

## **Rules of General Good for Crypto-Asset Service Providers from Another Member State when Providing Crypto-Asset Services in the Slovak Republic**

Foreign entities may conduct business in the territory of the Slovak Republic under the same conditions and to the same extent as Slovak entities, unless otherwise stipulated by relevant legal regulations. The right to freedom to provide services and the right of establishment are not absolute rights and may be restricted if necessary to protect the public interest, for example, for the purpose of ensuring consumer protection, market integrity, or financial stability. When exercising the right to freedom to provide services, or the right of establishment when doing business in the context of the MiCA Regulation, it is therefore important to take into account the restrictions under the relevant national legislation.

### **Personal Statute (lex societatis)**

- **Application when providing crypto-asset services based on:** Right of establishment.
- **Affected provision of the MiCA Regulation:** Art. 3 para. 1 point 33 letter f), Art. 62 para. 1.
- **Relevant provisions of SR legal regulations:** § 22 of Act No. 513/1991 Coll., Commercial Code.
- **Content:** A legal person other than a foreign natural person has legal capacity in the sphere of Slovak law according to the legal order under which it was founded. Its internal legal relations and the liability of its members or partners for its obligations are also governed by the legal order under which this person was founded.
- § 22 of Act No. 513/1991 Coll., the Commercial Code, contains a conflict-of-laws rule that determines the so-called **personal statute of a business company (lex societatis)**.
- In this provision, the Slovak legal order adheres to the so-called **incorporation theory** (in contrast to the real seat theory on which the national legal regulations of some EU Member States are based).
- It grants legal capacity to entities that have legal personality according to the legal order under which they were founded, regardless of whether they have a real seat in the Slovak Republic or in another Member State.
- The Slovak legal order itself grants legal capacity to these entities, and therefore the fulfilment of further conditions is not required.

### **Relocation of the Registered Office of a Foreign Legal Person to the Domestic Territory**

- **Application when providing crypto-asset services based on:** Right of establishment.
- **Affected provision of the MiCA Regulation:** Art. 3 para. 1 point 33 letter f), Art. 62 para. 1.
- **Relevant provisions of SR legal regulations:** § 26 of Act No. 513/1991 Coll., Commercial Code.
- **Content:** A foreign legal person established for the purpose of doing business may relocate its registered office from abroad to the territory of the Slovak Republic if so provided by the law of the European Union or if permitted by an international treaty to which the Slovak Republic is bound and which has been promulgated in the manner stipulated by law.
- When relocating the registered office, it is necessary to distinguish between the relocation of the seat of the main administration (the so-called **factual seat**) and the statutory seat (registered in the Commercial Register).

- For legal regulation based on the incorporation theory, no obstacle will arise in recognizing a legal person if its factual seat is not located in the territory of the state of foundation (incorporation).
- From this aspect, Slovak legislation will not have application problems in the context of the ECJ decisions that accept the requirements of the single market - *Centros C-212/97, Überseering C-208/00, Inspire Art C-167/01*, and *Daily Mail*.
- The relocation of the seat of the main administration or the principal place of business activity (the real seat) of a company established under the law of one Member State to the territory of the Slovak Republic through the establishment of a branch in the territory of the Slovak Republic is possible.
- The Commercial Register shall enter the organizational unit of a foreign entity's enterprise into the Commercial Register without special requirements, only while respecting the requirements arising from Act No. 530/2003 Coll. on the Commercial Register, as amended.
- In connection with the relocation of the real seat, the provision of § 26 para. 2 of Act No. 513/1991 Coll., the Commercial Code, which ties the relocation of the registered office to a constitutive entry in the Commercial Register, will not be applied.
- The decision on the change of the factual seat is not tied to the entry in the Commercial Register, except in the case when the first entry of the branch of the foreign legal person's enterprise into the Commercial Register is being carried out.
- The original intention of the regulation in § 26 of Act No. 513/1991 Coll., the Commercial Code, was focused on the simultaneous change of the statutory seat and the main administration, which is made possible by transnational forms of companies.
- For the change of the factual seat, the provisions of Art. 49 to 54 TFEU are relevant from the law of the European Communities.

