



# THE NEW BANKING ACT

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On October 5, 2001 the new Banking Act was approved by the National Council of the Slovak Republic and was published in the codex of laws as Act no. 483/2001 Z.z. no. 483/2001 Z.z. on Banks and on the amendment to and supplementing of certain acts (hereinafter simply "the new Banking Act"). There was amendment too of other acts which it was necessary to change in connection to the new treatment of matters in the new Banking Act.

This concerns in particular an amendment to Act no. 563/1991 Zb. on Accounting as amended, whereby through a special act it has been made possible to impose on accounting units the duty to compile the closing of accounts on an on-going basis in the course of period shorter than one year.

Also there is an amendment to Act of the Slovak National Council no. 73/1992 Zb. on Auditors and on the Slovak Chamber of Auditors as amended, through which were governed certain duties upon auditors in performing their auditing function, in particular in the field of cooperation and providing information to certain authorities. This concerns, for example, the National Bank of Slovakia in the performance of banking supervision or the Financial Market Authority in performing supervision over the financial market in the area of the capital market and the insurance industry.

The main aim in preparing the new act was to harmonise Slovak banking law with that of the European Communities and also to fulfil OECD requirements for banking business, including raising the scope of incorporation of the Basle Principles into the discharge of banking supervision. Within this framework banking activities have been conceptually harmonised with those banking activities governed in Directive of the European Parliament and Council no. 2000/12 on the establishment and conducting of the business of credit institutions.

A new significant part of the Banking Act are measures governing the rights and duties of the Slovak Republic in accepting foreign banks with registered offices in the territory of a member state of the European Communities, and which have an interest in conducting banking activities in the territory of the Slovak Republic, either through branches or directly. A component of the treatment of these relations is also the regulation of the operations of Slovak banks in these member states. The legal regulation has the aim of removing barriers to the free provision of banking services by banks and foreign banks in the framework of the European Communities. However these pro-

visions come into effect only upon the date of the Slovak Republic's accession to the European Communities.

## *Basic Provisions*

The new Banking Act has clearly governed the fact that banks may be established only as joint stock companies, where any other legal form is now explicitly precluded. The existing state-owned financial institutions will by June 30, 2002 have to be transformed into joint stock companies.

The basic banking activities, deposits taking and providing loans, may be performed concurrently only by banks or entities that are expressly permitted to do so by a special act. Banks must have a banking licence for the performance of these activities. This strict definition of the concurrence of deposit taking and the providing of credit only for entities specially licensed, regulated and controlled is important for the reason that these entities work to a large extent with the financial funds of depositors whose interests are protected by this act.

By deposit are understood entrusted financial funds representing a liability in respect of the depositor for their disbursement and this either immediately on request or in accordance with the deposit relationship. Into this general definition of a deposit besides deposit books may be included certificates of deposit and deposit bonds.

Credit is also understood in the widest meaning, namely temporarily provided financial funds regardless of the form (type) of business. A component of this definition of credit is also special credit forms such as factoring and forfeiting.

In the new Banking Act there are also provisions as in the previous legal regulation which remain unchanged, that clearly stipulate those activities that may not be performed by any entity other than a bank or branch of a foreign bank. These activities are:

1. taking deposits and providing credit from those, which are tax expenses according to Act no. 366/1999 Z.z. on income taxes as amended,
2. providing credits and loans from repayable financial funds acquired on the basis of a public offer,
3. performing a system of payments and clearing and
4. issuing bank payment cards.

All these activities are thus defined as exclusively banking activities, which in the interests of the depositor may be performed only by banks and branches of foreign

banks, because these are subject to the supervision of the National Bank of Slovakia and are obliged to adhere consistently to the rules of the transparent conduct of business.

Through these provisions is monitored the prevention of the performance of banking activity by entities that do not have a licence for this banking activity and are not controlled by anyone. In connection with this it is necessary to state that non-bank entities (legal entities as well as natural persons) may take deposits only if they are expressly enabled to do so by a special law (primarily the Commercial Code). In respect to this it is necessary to note that the term “deposits” is recognised by both the Civil Code as well as the Commercial Code, though they are used in essentially different meanings. The Civil Code (§ 778 and cosec.) governs deposit taking, which is a banking activity, where with these deposits is in principle connected the right of the depositor to interest (§ 779). The Commercial Code governs partners’ deposits in commercial companies, members’ deposits in cooperatives, as well as the acceptance of deposits by businesspersons from their silent partners, where this does not concern a banking activity and with the deposits there is in principle connected the right to a share in results of the business (a share in the profit, possibly also a share in the liquidation balance or settlement share, and other right to interest).

