



NEW ACT ON PAYMENTS

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On January 1, 2003, the Act on Payments will take effect almost in its entirety. As to its scope, it will present the first comprehensive arrangement of payments in the system of law of the Slovak Republic. So far only certain parts of the problem area of payments were governed by several legal regulations. They include especially the Banking Act, the Commercial Code, the Foreign Exchange Act, Decree of the National Bank of Slovakia on the Principles of Interbank Payments, the Act on the National Bank of Slovakia stipulating the principal powers of the central bank with regard to payments, including the payment instruments used in the payments system.

In addition to the enactment of the so far non-existent comprehensive legal arrangement of payments, a no less important goal was to harmonize the legal system of the Slovak Republic with legal standards of the European Union relating to the field of payments. In negotiations with the European Union this problem area falls under Chapter 4 – Free Movement of Capital. As part of the negotiations on this chapter, the Slovak Republic has undertaken to adopt Directive 97/5/EC on cross-border credit transfers, Directive 98/26/EC on settlement finality in payment and securities settlement systems, Recommendation 97/489/EC concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder.

By virtue of the Directive on cross-border credit transfers, pressure is exerted upon financial institutions executing cross-border transfers for the transfers to be executed within a certain time limit under conditions transparent to the customer. It is precisely defined therein what the customer must be informed of prior to and after the execution of the transaction itself. The Directive has tightened the environment for the execution of cross-border transfers, since it defines damage recovery procedures in the event of a failure to meet the time limit for the execution of a payment, or a failure to make a payment. It unambiguously sets responsibilities for all the institutions involved in the cross-border transfer that is from the paying bank through the mediator institutions to the receiving bank. Pursuant to the Directive it is necessary to provide for an effective settlement of disputes following from the execution of cross-border payments.

The Directive on settlement finality in payment and securities settlement systems provides for the irrevocability of a payment where a bankruptcy is announced and takes effect. The irrevocability is given from the moment set in accordance with the payment system's rules. It determines the effectiveness of bankruptcy announced on the payment system. The Directive does not allow for the principle of retroactive effect. Under this Directive it is necessary to protect collateral provided in connection with the participation in the payment system prior to the effectiveness of the bankruptcy proceedings.

Recommendation 97/489/EC concerning transactions by electronic payment instruments provides for transparency of the relationship between the issuer and the holder of an elec-

tronic payment instrument, the obligations as well as the commitments of both the issuer and the holder, and the effectiveness of dispute settlement.

The main feature of the said legal standards of the European Union is the introduction of transparency into the relationship between a bank and the customer in the execution of payments, the protection of the customer as a consumer in relation to banking entities, the protection of the payment systems against risks following from eventual insolvency of the parties to the payment system involved in the operation thereof.

During the preparation of the Act on Payments it was necessary to cope with a lot of new terminology contained in the aforementioned legal standards of the European Union. Proper application of terminology is a prerequisite for successful adoption of these legal standards in our system of law. For that reason there was a need for frequent consultations with representatives of the European Commission.

The Act itself is divided into six logical units regulating the following:

1. the execution of domestic fund transfers;
2. the execution of cross-border fund transfers;
3. the issuance and use of electronic payment instruments;
4. the creation and operation of payment systems;
5. payment systems oversight,
6. claims and the settlement of disputes ensuing from payments.

As for the scope of this Act, it needs to be mentioned that it does not regulate activities carried out in connection with postal payments, or the issuance of travelers' cheques, cheques and bills of exchange.

Domestic Transfers

The work on this section of the Act was undertaken reckoning that the Decree of the National Bank of Slovakia No. 275/1994 Z.z. on the Principles of Interbank Payments will be repealed and its main principles will be incorporated in this section. This was motivated by the fact that the existing Decree imposed obligations which, under the Constitution of the Slovak Republic in force, can only be imposed by a legal norm. In addition to the basic principles of interbank payments, there was an effort to arrange the main principles for executing

domestic payments between a bank and its customers in this section of the Act. At the present time this area is regulated by General Commercial Conditions, which set the principles for managing the customers of banks and the principles for executing payments and clearing on these accounts dated Dec. 7, 1993 as amended by Annex 1 (hereinafter the “General Commercial Conditions”). Although accepted by the banks from the very beginning, they do not constitute a generally binding legal provision, but a complex of banking business practices generally applied and observed in the banking sector in line with § 264 of the Commercial Code. They included especially the provisions addressing the issues covered by the section on foreign payments. The authors strived to apply to the field of domestic payments the same scope as had to be adopted in the field of foreign payments from Directive 97/5/EC. This mainly concerned transparency of disclosure of information before and after the execution of a payment, an obligation to observe the maximum limit for the duration of transfer between two institutions involved in the execution, damages for late debiting or crediting of the amount transferred, a ban on making deductions from the amount to be transferred, and other matters.