#### **Knowledge and Skills of Natural Persons When Providing Advice on Crypto-Assets**

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Affected provision of the MiCA Regulation:** Art. 81 para. 7.
- **Relevant provisions of SR legal regulations:** § 4 para. 3 of Act No. .../2024 on certain obligations and authorisations in the field of crypto-assets, § 1 of the Measure of the National Bank of Slovakia of ... 2024 on criteria for assessing the professional knowledge and skills of natural persons providing advice or information on crypto-assets or crypto-asset services on behalf of a crypto-asset service provider and the method of demonstrating the fulfilment of these criteria.
- **Content:** Crypto-asset service providers providing advice on crypto-assets in the sense of Art. 81 para. 7 of the MiCA Regulation ensure that natural persons providing advice or information on crypto-assets or crypto-asset services on their behalf have the necessary knowledge and skills to fulfil their duties.
- Member States are authorised by the aforementioned provision to establish the criteria to be used to assess this knowledge and these skills.
- Act No. .../2024 on certain obligations and authorisations in the field of crypto-assets stipulates that a measure issued by the National Bank of Slovakia and promulgated in the Collection of Laws of the Slovak Republic shall establish the criteria for assessing the professional knowledge and skills of natural persons and the method of demonstrating the fulfilment of these criteria.

- The Measure of the National Bank of Slovakia of ... 2024 on the criteria for assessing the professional knowledge and skills of natural persons providing advice or information on crypto-assets or crypto-asset services on behalf of a crypto-asset service provider and the method of demonstrating the fulfilment of these criteria determines these criteria as: completion of education according to § 2 of this measure and completion of verification of the acquisition of professional knowledge and skills according to § 3 of this measure.

### **Control of Fulfilment and Compliance with AML Obligations**

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Relevant provisions of SR legal regulations:** § 29 of Act No. 297/2008 Coll. on protection against the legalisation of proceeds from criminal activity and on protection against the financing of terrorism.
- **Content:** The control of the fulfilment and compliance with the obligations of obliged persons established by Act No. 297/2008 Coll. on protection against the legalisation of proceeds from criminal activity and on protection against the financing of terrorism is performed by the Financial Intelligence Unit of the Presidium of the Police Force of the Slovak Republic.
- The control of the fulfilment and compliance with obligations may also be carried out on a person who has ceased to be an obliged person to the extent of the obligations that arose from Act No. 297/2008 Coll. on protection against the legalisation of proceeds from criminal activity and on protection against the financing of terrorism, when they were an obliged person.

### **Rules for Advertising**

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Relevant provisions of SR legal regulations:** Act No. 147/2001 Coll. on Advertising.
- **Content:** Act No. 147/2001 Coll. on Advertising establishes general requirements for advertising and protection against the effects of inadmissible comparative advertising, unless specific regulations stipulate otherwise.

### **Prices and Fees for Crypto-Asset Services**

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Relevant provisions of SR legal regulations:** Act No. 18/1996 Coll. on Prices.
- **Content:** Act No. 18/1996 Coll. on Prices regulates certain rules for negotiating, applying, regulating, and controlling the prices of services.

### **Consumer Rights - General Requirements**

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Relevant provisions of SR legal regulations:** § 3 of Act No. 108/2024 Coll. on Consumer Protection.
- **Content:** Act No. 108/2024 Coll. on Consumer Protection stipulates that every consumer has the right to the protection of health, safety, and economic interests, to information to

the extent and under the conditions according to this Act and legally binding regulations of the European Union.

- The provisions in question do not constitute requirements that need to be explicitly reflected in the contractual relationship with the consumer.
- However, this contractual relationship must not be in conflict with the above-mentioned consumer rights.

#### **Obligations of the Crypto-Asset Service Provider as a Trader - General Requirements**

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Relevant provisions of SR legal regulations:** § 4 of Act No. 108/2024 Coll. on Consumer Protection.
- **Content:** Specifies the information that the crypto-asset service provider must communicate to the consumer in a clear and understandable way before providing the crypto-asset service or sending an order.

