

DECREE
of the National Bank of Slovakia
of 1 December 2009

**laying down certain details of authorisation for performing of activities and
undertaking of payment institutions and electronic money institutions**

The National Bank of Slovakia pursuant to Article 96 (1)(a)(b)(e)(f) and (i) of Act No. 492/2009 Coll. on payment services and on amending certain laws (hereinafter the “Act”) stipulates as follows:

Article 1

(1) Fulfillment of condition pursuant to the Article 64 (2)(a) of the Act is shown by submitting an excerpt from the Commercial Register about the applicant wishing to provide payment services not older than three months.

(2) Fulfillment of condition pursuant to the Article 64 (2)(b) of the Act is proven by submitting a written statement by the deposit administrator about payment of cash deposit to equity capital of the applicant and on providing payment services up to full amount.

(3) Fulfillment of the condition pursuant to the Article 64 (2)(c) of the Act is proven by submitting of documents on clear, trustworthy and legal origin of cash deposits deposited to the equity capital of the applicant wishing to provide payment services and of document on the origin of additional financial resources of the applicant wishing to provide payment services and its shareholders or partners, and that when it comes to a shareholder or a partner that is

- a) a physical entity by a overview of capital and financial situation of the physical entity, through the income tax return or the document about having performed the annual balance accounting of income tax pre-payments for dependant activity¹ for the last three taxing periods and information regarding the origin of cash deposits deposited to the equity capital of the applicant wishing to provide payment services,
- b) physical entity being an entrepreneur
 - 1. by an excerpts from the Commercial Register or an excerpt from the Trade Register or another register based on which the physical entity, entrepreneur, carries out its business, not older than three months,
 - 2. including an overview of capital and financial situation of the physical entity, entrepreneur, through the annual financial statements for the last three accounting periods, with income tax return¹) for the last three taxing periods and with an information regarding the origin of the cash deposits deposited to equity capital of the applicant wishing to provide payment services,
- c) Legal entity
 - 1. With an excerpt from the Commercial Register not older than three months; if the legal entity has its seat abroad, with another document proving the establishment and existence of the legal entity that was issued by a relevant body not older than three

¹ Act No. 595/2003 Coll. on Income Tax, as amended.

months,

2. by foundation agreement or foundation charter² establishing the legal entity including set place and date of its establishment and a list of activities it performs,
3. by auditor's report including authentic official copy of financial statements and financial report submitted to the General Assembly for the last three accounting periods; if the legal entity is a part of a consolidated group, also including auditor's report together with authentic official copy of consolidated financial statements for the last three accounting periods.

(4) Fulfillment of the condition pursuant to the Article 64 (2)(d) of the Act is being proven by submitting of

- a) documents pursuant to the Paragraph 3,
- b) of graphically depicted structure of the group with close links to which the shareholder or partner belongs,
- c) by statement of the applicant that legal regulations stipulating the issue of close links in the country on the territory of which the group has close links do not prevent performance of supervision if the shareholder or the partner is a foreigner³ or a legal entity seated abroad.

(5) Fulfillment of the condition pursuant to the Article 64 (2)(e) of the Act is proven by submitting

- a) a list of physical entities proposed for members of the statutory body, authorised representative, member of the Supervisory Board, of head employees and of the head of the Internal Control Department of the applicant wishing to provide payment services,
- b) a brief professional curriculum vitae of persons indicated in Letter a) with an overview of acquired education and language skills including authentic official copies of documents concerning acquired requested education and an overview of professional experience and participation in trainings and internships,
- c) an excerpts from the Register of Convictions of persons indicated in the Letter a) not older than three months if a foreigner³ is concerned, or a similar confirmation about the integrity issued by a relevant governmental authority in the place of usual domicile not older than three months,
- d) list of legal entities in which physical entities that are suggested for membership in the statutory body, to be an authorized representative, member of supervisory board or head of internal control department, have a share in the equity capital or voting rights of at least 5% or in which members of the statutory body, control body or leadership work indicating the business name, legal form, identification number, seat and overview of ownership relationships in these legal entities as well as the level and composition of the equity capital and the amount of the share in equity capital or in voting rights expressed in percentages,
- e) statements of persons indicated in the Letter a) that all data indicated by them and documents submitted are full, correct, true, genuine and current including authentic official copies of documents.

(6) Fulfillment of the condition pursuant to the Article 64 (2)(f) to (h) of the Act is proven by submitting documents pursuant to the Paragraph 4(b) and (c).

² Article 162 (2) of Act No. 513/1991 Coll. Commercial Code, as amended.