In this section of the Act, the basic features used in interbank payments so far, such as the requisites for banking details, that is the structure of the account number, the first part of which contains no more than 6 digits and the second one no more than 10 digits, the existence of identification codes of banks issued in the form of a correspondence table of bank codes, will continue to be preserved. There is a principal change compared to the current regulation in that the maximum period for an interbank transfer will be shortened from 3 to 2 days. The solution of § 2 of the current regulation, which means through whom interbank payments may be executed, is contained in the section of this Act dealing with the formation and operation of the payment systems.

Cross-Border Transfers

It is the first ever comprehensive coverage of the issue of cross-border transfers in the system of law of the Slovak Republic. To a great extent, it is the adoption of Directive 97/5/EC on cross-border credit transfers, which lays emphasis primarily on transparency of conditions for the conduct of the executing institution vis-à-vis the customer, the maximum time limit for a cross-border transfer, the protection of the customer as a consumer in relation to banking entities. Since the Directive regulates the execution of cross-border transfers solely within Member States of the European Union and the European Economic Area only up to the amount of EUR 50 000, the whole section of the Act relating to cross-border transfers is divided into two logical units. They include a section adopting the applicable EU Directive, referred to as specially regulated cross-border transfer in the Act (this section will take effect starting from the integration of the Slovak Republic into the European Union) and a section governing cross-border transfers vis-à-vis the rest of the world.

Electronic Payment Instruments

Contrary to the legislation currently in force, this section of

the Act contains a comprehensive description of the issuance and use of electronic payment instruments. It stipulates the basic division of electronic payment instruments into:

- remote access payment instruments represented by bank payment cards and payment applications of electronic banking;
- electronic money instruments.

Under the Act, only banks and branches of foreign banks holding a banking licence, or the National Bank of Slovakia are allowed to issue electronic payment instruments.

With respect to this section of the Act, it is necessary to mention that many of the procedures set thereunder for electronic payment instruments have already been applied in practice by individual banking institutions and, in many instances, will be nothing new for the banks. Nevertheless the Act aims to unify the practices and to clearly define the rights and obligations of both the issuer and the holder of such an instrument. Like in the other parts of this Act, an emphasis is laid on transparency of the conditions for providing electronic payment instruments. This in particular concerns the issuer's obligation to issue and make available to the holder the commercial with a minimum scope set, to inform the holder sufficiently in advance about any alteration to these conditions (30 days in advance at the minimum), the obligation to provide the holder with an intelligible report on operations carried out via the electronic payment instrument, etcetera. An important change with respect to bank payment cards is that in the event of the bank payment card is lost or stolen, the authorized holder has the right, from the moment of giving a notification to the issuer or a person authorized thereby, to demand from the issuer the refund of the money withdrawn, where the card has been misused by another person. On the other hand, the Act defines the obligations of the holder of an electronic payment instrument.

Payment Systems

This section specifies the basic attributes of the payment system, who can take part in it, as well as the basic principles for its functioning. The creation of a payment system is determined by the following:

- it must have a minimum number of participants set by law (generally at least three participants, and in exceptional cases at least two);
- the existence of a written contract on the payment system binding on all of its participants, which at the same time must be governed by the system of law of the Slovak Republic;
- the existence of rules for the operation of the payment system, which must be in accordance with this Act. These rules must for example precisely determine and define the moment of receipt of orders accepted by the payment system and the method for ensuring their irrevocability, the operator, settlement agent and a number of other rules prescribed by the Act on Payments;
- the basic legal prerequisite for the creation and existence of a payment system consists of an authorization from the National Bank of Slovakia to operate the payment system;
- the final prerequisite is a formal notification of the existence and name of the payment system to the European Commission.