#### **Unfair Commercial Practices, Misleading Action, and Misleading Omission**

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Relevant provisions of SR legal regulations:** § 4 of Act No. 108/2024 Coll. on Consumer Protection.
- **Content:** Specifies the unfair commercial practices that the crypto-asset service provider cannot commit in relation to the consumer, and the misleading action and misleading omission that the crypto-asset service provider must refrain from.

#### **Unacceptable Terms in Consumer Contracts**

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Relevant provisions of SR legal regulations:** § 53 para. 1 and para. 4 of Act No. 40/1964 Coll., Civil Code, § 8 of Act No. 266/2005 Coll. on Consumer Protection in relation to Financial Services Concluded at a Distance.
- **Content:** Specifies the unacceptable contractual terms that must not be contained in contracts concluded with consumers, unless the law stipulates otherwise.
- In the case of a distance contract, pursuant to § 8 of Act No. 266/2005 Coll. on Consumer Protection in relation to Financial Services Concluded at a Distance, the consumer rights established by this Act cannot be contractually excluded or limited in advance, regardless of the legal order governing the contractual relationship.
- A distance contract must not contain provisions by which the consumer would waive any rights in advance, and provisions stating that the burden of proof concerning the fulfilment of all or part of the supplier's obligations arising from this Act rests with the consumer.

#### **Information Obligations Towards Consumers**

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.

- **Relevant provisions of SR legal regulations:** § 4 of Act No. 266/2005 Coll. on Consumer Protection in relation to Financial Services Concluded at a Distance, § 5 para. 1 and para. 2, § 15 para. 1, § 19 para. 1 of Act No. 108/2024 Coll. on Consumer Protection.
- **Content:** Specifies the scope of information obligations that the crypto-asset service provider must fulfil towards consumers.
- The general requirement is set by § 5 para. 1 and para. 2 of Act No. 108/2024 Coll. on Consumer Protection.
- Specific requirements in the event that the contract is concluded at a distance are set by § 4 of Act No. 266/2005 Coll. on Consumer Protection in relation to Financial Services Concluded at a Distance, § 15 para. 1 and § 19 para. 1 of Act No. 108/2024 Coll. on Consumer Protection.

### Intermediation in the Field of Crypto-Assets

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Relevant provisions of SR legal regulations:** § 2, § 4 letter a), b) and c) of Act No. 186/2009 Coll. on Financial Intermediation and Financial Advising.
- **Content:** Crypto-asset services are not a financial service in the sense of Act No. 186/2009 Coll. on Financial Intermediation and Financial Advising, and therefore the provisions of this Act regulating financial intermediation cannot apply to them. Crypto-asset services can therefore not be distributed within the framework of financial intermediation.

### Financial Advising in the Field of Crypto-Assets

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Affected provision of the MiCA Regulation:** Art. 3 para. 1 point 24, Art. 81.
- **Relevant provisions of SR legal regulations:** § 3, § 4 letter a), b) and c) of Act No. 186/2009 Coll. on Financial Intermediation and Financial Advising, § 4 para. 1 of Act No. .../2024 on certain obligations and authorisations in the field of crypto-assets.
- **Content:** In the sense of Act No. .../2024 on certain obligations and authorisations in the field of crypto-assets, Act No. 186/2009 Coll. on Financial Intermediation and Financial Advising is not applied to the provision of advice in the field of crypto-assets. Crypto-asset services are not a financial service in the sense of Act No. 186/2009 Coll. on Financial Intermediation and Financial Advising, and therefore the provisions of this Act regulating financial advising cannot apply to them either.

### Taxation

- **Application when providing crypto-asset services based on:** Right to freedom to provide services and right of establishment.
- **Relevant provisions of SR legal regulations:** Act No. 595/2003 Coll. on Income Tax.
- **Content:** § 16 para. 1 of Act No. 595/2003 Coll. on Income Tax determines what is understood as income from sources in the territory of the Slovak Republic for a taxpayer with limited tax liability. This Act regulates the rules for income tax and the method of payment and collection of this tax.