

14
DECREE
of Národná banka Slovenska
of 15 November 2011

**laying down certain details concerning the authorisation to perform activities and
business of payment institutions and electronic money institutions**

In accordance with Article 96(1)(a), (b), (e), (f) and (i) of Act No 492/2009 Coll. on payment services and on amendments to certain laws, as amended by Act No 394/2011 Coll. (hereinafter “the Act”), Národná banka Slovenska stipulates as follows:

Article 1

(1) Compliance with the requirement referred to in Article 64(2)(a) and (b) of the Act shall be demonstrated by presenting an extract from the Business Register of the applicant for the authorisation to perform payment services which shall not be older than three months as at the day of filing the application.

(2) Compliance with the requirement referred to in Article 64(2)(c) of the Act shall be demonstrated by presenting documents on clear, trustworthy and legal origin of cash deposits in the equity capital of the applicant for the authorisation to perform payment services, and documents on the origin of other funds of the applicant for the authorisation to perform payment services and his shareholders and partners, namely in the case of a shareholder or a partner which is

(a) a natural person – private individual

1. by an overview of capital and financial situation of the natural person;
2. by an income tax return or by a document proving the annual settlement of advances for the tax on income from dependent activities¹⁾ for the past three tax periods; where a natural person started receiving income from dependent activities less than three years before filing the application for the authorisation to perform payment services, a tax return or a document proving the annual settlement of advances only for the period beginning from the day when such income commenced, shall be submitted, and
3. by information on the origin of cash deposits in the equity capital of the applicant for the authorisation to perform payment services;

(b) a natural person running a business

1. by an extract from the Business Register or the Trade Register or other register based on which the natural person carries out its business, which shall not be older than three months as at the day of filing the application;
2. by an overview of assets and financial situation of the natural person running a business;
3. by annual financial statements for the past three accounting periods and by income tax returns¹⁾ for the past three tax periods; where a natural person running a business started receiving income from dependent activities less than three years before filing the application for the authorisation to perform payment services, the annual financial statements and the tax return only for the period beginning from the day when such income commenced, shall be submitted, and
4. by information on the origin of cash deposits in the equity capital of the applicant for the authorisation to perform payment services;

(c) legal entity

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

1. by an extract from the Business Register which shall not be older than three months; where the legal entity has a registered seat abroad by any other document proving the establishment and existence of the respective legal entity issued by a competent authority, which shall not be older than three months;
2. by an incorporation deed or foundation charter or partnership contract²⁾ establishing the legal entity;
3. by an auditors' report including audited financial statements and annual report for the past three accounting periods, submitted to the statutory body of the applicant for the authorisation to perform payment services, where the legal entity is subject to the obligation of the financial statements verification by the auditor; or by the financial statements for the past three accounting periods, where the legal entity is not subject to the obligation of the financial statements verification by the auditor; where the legal entity is a part of a consolidated group, also including an auditors' report together with a certified copy of the consolidated financial statements for the past three accounting periods; where the legal entity commenced their business activities less than three years before filing the application for the authorisation to perform payment services the financial statements for only the period from the beginning of the business activities, shall be submitted.
4. by information on the origin of cash deposits in the equity capital of the applicant for the authorisation to perform payment services.

(3) Compliance with the requirement referred to in Article 64(2)(d) of the Act shall be demonstrated by presenting

- (a) the documents referred to in paragraph (2) by individuals or entities having a qualified participation in the payment institution;
- (b) a graphically depicted structure of the group with close links to which the shareholder or partner belongs;
- (c) a statement by the applicant for the authorisation to perform payment services that legal regulations governing the close links issue in the country in which the group has close links do not prevent the exercise of supervision where the shareholder or the partner is a foreigner³⁾ or a legal entity with a registered office abroad.

(4) Compliance with the requirement referred to in Article 64(2)(e) of the Act shall be demonstrated by presenting

- (a) a list of persons proposed as members of the statutory body, general proxy, members of the Supervisory Board, senior employees falling within the direct authority of the statutory body, and for the head of internal control department of the applicant for the authorisation to perform payment services;
- (b) professional CVs of persons referred to under (a) with an overview of completed education and language skills, including certified copies of documents concerning completion of required education, and an overview of professional experience and participation in trainings and internships;
- (c) a statement from the Criminal Register of persons referred to under (a) which shall not be older than three months; where a foreigner is concerned³⁾ a similar certificate of integrity issued by a competent authority of the state of his habitual residence, which shall not be older than three months;
- (d) a list of legal entities in which persons proposed as members of the statutory body, general proxy, members of the Supervisory Board, senior employees falling within the direct authority of the statutory body, and for the head of internal control department hold a share in the equity capital or voting rights of at least 5%, or in which they act as members of the statutory body, supervisory body or management, indicating their business name, legal form, identification number, registered office and an overview of the ownership relations within these legal entities, as well as the amount

²⁾ Articles 105 to 220a of Act No 513/1991 Coll. Commercial Code, as amended.

