

**Methodological Instruction  
of the Financial Market Supervision Section  
of the National Bank of Slovakia  
from 11th March 2008, No. 1/2008**

**on the activities of credit institutions, financial institutions and investment firms within  
the framework of a single European licence.**

The Financial Market Supervision Section of the National Bank of Slovakia issues the following methodological instruction in order to ensure a unified procedure of enforcing some provisions of the Act on Banks and the Securities Act related to the use of a single European licence (the right to a free provision of services):

**P A R T I.**

**Article 1**

**Purpose and Scope of Use**

(1) The aim of this Methodological Instruction is to provide:

- a. credit institutions, financial institutions and investment firms with head office registered in the Slovak Republic with detailed information on the procedures to be followed when commencing business in another Member State on the basis of SEL, and
- b. foreign credit institutions, foreign financial institutions and foreign stock brokerage firms with head office registered in other Member States with detailed information on the procedures to be followed in the territory of the Slovak Republic on the basis of SEL.

(2) This methodological instruction regulates the procedures to be followed when founding branch offices and commencing activities in a Member State other than the Home Member State, based on the right to a free provision of services within the scope of using SEL for

1. credit institutions, comprised of:

- A. A notification of establishing a branch office of a Slovak credit institution in a Member State as per Article 13, paragraphs 1 to 3 of the Act on Banks,
- B. A notification of the freedom to provide cross-border banking services of a Slovak credit institution in another Member State as per Article 13, paragraph 5 of the Act on Banks,
- C. Procedures when establishing a branch office in the Slovak Republic of a foreign credit institution based in a Member State pursuant to Article 11, paragraph 1 of the Act on Banks,
- D. Procedures when implementing the freedom to provide cross-border banking services in Slovakia by a foreign credit institution based in a Member State, pursuant to Article 11, paragraph 2 of the Act on Banks,
- E. Establishment of a representative office in Slovakia of a foreign bank based in a Member State.
- F. Establishment of a representative office in a Member State of a bank or a similar financial institution based in Slovakia,
- G. Deposit protection.

2. investment firms, including:

- A. Notification of the investment firm's intent to provide financial services, ancillary services or to perform investment activities / to perform activities in another Member State/in the territory of another Member State on the basis of the freedom to provide services without establishing a branch office as per

- Article 64 of the Securities Act,
- B. Notification of the investment firm's intent to establish a branch office in another Member State / in the territory of another Member State on the basis of the freedom to provide services as per Article 62 and Article 66 of the Securities Act,
  - C. Procedures in case of a foreign stock brokerage firm's intent to commence its operations in the Slovak Republic on the basis of the freedom to provide services without establishing a branch office pursuant to Article 65 of the Securities Act,
  - D. Procedures in the case of a foreign stock brokerage firm's intent to establish a branch office in the Slovak Republic on the basis of the freedom to provide services pursuant to Article 67 of the Securities Act,
  - E. Procedure in the case of the intent of an investment firm or a foreign stock brokerage firm to use a tied agent when providing services within the SEL framework,
  - F. Procedures in case of the intent of an investment firm or a foreign stock brokerage firm to commence activities associated with organising MTF in the territory of another Member State or the Slovak Republic as per Article 39b of the Stock Exchange Act.

## **Article 2**

### **General Provisions**

(1) In the case of credit institutions and financial institutions, SEL only applies to activities explicitly stated in Article 2 paragraphs 1 and 2 of the Act on Banks with the exception of activities stated in Article 2, paragraph 2, letters n) and o) of the Act on Banks. Other banking activities require a permission issued by the competent authorities of the Host Member State.

(2) An investment firm is entitled to provide only those investment services, ancillary services and investment activities in the Member State that are included in the investment services licence issued by the National Bank of Slovakia.

(3) This methodological instruction is categorised as an "Approval process".

## **Article 3**

### **Definitions**

For the purposes of this methodological instruction, the following terms are to be understood as explained below:

- a. a credit institution shall mean a bank or electronic money institution (Article 5, letter p) of the Act on Banks),
- b. a foreign credit institution shall mean a foreign bank or foreign electronic money institution (Article 5, letter r) of the Act on Banks),
- c. a financial institution is a legal person other than bank, which as its business activity performs as principal or major activity one of the activities specified in Article 2, paragraph 1, letter b) or, paragraph 2 of the Act on Banks, whose principal line of business is the acquisition of equity holdings as stipulated by a separate regulation (e.g. Act on Collective Investments), as well as any entity based abroad with a similar line of business (Article 6, paragraph 17 of the Act on Banks),
- d. an investment firm shall be a joint-stock company which has its registered office in the territory of the Slovak Republic and whose scope of business comprises the provision of one or more investment services to clients, or the performance of one or more investment activities on the basis of an investment services licence issued by the National Bank of Slovakia (Article 54, paragraph 1 of the Securities Act),
- e. a foreign stock brokerage firm is a legal person or a natural person having its registered office outside the territory of the Slovak Republic, which provides investment services and which has a licence to perform these activities in its home country (Article 54, paragraph 4 of the Securities Act),
- f. a branch office of a foreign stock brokerage firm is an organization unit of the foreign stock brokerage firm located in the territory of the Slovak Republic, which performs all or some investment services (Article 54, paragraph 5 of the Securities Act),
- g. Member State shall mean a Member State of the European Union or a state which is a part of the European Economic Area,

- h. Home Member State means:
  - 1. in the case of an investment firm whose registered office is in the Slovak Republic, the Slovak Republic;
  - 2. in the case of a foreign stock brokerage firm that:
    - 2a. is a natural person, the Member State in which where its head office is situated,
    - 2b. is a legal person, the Member State in which its registered office is located,
    - 2c. has, under its national law, no registered office, the Member State where in which its head office is situated,
- i. the Host Member State of an investment firm shall mean a Member State in which an investment firm has established a branch office or provides investment services, ancillary services or investment activities; the Slovak Republic is the Host Member State of a foreign stock brokerage firm based in a Member State,
- j. the competent authority of the Home Member State of an investment firm is the supervisory authority in the Member State that is the Home Member State of an investment firm,
- k. the competent authority of the Host Member State of an investment firm is the supervisory authority in the Member State that is the Host Member State of an investment firm,