Of great importance is the necessity to define, as part of the rules for the payment system, the moment of receiving a payment order, starting from which it is no longer possible to revoke or cancel the order received by the payment system, especially in connection to the announcement of bankruptcy. The goal is to ensure legal safeguards for participants to the payment system, i.e. what procedure will be followed in the event that at a certain moment of the day insolvency petition is granted on the assets of one of the participants. One of the effects of bankruptcy is the protection of right to a collateral which the participant to the system has provided to another participant in connection with his involvement in the payment system.

The whole section on payment systems is divided into three logical units. The first one contains general provisions applying to all the payment systems, the second defines rules for the payment system operating along RTGS principles being prepared by the National Bank of Slovakia, and the third, last in order, defines rules for the payment system combining the basic principles for settlement, operated by the National Bank of Slovakia. In the case of the last system mentioned these are the rules for a system which the National Bank of Slovakia is going to operate from January 1, 2003. Since the Act on Payments repeals Decree of the National Bank of Slovakia No. 275/1994 Zb. on Interbank Payments, the basic rules laid down in the Decree have been incorporated in this section of the Act.

No authorization is needed for the payment systems operated by the National Bank Slovakia, and the rules applying to these systems form a direct part of the Act. The creation of any other systems is governed by provisions specifying supervision of payment systems.

Payment Systems Oversight

This section of the Act unambiguously sets the rules for oversight of the payment systems and payments to be performed by the National Bank of Slovakia. It specifies which entities will be subject to such oversight, lays down the obligation to make the performance of oversight possible, to supply documentation and information required for the purposes of oversight. The performance of such oversight will abide by the provisions of separate laws relating to oversight performed by the National Bank of Slovakia, namely the Act on the National Bank of Slovakia and the Banking Act. Of great importance is the issue of authorization procedure for the payment systems that might be created in the future and operated in addition to the existing payment systems. For the sake of maintaining security and professionalism, each new payment system operated hereunder will be subject to this authorization procedure. Such an authorization will not be required for a payment system operated by the National Bank of Slovakia. The provisions of this Act set out precise requisites to be contained in an application for the grant of an authorization to operate the system, the corrective measures and penalties in the event that the National Bank of Slovakia reveals shortcomings in the operation of the payment system, through to conditions under which such an authorization can be revoked.

Directive 98/26/EC on settlement finality in payment and securities settlement systems lays down a requirement that there is a government authority, to which both bankruptcy courts and other authorities of the Slovak Republic are to direct any information on the announcement of bankruptcy with regard to the assets of a participant to the payment system operated under the Act on Payments. Under the Act, this authority is represented by the National Bank of Slovakia. The Bank is obligated to pass the received notifications to an operator of the payment system to whose participant the given information refers. From the day of accession to the European Union, the notification obligation of the National Bank of Slovakia will also apply to other Member States of the European Union and of the European Economic Area.

Claims and Settlement of Disputes

This section sets the basic principles with regard to procedures for receiving and handling claims concerning the accuracy and quality of services provided in the area of payments, including services associated with the issuance and use of electronic payment instruments. The Act stipulates time limits for the processing of claims.

Directive 97/5/EC on cross-border credit transfers requires that mechanism for effective out-of-court settlement of disputes between service providers and their customers be set up. The Act imposes the obligation to set up a standing arbitrator court in accordance with the Act on Arbitrator Proceedings for the settlement of disputes arising from payments, while assuming that such a court will be established by banks and branches of foreign banks, either jointly or through their representative professional association. Further to it, the Act addresses the issue of funding such a standing arbitrator court. No fees and charges are to be paid on filing a motion for the settlement of a dispute to the arbitrator court.

Apart from the sections described above, the Act on Payments contains provisions which modify and amend other legal standards, such as the Commercial Code, the Act on Securities and Investment Services, the Act on Bankruptcy and Composition, the Act on Internal Private and Procedure Law. In conclusion, the effective dates of respective provisions are specified. Although the sections mentioned last are of no less importance, the main purpose of this article was to familiarize the reader with the main legal provisions introduced by the new Act in the field of payments.

The area of payments so far has been governed by a number of regulations, which did not make the life of not only the customers of commercial banks, but frequently also of payments specialists any easier. Payments have gradually evolved into an area which deserves its own law. Expectations on the new Act are high – it is expected to make the legislation on payments easier to follow, both for experts and laymen, to ensure the adoption of legislation of the European Union on payments in the legal system of the Slovak Republic, to ensure the transparency of services provided in the area of payments and, last but not least, to raise the prestige of the whole problem area of payments. Following January 1, 2003 we shall see which of these expectation are finally materialized.