³⁾ Article 1(2) of Act No 48/2002 Coll. on the Stay of Foreigners and on amendments to certain laws, as amended.

and composition of the equity capital and the shares in the equity capital or voting rights expressed in percentages;

(e) a statement by persons referred to under (a) that all data indicated and documents submitted by them are complete, correct, true, genuine and up-to-date, including all certified copies of the documents;

f) a written statement by persons referred to under (a) proving compliance with the requirements pursuant to Article 2(31) of the Act.

(5) Compliance with the requirement referred to in Article 64(2)(f) to (h) of the Act shall be demonstrated by presenting documents referred to under paragraph 3(b) and c).

(6) Compliance with the requirement referred to in Article 64(2)(i) of the Act shall be demonstrated by presenting draft articles of association of the applicant for the authorisation to perform payment services.

(7) Compliance with the requirement referred to in Article 64(2)(j) and (m) of the Act shall be demonstrated by presenting

(a) a structured analysis of each separate type of provided payment service with regard to the required technical and software systems, processes, operating procedures and other resources which are necessary for proper provision of payment services;

(b) a description of information system, including its technical and software support and a detailed description, by means of which the applicant for the authorisation to perform payment services will perform all activities and manage all data and information relating to the provision of payment services and directly execute payment services; this description shall include detailed information on

1. all databases of the information system;
2. data structure and dataflow and their integrity, confidentiality, credibility, irrevocability, and verifiability;
3. the flows of funds of payment service users and their protection;
4. ensuring continuity of provided payment services and on back-up and restoration of the information system.

(8) Compliance with the requirement referred to in Article 64(2)(k) of the Act shall be demonstrated by presenting

(a) an incorporation deed, foundation charter or partnership contract²⁾ of the applicant for the authorisation to perform payment services;

(b) draft articles of association of the applicant for the authorisation to perform payment services, or

(c) any other document credibly proving compliance with the requirement.

(9) Compliance with the requirement referred to in Article 64(2)(l) of the Act shall be demonstrated by presenting

(a) a description of risks to which the applicant for the authorisation to perform payment services and the information systems used by him are exposed and the method of mitigating individual types of risk;

(b) internal regulations governing the provision of payment services, risk management system and activities of the internal control department, including the regulation concerning the protection of the applicant for the authorisation to perform payment services against money laundering⁴⁾.

⁴⁾ Act No 297/2008 Coll. on the Prevention of Legalisation of Proceeds of Criminal Activity and Terrorist Financing and on amendment to certain laws, as amended.

(10) Compliance with the requirement referred to in Article 64(2)(n) of the Act shall be demonstrated by presenting a proposed wording of the general business conditions of the applicant for the authorisation to perform payment services.

(11) Compliance with the requirement referred to in Article 64(2)(o) of the Act shall be demonstrated by presenting documents credibly proving solvency of shareholders or partners of the applicant for the authorisation to perform payment services and their ability to bridge potential adverse financial situation of the applicant, especially the documents referred to under paragraphs (2) and (3).

(12) Compliance with the requirement referred to in Article 64(2)(p) of the Act shall be demonstrated by presenting

(a) approved security policy for the area of information systems as a whole, including the part which is operated by another provider of payment services;

(b) a project of funds settlement between the payment services user, payment institution and other providers of payment services;

(c) contracts between the applicant for the authorisation to perform payment services and other providers of payment services concerning their cooperation in the area of providing payment services;

(d) a description of measures taken to treat funds pursuant to Article 77(7) and (8) of the Act which have not been transferred to the recipient or any other payment service provider by the end of the working day following their reception.

(13) Where a payment institution applies for a change in the authorisation to perform payment services, the application shall include information and documents concerning the change.

Article 2

(1) Own funds used for financing of a payment institution consist of the sum of the original own funds and the additional own funds of the payment institution less deductible items.