³ Article 1 (2) of Act No. 48/2002 Coll. on the stay of foreigners and on amendments to certain laws.

(7) Fulfillment of condition pursuant to the Article 64 (2)(i) of the Act is proven by submitting a proposal for by-laws of the applicant wishing to provide payment services.

(8) Fulfillment of the condition pursuant to the Article 64 (2)(j) and (m) of the Act is proven by submitting

- a) structured analysis of each individually provided payment service from the aspect of technical and program systems, processes, work procedures and other resources needed for proper provision of payment services,
- b) project of information system (technical and program equipment) with its detailed description that will enable the applicant wishing to provide payment services to ensure all activities and administer all data and information related to providing payment services and perform and directly carry out payment services, detailed information regarding all information system databases are
 1. a part of this description,
 2. structure and data flow and their unity, confidentiality, credibility, irrecusability and verifiability,
 3. flow of financial resources of users of payment services and their protection,
 4. ensuring continuity of provided payment services and on back-upping and renewal of the information system.

(9) Fulfillment of the condition pursuant to the Article 64 (2)(k) of the Act is proven by submitting

- a) foundation agreement, partnership agreement or foundation charter² of the applicant wishing to provide payment services,
- b) proposal of by-laws of the applicant wishing to provide payment services or by
- c) other document credibly showing fulfillment of this condition.

(10) Fulfillment of the condition pursuant to the Article 64 (2)(l) of the Act is proven by submitting

- a) a description of risks that the applicant wishing to provide payment services and his information systems face, the way of mitigation of individual risks and a list and description of residual risks,
- b) internal regulations stipulating provision of payment services, risk management system and internal control department activity including a regulation for ensuring protection of applicant wishing to provide payment services against legalisation of income from criminal activity⁴.

(11) Fulfilment of the condition pursuant to the Article 64 (2)(n) of the Act is proved by submitting a proposed wording of general business conditions of the applicant wishing to provide payment services.

(12) Fulfilment of the condition pursuant to the Article 64 (2)(o) of the Act is proven by submitting documents credibly showing solvency of shareholders or partners of the applicant wishing to provide payment services and their ability to bridge potential financial situation of this applicant, especially by documents in accordance with the Paragraphs 3 and 4.

(13) Fulfilment of the condition pursuant to the Article 64 (2)(p) of the Act is proven by submitting

- a) approved security policy for the area of information system as a whole, and that

⁴ Act No. 297/2008 Coll. on protection against legalisation of income from criminal activity and on protection against terrorism and on amendment to certain laws, as amended.

- including that part operated by another payment institution,
- b) project of accounting of financial resources among users of payment services, payment institution and other providers of payment services,
- c) agreements of the applicant wishing to provide payment services with other providers of payment services about their mutual cooperation in the area of providing payment services.

(14) When changing the authorisation for providing payment services, the application of the payment institution contains information and documents that are subject to change.

Article 2

(1) Own funds of the payment institution make up the basic own funds of the payment institution and additional own funds of the payment institution total of which reduces deductibles.

(2) For calculation of the total of basic own funds of the payment institution and additional own funds of the payment institution reduced by deductibles, the procedures for banks stipulated by a separate regulation⁵ apply.

- (3) As safe, liquid and low-risk assets of payment institution are perceived
- a) petty cash,
 - b) bond securities issued by countries of the Eurosystem, by the United States of America, Canada, the United Kingdom of Great Britain and Northern Ireland, Japan or Switzerland or by Central Banks of countries of the Eurosystem, the United States of America, Canada, United Kingdom of Great Britain and Northern Ireland, Japan or Switzerland.

Article 3

(1) Fulfilment of the condition pursuant to the Article 82 (2)(a) of the Act is proven by submitting an extract from the Commercial Register on the applicant wishing to issue electronic money not older than three months.

(2) Fulfilment of the condition pursuant to the Article 82 (2)(b) of the Act is proven by submitting a written statement of the deposit administrator confirming repayment of cash deposit to the equity capital of the applicant wishing to issue electronic money in full amount.

(3) Fulfilment of the condition pursuant to the Article 82 (2)(c) of the Act is proven by submitting documents about clear, trustworthy and legal origin of money deposited to the equity capital of the applicant wishing to issue electronic money and document regarding the origin of additional financial resources of the applicant wishing to issue electronic money and its shareholders or partners, and that for a shareholder or a partner that is

- a) a physical entity through an overview of capital and financial situation of the physical entity, by income tax return or a document confirming having performed annual balance accounting of income tax pre-payments for dependant activity¹) for the last three taxing periods and information about the origin of cash deposits deposited to the equity capital of the applicant wishing to issue electronic money,

⁵ Article 3 to 6 of the Decree of the National Bank of Slovakia of 13 March 2007 No. 4/2007 on own funds of bank funding and on requirements regarding own funds for funding of securities dealers and requirements for own funds for funding of securities dealers (Announcement No. 121/2007 Coll.) as amended by the Decree No. 17/2008 (Announcement No. 443/2008 Coll.).