## **P A R T II.**

### **CREDIT INSTITUTIONS**

#### **Article 4**

#### **Procedures to be followed when founding branch offices and commencing activities of credit institutions and foreign credit institutions in the territory of a Member State on the basis of the freedom to provide services**

#### **A. The notification of the credit institution's intent to establish a branch office in another Member State on the basis of the freedom to provide services as per Article 13, paragraphs 1 to 3 of the Act on Banks**

(1) Pursuant to Article 13, paragraph 1 of the Act on Banks, a credit institution seeking to set up a branch office in the territory of a Member State shall apply in writing to the National Bank of Slovakia for permission to set up a branch office in the territory of the Member State concerned. Requests are to be submitted to the National Bank of Slovakia separately for each Member State, in two copies (one in the Slovak language and the other in the official language of the Host State, or a language commonly used in the area of international finance). The proceedings will commence on the date of accepting the request by the National Bank of Slovakia and after having paid the fee amounting to SKK 100,000 in accordance with NBS Measure No. 11/2005 from 20th December 2005, which regulates the amount of fees for the individual types of NBS operations as amended by the NBS Measure No. 3/2006. In case of an incomplete request, the National Bank of Slovakia shall interrupt the proceedings and call upon the applicant to complete it.

(2) The credit institution shall include in its request:

- a. the name of the Member State on whose territory it intends to establish a branch office,
- b. the registered office of the branch office in the Member State (an address where Host State branch office documents may be requested and where documents can be delivered),
- c. names and surnames of persons responsible for managing the branch office; the request must be accompanied by the CVs of the branch office's leading employees with a special regard to their professional qualifications and credibility.
- d. the scheme of the branch office's organisational structure, assignment of the branch office's leading employees' competences, a general arrangement of powers of decision and representation of the branch office's leading employees (one or more representatives together),
- e. business plan that particularly includes a calculation of expected activities and a proposed strategy of its activities based on realistic economic calculations; it should contain in particular:

1. data on the volume of scheduled deals; it is necessary to state a three-year estimate of the volume of scheduled deals and the number of employees,
  2. including the branch office into the bank's internal control system; it is necessary to state the person and division responsible for the branch office's internal audit and AML, to detail the organisation of internal audit and AML and to confirm that the branch office's integration into the internal control system and AML is in accordance with the Act on Banks and the recommendations of the National Bank of Slovakia,
  3. supplementary data in case of establishing multiple operations; if the bank is planning to establish multiple operations in the host country - regarded as branch offices - it is necessary to provide more detailed data; in particular the details on the main branch office whose manager is responsible for the relationship with the host country's supervisory authority; addresses of operations/branch offices,
  4. data on the deposit protection system,
  5. data on the branch office's integration into the credit institution's risk management system,
- f. an officially certified translation of the text of the credit institution's request into the host country's official language or into a language commonly used in the area of international finance (this does not apply to the Czech Republic).

(3) If the request complies with these requirements and if the National Bank of Slovakia has no reason to question the credit institution's organizational structure and financial situation in relation to the approved activities, it shall announce its decision on granting its consent within three months upon delivery of a complete request to the supervisory authority of the respective Member State and the credit institution; simultaneously it shall inform the respective Member State's supervisory authority on the amount of own funds for the financing of a credit institution, for the purpose of calculating the required own funds of financing, data on the required own funds of financing and details on deposit protection in the Slovak Republic.

(4) In case of any doubts about the facts stated in the previous section, the National Bank of Slovakia shall announce its decision on refusing to grant consent within three months upon delivery of a complete request to the respective Member State's supervisory authority and the credit institution. The credit institution may file a remedy against such decision within a period set by law.

#### **Notification of Changes**

(5) In case of a change of particulars stated in the request as per Article 13 paragraphs 1 and 2 of the Act on Banks, the credit institution is obliged to give a notification of these changes in writing to the National Bank of Slovakia and to the respective Member State's supervisory authority at least 30 days prior to carrying out the intended changes. If the notification of changes for the respective country's supervisory authority is not made in this country's official language or a language commonly used in the area of international finance, it is necessary to accompany it with an officially certified translation into this country's official language or into a language commonly used in the area of international finance (this does not apply to the Czech Republic). In case of a change in the branch office leadership, it is essential that the notification is accompanied by a professional CV of the future branch office manager together with an abstract from the Criminal Record Register. The reporting obligation also applies to closing the branch office.

**B. The notification of a credit institution's intent to commence activities in another Member State on the basis of the freedom to provide services without establishing a branch office as per Article 13, paragraph 5 of the Act on**

## **Banks**

(1) As per Article 13, paragraph 5 of the Act on Banks, the credit institution shall notify the National Bank of Slovakia of its intent to freely provide cross-border banking services without establishing a branch office in another Member State prior to carrying out the first banking transaction. The notifications are to be submitted to the National Bank of Slovakia in two copies, separately for each Member State. The one-month period within which the National Bank of Slovakia is to pass the notification onto the respective Member State's supervisory authority, shall commence only in the case of notifications that comply with the conditions set below.

(2) A complete notification contains:

- a. a notification, as per Article 13, paragraph 5 of the Act on Banks, of the intent to carry out banking activities within the framework of the freedom to provide cross-border banking services in a particular Member State,
- b. a programme of operations containing a description of scheduled banking activities stipulated in Article 2, paragraph 1 and 2 of the Act on Banks,
- c. an officially certified translation of the text into the host country's official language or into a language commonly used in the area of international finance (this does not apply to the Czech Republic).