Through a ban on the providing of credit or other returns from deposits received, which are an expense according to Act no. 366/1999 Z.z. on income taxes as amended there should be prevented the promise of unrealistically high fixed interest payments and their inclusion into expenses is not in terms of accounting clearly evincible.

### **General provisions on banking supervision**

In contrast to the previous legal regulation the new Banking Act contains certain general provisions on banking supervision. In these provisions there is regulated the conduct of banking supervision by the National Bank of Slovakia on both an individual basis as well as on a consolidated basis. There are clearly regulated the relations between the various supervisions, so that banking supervision on a consolidated basis does not come to replace the performance of banking supervision on an individual basis over banks and branches of foreign banks or inspection of other financial institutions and insurance companies performed by the respective authorities, where these financial institutions are a component of a consolidated whole. This means for example that supervision over fund management companies, or insurance companies from the aspect of their functioning will continue to be performed by the Financial Market Authority. In their case banking supervision of the National Bank of Slovakia will have competence only in the framework of supervision on a consolidated basis to audit the correctness of the data provided for the performance of banking supervision on a consolidated basis. For the

non-provision or the incorrect provision of such data it will be possible to impose on the supervised entity in the framework of the supervision on a consolidated basis a fine up to the amount of 20 000 000 SKK. If the activity of the persons threatens the bank in the framework of the consolidated unit the National Bank of Slovakia will be authorised to impose against that bank which is a component of the consolidated whole, or that which controls it, a sanction directing that it ensure remedy in the activity of the respective entity or cease trading with it.

The act also clearly regulates that problems between banks or branches of foreign banks and their clients are not subject to banking supervision. Such disputes may be resolved by the courts or by other respective bodies, for example arbitration panels. This may concern for example non-adherence to banking secrecy or disputes concerning the transfer of financial funds at variance with the client’s payment order.

Banking supervision is subject also to the activity of other persons connected with the activity of banks or the management of banks or branches of foreign banks. These persons are for example persons using the title bank or branch of a foreign bank, where they do not have a banking licence, other persons which have acquired a share in a bank without the prior consent of the National Bank of Slovakia, or members of the statutory body of a bank or of the supervisory board of a bank.

In this part the new Banking Act governs also the manner of performing supervision over branches of foreign banks, and this in a manner that the banking supervision authority of another country performs supervision only on the basis of an agreement concluded between the National Bank of Slovakia and the banking supervision authority of the other country. Also the National Bank of Slovakia may perform supervision in the territory of another country only where this is allowed by the legal regulations of the country or international treaties.

In the general provisions on banking supervision there is also governed the possibility of the National Bank of Slovakia’s co-operation with other authorities supervising financial institutions in the Slovak Republic and similar supervisory authorities and inspectorates abroad and the possibility for the exchange of information gained in the performance of banking supervision and inspection. The act in this ensures the protection of such information so that it may be used only for the purposes of fulfilling tasks in the performance of banking supervision or inspection. These authorities will be able to provide one another information only with the consent of the National Bank of Slovakia.

### **Banking licence**

The new Banking Act also contains basic rules and conditions for the granting of banking licences. An application is submitted to the National Bank of Slovakia, which



decides on its granting. Only in the case of building societies and mortgage banks does the National Bank of Slovakia decide on the granting of a banking licence following agreement with the Ministry of Finance of the Slovak Republic.

In contrast to the previous act there are in the new Banking Act clearly stated the conditions which a subject applying for the granting of a banking licence must fulfil. Directly in the act there is stated the requirement of a minimum amount of financial deposit in the equity base, for a general bank of 500 000 000 SKK and for a mortgage bank 1 000 000 000 SKK. Further conditions which the applicant must fulfil are aimed at transparency and trouble-free financial resources, fitness and aptitude of the future shareholders of the bank, professional competence and trustworthiness of the persons proposed as members of the statutory body, supervisory board and as managing employees. By managing employees are understood those managing employees in the direct managing purview of the statutory body. The applicant subject also must fulfil various conditions concerning the economic relations of the future bank and with the requirements for the secure and transparent conduct of business in the field of banking.

Besides these matters, the applicant must also demonstrate aptitude and fitness of the persons who will be shareholders with a qualified stake in the bank. This requirement results from the fact that banking supervision is required to assess the ownership structure of a bank. In assessing the competence of a possible shareholder with a qualified stake it will be verified whether for example the shareholder is legally competent to perform shareholder rights and obligations or whether he/she/it has the financial capacity. In an assessment of the fitness of a potential shareholder there will be required the reliable evidencing of the transparent and trustworthy origin of a financial deposit into the equity base and there will also be judged their reliability in relation to requirements for the secure functioning of the bank and the banking sector. The abovementioned matters will be verified with the aim that the banking licence will not be issued to shareholders whose background is unclear or inappropriate (for example persons from off-shore centres or persons connected to these centres, subjects performing banking activities in contention with the Banking Act, for example accepting financial resources without a banking licence) or to persons whose main subject of business is not a guarantee that they could ensure the secure performance of banking activities and not threaten the stability of the banking sector. For example if these people do not have a good business reputation, are not upright in civic matters (in the case of natural persons) or are not able to demonstrate transparency in their financial or property affairs in relation to other entities operating in the financial market. In the stated assessment there is also taken into account the overall shareholder ownership structure and the intention of the shareholder in influencing the bank.