- b) a physical entity being an entrepreneur
 1. by the excerpts from the Commercial Register or by an excerpt from the Trade Register or another register based on which the physical entity, entrepreneur, carries out its business, not older than three months,
 2. by an overview of capital and financial situation of the physical entity, entrepreneur, by annual financial statements for the last three accounting periods, by income tax return¹⁾ for the past three taxing periods and information regarding the origin of the cash deposit deposited to the equity capital of the applicant wishing to issue electronic money,
- c) a legal entity
 1. by an excerpt from the Commercial Register not older than three months; if the legal entity seated abroad is concerned, by another document proving the establishment and existence of the legal entity issued by a relevant authority not older than three months,
 2. by founding agreement or foundation charter²⁾ that established the legal entity indicating the place and date of its establishment including a list of activities it performs,
 3. by auditor's report accompanied with audited financial statements and financial report submitted to the General Assembly for the last three accounting periods; if the legal entity is a part of a consolidated group, also including auditor's report accompanied by audited consolidated financial statements for the last three accounting periods.

(4) Fulfilment of the condition pursuant to the Article 82 (2)(d) of the Act is proven by submitting of

- a) documents in accordance with the Paragraph 3,
- b) graphically depicted structure of the group with close links to which the shareholder or partner belongs,
- c) statement of the applicant confirming that legal regulations stipulating the area of close links in the country in which the group has got close links do not prevent performance of supervision if the shareholder or partner is a foreigner³⁾ or a legal entity seated abroad.

(5) Fulfilment of the condition pursuant to the Article 82 (2)(e) of the Act is proven by submitting

- a) a list of physical entities proposed for membership in the statutory body, to be authorised representative, member of the supervisory board, head employees and head of the internal control department of the applicant wishing to issue electronic money,
- b) a professional curriculum vitae of persons indicated in the Letter a) with an overview of acquired education and language skills including authentic official copies of documents of acquired education and including an overview of professional experience, trainings and internships,
- c) an excerpt from the Register of Convictions of persons indicated in the Letter a) not older than three months, and in case of a foreigner³⁾, by a similar confirmation of the integrity issued by a relevant governmental authority in the place of the usual domicile not older than three months,
- d) list of legal entities in which physical entities proposed for membership in the statutory body, for authorised representative, for members of supervisory board and for the head of Internal Control Department have a share in the equity capital or voting rights of at least 5% or in which they participate as members of statutory body, control body or management, with indicating their business name, legal form, identification number, seat and overview of property relationships in these legal entities as well as the volume and composition of equity capital and the amount of participation in equity capital or in voting rights expressed in percentage,
- e) by a statement of persons indicated in Letter a) that all data indicated by them and all the

submitted documents are complete, correct, true, genuine and current including authentic official copies of documents.

(6) Fulfilment of condition pursuant to the Article 82 (2)(f) to (h) of the Act is proven by submitting documents pursuant to the Paragraph 4 (b) and (c).

(7) Fulfilment of the condition pursuant to the Article 82 (2)(i) of the Act is proven by submitting a proposal of by-laws of the applicant wishing to issue electronic money.

(8) Fulfilment of condition pursuant to the Article 82 (2)(j) and (1) of the Act is proven by submitting

- a) a description of the information system and technical equipment of the applicant wishing to issue electronic money with indicated data about computer technology (hardware, software), the system of technical data processing, information regarding safety of data transport including information about how it will ensure unity, confidentiality, credibility of transferred data, irrecusability, verifiability and demonstrability of activities and impossibility of fraudulent creation of electronic money including a detailed description of the creation, distribution, use, processing and liquidating of electronic money, description of the information, computer and other systems connected with issuing electronic money including a description of risks that applicant wishing to issue electronic money faces and ways of mitigating these individual risks and a description of residual risks,
- b) internal regulations stipulating activity of issuing electronic money, the system of risk management and activity of the internal control department including regulation for ensuring protection of the applicant wishing to issue electronic money against legalisation of income from criminal activity⁴.

