

INTEGRATED SUPERVISION OF THE FINANCIAL MARKET

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As of 1 January 2006, the National Bank of Slovakia assumed the integrated supervision of the financial market in the area of banking, capital market, insurance and pension savings within the scope and meaning of the competences laid down by Act No 747/2004 Coll. on Financial Market Supervision and on consequential amendments.

This marked the culmination of an almost four-year process to establish a legislative environment and an independent and integrated supervisory body. It was set in motion by the Slovak Government's resolutions of March 2002, on the approval of a concept for the integrated supervision of the financial market, and of August 2003, on the approval of the integration procedure. Then, in December 2004, the National Council of the Slovak Republic (NR SR) adopted the Financial Market Supervision (FMS) Act and other amendments to the National Bank of Slovakia Act concerning legislation. The establishment of the Financial Market Supervision Unit by the NBS Bank Board was preceded by intensive efforts from representatives of the Ministry of Finance, NBS and the former Financial Market Authority conducted under four working commissions. Their objective was to prepare the individual steps for the integration of the existing supervisory authorities and to minimize the potential risk.

The NBS cooperated closely with the World Bank and the European Central Bank. The supervisory unit under the NBS came into being at the end of August, beginning of September 2005, when the NBS Bank Board approved the internal organization and an addendum to the Organizational Order. The NBS may be said to have successfully overseen the smooth transition of activities from the Financial Market Authority to the integrated supervisory authority.

The NBS integrated supervision covers domestic banks, the branches or representative offices of foreign banks, entities independently providing cross-border banking services, and, since 1 January 2006, securities dealers, the central depository, investment services intermediaries, issuers of securities, organizers of public offerings of securities or assets, the Bratislava Stock Exchange, domestic asset management companies, the mutual funds managed by such companies and the fund holders, insurance and reinsurance, pension management companies, old-age pension intermediaries, and also foreign entities providing capital market and insurance services in Slovakia, whether independently

on the basis of a single European licence or on the basis of a special licence.

The Financial Market Supervision Unit and the Supervision Principles

Under the FMS Act, the independent, separate and impartial Financial Market Supervision Unit falls within the competence of a deputy governor of the NBS. This person decides on the procedures the Unit is to follow when performing on-site and off-site supervision, when conducting proceedings and taking decision in the first instance, and when drafting proposals (under rules laid down by the NBS Bank Board) for financial market regulation, including the adopting and signing of first-instance decisions. In performing supervision, the FMS Unit works in cooperation with other organizational units of the NBS, but it is only bound – under the second-instance decision-making process – by decisions of the NBS Bank Board issued under the second-instance proceedings, and by decisions of Supreme Court of Slovak Republic issued within its scrutiny of the legality of NBS decisions.

Under the NBS's internal organization, the FMS Unit has since the 1 January 2006 been composed of two sections: the Section for the Supervision of Banking and Securities Dealers, and the Section for the Supervision of Capital Market, Insurance and Pension Savings. It is they that should in practice ensure the objective of supervision: the stability, functionality and trustworthiness of the financial market, protection of customers and respect for the rules of economic competition. In performing supervision, the FMS Unit follows general supervision principles: it establishes key facts about the supervised entities and their activities, especially any shortcomings, about the causes and consequences of any shortcomings, and about the competent persons. At the same time, it performs supervision on an individual and consolidated basis, as well as supplementing the supervision of financial conglomerates. The subject-matter of supervision does not extend to legal disputes between the supervised entities and their customers.

A crucial principle is the confidentiality of information acquired during the performance of supervision or any facts for whose supervision the NBS is responsible. Persons authorized to perform supervision are not accountable to third parties for any consequences arising from the performance of the supervision. If any facts established during the course of supervision indicate that a crime has been committed, they must, according to the FMS Act, be notified without delay to the competent criminal law enforcement authority, which in the case of a suspicious business operation is the Financial Police Bureau.

As regards the supervised entities, they are required to make the performance of supervision possible, to provide in the state language any information, documentation or required cooperation, and to let the supervisory officers attend meetings of their bodies. Since supervision also fulfils a preventive function, the NBS is authorised, outside sanction proceedings, to discuss any problems or inconsistencies in the entity's activities with members of its statutory body, supervisory board, or with management employees, including internal audit and internal control.

The NBS also gives guidance to supervised entities through standpoints, methodological instructions, and recommendations which relate to supervision and explain the implementation of the FMS Act, separate laws, and other generally binding legal regulations.

