.

## Article 85

(1) In its business activity, an electronic money institution shall maintain minimum reserves pursuant to specific provisions,<sup>61)</sup> which must be deposited in an account with National Bank of Slovakia or in a bank's account with National Bank of Slovakia, and comply with the obligations relating to the statutory minimum reserves. Unless Article 87 of this Act provides otherwise, the electronic money institution and the members of its bodies, its employees and shareholders shall be subject to requirements and limitations concerning the establishing, business, governance, operation and business documentation, acquiring or exceeding holdings in registered capital and voting rights of the electronic money institution, and the granting of prior approval by the National Bank of Slovakia, including the authorisation granted under Article 82 (1), to the same extent and on the same terms as established for banks and their members of bodies, employees and shareholders pursuant to a specific law,<sup>62)</sup> except the requirements, conditions and limitations established under the specific law<sup>62)</sup> in respect of adequacy of banks' own funds and acquisition by banks of holdings in registered capital of other legal entities.

(2) An electronic money institution shall not acquire any holdings in other legal entities except where such other legal entities perform exclusively operational or other ancillary functions related to the issuing and administering electronic money by the electronic money institution concerned.

(3) An electronic money institution shall not accept deposits, grant credits, or pursue business activities other than the issuing of electronic money, except:

(a) such operational or other ancillary activities by which credit is not provided and that are directly linked with the issuing of:

1. electronic money issued by that electronic money institution; or
2. other payment instruments;

(b) data storage on an electronic device for and on behalf of other legal entities.

(4) An electronic money institution shall at all times have its own funds that shall not be less than 2% of the higher of:

(a) the amount of electronic money issued; or

(b) the average of the total of its financial liabilities connected with the electronic money issued during the preceding six months.;

(5) If the electronic money institution has ceased the issuing and administering of electronic money for a period longer than six months, it shall at all times have its own funds that shall not be less than 2% of:

(a) the amount of electronic money issued; or

(b) the total of its financial liabilities connected with the electronic money issued during at least the first six months of the issuing and administering electronic money as envisaged in the electronic money institution's business plan submitted under Article 82 (4) (h), including any adjustments to the plan made on the basis of requirements arising from the exercise of supervision of the electronic money institution.

(6) The sum to be applied for the purposes of Paragraph 5 shall be the higher of those defined in Subparagraphs (a) or (b).

(7) The payment institution's own funds must not fall below the amount of its registered capital pursuant to Article 82 (2)(b).

(8) An electronic money institution shall have investments of an amount of no less than its financial liabilities related to the electronic money issued, made only in cash or other designated risk-weighted assets so that liquidity of the electronic money institution is ensured and all market risks arising from such investments and from the issuing and administering electronic money are minimised. Investments of the electronic money institution in designated risk-weighted assets whose risk weight is greater than zero shall not be greater than 20 times the amount of the electronic money institution's own funds. When making its investments, the electronic money institution shall ensure compliance with the limitation on its property exposure to the same extent and on the same terms as established for banks under the specific law<sup>63)</sup>

(9) An electronic money institution shall continuously monitor, determine and calculate the value of its investments, assets and designated risk-weighted assets and its own funds as specified in Article 96 (1)(b). Such calculations, including the underlying data, shall be submitted to National Bank of Slovakia in accordance with Article 96 (1) (c).

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<sup>61)</sup> For example, Section 9, Paragraph 9.2, Section 12, Paragraph 12.1, Section 14, Paragraph 14.3 and Sections 19, 20 and 42 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (OJ C 321 E, 29.12.2006); Articles 20 and 21 of the Act of the National Council of the Slovak Republic No. 566/1992 Coll., as amended.

<sup>62)</sup> Act No. 483/2001 Coll., as amended.

<sup>63)</sup> Article 31 and Article 32 (3) of Act No. 483/2001 Coll., as amended.

(10) An electronic money institution shall keep accounting books in accordance with the specific law;<sup>29)</sup> every accounting transaction related to the issuing or administering electronic money shall be recorded in the accounting books on the date such accounting transaction has occurred.

(11) An electronic money institution shall ensure risk management against all market risks, financial risks, and other risks to which it is exposed. It shall have for that purpose an appropriate, functional, effective and prudent risk management system, appropriate administrative procedures and a proportionate internal control system.

(12) Provisions of the specific law regulating the supplementary supervision of financial conglomerates<sup>64)</sup> shall apply to electronic money institutions.

## Article 86

(1) Activities of an electronic money institution shall be subject to supervision exercised by the National Bank of Slovakia in accordance with this Act and the specific provisions,<sup>39)</sup> unless this Act provides otherwise.

(2) Where National Bank of Slovakia establishes irregularities in the operation of an electronic money institution that rest in non-compliance with the conditions laid down in the authorisation, requirements and obligations arising from other decisions of National Bank of Slovakia imposed on the payment institution, non-compliance with or circumvention of the provisions of this Act, legally binding acts of the European Communities and the European Union concerning the issuing of electronic money, specific laws<sup>20)</sup> or other generally binding legal provisions concerning the issuing of electronic money, depending on the severity, extent, duration, consequences and nature of the irregularities so established, National Bank of Slovakia shall:

- (a) impose on the electronic money institution an obligation to adopt remedial measures;
- (b) impose on the electronic money institution a fine of up to EUR 300,000 or, in case of a repeated or severe irregularity, of up to EUR 600,000;
- (c) impose on the electronic money institution an obligation to submit special statements, notifications, reports and other information;
- (d) limit or suspend the pursuit by the electronic money institution of any of the activities listed in the authorisation to issue electronic money;
- (e) withdraw the electronic money institution's authorisation for the pursuit of any of the activities listed in the authorisation to issue electronic money;
- (f) impose on the electronic money institution an obligation to make corrections in its accounting records or other records in accordance with the findings of National Bank of Slovakia or the auditor;
- (g) impose on the electronic money institution an obligation to publish correction of any incomplete, incorrect or false information previously published by the electronic money institution regarding its business or other activity, its economic or financial situation or its property circumstances;
- (h) impose on the electronic money institution an obligation to recognise in its accounting losses from management of:
  - 1. electronic money institution's retained profits of previous years, reserves created from profits and capital reserves;
  - 2. electronic money institution's registered capital;
- (i) place the electronic money institution under special administration;
- (j) withdraw the electronic money institution's authorisation to issue electronic money;

(3) The imposition of corrective measures, fine or other sanction under Paragraph 2 shall be without prejudice to the liability of the electronic money institution under specific laws.<sup>38)</sup>

(4) Corrective measures, a fine or other sanctions pursuant to Paragraph 2 may be imposed concurrently and repeatedly. A fine shall be due in 15 days from the date the decision imposing the fine becomes final. A fine so imposed shall constitute state budget revenue.

(5) Corrective measures, a fine or other sanctions pursuant to Paragraph 2 may be imposed within two years from the establishment of the irregularities but no later than 10 years from their occurrence. Irregularities specified in the Protocol on the carried out on-site supervision shall be considered to be established from the day when the on-site supervision was finished in accordance with the specific law.<sup>58a)</sup>

(6) Provisions of the act concerning special administration of a bank<sup>44)</sup> shall equally apply to the placing under a special administration of an electronic money institution.

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<sup>64)</sup> Articles 49a to 49o of Act No.483/2001 Coll., as amended.

(7) National Bank of Slovakia shall have the right to discuss irregularities in the operation of the electronic money institution with members of its statutory body, members of its board of supervisors, its managers or the head of its internal control and internal audit body even outside a proceeding on imposition of corrective measures, a fine or other sanction pursuant to Paragraph 2. Such persons shall provide the National Bank of Slovakia with all assistance it requires.

(8) If the amount and value of electronic money institution's investment that is mandatory pursuant to Article 85 (8) falls below the amount of financial liabilities related to the electronic money issued by the electronic money institution, and the same constitutes a minor breach, National Bank of Slovakia shall without undue delay request that the electronic money institution immediately adopt and implement remedial measures.

(9) An electronic money institution may also issue and administer electronic money in another Member State through its branch or without establishing a branch, subject to the conditions laid down in this Act.

(10) An electronic money institution wishing to issue and administer electronic money in another Member State for the first time shall notify to National Bank of Slovakia :

- (a) the name and registered office of the electronic money institution;
- (b) the host Member State in whose territory it intends to issue and administer electronic money;
- (c) a business plan based on proposed business strategy and supported by realistic economic calculations;
- (d) where a branch is to be established, also:
  1. the registered office of the branch in the Member State;
  2. the full name and permanent address of the person responsible for management of the branch;
  3. the organisational structure of the branch.

(11) National Bank of Slovakia shall submit such information to the host Member State's supervisory authority within one month from receipt of notification pursuant to Paragraph 10, and inform the electronic money institution accordingly.

(12) The electronic money institution shall notify National Bank of Slovakia and the host Member State's supervisory authority in writing of any changes in the information specified in Paragraph 10 no later than 30 days before the date when the intended changes become effective.

(13) A foreign electronic money institution having its registered office in the territory of another Member State may issue electronic money in the territory of the Slovak Republic through its branch or without establishing a branch if it has authorisation to issue electronic money granted in another Member State, subject to delivery to the National Bank of Slovakia written notification from the competent supervisory authority of the home Member State. Supervision of the branch of the foreign electronic money institution in the territory of the Slovak Republic shall be exercised by the supervisory authority of the home Member State.

(14) If National Bank of Slovakia wishes to carry out on site supervision at a branch of an electronic money institution in the territory of a host Member State, National Bank of Slovakia shall notify the competent supervisory authority of that state and cooperate with it. National Bank of Slovakia may agree with the competent supervisory authority of the host Member State that the on site supervision shall be carried out by that supervisory authority.

(15) National Bank of Slovakia may agree with the competent supervisory authority of the home Member State that it will carry out on site supervision at the branch of the foreign electronic money institution in the Slovak Republic.

(16) National Bank of Slovakia shall provide competent supervisory authorities of other Member States with all necessary information, particularly in cases where violation of obligations by a branch of a foreign electronic money institution in the territory of the Slovak Republic has occurred or is suspected.

## Article 87

(1) An electronic money institution referred to in Article 81 (b) may issue electronic money to a limited extent only on the basis of authorisation to issue electronic money and on the condition that the amount of electronic money issued to a single payment service user and stored on an electronic device does not exceed EUR 150, and the amount of all payment institution's liabilities arising from the outstanding sums of electronic money issued is normally not greater than EUR 5,000,000 and at all times is not greater than EUR 6,000,000.

(2) An application for the authorisation shall be filed by the applicant wishing to become an electronic money institution as defined in Paragraph 1 and an application for a change in the authorisation shall be filed by the applicant being the electronic money institution as defined in Paragraph 1. The application for the authorisation shall be subject to Article 82 (2) (a) to (c) and (j) to (m), Article 82 (3) (a) (d) and (e), Article 82 (4) (a) to (c) and (h).

(3) An electronic money institution pursuant to Paragraph 1 shall not accept deposits and grant credits, and the provisions of Articles 85 (1) to (8) shall not apply to it.