(9) Fulfilment of the condition pursuant to the Article 82 (2)(k) of the Act is proven by submitting

- a) Foundation agreement, Partnership agreement or Foundation Charter² of the applicant wishing to issue electronic money,
- b) proposal of by-laws of the applicant wishing to issue electronic money or
- c) other document credibly proving fulfilment of this condition.

(10) Fulfilment of the condition pursuant to the Article 82 (2)(m) of the Act is proven by submitting

- a) approved security policy for the area of information system safety as a whole including the part operated by another issuer and administrator of electronic money,
- b) project of accounting of electronic money and of accepted financial resources between agents and holders of payment means of electronic money,
- c) agreements of the applicant wishing to issue electronic money with other issuers and administrators of electronic money on their mutual cooperation in the area of administration and accounting of electronic money issued by another issuer and administrator of electronic money, through electronic money issued by the applicant wishing to issue electronic money.

(11) Fulfilment of the condition pursuant to the Article 82 (2)(n) of the Act is proven by submitting documents credibly showing financial ability of the shareholders or partners of the applicant wishing to issue electronic money to bridge potential unfavourable situations of the applicant wishing to issue electronic money, especially by documents pursuant to the Paragraphs 3 and 4.

(12) When changing the authorisation for issuing electronic money, the application of the electronic money institution includes information and documents that are subject of this change.

Article 4

(1) Fulfilment of conditions not to exceed the amount of electronic money issued for one user of payment services saved in each individual electronic facility up to EUR 150 pursuant to the Article 87 (1) of the Act is proven by submitting

- a) a detailed description of the individual type of exchange of financial means for electronic money and repeated exchange pursuant to the Article 80 of the Act of each individual type of offered electronic equipment saving electronic money containing detailed description of time flow of electronic money and financial means and data flow depicting the actual real movement of electronic money and financial means,
- b) a detailed description of individual types of payment operations using electronic money and description of the way of accounting of performed payment operations using electronic money; a part of this description is also a description of the flow of electronic money from each offered electronic facility saving electronic money for other type of electronic facility saving electronic money or to bank account or to foreign bank account containing independently a part of the time flow of electronic money and financial means and independently a part of data flow depicting the actual time movement of electronic money and financial means,
- c) a detailed description of the process of change, replacement and updating of used hardware and software,
- d) a detailed description of all databases contained in the information system as a whole that ensure issuing, operation, administration and liquidation of electronic money and electronic facilities saving electronic money and reporting and accounting of electronic money and financial means,
- e) a detailed description of administration of user names and passwords, privileges and authorisations of each individual role authorized to access databases pursuant to the Letter d) and to information system as a whole and that on application and on system level,
- f) a detailed description of the process of back-upping of information system containing a separate part
 1. of creation of a back-up medium, its time movement with indicated role and user name that created the back-up medium,
 2. describing time movement of back-up medium and persons that come into contact with it,
 3. recording of manipulation with the back-up medium,
- g) of a detailed description of the process of information system renewal in the structure according to Letter f),
- h) analysis of risks in the information system that could cause exceeding of the amount of EUR 150 deposited in each individual electronic facility saving electronic money and a description of introduced measures for their elimination or reduction to a minimum level,
- i) of methodology for identification of a minimum level of irremovable risks according to Letter h).

(2) Fulfilment of the condition to maintain the value of all obligations of the applicant wishing to issue electronic money resulting from currently unsettled amounts of electronic money as a rule not exceeding EUR 5,000,000 and not exceeding EUR 6,000,000 pursuant to the Article 87 (1) of the Act is proven by submitting

- a) the methodology of identification of the fluctuation span of the value of all obligations over EUR 5,000,000,

- b) the analysis of risks endangering the exceeding of EUR 5,000,000 and fulfilling the span set in the Letter a) and description of introduced decree for their elimination or reduction to a minimum level,
- c) the methodology for identification of a minimum level for individual irremovable risks pursuant to the Letter b),
- d) the analysis of risk endangering the exceeding of the value of all obligations amounting to EUR 6,000,000 and a description of introduced decrees for their elimination,
- e) a methodology of identification the level of exceeding EUR 5,000,000 that means unquestionable endangering of the condition not to exceed EUR 6,000,000 and consequent launching of protection procedures needed in order to ensure immediate and unconditional not exceeding of EUR 6,000,000,
- f) a description of protection procedures indicated in the Letter e).

Article 5

(1) Own funds of electronic money institutions are made up of basic own funds of electronic money institutions and of additional own funds of electronic money institutions total of which is reduced by deductibles.