(3) The National Bank of Slovakia shall send notifications that meet these requirements to the respective Member State's supervisory authority within one month upon delivery of a complete notification, and it shall also inform the credit institution on this fact.

## **Notification of Changes**

(4) In case of a change to the particulars reported as per Article 13, paragraph 5 of the Act on Banks, a credit institution is obliged to give a notification of these changes to the National Bank of Slovakia and the respective Member State's supervisory authority in writing within a period of at least 30 days prior to carrying out the proposed changes. If the notification of changes for the host country's competent authority is not made in this country's official language or a language commonly used in the area of international finance, it is necessary to accompany it with an officially certified translation into this country's official language or into a language commonly used in the area of international finance (this does not apply to the Czech Republic). The reporting obligation also applies to a scheduled termination of the provision of cross-border banking services.

## **C. Procedures in case of a foreign credit institution's intent to establish a branch office in the Slovak Republic on the basis of the freedom to provide services as per Article 11, paragraph 1 of the Act on Banks**

(1) A foreign credit institution proceeds analogically, in a similar way as the credit institution in Clause A, providing that all possible specific regulations of the respective Member State's supervisory authority arising from local legal regulations are adhered to. The notification must also include information as to by what means the established branch office will ensure of its clients' deposit protection.

(2) The National Bank of Slovakia shall, within two months of receiving a statement from the supervisory authority of the respective Member State concerned that it has no reasons to question the organisational structure and financial situation of the foreign credit institution as per Article 12, paragraphs 1 and 2 of the Act on Banks, prepare to exercise supervision of the branch office of this institution and, when necessary, advise it within this time limit of the conditions according to which the scheduled activities may or must be performed in the public interest within the territory of the Slovak Republic, and will likewise advise it of the provisions of the generally binding regulations of the Slovak Republic that would apply to its operation.

(3) This notification shall also be delivered to the respective Member State's supervisory authority. Upon delivery of the above statement or an ineffectual lapse of a two month period, the branch office of a foreign bank (as per Article 11, paragraph 1 of the Act on Banks) may perform activities in the territory of the Slovak Republic.

(4) The notification, analogically as per Clause A, shall be also delivered to the National Bank of Slovakia in the form of an officially certified translation into a language commonly used in the area of international finance (this does not apply to the Czech Republic).

(5) Banking activities as per Article 11, paragraph 1 of the Act on Banks may also be performed by a foreign financial institution which is not a credit institution, providing that the conditions set by Article 11, paragraph 3 of the Act on Banks are complied with. The foreign financial institution is to provide the National Bank of Slovakia with a proof of the facts stated in Article 11, paragraph 3 of the Act on Banks by means of a written or electronic confirmation by the respective Member State's supervisory authority.

#### **Notification of Changes**

(6) In case of a change to the particulars reported analogically as per Clause A, the foreign credit institution is obliged to give a written notification of these changes to the competent authorities of the Home and Host Member States no more than one month prior to carrying them out. The notification of changes is to be accompanied by an officially certified translation into the Slovak language or into a language commonly used in the area of international finance (this does not apply to the Czech Republic). The reporting obligation also applies to closing the branch office.

#### **D. Procedures in case of a foreign credit institution's intent to commence activities in the Slovak Republic on the basis of the freedom to provide services without establishing a branch office as per Article 11, paragraph 2 of the Act on Banks**

(1) A foreign credit institution acts in a similar way as a credit institution in Clause B, providing that the potentially applicable specific directives of the respective Member State's supervisory authority are complied with. The National Bank of Slovakia shall receive a foreign credit institution's notification as per Article 11, paragraph 2 of the Act on Banks and it shall advise it of its duty to comply with laws and generally binding legal regulations that apply to the scheduled

activities. At the same time, it shall notify it of its duty to provide the National Bank of Slovakia with regular reports on its activities in the Slovak Republic upon request, as per Article 18, paragraph 1 of the Act on Banks.

(2) On the basis of submitted data, the National Bank of Slovakia usually issues a confirmation of the acceptance of the notification. This confirmation shall be delivered to the respective Member State's supervisory authority and to the foreign credit institution.

(3) The foreign credit institution's notification as per Clauses C and D shall be delivered to the National Bank of Slovakia in a language commonly used in the area of international finance or in a form of an officially certified translation into the Slovak language (this does not apply to the Czech Republic).

(4) Banking activities as per Article 11 paragraphs 1 and 2 of the Act on Banks may also be performed by a foreign financial institution, providing that the conditions set by Article 11, paragraph 3 of the Act on Banks are complied with. The foreign financial institution gives proof of the facts given in Section 3 to the National Bank of Slovakia by means of a written or electronic confirmation by the supervisory authority of the respective Member State.

(5) In case of doubts that may arise if the host country has a reason to believe that instead of a freedom to provide cross-border banking services without establishing a branch office, a branch office is being operated (for instance in case of a simultaneous existence of a representative office), supplementary data shall be provided to prove that only the performance of activities in form of the freedom to provide cross-border banking services is involved (e.g. a statement by the foreign credit institution that it will not use its representative office to perform banking activities in connection with the freedom to provide cross-border banking services).

#### **Notifications of Changes**

(6) In case of a change to the particulars reported as per Clauses C and D, a foreign credit institution or a foreign financial institution are obliged to immediately give a notification of these changes to the National Bank of Slovakia either in writing or electronically. (3) The notification of changes must be delivered in a language commonly used in the area of international finance or in a form of an officially certified translation into the Slovak language (this does not apply to the Czech Republic). The reporting obligation also applies to a scheduled termination of the provision of free cross-border banking services.

#### **E. Establishment of a representative office in Slovakia of a foreign bank based in a Member State.**

(1) The establishment of a representative office of a foreign bank or a similar foreign financial institution in the territory of the Slovak Republic is regulated by Article 22 of the Act on Banks. Since pursuant to Article 11, paragraph 7 of the Act on Banks, the regulations of Article 22 of the Act on Banks do not apply to foreign banks based in Member States, the foreign bank shall express its interest in establishing a representative office in the territory of the Slovak Republic by

sending a notification to the National Bank of Slovakia.