(4) An electronic money institution pursuant to Paragraph 1 shall comply with the requirements in Paragraphs 1 and 3 throughout the validity term of the authorisation. The electronic money institution pursuant to Paragraph 1 shall provide National Bank of Slovakia with credible evidence of the compliance in accordance with Article 83 (7) and specific provisions.<sup>65)</sup>

(5) An electronic money institution pursuant to Paragraph 1 shall not be allowed to issue electronic money outside the territory of the Slovak Republic.

(6) A foreign electronic money institution issuing money to a limited extent, as referred to in Paragraph 1, shall not be allowed to issue electronic money through its branch in the territory of the Slovak Republic without a specific authorisation granted in accordance with this Act.

## PART SIX

### DATA PROTECTION

#### Article 88

(1) Payment service providers shall respect the confidentiality of any information and documents concerning matters relating to payment service users and their transactions,<sup>66)</sup> other than those that are publicly available, which payment service providers obtain during their operation under this Act, including in particular information concerning payment transactions and the use of funds by means of payment instruments. Payment service users shall keep any such information and documents concerning payment service users and their transactions in confidence and store, appropriately backup and safeguard them against unauthorised access, disclosure, misuse, alteration, damage, destruction, loss or theft. Payment service providers shall be allowed to provide any information and documents concerning matters relating to payment service users and their transactions to third parties only with prior approval given or on instruction given in writing by the payment service user concerned, unless this Act provides otherwise.

(2) The provisions of the special law<sup>67)</sup> concerning matters protected by bank secret, disclosure of matters protected by bank secret and the confidentiality obligation of employees, members of bodies and other persons involved in the operation of banks and branches of foreign banks shall equally apply to any matters that are subject to protection under Paragraph 1, the reporting by payment services users on matters that are subject to protection under Paragraph 1 and the confidentiality obligation of employees, members of bodies and other persons involved in the activities of payment service providers.

(3) For the purposes of ascertaining, verifying and checking identity of payment service users and their representatives, for the purposes of entering and executing transactions<sup>68)</sup> with payment service users in the provision of payment services under this Act, for the purposes of accepting and handling complaints of payment service users and for the other purposes referred to in Paragraph 5, in any transactions with a payment service provider, payment service users and their representatives shall at the payment service provider's request, with or without approval from the persons concerned:

(a) provide to the payment service provider:

1. in case of a natural person, including a natural person representing a legal entity, the full name, permanent address, temporary address, personal ID, if any, date of birth, nationality, type and number of the identity document, and if the natural person is an entrepreneur, the place of business, scope of business, a reference to the official register or other official records<sup>68)</sup> in which he is registered, as well as the registration number;

2. in case of a legal entity, the name, identification number, if any, address of its registered office, scope of business or other activity, address where the business or its organisational units are located and address of the place where the activity is carried out; a list of persons constituting the legal entity's statutory body and information about them to the extent provided for in Point 1; a reference to the official register or other official records<sup>68)</sup> in which the legal entity is registered and the registration number ;

<sup>65)</sup> For example, Articles 34 a and 34 b of Act No. 566/1992 Coll., as amended; Act No. 747/2004 Coll., as amended.

<sup>66)</sup> For example, Article 5 (j) of Act No. 483/2001 Coll., as amended.

<sup>67)</sup> Articles 91 to 93 of Act No. 483/2001 Coll., as amended.

<sup>68)</sup> For example, Act No. 530/2003 Coll., as amended; Article 3a and Articles 27 to 33 of the Commercial Code; Article 2 (2) and Articles 10 and 11 of Act No. 34/2002 Coll. on foundations and on amendments to the Civil Code, as amended; Article 9 (1) and (2) and Article 10 of Act No. 147/1997 on non-investment funds and on amendments to the Act of the National Council of the Slovak Republic No. 207/1996 Coll., as amended by Act No. 335/2007; Article 9 (1) and (2) and Article 11 of Act No. 213/1997 Coll. on non-profit organisations providing public welfare services, as amended; Articles 6, 7, 9 and 9a of Act No. 83/1990 on association of citizens, as amended; Article 6 (1) and Article 7 of the Act of the National Council of the Slovak Republic No. 182/1993 Coll. on the ownership of flats and non-residential facilities, as amended; Article 4 (3) of Act No. 515/2003 Coll. on county and circuit authorities and on amendments to certain acts, as amended by Act No. 254/2007 Coll.

3. a contact telephone number, fax number and electronic address, where applicable;
4. documents demonstrating and evidencing:
  - 4a. the payment service user's ability to fulfil its liabilities from the transaction;
  - 4b. the requested security for the liabilities from the transaction;
  - 4c. authorisation for the representation, if the person is a representative;
  - 4d. satisfaction of all other requirements and conditions for the entering into or execution of a transaction laid down in this Act or specific provisions or agreed with the payment service provider;
- (b) allow the payment service provider to obtain by copying, scanning or otherwise recording:
  1. a face image and the title, full name, surname at birth, personal ID, date of birth, place and district of birth, permanent address, temporary address; nationality; notice of limited legal capacity; identity document type, number, issuing authority, date of issue and date of expiry; and
  2. any other information from the documents that demonstrates and proves the information to which Subparagraph (a) applies.

(4) For the purposes of ascertaining, verifying and checking the identity of payment service users and their representatives, for the purposes of entering and executing transactions<sup>66)</sup> with a payment service user in the provision of payment services under this Act, for the purposes of accepting and handling complaints of payment service users and for the other purposes referred to in Paragraph 5, a payment service provider shall have the right in any transaction to ask the payment service user and its representative to provide the information defined in Paragraph 3 and receive such information, in the manner described in Paragraph 3 (b), repeatedly at every transaction. The payment service user and the payment service user's representative shall accommodate every such request from the payment service provider.