Throughout its existence a bank will be obliged to adhere to the conditions on the basis of which a banking licence was granted to the bank, until the banking licence lapses or until it is revoked.

Following the granting of a banking licence a bank has the possibility to prepare in terms of its organisation for the performance of banking activities, at longest however over a period of six months. If the bank during this term does not evidence redemption of the equity base in the full amount and organisational readiness for the performance of banking activities, a functioning management and control system of the bank, including a risk management system, the National Bank of Slovakia will be obliged to revoke its banking licence. An important condition which a bank must demonstrate prior to the commencement of its activities is also a valid contract with members of the statutory body, in which there must be a clear statement of the duties of a member of the statutory body and also a clear statement of the responsibilities of a member of the statutory body in the case of possible damages caused in the performance of his/her function and this in the full extent.

Similar conditions must be fulfilled also by a foreign bank, if it wishes to perform banking activity in the territory of the Slovak Republic through its branch of the foreign bank.

### **Organisation, management, requirements for the conduct of business of the bank and branch of a foreign bank**

In the draft new Banking Act there are tightened up the requirements for the internal organisation of banks so as to ensure the functionality of the performance of banking activities. Emphasis is laid on the clear separation of competences and responsibilities in the system of bank management directly in the articles of association and also in a clear regulation of cooperation between the statutory authority of the banks, the supervisory board of the bank and the managing employees of the bank.

In connection with this the new Banking Act has clearly governed also the duties of members of the statutory bodies of banks and the manner of construing their liability for non-adherence to these duties.

The requirements for conducting banking business have also been harmonised with the requirements governed in the European Banking Directive, for example in the part on the possibility of acquiring a stake in a non-bank artificial legal entity. A bank may have according to the new Banking Act control over an artificial legal entity that is not a bank, financial institution or ancillary concern to banking services. By control here is understood in particular directly or indirectly a share of at least 50% in the basic equity of the artificial legal entity or the voting rights in the artificial legal entity, or the right to appoint or recall the statutory body, the majority of the statutory body, su-

pervisory board or director of the artificial legal entity.

New terms in the Banking Act are “financial institution”, and “ancillary concern to banking services”. By a financial institution is understood a legal entity other than a bank which in the framework of conducting its business performs as its main or substantial activity one of the banking activities stated in § 2 para. 2 of the new Banking Act or whose main subject of business is acquiring shares in property pursuant to Act no. 385/1999 Z.z. on collective investment as amended as well as any subject with its registered office with a similar subject of activity and unit trust funds.

By ancillary concern to banking services is understood a legal entity which as a main activity performs the administration of assets, data processing services or other similar activity, which assists in securing the main activity of one or more banks or branches of foreign banks.

In a new way have been amended provisions governing capital adequacy, credit exposure and bank liquidity so that various limits hitherto governed in measures of the National Bank of Slovakia are stated directly in law.

### Measures for remedy and fines

In the framework of measures for remedy there have in the new Banking Act been specified measures for a remedy that the National Bank of Slovakia may impose against banks or branches of foreign banks, where the National Bank of Slovakia finds shortcomings in their activity. The upper limit of the fine has been raised to 20 000 000 SKK in the case of a repeated or serious shortcoming. A new sanction is also the possibility in the framework of banking supervision to impose a fine on a member of the statutory body of a bank, a member of the supervisory board of a bank, a manager of a branch of a foreign bank, a representative of the manager of a foreign bank, a confidential clerk, a managing employee of a bank or branch of a foreign bank, an official receiver for the performance of forced administration or a representative of an official receiver for the performance of forced administration for violation of duties resulting to him from the Banking Act or other generally binding legal regulations relating to the performance of banking activities, from the bank's articles and other internal acts of the bank's management or for the violation of conditions or duties imposed by decisions issued by the National Bank of Slovakia according to the seriousness, the extent of guilt and the nature of the violation up to the amount of twelve times the average of his total incomes for the preceding year from the bank or branch of the foreign bank and from members of the consolidated unit or members of the sub-consolidated unit into which the bank or branch of a foreign bank belongs. Upon a managing employee may be imposed a fine of up to 50 % of double the monthly average of his total incomes for the preceding year from the bank or branch of the foreign bank and from members of the consolidated unit

or members of the sub-consolidated unit into which the bank or branch of a foreign bank belongs.