(2) The sum of the payment institution's original own funds and additional own funds of financing less the deductible items shall be calculated by a procedure in accordance with a separate regulation.⁵⁾

(3) Safe, liquid and low-risk assets in which a payment institution may invest shall mean

(a) cash in hand,

(b) debt securities issued by the euro area countries, the United States of America, Canada, the United Kingdom of Great Britain and Northern Ireland, Japan or Switzerland, or by the central banks of the euro area countries, the United States of America, Canada, the United Kingdom of Great Britain and Northern Ireland, Japan or Switzerland.

(4) Investments in the securities referred to in paragraph 3(b) shall be possible only if the debt securities do not fall below credit quality grade 4 in accordance with the data from Národná banka Slovenska published on its website.

Article 3

⁵⁾ Articles 3 to 6 of Decree of Národná banka Slovenska No 4/2007 on banks' own funds of financing and banks' capital requirements and on investment firms' own funds of financing and investment firms' capital requirements (Notification No 121/2007 Coll.), as amended.

(1) Compliance with the requirement referred to in Article 82(2)(a) and (b) of the Act shall be demonstrated by presenting an extract from the Business Register concerning the applicant for the authorisation to issue electronic money which shall not be older than three months as at the day of filing the application.

(2) Compliance with the requirement referred to in Article 82(2)(c) of the Act shall be demonstrated by presenting documents on clear, trustworthy and legal origin of cash deposits in the equity capital of the applicant for the authorisation to issue electronic money, and documents on the origin of other funds of the applicant for the authorisation to issue electronic money and his shareholders and partners, namely in the case of a shareholder or a partner who is

(a) a natural person - private individual

1. by an overview of capital and financial situation of the natural person;
2. by an income tax return or by a document proving the annual settlement of advances for the tax on income from dependent activities¹⁾ for the past three tax periods; where a natural person started receiving income from dependent activities less than three years before filing the application for the authorisation to issue electronic money, a tax return or a document proving the annual settlement of advances only for the period beginning from the day when such income commenced shall be submitted, and
3. by information on the origin of cash deposits in the equity capital of the applicant for the authorisation to issue electronic money;

(b) a natural person running a business

1. by an extract from the Business Register or the Trade Register or other register based on which the natural person carries out its business, which shall not be older than three months as at the day of filing the application;
2. by an overview of assets and financial situation of the natural person running a business;
3. by annual financial statements for the past three accounting periods and by income tax returns¹⁾ for the past three tax periods; where a natural person running a business started receiving income from dependent activities less than three years before filing the application for the authorisation to issue electronic money, the annual financial statements and the tax return only for the period beginning from the day when such income commenced shall be submitted, and
4. by information on the origin of cash deposits in the equity capital of the applicant for the authorisation to issue electronic money;

(c) legal entity

1. by an extract from the Business Register which shall not be older than three months; where the legal entity has a registered seat abroad, by any other document proving the establishment and existence of the respective legal entity issued by a relevant authority which shall not be older than three months;
2. by an incorporation deed or foundation charter or partnership contract²⁾ establishing the legal entity;
3. by an auditors' report including certified copies of financial statements and annual reports for the past three accounting periods submitted to the statutory body of the applicant for the authorisation to issue electronic money, where the legal entity is subject to the obligation of the financial statements verification by the auditor; or by financial statements for the past three accounting periods, where the legal entity is not subject to the obligation of the financial statements verification by the auditor; where the legal entity is a part of a consolidated group also including an auditors' report together with certified copies of consolidated financial statements for the past three accounting periods; where the legal entity commenced their business activities less than three years before filing the application

for the authorisation to issue electronic money, the financial statements for only the period from the beginning of the business activities shall be submitted.

4. by information on the origin of cash deposits in the equity capital of the applicant for the authorisation to issue electronic money.

(3) Compliance with the requirement referred to in Article 82(2)(d) of the Act shall be demonstrated by presenting

(a) the documents referred to in paragraph (2) by individuals or entities having a qualified participation in the electronic money institution;

(b) a graphically depicted structure of the group with close links to which the shareholder or partner belongs;

(c) a statement by the applicant for the authorisation to issue electronic money that legal regulations governing the close links issue in the country in whose territory the group has close links do not prevent performance of supervision where the shareholder or the partner is a foreigner³⁾ or a legal entity with a registered seat abroad.