(5) For the purposes of ascertaining, verifying and checking the identity of payment service users and their representatives, for the purposes of entering and executing transactions<sup>66)</sup> with payment service users in the provision of payment services under this Act, for the purposes of accepting and handling complaints of payment service users, for the other purposes of resolving disputes with payment service users arising from the provision of payment services, for the purposes of protecting and enforcing payment service provider's rights against payment service providers, for the purposes of exercising the supervision of payment service providers and their operation and compliance with their duties and obligations under this Act or special provisions,<sup>69)</sup> the payment service provider shall have the right, with or without approval from and notice to the persons concerned,<sup>70)</sup> to ascertain, obtain, record, store, use and otherwise process<sup>71)</sup> personal data and other information to the extent provided for in Paragraph 3; in doing so, the payment service provider shall have the right to make copies of identity documents and process personal IDs<sup>72)</sup> and other information and documents using automated or non-automated means to the extent provided for in Paragraphs 1 and 3.

6) A payment service provider shall make available and provide<sup>73)</sup> any information to which Paragraph 1 and Paragraphs 3 to 5 apply, with or without approval from and notice to the persons concerned,<sup>70)</sup> for processing by other persons designated by law only if the conditions laid down in this Act or a specific law<sup>74)</sup> have been met, and to National Bank of Slovakia for the purposes of operating payment systems and performing the duties, supervision and activities in accordance with this Act and specific provisions. For the purposes referred to in Paragraph 5, National Bank of Slovakia shall have the right to process and provide<sup>73)</sup> to providers of payment services, from its information systems, any information to which Paragraph 1 and Paragraphs 3 to 5 apply and which is kept in operational payment systems.

(7) A payment service provider shall be competent to make available and provide<sup>73)</sup> from its information system any information to which Paragraph 1 and Paragraphs 3 to 5 apply, with or without approval from and notice to the persons concerned,<sup>70)</sup> to such persons and authorities to which it is required or authorised by virtue of law to provide information protected by the confidentiality obligation under Paragraphs 1 and 2, provided that this competence shall be limited to the provision and to the extent of the provision of information protected by the confidentiality obligation under Paragraphs 1 and 2.

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<sup>69)</sup> For example, Act No. 297/2008 of Act No. 431/2002 Coll., as amended; Act No 395/2002 Coll. on archives and registries and on amendments to certain acts; as amended.

<sup>70)</sup> For example, Article 4 (5) and Article 7 (3) of Act No. 428/2002 Coll. on personal data protection, as amended by Act No. 90/2005 Coll.

<sup>71)</sup> Article 4 (1) (a) (b) and (c); Article 7 (3); the second sentence in Article 7 (5) and the second sentence in Article 7 (6), Article 8 (2); and Article 10 (6) of Act No. 428/2002 Coll., as amended by Act No. 90/2005 Coll.

<sup>72)</sup> Article 2 of the Act of the National Council of the Slovak Republic No. 301/1995 Coll. on the personal ID.

<sup>73)</sup> Article 7 (6) of Act No. 428/2002 Coll., as amended by Act No. 90/2005 Coll.

<sup>74)</sup> For example, Articles 12 (1) and (2) and Article 22b of the Act of the National Council of the Slovak Republic No. 118/1996 Coll., as amended.

(8) A payment service provider shall be allowed to make available or provide to foreign entities any information to which Paragraph 1 and Paragraphs 3 to 5 apply only if the conditions laid down in the specific law<sup>75)</sup> have been met, or if so stipulated in an international treaty by which the Slovak Republic is bound and which has precedence over laws of the Slovak Republic.

(9) Paragraphs 3 to 8 shall equally apply to the permanent court of arbitration referred to in Article 90, including the provision, obtaining, making accessible and processing of information for the purposes of that permanent court of arbitration's proceeding and deciding on disputes arising from the provision of payment services between payment service providers and their payment service users, as well as for the purposes of documenting activities of the permanent court of arbitration. However, the permanent court of arbitration shall make available and provide<sup>73)</sup> any information to which Paragraph 1 and Paragraphs 3 to 5 apply only to National Bank of Slovakia for the purposes of performing the duties, supervision and activities in accordance with this Act and specific provisions, only to Member States' authorities to a necessary extent for the purposes of cooperation in the out-of-court settlement of disputes arising from the provision of payment services, and only to parties to an arbitration before the permanent court of arbitration to a necessary extent for the purposes of the arbitration.

## **PART SEVEN**

### **HANDLING OF COMPLAINTS AND OTHER PETITIONS AND RESOLUTION OF DISPUTES IN CONNECTION WITH PAYMENT SERVICES**

Handling of complaints and other petitions in connection with the provision of payment services

#### Article 89

(1) A payment service user and any other interested party, including consumer associations, have the right to submit to National Bank of Slovakia a complaint if they believe that a payment service provider whose supervision is exercised by National Bank of Slovakia has infringed the provisions of this Act or any other generally binding provisions concerning payment services; for the purposes of handling complaints and other petitions and for the purposes of resolving disputes in connection with payment services, the issuing and use of electronic money shall be considered as a payment service.