(2) Section 1 requires that the notification include:

- a. the trade name of the bank or a similar foreign financial institution,
- b. registered office (address) of the representative office of a foreign bank or a similar financial institution in the Slovak Republic,
- c. telephone and fax connection of the representative office, if known,
- d. name and surname of the representative office head and its permanent address,
- e. date of the commencement of the representative office's activities.
- f. assessment of the foreign bank issued by the supervisory authority of the country of its residence,
- g. a statement by the foreign bank that it will not use its representative office to perform banking activities related to the freedom to provide cross-border banking activities without establishing a branch office.

(3) The foreign representative office is obliged to notify the National Bank of Slovakia of any changes that may occur in the particulars related to the respective representative office within 30 days, either in writing or electronically. On the basis of the submitted data, the National Bank of Slovakia shall issue a confirmation of this notification which will state that the representative office is not entitled to perform banking activities or carry on any other business.

#### **F. Establishment of a representative office in a Member State of a bank or a similar financial institution based in Slovakia,**

(1) A Slovak-based bank shall express its interest in establishing its representative office in the territory of a Member State by sending a notification to the respective Member State's supervisory authority.

(2) Section 1 requires that the notification must include:

- a. the trade name of the bank or a similar foreign financial institution,
- b. registered office (address) of the representative office of a bank or a similar financial institution in the host country,
- c. telephone and fax connection of the representative office, if known,
- d. name and surname of the representative office head and its permanent address,
- e. date of the commencement of the representative office's activities.
- f. bank evaluation issued by the National Bank of Slovakia,
- g. a statement by the bank that it will not use its representative office to perform banking activities related to the freedom to provide cross-border banking activities without establishing a branch office.

#### **G. Deposit protection**

(1) In compliance with the Slovak legal regulations, a branch office of a foreign bank may decide upon the deposit protection system in which it will be insured (home or host system of deposit protection). However, it may use the home deposit protection system only if the clients' deposits are protected in it at least within the scope stipulated by the host deposit protection system. If there are any discrepancies within the range of both systems' data protection (in particular as to the amount and scope of deposit protection, in the case of Slovakia EUR 20,000.00 and 90% of deposits, valid since 1st May 2004), the branch office of a foreign bank may choose to set up an additional insurance in a deposit protection system whose parameters will be more favourable.



(2) In the case of branch offices of foreign banks entering the Slovak banking market, the National Bank of Slovakia shall, within the scope of SEL, require that the notification include information on deposit insurance. The branch offices themselves will be obliged to provide detailed information on the deposit protection system in which the bank takes part together with its branch offices (including the scope and amount of deposit protection) to the present and future depositors, as per the Directive 94/19/ES. This information must be provided in a comprehensible manner.

### **P A R T III.**

#### **INVESTMENT FIRMS**

##### **Article 5**

##### **Procedures to be followed when founding branch offices and commencing an investment firm's operation in the territory of a Member State on the basis of the freedom to provide services**

##### **A. Procedures in case of an investment firm's intent to commence operation in a Member State on the basis of the freedom to provide services without establishing a branch office as per Article 64 of the Securities Act,**

(1) An investment firm that has decided to provide investment services, ancillary services or investment activities in another Member State on the basis of the freedom to provide services without establishing a branch, shall prior to providing any investment service or activity for the first time give the National Bank of Slovakia written notification of this intention.

(2) An investment firm shall include the following in its notification as per Paragraph 1:

- a. name and registered office of the investment firm,
- b. Member State on whose territory it has decided to operate,
- c. programme of operations stating in particular the nature and range of investment services, investment activities and ancillary services which it intends to provide,
- d. information on whether it intends to use tied agents in the territory of another Member State where it intends to provide services, together with data on the tied agents' identity, if they are known to it at the time of sending this notification.

(3) All required information shall be given in a language commonly used in the area of international finance and accepted by the Member State's competent authority.

(4) If the notification as per Paragraph 1 contains all required details and if the National Bank of Slovakia has no reason to question the investment firm's intent to provide investment services and ancillary services or to perform investment activities in another Member State, it shall send this notification to the Competent authority of the Host Member State within a period of no more than 30 days upon its receipt.

(5) The notification as per Paragraph 1 is to be sent in a standard form according to a template given in Annex No. 1.

(6) The investment firm is entitled to commence the provision of investment services, ancillary services or investment

activities in the Host Member State after the competent authority of the Host Member State has received the notification as per Paragraph 1.

(7) The National Bank of Slovakia shall notify the investment firm of the fact that the notification as per Paragraph 1 has been sent to the competent authority of the Host Member State, together with the sending date.

(8) The competent authority of the Host Member State shall confirm the receipt of the notification to the National Bank of Slovakia in a timely manner<sup>1</sup>.

### **Notification of Changes**

(9) The investment firm is obliged to notify the National Bank of Slovakia of each change of data given in the notification as per Paragraph 1 within a period of 30 days prior to carrying out the respective change. The National Bank of Slovakia shall subsequently and immediately inform the competent authority of the Host Member State. The reporting obligation also applies to a scheduled termination of the provision of services.

### **B. The notification of an investment firm's intent to establish a branch office in another Member State on the basis of the freedom to provide services as per Article 62 and Article 66 of the Securities Act**

(1) An investment firm having decided to establish a branch office in another country is obliged to announce this intent to the National Bank of Slovakia.