In the new Banking Act are clearly governed the reasons where the National Bank of Slovakia will have the duty to initiate forced administration on a bank (for example, where the bank's capital adequacy falls below 4%) and when it will have to consider its introduction. Similarly in the new act there is treated the revocation of a banking licence. The means that the act has stipulated the cases when the National Bank of Slovakia will be obliged to revoke a banking licence (for example when a bank's capital falls below the level of its equity base or where capital adequacy falls below 2%) and when it will have the possibility to revoke a banking licence.

### Banking Secrecy

In the new Banking Act banking secrecy has been defined more clearly so that the subject of banking secrecy is all information and documents on matters concerning a bank client or client of a foreign bank that are not publicly available, account balances and deposit balances. A bank or branch of a foreign bank are obliged to maintain this information in confidence and safeguard against its leakage, misuse, damage, destruction, loss or theft. A bank and branch of a foreign bank may provide information and documents on matters protected by banking secrecy to third parties only with the prior written consent of the client affected or on his written instruction. A bank and branch of a foreign bank is obliged without such consent of the client to submit a report on the client's affairs to persons charged with performing banking supervision, auditors in an activity stipulated by the Banking Act or Act no. 73/1992 Zb. on the Slovak Chamber of Auditors as amended and the Deposit Protection Fund in the fulfilment of its tasks. A building society shall submit such a report also to persons charged with the control of the use of the state premium in building societies, and a mortgage bank also to persons charged with the control of the use of the state contribution in mortgage deals. Information may also be provided on written request for example to the court, an authority active in criminal proceedings, a tax authority or customs authority, court executor, financial control administration, state administration body for the purposes of performing a decision, to the financial police service of the Police Corps, to the administrator or preliminary administrator in bankruptcy and liquidation proceedings of the Financial Market Authority or to the respective state authority for the purposes of fulfilling obligations ensuing from an international treaty.

The new Banking Act also continues to require proof of the identity of a bank client, where however the manner in which the identity of clients may be identified has been defined more clearly. The identity of a client may be proven by a document of identity or by the signature of the client, where the client is personally known and if his sig-



nature is without any doubt identical to the client's signature in the signature sample deposited in the bank or in the branch of the foreign bank in which the signed client has proven his identity by means of a document of identity. In carrying out a deal by means of technical equipment identity is proven by a personal identification number or similar code, which the bank or branch of a foreign bank assigns to the client and an automatic data item which the bank or branch of a foreign bank agrees with the client, or electronic signature. In the case of a minor client who does not have a document of identity, his legal representative verifies the minor's identity, submitting the document from which the representative's authorisation is manifest and also the birth certificate of the minor client.

A completely new provision in the Banking Act is the incorporation of the duty for the bank and branch of a foreign bank is to ascertain ownership of funds used by the client for performing a deal and this in the case of each deal with a value over 100 000 SKK. This provision should limit the possibility for legalising revenues from criminal activity.

### **Proceedings before the National Bank of Slovakia**

The new Banking Act as with the previous Banking Act contains also procedural provisions governing also proceedings in the framework of the activity of the National Bank of Slovakia, to which Act no. 71/1967 Zb. on administrative proceedings does not relate.

The procedural provisions are amended in these provisions so that in proceedings in the framework of the Natio-

nal Bank of Slovakia according to the Banking Act there no longer relates Act no. 71/1967 Zb. on administrative proceedings. The reason for this amendment is that this concerns the specific proceedings of the National Bank of Slovakia for which various provisions of the act on administration proceedings are inapplicable (for example, provisions on appeal proceedings and review decisions outside appeal decisions). There is also however the reason that the National Bank of Slovakia is not a body of the state administration. Decision making of the National Bank of Slovakia does however fall into the sphere of decision-making in the field of public administration and thus its decisions are subject to review by the Supreme Court of the Slovak Republic pursuant to § 44 para. 2 of the Civil Court Code as the decisions of a legal entity in the field of public administration, or as the decisions of a legal entity to which the act entrusts decision making on the rights and duties of natural persons and legal entities.

The procedural provisions relate to proceedings in matters entrusted to the National Bank of Slovakia in which decision making concerns the rights, duties and legally protected interests of natural persons and legal entities. Proceedings may be commenced on the basis of a written request of the participant of the proceedings or at the initiation of the National Bank of Slovakia.

In the framework of these provisions it has been clearly stipulated that for proceedings at the first level the banking supervision unit of the National Bank of Slovakia is respective. On a remonstrance against a banking supervision decision of the National Bank of Slovakia the Bank Board of the National Bank of Slovakia shall decide.