(2) When handling a petition received pursuant to Paragraph 1, National Bank of Slovakia shall act without undue delay and obtain and review information and inputs concerning the matters which constitute the subject of the petition with a view to establishing the facts and legal status of the case and the irregularities, if any, in conduct of the payment service provider whose supervision is exercised by National Bank of Slovakia, the causes and consequences of such irregularities and the persons liable therefor. Where, based on a petition referred to in Paragraph 1, National Bank of Slovakia establishes that the payment service provider whose supervision is exercised by National Bank of Slovakia has infringed the provisions of this Act or any other generally binding legal provisions concerning payment services, National Bank of Slovakia shall launch against the payment service provider a proceeding on imposition of a corrective measure, penalty or other sanction under this Act and specific legal provisions concerning supervision of the financial market.<sup>39)</sup>

(3) Included in a notice of examination and decision of a petition pursuant to Paragraph 1 by National Bank of Slovakia shall be information on the available dispute resolution procedures pursuant to Articles 90 to 95.

(4) Where the payment service user or the other interested party, including a consumer association, believes that a payment service provider whose supervision is exercised by an authority other than National Bank of Slovakia has infringed the provisions of this Act or any other generally binding legal provisions concerning payment services, it shall have the right to submit a complaint to such other competent supervisory authority<sup>76)</sup> and that authority shall handle the complaint so received in accordance with the complaint procedure provided for in Paragraphs 2 and 3.

(5) A payment service provider shall accept any complaint concerning the provision of payment services. The form and method of receiving complaints shall be regulated in a framework contract.

(6) The payment service provider shall without undue delay establish whether the complaint is justified. The foregoing is without prejudice to the provisions of Article 10 concerning the authentication review and evidence, Article 14 regulating the time limits for the refund, and Articles 21 and 22 concerning the assessment of payment service provider's liability. The payment service provider shall without undue delay and in the manner agreed in the framework contract notify the complaint procedure result to the payment service user.

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<sup>75)</sup> Articles 23 and 55 of Act No. 428/2002 Coll., as amended by Act No. 90/2005 Coll.

(7) Paragraph 6 shall apply mutatis mutandis to the handling of complaints concerning payment services provided in currencies referred to in Article 1 (2) (b) or (c), provided that the total duration of the complaint procedure shall be no longer than 30 calendar days, and no longer than six months in intricate cases. The payment service provider shall notify that fact to the payment service user within the 30-day time limit.

(8) Any expenses incurred in connection with the complaint procedure shall be borne by the payment service provider. Any expenses incurred in connection with the preparation and submission of the complaint and its enclosures shall be borne by the complainant.

(9) Payment service providers shall provide each other mutual assistance in the complaint procedures.

(10) A payment service provider shall:

(a) develop and make available the rules for claims;

(b) keep records of complaints and, on request, submit the same to National Bank of Slovakia for consultation.

Dispute resolution through the permanent court of arbitration

#### Dispute resolution by the permanent court of arbitration

##### Article 90

(1) Payment service providers shall, either jointly or through their professional association,<sup>77)</sup> establish a permanent court of arbitration and facilitate its operation in accordance with the specific law on arbitration,<sup>78)</sup> which shall have its registered office in Bratislava; branches of the permanent court of arbitration may be established by way of the court's statute.

(2) The permanent court of arbitration shall be competent to decide in particular disputes arising between payment service providers and payment service users in the provision of payment services.

(3) A payment service provider shall offer to its payment service user an irrevocable proposal for conclusion of an arbitration agreement stipulating that any mutual disputes arising between them in connection with payment services be decided by arbitration before the permanent court of arbitration referred to in Paragraph 1 in a manner that allows the payment service user to elect whether to accept the proposal to conclude the arbitration agreement. When proposing the conclusion of an arbitration agreement, the payment service provider shall also provably inform the payment service user of implications of the conclusion of the proposed arbitration agreement for the resolution of their mutual disputes in connection with payment services.

(4) The payment service provider shall submit the proposal to conclude an arbitration agreement to the payment service user, as referred to in Paragraph 3, as part of the framework contract defined in Article 31. The payment service user shall not be obligated to accept the proposed draft of arbitration agreement. If the payment service user does not accept the proposal to conclude an arbitration agreement, any disputes between the payment service user and its payment service provider shall be resolved through a procedure in accordance with specific provisions.<sup>79)</sup>

##### Article 91

(1) Expenses on the operation of the permanent court of arbitration shall be covered from annual contributions made by payment service providers which have their registered office or have established a branch in the territory of the Slovak Republic.

(2) The amount of annual contributions shall be proposed by the founder of the permanent court of arbitration and determined by National Bank of Slovakia on the basis of a proposal from the founder of the permanent court of arbitration. At the proposal from the founder of the permanent court of arbitration, National Bank of Slovakia may determine that the annual contribution be not payable if previous years' income of the permanent court of arbitration is sufficient to cover its operation.

(3) The founder of the permanent court of arbitration shall submit a proposal for the annual contribution amount to National Bank of Slovakia no later than 15 April of a calendar year. The annual contribution amount shall be determined no later than 30 April and the contribution shall be due on 31 May of the calendar year to which the contribution relates.

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<sup>76)</sup> For example, Article 39 and Article 41 (1) of Act No. 507/2001 Coll., as amended by Act No. 15/2004 Coll.

<sup>77)</sup> Articles 20f to 20j of the Civil Code.

<sup>78)</sup> Act No. 244/2002 Coll. on the arbitration, as amended.

<sup>79)</sup> For example, the Rule of Civil Procedure; the Act of the National Council of the Slovak Republic No. 233/1995 Coll., as amended.

<sup>80)</sup> Article 14 (1) (b) of Act No. 244/2002 Coll.