(2) The investment firm shall include in the notification as per Paragraph 1:

- a. the name of the state in whose territory it intends to establish a branch office,
- b. an expected address of the branch office and the address where it is possible to request documents and where documents can be sent, if this address is different from the branch office address,
- c. names and surnames of the branch office manager and their deputy; the request must be accompanied by the CVs of the branch office's leading employees with special regard to their professional qualifications and credibility,
- d. information on the conditions of client protection (data related to the compensation scheme of which the investment firm is a part),
- e. a calculation of scheduled activities (investment services, ancillary services and investment activities) as per the Securities Act, as well as its proposed strategy of activities based on realistic economic calculations,
- f. a programme of the branch office's operations that includes especially the following:

1. corporate strategy - a high level strategy, explaining how the branch office will contribute to the firm's/group's strategy and what the main functions of the branch office will be,

2. commercial strategy - a description of the type of customers or counterparties the branch office will be dealing with and how the firm will obtain and deal with those clients,

3. organisational structure scheme, which shall contain

3a. the manner of reporting the requested data from the viewpoint of functionality as well as law,

3b. information on how the branch office organizationally relates to the company structure within the group framework,

- 3c. how the branch office will carry out its reporting duties to the head office,
- 3d. detailed information on persons holding key posts, persons responsible for everyday transactions carried out by the branch office, and persons responsible for compliance and handling complaints,
- 3e. d) assignment of the branch office's leading employees' competences, a general arrangement of powers of decision and representation of the branch office's leading employees (a model of one or more representatives together),
- 3f. detailed information on possible measures related to entrusting the performance of activities to other persons in relation to the transactions carried out by the branch office,
- 4. data on tied agents - confirmation whether the branch office is planning to use tied agents and, if the tied agents' identity is known already at the time of sending the notification, also the information on their identity,
- 5. data on the control system:
  - 5a. client property protection measures,
  - 5b. measures related to the branch office's duties, performance of which is supervised by the Competent authority of the Host Member State,
  - 5c. the internal Unified Code of Conduct that includes the control over the trading in personal accounts,
  - 5d. measures against legalisation of income from criminal activities,
  - 5e. tracking and checking some critical measures in the area of entrusting activities in relation to regulated activities performed by the branch office,
  - 5f. data on integrating the branch office into the investment firm's risk management system,
- 6. data on carrying out an internal audit - information related to persons and the department responsible for the branch office's internal audit and AML, a detailed description of the internal audit and AML organization as well as a confirmation of the fact that integrating the branch office into the internal control system and AML complies with the Act on Securities and with the recommendations of the National Bank of Slovakia.
- 7. a financial forecast - a forecast of profit and loss and cash flow for a period of 12 months,
- 8. data on the volume of scheduled deals; it is necessary to state a three-year estimation of the volume of scheduled deals and number of employees,
- 9. supplementary data required in the case of an intent to establish multiple branch offices.

(3) Data as per paragraph 2, letters a) to f) are to be sent in a standardized form according to the template given in Annex No. 2. It is not possible to send the information and data included in the branch office's programme of operations exclusively in a standardized form according to the template given in Annex 2 due to their voluminosity, instead they are to be given individually, taking into account the particularities of the individual branch office's business activities.

(4) An investment firm submits the notification as per Paragraph 1 to the National Bank of Slovakia made in the Slovak language and also in the language of the Host Member State on whose territory it is planning to establish a branch office, or in a language that the National Bank of Slovakia and the Competent authority of the Host Member State mutually accept. An officially certified translation is required.

(5) If the National Bank of Slovakia has no reason to doubt the data information stated in the notification under

Paragraph 1 in regard to the organizational structure or the financial position of the investment firm and to the licensed activities of the investment firm, it shall hand/send the notification as per Paragraph 1 to the Competent authority of the Host Member State together with data on the investment firm's amount of own funds in order to calculate the capital adequacy ratio, and information on the conditions of client protection.

(6) The National Bank of Slovakia shall assess the notification as per Paragraph 1 within a period of no more than three months. Simultaneously, at this time or later, the National Bank of Slovakia may send a request for assistance to the Competent authority of the Host Member State as per the Protocol on the supervision of branch offices<sup>2)</sup>, either in the form of a "Standing request for assistance" or a so-called "Common oversight request".

(7) The National Bank of Slovakia informs the investment firm on having handed in the notification. The Competent authority of the Host Member State shall confirm the receipt of the notification to the National Bank of Slovakia in a timely manner.

(8) An investment firm may establish a branch and commence the provision of investment services and activities in a host Member State on receipt of a notification from the competent authority of the host Member State, or failing such communication at the latest after two months from the date that the notification referred to in paragraph (1) was received by the competent authority of the Host Member State.

(9) The supervision of the branch of a securities dealer for the compliance of its activities with the obligations laid down in Articles 73b to 73m and Articles 73o to 73t, Articles 73v, 75 (3) and (4), Articles 78, 78a and 78b of the Securities Act, shall be exercised by the competent authority of the Host Member State within the scope stipulated by the laws of the host Member State. The investment firm shall provide the competent authority of the host Member State with the access required to exercise supervision over the branch arrangements and shall make any changes in the branch that the competent authority requires for the purpose of enforcing the obligations laid down in Articles 73b to 73m, Articles 73o to 73t, Articles 73v, 75(3) and (4), 78, 78a and 78b and the legal regulations of the host Member State adopted pursuant thereto with respect to the investment services, ancillary services and investment activities provided by the branch within its territory.

#### **Notification of Changes**

(10) The investment firm is obliged to notify the National Bank of Slovakia of any changes of data given in the notification as per Paragraph 1 within a period of no less than 30 days prior to carrying out the respective change. The National Bank of Slovakia shall subsequently and immediately inform the competent authority of the Host Member State. The reporting obligation also applies to closing the branch office.

#### **C. Procedures in case of a foreign stock brokerage firm's intent to commence operations in the Slovak Republic on the basis of the freedom to provide services without establishing a branch as per Article 65 of the Securities**

## **Act**

(1) A foreign stock brokerage firm entitled to provide investment services on grounds of a licence issued by the competent authority of their Home Member State can provide investment services, ancillary services and investment activities in the territory of the Slovak Republic on the basis of the freedom to provide services, following a written or electronic notification by the competent authority of the foreign stock brokerage firm's Home State addressed to the National Bank of Slovakia prior to the first provision of an investment service or the performance of investment activities.