The NBS's legally regulated cooperation with state authorities and public authorities plays an irreplaceable role in the performance of supervision. Among such authorities are the chambers of notaries and auditors and other natural or legal persons who possess documents or information relating to supervised entities. There is likewise cooperation with foreign supervisory authorities.

Differences in the legal regulation of supervision

The FMS Act No. 747/2004 Coll. of 2 December 2004, which came into force on 1 January 2006 and has already been amended twice, regulates the subject-matter and scope of supervision, supervision procedures, and the process side of proceedings, as well as other activities and authorizations. It includes a number of differences from the law it superseded, Act No 96/2002 Coll.

In it is not my aim here to list all the difference, but merely to highlight some of the more important ones:

- Although the regulation of procedures for on-site supervision remains basically unchanged (Sections 6 to 11), it is possible under the new Act, for example to make out a written interim or partial protocol, and, during the on-site supervision, to set the period in which the supervised entity is required to carry out measures for the removal and rectification of any established shortco-

mings and to communicate this information to the entity in writing. The supervision protocol may also contain recommendations for the supervised entity on how to improve its activities. The supervised entity is entitled to take a look at the supervision protocol and to make extracts from it. The on-site supervision is completed by the delivery of a written notification to the supervised entity concerning the results of the investigation of any written objections that the entity has made in this regard (not on the date when such objections are deliberated).

- The principles and procedure that the supervisory authority follows during proceedings remains more or less the same. The most significant change concerns proceedings before the NBS upon an application made by a party to the proceedings – the application itself must contain several particulars, for example, a declaration on the completeness, correctness, truthfulness, genuineness and timeliness of the submitted application, including its annexes; it must also include the applicant's attested signature or that of his statutory body. The Act makes detailed provision for the delivery of written documents under the proceedings.

- The Act institutes the possibility of dividing a proceeding on various matters into separate proceedings (Section 20). In contrast to the previous law, any decision to divide, or amalgamate, proceedings shall be delivered to each party thereto rather than communicated by written notification of the issuance of the decision.

- There were also changes regarding the discontinuance of proceedings (Section 21) – the grounds for discontinuing proceedings have been expanded and they are no longer obligatory. At the same time, any decision to discontinue proceedings shall be delivered to each party thereto rather than communicated by written notification of the issuance of the decision.

- The grounds for halting proceedings have been expanded (Section 22)

- A party to proceedings may, under the conditions laid down by the Act, also submit evidence in second-instance proceedings (Section 24).

- Under the Act, the NBS is required, before to issuing a decision, to remind the parties to the proceedings to be acquainted with the dossier on the proceedings and to make a written statement thereon (Section 26).

- In the written version of the decision there is to be stated not only the identification data on the parties to the proceedings but also on their representatives. The decision pronouncement shall not impose obligations imposed directly by the Act. A rationale is not required where all the participants are satisfied with the decision (Section 27).

- The Act gives the NBS discretion over whether to commence proceedings for slight infractions of obligations under the Act and to call an adjournment of the matter (Section 29).



- Where the FMS Unit files an appeal on its own, it may supplement the substantiation (Section 30).

- Section 31 of the Act stipulates when the Bank Board, or another professionally qualified NBS unit that it has designated, may act instead of the FMS Unit.

- In appeal proceeding against a first-instance decision, the Bank Board may supplement the evidence. Where an appeal is filed belatedly or by an unauthorised person, the Bank Board shall refuse it on the basis of a decision. In accordance with the FMS Act, the Bank Board may overturn, repeal and confirm a first-instance decision (Section 32).

- Where a fine is imposed and the proceeds thereof are revenue of the state budget, it shall be enforced by the financial control administration according to the respective registered office or permanent residence of the person fined (Section 34).

- The NBS may levy a disciplinary penalty (with entitlement to the proceeds) against anyone who without just cause obstructs the on-site or off-site performance

of supervision or under NBS proceedings. The maximum fine for a natural person is SKK 50,000, and for a legal person, SKK 500,000 (Section 38).

- Fees for acts carried out by the NBS are to be paid by the person who submits the respective application and at the time when the application is submitted. Where a fee is not paid duly and promptly, the debtor shall pay penalty interest on the amount owed.

With the NBS having assumed the integrated supervision, the professional community now expects not only more effective regulation and streamlined performance of supervision in order to maintain financial market stability, but also unification and harmonization of the rules applied to supervised entities in the financial market areas of banking, capital market, insurance and pension savings.