(4) Compliance with the requirement referred to in Article 82(2)(e) of the Act shall be demonstrated by presenting

(a) a list of persons proposed for members of the statutory body, general proxy, members of the Supervisory Board, senior employees falling within the direct authority of the statutory body, and for the head of internal audit department of the applicant for the authorisation to issue electronic money;

(b) professional CVs of the persons referred to under (a) with an overview of completed education and language skills, including certified copies of documents concerning completion of required education, and an overview of professional experience and participation in trainings and internships;

(c) a statement from the Criminal Register of persons referred to in (a) which shall not be older than three months; where a foreigner is concerned³⁾ by a similar certificate of integrity issued by a relevant authority of the state of habitual residence which shall not be older than three months;

(d) a list of legal entities in which the persons proposed as members of the statutory body, general proxy, members of the Supervisory Board, senior employees falling within the direct authority of the statutory body, and for the head of internal control department hold a share in the equity capital or voting rights of at least 5%, or in which they act as members of the statutory body, supervisory body or management, indicating their business name, legal form, identification number, registered seat and an overview of the ownership relations within these legal entities, as well as the amount and composition of the equity capital and the shares in the equity capital or voting rights expressed in percentages;

(e) a statement by the persons referred to under (a) that all data indicated and documents submitted by them are complete, correct, true, genuine and up-to-date including all certified copies of documents;

(f) a written statement by persons referred to under (a) proving compliance with the requirements pursuant to Article 2(31) of the Act.

(5) Compliance with the requirement referred to in Article 82(2)(f) to (h) of the Act shall be demonstrated by presenting the documents referred to under paragraph 3(b) and c).

(6) Compliance with the requirement referred to in Article 82(2)(i) of the Act shall be demonstrated by presenting draft articles of association of the applicant for the authorisation to issue electronic money.

(7) Compliance with the requirement referred to in Article 82(2)(j) and (l) of the Act shall be demonstrated by presenting

(a) a description of information system of the applicant for the authorisation to issue electronic money, including its technical and software support, and information concerning

1. computer technology,
2. the system for technical processing of data and information concerning the safety of data transmission, including information about the method of ensuring completeness, confidentiality and credibility of transferred data, irrevocability, verifiability and conclusiveness of activities and prevention of fraudulent creation of electronic money;

(b) a description of

1. electronic money creation, distribution, usage, processing and liquidation;
2. information, computer and other systems relating to electronic money issuance;
3. risks to which the applicant for the authorisation to issue electronic money and the systems used by him are exposed;
4. the method of mitigating individual types of risk;

(c) internal regulations governing the activity of issuing electronic money, risk management system and activities of the internal control department, including the regulation concerning the protection of the applicant for the authorisation to issue electronic money against money laundering⁴⁾.

(8) Compliance with the requirement referred to in Article 82(2)(k) of the Act shall be demonstrated by presenting

- (a) an incorporation deed, foundation charter or partnership contract²⁾ of the applicant for the authorisation to issue electronic money;
- (b) draft articles of association of the applicant for the authorisation to issue electronic money; or
- (c) any other document credibly proving compliance with the requirement.

(9) Compliance with the requirement referred to in Article 82(2)(m) of the Act shall be demonstrated by presenting

- (a) approved security policy for the area of information systems as a whole, including the part which is operated by another electronic money issuer and administrator;
- (b) a project of electronic money and received funds settlement between agents and electronic money holders;
- (c) contracts between the applicant for the authorisation to issue electronic money and other electronic money issuers concerning their cooperation in the area of the settlement of electronic money issued by another electronic money issuer by means of electronic money issued by the applicant for the authorisation to issue electronic money.

(10) Compliance with the requirement referred to in Article 82(2)(n) of the Act shall be demonstrated by presenting documents credibly proving solvency of shareholders or partners of the applicant for the authorisation to issue electronic money and their ability to bridge potential adverse financial situation of the applicant for the authorisation to issue electronic money, especially the documents referred to under paragraphs (2) and (3).

(11) Compliance with the requirement referred to in Article 82(2)(o) of the Act shall be demonstrated by presenting

- (a) approved security policy for the area of information systems security as a whole, including the part which is operated by another electronic money institution or other payment service provider;
- (b) a project of funds settlement between the electronic money holder, electronic money institution and other electronic money institutions or other payment service providers;
- (c) contracts between of the applicant for the authorisation to issue electronic money and other electronic money issuers concerning their cooperation in the area of electronic money issuance;

(d) a description of measures taken to treat funds pursuant to Article 77(7) and (8) of the Act which have not been transferred to the recipient or any other payment service provider by the end of the working day following their reception.

(12) Compliance with the requirement referred to in Article 82(2)(p) of the Act shall be demonstrated by presenting equivalent documents as referred to in Article 1(7), (9), (10) and (12) which relate to the electronic money institution.