(2) For the calculation of the total of basic own funds of electronic money institution and additional own funds of electronic money institution reduced by o deductibles, the procedure in accordance with a separate regulation is applied.⁵

(3) Investments of the electronic money institution consist of

- a) Assets⁶ with zero risk value,
- b) Assets with risk value above zero.

(4) Assets pursuant to the Paragraph 3, Letter a) are made up of

- a) cash value,
- b) receivables from the governments and central banks that would be associated with zero risk value being unguaranteed pursuant to separate regulation⁷,
- c) receivables guaranteed by governments or central banks, if receivables from countries or central banks fulfil conditions pursuant to the Letter b).

(5) Assets pursuant to the Paragraph 3(b) are made up of

- a) deposits due at a request in banks and in foreign banks seated in the country, receivables of which would fulfil conditions in accordance with the Paragraph 4(b),
- b) Bond securities,
 - 1. that are not assets pursuant to the Paragraph 3(a),
 - 2. that would be associated with risk value of 20 % as being unguaranteed pursuant to a separate regulation⁷,
- 3. issued by persons not having a qualified participation in electronic money institutions or by persons that are not part of a consolidated group or a financial conglomerate member of which is also the person with qualified participation in electronic money institution,
- c) by financial instruments accepted for trading on regulated market that the electronic money institutions holds for the purposes of mitigating market risk resulting from its other investments and from issuing of electronic money.

⁶ Article 2 (4)(i) of Act No. 431/2002 Coll. on Accounting as amended by Act No. 561/2004 Coll.

⁷ Article 32 of Act No. 483/2001 Coll. on Banks and on amendments to certain laws, as amended. Decree No. 4/2007 (Announcement No. 121/2007 Coll.) as amended by the Decree No. 17/2008 (Announcement No. 443/2008 Coll.)

Article 6

(1) A procedure in accordance with a separate regulation⁸ applies to liquidity risk management of electronic money institutions.

(2) For internal control system of electronic money institutions and related activities of internal control departments, head employees and statutory body of the electronic money institutions, provisions regarding internal control system in bank pursuant a separate regulations⁹ apply.

Common and final provision

Article 7

(1) Information and documents according to the Article 1, 3 and 4 are submitted in originals or as authentic official copies.

(2) If information and documents pursuant to the Article 1,3 or 4 are developed in a language other than the official language, fulfilment of conditions is proven by officially verified translation of such information or documents to the official language of the country.

(3) Information and documents in accordance with the Article 1, 3 and 4 that the applicant wishing to provide payment services and the applicant wishing to issue electronic money submits to the National Bank of Slovakia prior to submitting of the application for granting or altering authorisation to provide payment services or prior to submitting of the application for granting or altering authorisation to issue electronic money, may be replaced by a list of submitted information and documents with indicated dates of their submission to the National Bank of Slovakia and by a confirmation of the applicant wishing to provide payment services and the applicant wishing to issue electronic money that the information and document are still current in full extent.

Article 8

By this Decree legal regulations of the European Community and European Union indicated in the Annex are taken over.

Article 9

The following are cancelled:

1. Decree of the National Bank of Slovakia of 28 April 2004 No. 6/2004 laying down details of conditions, ways of proving and documenting fulfilment of conditions and on application for granting or altering authorisation to issue and administer electronic money and payment means of electronic money including contents and annexes of such applications (Announcement No. 305/2004 Coll.),
2. Decree of the National Bank of Slovakia of 11 June 2004 No. 8/2004 on own funds for funding and investments of electronic money institutions (Announcement No. 370/2004 Coll.),
3. Section I. of the Decree of the National Bank of Slovakia of 7 April 2009 No. 2/2009 laying down contents of the applications for granting authorisation to issue payment

⁸ Article 27 of Act No. 483/2001 Coll. as amended.

⁹ Article 23 of Act No. 483/2001 Coll. as amended.

means of electronic money in accordance with the Article 21d of Act No. 510/2002 Coll. on the system of payment and on amendments to certain laws, as amended, and on amendment to the Decree of the National Bank of Slovakia No. 8/2008 on fees for Acts of National Bank of Slovakia (Announcement No. 147/2009 Coll.).

Article 10

This Decree shall enter into force on 20 December 2009.

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Annex to the Decree No.7/2009

List of accepted legal Acts of the European Community and European Union

1. Directive of the European Parliament and the Council 2007/64/EC of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC a repealing the Directive 97/5/EC (OJ of EU L319/1, 5.12.2007).

2. Directive 2000/46/EC of the European Parliament and the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (Special issue of OJ, Chapter 06, unit 03).