(2) The investment firm shall include the following in the notification as per Paragraph 1 which it sends to the Home Member State's competent authority:

- a. name and registered office of the foreign stock brokerage firm,
- b. name of the Member State on whose territory it has decided to operate - Slovak Republic in this case,
- c. programme of operations containing especially the nature and scope of investment services, investment activities and ancillary services that the foreign stock brokerage firm has decided to provide,
- d. information on whether it plans to use tied agents on the territory of the Slovak Republic, together with data on their identity, if known at the time of sending the notification.

(3) All required information shall be given in a language commonly used in the area of international finance and accepted by the National Bank of Slovakia.

(4) The notification as per Paragraph 1 is to be sent in a standard form according to a template given in Annex No. 1.

(5) The National Bank of Slovakia shall inform the foreign stock brokerage firm of delivering the notification as per Paragraph 1 and, if necessary, it shall also notify it of the provisions of the Slovak generally valid regulations applicable to their activities. The National Bank of Slovakia shall confirm to this authority, in a timely manner, that it has received the notification as per Paragraph 1 from the competent authority of the foreign stock brokerage firm's Home Member State.

(6) The foreign stock brokerage firm is entitled to commence the provision of investment services, ancillary services or investment activities in the territory of the Slovak Republic on the basis of the freedom to provide services from the date of sending the notification as per Paragraph 1 by the competent authority of the foreign security dealer's Home Member State to the National Bank of Slovakia. The competent authority of the foreign stock brokerage firm's Home Member State informs the foreign stock brokerage firm on sending this notification.

## **Notification of Changes**

(7) The foreign stock brokerage firm is obliged to notify the competent authority of its Home Member State of any changes of data given in the notification as per Paragraph 1 as soon as possible prior to carrying out a change. This authority subsequently sends the notification on changes to the National Bank of Slovakia<sup>3)</sup>. The reporting obligation also

applies to a scheduled termination of the provision of services.

**D. Procedures in case of a foreign stock brokerage firm's intent to establish a branch office in the Slovak Republic on the basis of the freedom to provide services as per Article 67 of the Securities Act,**

(1) A foreign stock brokerage firm entitled to provide investment services on grounds of a licence issued by the competent authority of their Home Member State may establish a branch office and commence the provision of investment services, ancillary services and investment activities in the territory of the Slovak Republic on grounds of an affirmative written or electronic statement of the competent authority of its Home Member State delivered to the National Bank of Slovakia, or following an ineffectual lapse of a two months' period following the delivery of such statement.

(2) The foreign stock brokerage firm shall send the notification made according to the template given in Annex No. 1 to the competent authority of its Home Member State which shall subsequently send this notification to the National Bank of Slovakia<sup>4)</sup>.

(3) The competent authority of the foreign stock brokerage firm's Home Member State shall assess and hand in the notification as per Paragraph 2 within three months. Simultaneously, this authority can at this time or later send a Standing Request for Assistance to the National Bank of Slovakia as per the Protocol on the supervision of branch offices, where it will give details on a scheduled approach to common supervision carried out by this authority and the National Bank of Slovakia.

(4) The National Bank of Slovakia shall confirm the receipt of the notification as per Paragraph 2 to the competent authority of the foreign stock brokerage firm's Home Member State in a timely manner.

(5) When performing activities on the territory of the Slovak Republic, the branch office of a foreign stock brokerage firm as per Paragraph 1 is subject to the provisions of Article 73b to 73m and Article 73o to 73t, Article 73v, 75, paragraph 3 and 4, Article 78, 78a and 78b of the Securities Act. The National Bank of Slovakia shall supervise the compliance of the investment firm's branch office with these provisions. The National Bank of Slovakia shall prepare itself for the performance of supervision over a foreign stock brokerage firm's branch office within 60 days upon delivery of the notification and, if needed, advise it of the provisions of generally binding legal regulations that apply to the branch office's activities.

(6) If the National Bank of Slovakia has received a request for cooperation in the form of a Standing Request for Assistance from the competent authority of the foreign stock brokerage firm's Home Member State, it should take the measures necessary for meeting its obligation to cooperate as soon as possible and not later than two months upon receipt of this request. If the National Bank of Slovakia has a reason to refuse to cooperate with the above competent authority, it shall state these reasons, which are only acceptable in certain cases, and both parties shall make all the necessary effort to come to a mutually acceptable solution. The National Bank of Slovakia may also be requested to

cooperate by the competent authority of the Home Member State of an investment firm in the form of being sent a so-called "Common oversight request".

### **Notification of Changes**

(7) A foreign stock brokerage firm, who establishes a branch office in the territory of the Slovak Republic and performs activities there, shall report any changes of data given in the notification as per Paragraph 2 to the competent authority of its Home Member State within one month prior to carrying out the change. The above authority subsequently sends the notification of changes to the National Bank of Slovakia. The reporting obligation also applies to closing the branch office.

### **E. Procedures in case of an intent of an investment firm or a foreign stock brokerage firm to use a tied agent when providing services within the SEL framework**

(1) An investment firm which is planning to use tied agents as part of its business on the basis of the freedom to provide services, either by means of a branch office or without establishing a branch office in another Member State, shall notify the National Bank of Slovakia of its intent in writing. A foreign stock brokerage firm which is planning to use tied agents as part of its business on the basis of the freedom to provide services, either by means of a branch office or without establishing a branch office in the territory of the Slovak Republic, is obliged to notify of this fact the competent authority of its Home Member State.