(13) Where an electronic money institution applies for a change in the authorisation to issue electronic money, the application shall include information and documents concerning the change.

Article 4

(1) Compliance with the requirement of not exceeding the average outstanding electronic money of €5,000,000 for the total business activities under Article 87(1) of the Act shall be demonstrated by presenting

(a) a methodology for calculating the value of average outstanding electronic money for the total business activities;

(b) an analysis of risks to requirement of not exceeding the average outstanding electronic money of €5,000,000 for the total business activities, and a description of measures taken to eliminate these risks.

(2) Compliance with the requirement under Article 87(5) of the Act shall be demonstrated by presenting

(a) a methodology for calculating the monthly average not exceeding €3,000,000 of the total amount of payment transactions for the past 12 months including every payment service agent for whose activities it is fully responsible;

(b) a justification of the expected total amount of payment transactions, which is a part of the business plan;

(c) an analysis of risks to requirement of not exceeding the monthly average of below €3,000,000 of the total amount of payment transactions for the past 12 months, including every payment service agent for whose activities it is fully responsible, and a description of measures taken to eliminate these risks.

Article 5

(1) Own funds used for financing of an electronic money institution shall consist of the sum of the original own funds and the additional own funds of the electronic money institution less deductible items.

(2) The sum of the electronic money institution's original own funds and additional own funds of financing less the deductible items shall be calculated by a procedure in accordance with a separate regulation.⁵⁾

(3) In the electronic money institution which also engages in activities under Article 81(2)(a) of the Act, the own funds of financing shall be created as the sum of the own funds calculated in accordance with paragraphs (1) and (2) and the own funds calculated in accordance with Article 2(1) and (2).

(4) Safe, liquid and low-risk assets in which an electronic money institution may invest shall mean

(a) cash in hand,

(b) debt securities issued by the euro area countries, the United States of America, Canada, the United Kingdom of Great Britain and Northern Ireland, Japan or Switzerland, or by the central banks of the euro area countries, the United States of America, Canada, the United Kingdom of Great Britain and Northern Ireland, Japan or Switzerland.

(5) Investments in the securities referred to in paragraph 4(b) shall be possible only if the debt securities do not fall below credit quality grade 4 in accordance with the data from Národná banka Slovenska published on its website.

Article 6

(1) The liquidity risk management of an electronic money institution shall be governed by a procedure laid down for banks *mutatis mutandis* in accordance with a separate regulation.⁶⁾

(2) The internal control system of an electronic money institution and the related activity of the internal control unit, senior employees falling within the direct authority of the statutory body and the electronic money institution's statutory body shall be governed by provisions concerning the internal control system in banks *mutatis mutandis* in accordance with a separate regulation.⁷⁾

Common and final provisions

Article 7

(1) The information and documents referred to in Article 1, 3 and 4 shall be submitted as originals or officially certified copies.

(2) Where the information and documents referred to in Article 1, 3 and 4 are prepared in other than the official language, compliance with the requirements shall be also demonstrated by a certified official translation of the information and documents into the official language.

(3) The information and documents referred to in Article 1, 3 and 4 that the applicant for the authorisation to perform payment services and the applicant for the authorisation to issue electronic money have submitted to Národná banka Slovenska before submitting the application for the authorisation or for a change to the authorisation to provide payment services, or before submitting the application for the authorisation or for a change to the authorisation to issue electronic money, may be replaced by a list of information and documents already submitted with dates of their submission to Národná banka Slovenska, and by a statement by the applicant for the authorisation to perform payment services or the applicant for the authorisation to issue electronic money that the information and documents are fully up-to-date.

Article 8

This Decree transposes the legally binding acts of the European Union which are specified in the Annex hereto.

Article 9

Decree of Národná banka Slovenska of 1 December 2009 No 7/2009 laying down certain details of authorisations to perform activities and business of payment institutions and electronic money institutions (Notification No 531/2009 Coll.) shall be repealed.

⁶⁾ Article 27 of Act No 483/2001 Coll. on Banks and on amendments to certain laws, as amended.

⁷⁾ Article 23 of Act No 483/2001 Coll. as amended.

Article 10

This Decree shall enter into force on 30 December 2011.

Jozef Makúch
Governor

Issuing unit:	Regulation and Financial Analyses Department Banking and Payment Services Regulation Section	Tel.: +421 2 5787 3301 Fax: +421 2 5787 1118
---------------	---	---

List of transposed legally binding acts of the European Union

1. Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007) as amended by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 302, 17.11.2009).

2. Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009).