## Article 92

Proceedings before the permanent court of arbitration on disputes between payment service users and their payment service providers shall be free of charge. A proceeding before the permanent court of arbitration on a dispute other than arising between payment service users and their payment service providers shall be subject to payment of the costs in accordance with the rules on arbitration costs, as stipulated in the rules of procedure of the permanent court of arbitration.<sup>80)</sup>

## Article 93

(1) The parties to arbitration may agree that the place of arbitration be the head office or a branch of the permanent court of arbitration, if established. Where the parties to arbitration do not make such an agreement, at the proposal of the payment service provider being a party to arbitration, the permanent court of arbitration shall determine that the place of arbitration will either be its head office or any of its branches, if established.

(2) The payment service user shall have the right to arbitration conducted in the language of the arbitration agreement or the language in which he usually negotiates with the payment service provider.

(3) The parties to arbitration shall contribute to the consummation of the purpose of arbitration particularly by describing truly and completely all necessary matters, identifying the means of evidence and following the instructions given by the permanent court of arbitration.

(4) Where the payment service user is not able to submit in the arbitration any proposed document, deed or other evidence related to the arbitration because such document, deed or other evidence is possessed by the payment service provider, at the request of the payment service user or of the permanent court of arbitration, the payment service provider shall without undue delay submit such document, deed or other evidence to the permanent court of arbitration.

## Article 94

The founder of the permanent court of arbitration shall submit to National Bank of Slovakia a report on the operation and financial management of the permanent court of arbitration for a calendar year no later than 31 March of the next calendar year. The founder of the permanent court of arbitration shall also notify National Bank of Slovakia of any adopted statute, the adopted rules of procedure of the permanent court of arbitration and any adopted change; such notification shall be given without undue delay after the adoption.

## Article 95

(1) The permanent court of arbitration shall cooperate in any disputes in connection with payment services with Member States' authorities that are competent with regard to the out-of-court decision of disputes in connection with payment services.

(2) The permanent court of arbitration or an arbitrator shall notify National Bank of Slovakia of any infringement by payment service providers of the rules for the provision of payment services that the permanent court of arbitration establishes in the course of deciding disputes in connection with payment services.

## PART EIGHT

### ENABLING, COMMON, TRANSITIONAL AND FINAL PROVISIONS

## Article 96

### Enabling provisions

(1) A provision<sup>81)</sup> shall be adopted by National Bank of Slovakia and promulgated in the Collection of Laws of the Slovak Republic, laying down:

(a) particulars of the conditions for granting authorisation to issue electronic money pursuant to Article 82 (2) and (7); the manner of demonstrating and proving compliance with those conditions; the extent and method of and time limits for demonstrating and proving compliance with the other conditions, requirements and limitations in accordance with Articles 82 to 84; and particulars of applications for the granting or a change of authorisation to issue electronic money pursuant to Article 82 (1) (3) and (4) including essential elements and enclosures of such applications;

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<sup>81)</sup> Article 1 (1) of the Act of the National Council of the Slovak Republic No. 1/1993 Coll. on the Collection of Laws of the Slovak Republic, as amended.

- (b) the manner and methods of calculating values and risk weights of investments, assets, designated risk-weighted assets and own funds of an electronic money institution, time limits and due dates for such calculations, as well as what constitutes risks, investments, assets, designated risk-weighted assets and own funds of an electronic money institution; further particulars of investments and own funds of an electronic money institution; rules and methods for identifying and calculating risks and the method and procedure for the electronic money institution's risk management, and particulars of the electronic institution's risk management system, administrative procedures and internal control system;
- (c) the structure of statements, reports, notifications and other information that an electronic money institution or a branch of a foreign electronic money institution is required under Article 83 (7) to prepare and submit to National Bank of Slovakia; the scope, content, breakdown, and due dates, form, method, procedure and place of submission of such statements, reports, notifications and other information, including the methodology for their preparation; and the method and due dates of submission of financial statements and consolidated financial statements referred to in Article 83 (7) to National Bank of Slovakia;
- (d) particulars of the conditions and limitations laid down in Article 85 (1); the extent and method of and due dates for demonstrating and proving compliance with those conditions and limitations; (e) the manner of proving compliance with the conditions for granting authorisation for payment services pursuant to Article 64(2);
- (f) what constitutes own funds of a payment institution and the method of their calculation, as well as the meaning of safe, liquid and low-risk assets referred to in Article 77 (7); codes of payment service providers or operators of payment systems; the structure of the international bank account number (IBAN); and particulars of the issuing, publishing and distributing a converter of identification codes;
- (h) the structure of statements, reports, notifications and other information submitted by payment institutions under Article 76 (5), as well as the scope, content, breakdown, and due dates, form, method, procedure and place of submission of such statements, reports, notifications or other information, including the methodology for their preparation;
- (i) particulars of the conditions and requirements laid down in Article 87; the extent and method of and time limits for demonstrating and proving compliance with those conditions and limitations; and particulars of applications for granting authorisation pursuant to Article 87, including the essential elements and enclosures of such applications.

(2) A provision<sup>81)</sup> may be adopted by National Bank of Slovakia and promulgated in the Collection of Laws of the Slovak Republic, laying down:

- (a) the structure of statements, reports, notifications and other information submitted by operators of payment systems under Article 45 (3) (b) to (d), as well as the scope, content, breakdown, and due dates, form, method, procedure and place of submission of such statements, reports, notifications or other information, including the methodology for their preparation;
- (b) the structure of statements, reports, notifications and other information on the provision of payment services or on the execution of payment transactions, submitted by payment institutions and branches of foreign payment institutions, as well as the scope, content, breakdown, and due dates, form, method, procedure and place of submission of such statements, reports, notifications or other information, including the methodology for their preparation;
- (c) the structure of statements, reports, notifications and other information on the issuing and use of electronic money submitted by electronic money institutions and branches of foreign electronic money institutions, as well as the scope, content, breakdown, and due dates, form, method, procedure and place of submission of such statements, reports, notifications or other information, including the methodology for their preparation.