(2) For the purposes of the Securities Act (MiFID), a tied agent is regarded as a branch office, provided it has a registered office or a permanent address

- a. in a Member State other than Slovak Republic, if the tied agent acts on behalf of the investment firm, or
- b. in a Member State other than the state where the foreign stock brokerage firm on whose behalf the tied agent acts has been granted a licence for activities.

(3) If an investment firm is planning to use a tied agent with a permanent address or registered office in a Member State other than the Slovak Republic, it is obliged to notify of this fact the National Bank of Slovakia in the form of:

- a. a notification of its intent to establish a branch office as per Article 5, part III, Letter B of this methodological instruction or
- b. a notification of changes to the notification of the intent to establish a branch office as per Article 5, part III, Letter B of this methodological instruction, if the investment firm has already established a branch office (or a tied agent) in this state.

(4) If a foreign stock brokerage firm is planning to use a tied agent with registered office in a Member State other than the state which issued a licence for this investment firm to perform activities (i.e. in this case it concerns a tied agent based in the Slovak Republic), it is obliged to report this fact to the competent authority of its Home Member State in the form of:

- a. a notification of the intent to establish a branch office as per Article 5, part III, Letter D of this

methodological instruction or

- b. a notification of changes to the notification of its intent to establish a branch office as per Article 5, part III, Letter D of this methodological instruction, if the investment firm has already established a branch office (or a tied agent) in the Slovak Republic.

(5) A tied agent can commence its operations in another state / in the Slovak Republic upon the lapse of a one-month period following the submission of the notification as per Paragraph 1.

(6) An investment firm or a foreign stock brokerage firm must ensure that the tied agent whom it intends to use in its activities is entered in the register of the competent authority of the state where the tied agent has its registered office, prior to commencing its operations. If the given state does not allow using tied agents within the framework of the investment firm's (foreign stock brokerage firm's) activities, they must ensure that the tied agent is entered in the register of the National Bank of Slovakia (in the register of the competent authority of the foreign stock brokerage firm's Home Member State).

(7) It is possible to enter a person who meets registering requirements as per the Securities Act in the register of the National Bank of Slovakia.

(8) The investment firm or foreign stock brokerage firm for whom the tied agent is to perform activities shall submit, either in writing or electronically, all entry proposals, changes of entries or cancellation of entries in a register of tied agents.

(9) An investment firm which is planning to perform activities in another Member State on the basis of the freedom to provide services by means of tied agents may:

- a. file an application for the registration of a person with permanent residence or registered office in the Slovak Republic, or a branch office of a foreign legal person, in the register of tied agents kept by the National Bank of Slovakia and use such a tied agent also in another Member State on the basis of a notification to the National Bank of Slovakia,
- b. file an application for the registration of a person with permanent residence or registered office in a Member State where no such or similar register is kept (using the national option not to accept the institute of tied agents) in the tied agents register of the National Bank of Slovakia and use such tied agent also in another Member State on the basis of a notification to the National Bank of Slovakia,
- c. file an application for the registration of a person with permanent residence or registered office in another Member State in the register of the competent authority of this Member State and on the basis of a notification to the National Bank of Slovakia use such a tied agent in another Member State.

(10) A foreign stock brokerage firm which is planning to perform activities in the Slovak Republic on the basis of the freedom to provide services by means of tied agents may:

- a. file an application for the registration of a person with permanent residence or registered office in the Slovak Republic or a branch office of a foreign legal person in the register of tied agents kept by the National Bank of Slovakia and use such tied agent also in the Slovak Republic on the basis of a notification to the competent authority of its Home Member State,
- b. file an application for the registration of a person with permanent residence or registered office in a Member State where no such or similar register is kept (using the national choice not to accept the institute of tied agents) into the tied agents register of the competent authority of its Home Member State and use such a tied agent in the Slovak Republic on the basis of a notification to the competent authority of its Home Member State,
- c. file an application for the registration of a person with permanent residence or registered office in



another Member State in the register of the competent authority of this Member State and use such a tied agent in the Slovak Republic on the basis of a notification to the competent authority of its Home Member State.

**F. Procedures in case of an intent of an investment firm or a foreign stock brokerage firm to commence activities associated with organising MTF in the territory of another Member State or the Slovak Republic as per Article 39b of the Stock Exchange Act.**

(1) In case of an intent to commence activities related to organizing MTF in the territory of another Member State or the Slovak Republic as per Article 39b of the Stock Exchange Act, an investment firm or a foreign stock brokerage firm shall proceed in compliance with the provisions set by Article 5, Part III, letters A or C of this methodological instruction.

**P A R T IV.**

**Article 6**

**Common and Final Provisions**

(1) This methodological instruction also assumes procedures related to the system of single/unified European licences set in MiFID, contained within

- a. the CESR recommendations to supervisory authorities for MiFID implementation - "The Passport Under MiFID Recommendations for the implementation of the Directive 2004/39/EC and Statement on practical arrangements regarding the late transposition of MiFID" (Ref: CESR/07-337b),
- b. the Protocol issued by CESR, related to notifications of cross-border cooperation of investment firms "Protocol on MiFID Passport Notifications" (Ref: CESR/07-317b),
- c. the protocol issued by CESR, related to the supervision over branch offices as per the MiFID directive "Protocol on the supervision of branch offices under MiFID" (ref: CESR/07-672).

(2) Legal regulations related to the subject of this instruction are to be found on the website of the National Bank of Slovakia, [www.nbs.sk](http://www.nbs.sk). CESR documents used in this methodological instruction are published on the website [www.cesr.eu](http://www.cesr.eu) in the part "Documents" or "Expert Groups - MiFID Level 3".

(3) This methodological instruction supersedes the Methodological instruction of the Financial Market Supervision Section of the National Bank of Slovakia from 26th June No.4/2006 on the pursuit of business by credit institutions, financial institutions and investment firms under the system of a single licence (European passport system).