### **Common provisions**

#### Article 97

This act transposes the legally binding acts of the European Union listed in the Annex.

#### Article 98

(1) A payment service provider and a payment service user may agree in writing that the provisions of Article 6, Article 8 (3), Articles 10, 12 to 14, 22, and the provisions of Articles 31 to 44, except Article 44 (2) and (3) not apply, in whole or in part, if the payment service user is not a consumer. The parties referred to in this Paragraph may agree in writing on a time limit different from that defined in Article 9.

(2) In case of a dispute, the payment service provider shall be required to prove compliance with the obligations laid down in Articles 40 and 41.

(3) Payment service providers shall not be allowed to deviate from the provisions of this Act to the detriment of payment service users. However, payment service users may provide more advantageous terms to payment service users.

(4) The National Bank of Slovakia and the Ministry of Finance of the Slovak Republic shall provide the European Commission with information on the provision of payment services to the extent required by the European Commission.

(5) A provider of payment services pursuant to Article 2 (3) and an operator of a payment system pursuant to Article 45 (3) (a) (b) or (c) to which National Bank of Slovakia has assigned an identification code shall display on its operational premises, on paper or in electronic form in the state language, the current converter of identification codes assigned by National Bank of Slovakia, which is issued and updated by the National Bank of Slovakia. For the purposes of prompt distribution of the converter of identification codes, a payment service provider and an operator of a payment system shall notify to the National Bank of Slovakia their electronic addresses and other data necessary for the distribution of the converter.

(6) Contractual legal relationships established under this Act shall be subject to general legal provisions on contractual business relationships,<sup>82)</sup> unless this Act provides otherwise.

#### Article 99

Payment operations involving the use of cash where the total amount cannot be divided without remainder into the nominal value of valid banknotes and coins and where the remainder is less than the nominal value of the lowest valid coin shall be rounded; a total remainder of payment transaction that is less than half of the nominal value of the lowest valid coin shall be rounded down, and a total remainder of payment transaction that is equal to or higher than half of the nominal value of the lowest valid coin shall be rounded up to the nominal value of the lowest valid coin, unless the parties to the legal relationship constituted by the payment transaction agree otherwise or a special provision otherwise regulates the rounding of certain payment transactions involving use of cash.

#### Article 100

Unless this Act provides otherwise, the specific provisions<sup>39)</sup> on supervision of the financial market shall apply mutatis mutandis to the exercise of supervision conferred on National Bank of Slovakia under this Act, provided that competent authorities with regard to the exercise of on-the-spot supervision and remote supervision and the first-instance proceeding and deciding within the scope this Act shall be the organisational units designated by the organisational regulations of National Bank of Slovakia. The person competent to sign first-instance decisions and authorisations to carry out on-the-spot supervision shall be the head of the appropriate unit or an employee of that unit appointed thereby. The general provisions on administrative procedure<sup>54)</sup> shall not apply to proceedings on matters conferred by this Act on National Bank of Slovakia.

#### Article 101

##### Transitional provisions

(1) The provisions of this Act shall also govern the legal relationships regulated by this Act that originated before 1 December 2009; however, the origination of such legal relationships and claims arising therefrom that originated before 1 December 2009 shall be considered pursuant to the legislation in effect by 30 November 2009, unless this Act provides otherwise.

(2) An authorisation to pursue electronic money business granted to an electronic money institution to issue and administer electronic money payment instruments under Article 21 (2)(d) and Articles 21a to 21c of Act No. 510/2002 Coll. on the payment system and on amendments to certain acts, as amended, shall be considered as authorisation to issue electronic money under this Act.

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<sup>82)</sup> Commercial Code. The Civil Code, in conjunction with Article 1 (2) of the Commercial Code.

(3) Legal entities to which authorisation to issue electronic money payment instruments was granted under Article 21d of Act No. 510/2002 Coll. on the payment system and on amendments to certain acts, as amended, shall be allowed to pursue that business without bringing themselves into compliance with the provisions of Article 87 by 30 April 2010, and until that date the pursuit of business shall be governed by the legislation in effect by 30 November 2009.

(4) Payment system agreements made by National Bank of Slovakia as operator of a payment system with each participant of the payment system under the legislation in effect by 30 November 2009 shall be considered as payment system agreements made under this Act.

(5) Payment service providers shall bring their legal circumstances and legal relationships into compliance with this Act no later than 28 February 2010; the foregoing shall also apply to any payment institutions that were holders of foreign exchange licences to provide foreign exchange services by 30 November 2009. However, starting from 1 December 2009, no person shall be allowed to continue any activity that contravenes this Act; the foregoing is without prejudice to the provision of Paragraph 8.

(6) A payer and his payment service provider may agree for the period by 31 December 2011 on a time limit for the execution of a payment transaction deviating from that defined in Article 15 of this Act, provided that such other time limit shall not be longer than three business days following the point in time of receipt of the payment order; this time limit may be extended by a further business day for payment orders on paper.

(7) Ancillary banking service undertakings that pursued activities related to the processing of transfer data under the legislation in effect by 30 November 2009 shall be allowed to pursue those activities without bringing themselves into compliance with this Act by 30 December 2010, and until that date the pursuit of those activities shall be governed by the legislation in effect by 30 November 2009.

(8) A legal entity that before 25 December 2007 started and has been pursuing activities comparable to business of a payment institution pursuant to this Act shall be allowed to pursue those activities within the territory of the Slovak Republic without an authorisation granted in accordance with Article 64 (1) by 30 April 2011, and until that date the pursuit of those activities shall be governed by the legislation in effect by 30 November 2009.