**USED ABBREVIATIONS:**

Act on Banks - Act No. 483/2001 Coll. on banks and on changes and amendments to certain other laws, as amended,

Securities Act - Act No. 566/2001 Z. z. on securities and investment services and on changes and amendments to certain laws (Act on Securities) as amended,

ZKI - Act No. 594/2003 Coll. on collective investments and on amendments to certain other laws, as amended,

Stock Exchange Act -Act No. 429/2002 Coll. on stock exchange, as amended,

MiFID - European Parliament and Council Directive 2004/39/EC on markets with financial instruments, on changing and amending the Council directives 85/611/EEC and 93/6/EEC and the European Parliament and Council Directive 2000/12/EC, and on cancelling the Council Directive 93/22/EEC,

Treaty on EC - Treaty on Establishing the European Community in its Amsterdam version,

SR - Slovak Republic,

SEL - single European licence

AML - limiting legalisation of income from criminal activities,

MTF - multilateral trading facilities,

CESR - Committee of European Securities Regulators.

**Ing. Martin Barto, CSc.**

**Deputy Governor**

**Note:**

1) Part II/2.1.2 of the document "Protocol on MiFID Passport Notifications"; direct link:

<http://www.cesr.eu/index.php?docid=4604>

2) Protocol on the supervision of branches under MiFID; direct link: <http://www.cesr.eu/index.php?docid=4817>

3) Part II/2.3 of the document "Protocol on MiFID Passport Notifications"; direct link:

<http://www.cesr.eu/index.php?docid=4604>

4) Part II/2.2.2 of the document "Protocol on MiFID Passport Notifications"; direct link:

<http://www.cesr.eu/index.php?docid=4604>

Annex No.1 - Standardized form of a notification of cross-border activities of an investment firm and a foreign stock brokerage firm without establishing a branch

**STANDARD NOTIFICATION FORM FOR CROSS BORDER SERVICES**

Direct line:

Local fax:

Email:

[Date]

Our Ref:

Dear,

Notification in accordance with Article 31 of the Markets in Financial Instruments Directive (2004/39/EC)

In accordance with Article 31.3 of the Markets in Financial Instruments Directive (2004/39/EC), I wish to notify you that [Name of firm], an investment firm authorised by [Competent authority of the Home Member State], intends to carry out the investment services and activities listed in the attached schedule for the first time under the freedom to provide services.

[In carrying out the services and activities the firm intends to use tied agents] 1. [Enclosed is a separate list with the identity of the tied agents the firm intends to use] 2.

If you have any queries, please do not hesitate to contact me.

Yours sincerely,

[Signatory details]

1 if applicable

2 if this information is available

**SCHEDULE TO NOTIFICATION DATED [Date of letter] PURSUANT TO Article 31 OF THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE**

Type of notification: [e.g. first time / additional services / address change]

Notification reference: [Home Member State ref]

Member State in which firm [Host Member State] intends to operate:

Investment firm: [Name of firm]



Annex No.2 - Standardized form of a notification of cross-border activities of an investment firm and a foreign stock brokerage firm by means of a branch

## STANDARD NOTIFICATION FORM FOR BRANCH OFFICE ESTABLISHMENT

Direct line:

Local fax:

Email:

[Date]

Our Ref:

Dear,

Notification in accordance with Article 32 of the Markets in Financial Instruments Directive (2004/39/EC)

In accordance with Article 32.3 of the Markets in Financial Instruments Directive, I am writing to notify you that [Name of firm], an investment firm authorised by the [Competent authority of the Home Member State], intends to [establish a branch office] [use a tied agent assimilated to a branch office and located]<sup>1</sup> in [Host Member State] to carry out the investment services and activities listed in the attached schedule.

The branch office manager(s) will be [Name(s)] whose CV(s) is(are) attached and there will be a total of [X] employees at the branch office. A staff organisational chart is attached together with a summary programme of operations. The branch office address is:

XXXXX

XXXXX

XXXXX

Tel:

Fax:

Email:

[Name of firm] is a participant in the [Home Member State accredited compensation scheme], which provides cover for eligible investors as required by the [Home Member State legislation] in respect of investment services and activities carried on by the firm from an establishment in [Home Member State] and through its branch offices in the European Economic Area.

If you have any queries, please do not hesitate to contact me.



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## PROGRAMME OF OPERATIONS

(This summary should be completed in English or another mutually acceptable language.)

Response	Response
<p>1. Corporate strategy</p> <p><i>a) How will the branch office contribute to the strategy of the firm/group?</i></p> <p><i>b) What will the main functions of the branch office be?</i></p>	
<p>2. Commercial Strategy</p> <p><i>a) Describe the types of customers/counterparties the branch office will be dealing with</i></p> <p><i>b) Describe how the firm will obtain and deal with these clients</i></p>	

### 3. Organisational structure

a) *Briefly describe how the branch office fits into the corporate structure of the firm/group? (This may be facilitated by attaching an organisational chart)*

b) *Set out the organisational structure of the branch office, showing both functional and legal reporting lines*

c) *Which individual will be responsible for the branch office operations on a day to day basis?*

d) *Which individual will be responsible for compliance at the branch office?*

e) *Which individual will be responsible for dealing with complaints in relation to the branch office?*

f) *How will the branch office report to the head office?*

g) *Detail any critical outsourcing arrangements*

### 4. Tied Agents

a) *Will the branch office use tied agents?*

b) *If the information is available, what is the identity of the tied agents?*



## 5. Systems & Controls

*Provide a brief summary of arrangements for:*

*a) safeguarding client money and assets*

*b) compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to Art 32(7) and record keeping under Art 13(9)*

*c) code of Conduct, including personal account dealing*

*d) anti-money laundering*

*e) monitoring and control of critical outsourcing arrangements (if applicable)*

## 6. Auditor details

*a) Details of the audit arrangements of the branch office (including where applicable details of the external auditor)*

## 7. Financial forecast

*a) Attach a forecast statement for profit and loss and cash flow, both over a twelve month period*