(9) The permanent court of arbitration established under the legislation on arbitration and Act No. 510/2002 Coll. on the payment system and on amendments to certain acts, as amended, shall be considered as permanent court of arbitration within the meaning of this Act. Arbitration agreements stipulating that any mutual disputes arising in connection with payment services be decided by arbitration before the permanent court of arbitration, made under the legislation in effect by 30 November 2009, shall be considered as arbitration agreements made under this Act.

(10) Any proceedings initiated and not completed with finality before 1 December 2009 shall be completed in accordance with the procedures laid down in this Act and the specific law.<sup>39)</sup> Starting from the date when this Act becomes effective, any irregularities existing under the former legislation on the payment system on which a proceeding under the former legislation was not undertaken shall be examined and heard in accordance with this Act and the specific law<sup>39)</sup> insofar as the irregularities in question are considered as such also under this Act. However, as of the date when this Act becomes effective, only measures allowed by this Act may be imposed to remedy an illegal situation, fine or corrective measure. The legal effects of any action taken in a proceeding before 1 December 2009 shall remain unprejudiced. Time limits that shall have not lapsed by the date upon which this Act becomes effective shall be subject to provisions of this Act.

(11) Any on-site supervision commenced and not completed by 1 December 2009 shall be completed in accordance with this Act and the specific law.<sup>39)</sup> Legal effects of any action taken during on-site supervision before 1 December 2009 shall remain unprejudiced.

(12) The following terms, whenever used in other generally binding legal provisions, shall have the meanings ascribed thereto below:

- (a) "payment system" or "payment and settlement system" shall be understood as "payment services";
- (b) "bank payment card" shall be understood as "payment card";
- (c) "electronic payment instrument," "remote access payment instrument" or "electronic banking payment application" shall be understood as "payment instrument";
- (a) "electronic money payment instrument," "electronic purse" or "software purse" shall be understood as "electronic money";
- (e) "transfer of funds," "domestic transfer of funds" or "cross-border transfer of funds" shall be understood as "payment service" or "payment transaction";
- (b) "payment," if referring to an activity, shall be understood as "payment transaction";
- (g) "provider of payment and settlement system services," "performing institution" or "issuer of electronic payment instruments" shall be understood as "payment service provider";
- (h) "intermediary institution" shall be understood as "intermediary" within the meaning of Article 7(1).

Article 101a  
Transitional provision to amendments effective as of 30 June 2011

Provisions on payment systems effective from 30 June 2011 shall apply to orders received, but not settled, prior to 30 June 2011.

Article 102  
Repealing provision

The following shall be repealed:

1. Section I of Act No. 510/2002 Coll. on the payment system and on amendments to certain acts, as amended by Section II of Act No. 589/2003 Coll., Act No. 604/2003 Coll.; Section II of Act No. 554/2004 Coll.; Section XII of Act No. 747/2004 Coll.; Section II of Act No. 214/2006 Coll.; Section I, point 163 of Act No. 209/2007 Coll.; Section XIII of Act No. 659/2007 Coll.; Section I of Act No. 270/2008 Coll.; Section V of Act No. 552/2008 Coll.; Section IV of Act No. 567/2008 Coll.

2. Provision of National Bank of Slovakia of 12 December 2002 No. 10/2002 on reports submitted by issuers of electronic money payment instruments to National Bank of Slovakia (Notice No. 699/2002 Coll.);

3. Provision of the National Bank of Slovakia of 12 December 2002 No. 11/2002 on reports submitted by payment system operators to National Bank of Slovakia (Notice No. 700/2002 Coll.);

4. Provision of the National Bank of Slovakia of 12 December 2003 No. 7/2003 laying down the structure of bank and bank account details for the purposes of domestic transfers, the structure of an international bank account number for the purposes of cross-border transfers and particulars of the issuing of a converter of identification codes (Notice No. 605/2003 Coll.);

5. Provision of National Bank of Slovakia of 28 April 2004 No. 6/2004 laying down details of the conditions and methods of demonstrating and proving compliance with the conditions and of applications for the granting or a change of authorisation to issue and administer electronic money and electronic money payment instruments, including elements and enclosures of such applications (Notice No. 305/2004 Coll.);

6. Provision of the National Bank of Slovakia of 11 June 2004 No. 8/2004 on own funds and investments of electronic money institutions (Notice No. 370/2004 Coll.);

7. Section I of the Provision of the National Bank of Slovakia of 7 April 2009 No. 2/2009 laying down essential elements of an application for authorisation to issue electronic money payment instruments under Article 21d of Act No. 510/2002 Coll. on the payment system and on amendments to certain acts pursuant to later legislation and on amendments to the Provision of the National Bank of Slovakia No. 8/2008 on charges for services of National Bank of Slovakia (Notice No. 147/2009 Coll.).

Section XXI

Effective Date

This Act shall come into effect on 1 December 2009, except the provisions of Section XI, point 17 [Articles 88a to 88d] which shall come into effect on 1 April 2010.

Act No. 130/2011 Coll. became effective on 30 June 2011.

**LIST OF IMPLEMENTED LEGALLY BINDING ACTS  
OF THE EUROPEAN UNION**

1. Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007).

2. Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ Special Edition, Chapter 6 Volume 3; OJ L 166, 11.6.1998).

3. Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (OJ Special Edition, Chapter(OJ Special Edition, Chapter 6 Volume 3; OJ L 275, 27.10.2000).

4. Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims (OJ L 146, 10.6.2009).