

GUIDE

Terms of Providing Services in the Territory of the Republic of Hungary

2009

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INTRODUCTION

BRIEFLY ABOUT THIS GUIDE

This Guide to legal regulations has been compiled for financial organisations headquartered in a Member State of the European Union and intending to establish a branch or to do business in Hungary as part of their cross border services. This document seeks to provide information (in line with the relevant legal regulations) to new market entrants about the rules governing the provision of services in Hungary, to offer an overview of the Hungarian legislative environment and to promote the application of laws.

The first chapter of the Guide lists the regulations and other standards which are applicable to different financial sectors and which institutions intending to offer services in the Hungarian market must observe in particular, including the relevant recommendations of the Hungarian Financial Supervisory Authority (HFSA) and the regulations of the National Bank of Hungary (NBH). Please note that the recommendations of the HFSA are not legislative control tools and although the HFSA has no power to sanction any deviation from, it checks compliance with the recommendations during its regulatory audits. Supervisory recommendations seek first of all to communicate regulatory expectations the observation of which the HFSA considers advisable. Recommendations are aimed at describing good practices from which any institution may deviate in a ‘positive direction’ and may develop internal practices and in-house regulations which are best suited to their own special risks, structure of organisation and operations.

Although the Guide classifies laws and other standards by type to promote transparency, the classification does by no means establish a ranking by importance, as branches and cross-border service providers have to comply with all the norms applicable to their respective operations.

After the general list of applicable regulations, the Guide identifies the laws that are of particular relevance to various sectors, to specific financial organisations and to their operations.

In addition to the acts providing the basic rules applicable to various lines of business, the Guide also covers the provisions that determine the environment of business operations in terms of the criminal and the civil law and the ground rules of consumer protection.

The Guide highlights the new Act (Act CXXXVI of 2007) on the Prevention and Combating of Money Laundering and Terrorist Financing (AML Act), which has been in effect since December 14, 2007. It should be noted that the provisions of the new Act harmonise in full with *Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering*, as amended by *Directive 2001/97/EC*, along with the standards established by the Financial Action Task Force operating alongside the OECD.

The conceptually transformed provision (in effect since January 1, 2008) containing the statutory definition of money laundering - originally incorporated in the Criminal Code in May 1994 (as §303) - is also aligned to the expectations that have evolved in the course of the assessment practices applied by the organisations - FATF, Council of Europe Moneyval (PC-

R-EV) - operating on the basis of the mutual assessment between Member States, carrying out the tasks of the analysis of the actions taken against money laundering by the countries that have signed the Convention on 8 November 1990 in Strasbourg on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

It should be noted that financial organisations are required to develop internal by-laws for the fulfilment of their tasks laid down in the aforementioned laws and regulations, to be submitted for approval to the Hungarian Financial Supervisory Authority in its capacity as trade supervisor. The HFSA has drafted model regulations to assist entities develop their own internal anti-money laundering procedures, and made them available on the HFSA website at www.pszaf.hu/bal_menu/szabalyozo_eszkozok/engedelyezesi_utmutatok/penzmos_szab in a breakdown by type of institution.

Progressing from the general towards the specific, the Guide indicates precisely the sections of the most important pieces of legislation which entities doing business in the financial sector must be aware of, i.e. the most important provisions governing specific lines of business that demand special attention for the sake of compliance.

The second chapter of the Guide contains a brief discussion of the rules governing the establishment and operation of branch offices, including their supervision, the internal procedures branch offices must prepare, a description of the reports and disclosures to be submitted to and the licenses to be obtained from the HFSA and an overview of essential information regarding deposit insurance and the central credit information system.

The third chapter of the Guide provides a detailed description of the ever-changing and steadily expanding set of provisions governing consumer protection, including an introduction of general consumer protection rules applicable to the provision of services in each financial market followed by a breakdown of sector-specific rules, taking into account the fact that consumer protection rules are particularly important for entities doing business as branches or through the provision of cross-border services. Consumer protection rules cover the following areas of the Hungarian financial market at present:

Rules about *General Terms of Business* set forth mandatory provisions regarding the content and manner of publishing the terms of business of a financial organisation and contain the rules governing the mandatory requisites of contracts of financial content concluded by financial organisations, which set forth detailed rules about the elements to be covered in a specific contracts between a financial organisation and its client.

Customer information rules are the most important area of consumer protection, which is governed by the most detailed regulations. All financial organisations are required to provide their customers with unambiguous, understandable and clear information on the conditions of the service offered prior to the conclusion of a contract and are also obliged to provide information to customers on all facts and circumstances that may be of importance for customers - as frequently as necessary - once an agreement is in place.

Another general principle of customer information requires the disclosure to customers of the details of the risks relating to a given financial product, including customer liability. In addition to the requirement that contracts must be set in writing, customer information must also be provided in writing and in the Hungarian language. Exceptions to this rule include provisions governing insurers, as insurers and insurance intermediaries must provide customer

information in the official language of the member state where the obligation to insure is assumed or in another language specified in an agreement with the customer. The supervisory recommendations pertaining to customer information provided by financial organisations are laid down in the Recommendation No. 15/2001 of the HFSA.

As regards *complaint management* financial organisations are in general required to operate a customer service. Entities must determine the rules of operation and the opening hours of their customer service function and ensure its operating conditions by providing access to and facilitating the use of the unit in a manner that does not impose disproportionate burden on customers. If a customer complaint is rejected, customers must be notified in writing of the decision within 15 days. Financial organisations are obliged to investigate written notifications and customer complaints forwarded by the Hungarian Financial Supervisory Authority in merit within thirty days and must notify the HFSA of the findings. The expectations of the HFSA regarding the customer service operations of financial organisations are laid down in Recommendation No. 14/2001 by the President of the HFSA. The HFSA has issued model complaint procedures and it advises financial organisation to use a standardised complaint form.

The *enforcement of customer claims and rights* is governed first of all by the rules of Civil Code, which offer a separate means for contesting any unfair provision set in the general terms of business agreement. Moreover, there are also special instruments of enforcing customer claims and rights, including in particular the power of the HFSA to bring public action against a financial organisation whose irregular activities affect a large number of customers clearly identifiable due to the circumstances of the violation.

Furthermore, the consumer protection authority, a non-governmental organisation representing consumer interests and prosecutors may also bring public action in the interest of a large group of consumers or to eliminate a material disadvantage against a financial organisation whose irregular activities affect a large number of customers or inflict material disadvantage in respect of a financial service or an auxiliary financial service.

The *Money and Capital Market Arbitration Court*, which may also proceed in consumer protection cases, may play a unique role in resolving money and capital market disputes.

Alternatively, customer claims may be asserted before a *conciliation court* designed to reach out of court settlement of disputes that arise between consumers and businesses regarding the quality of a service and the conclusion and performance of an agreement between the parties (hereinafter: consumer disputes).

Advertising rules are set forth, on the one hand, in the Act on Business Advertising and in the Act Prohibiting Unfair Business-to-Consumer Commercial Practices. On the other hand, financial organisations are subject to separate advertising regulations that define the concept of advertising and the entities authorised advertise financial services. These rules contain provisions about the content and the method of advertising by financial organisations and also prohibit certain types of advertisements.

The rules governing data protection and confidentiality in financial markets are designed to protect the personal and economic interests and the financial position of customers. The data protection requirements set forth in professional regulations normally define the concept of trade secrets, the scope of disclosures and the rules governing exemptions. In general, any disclosure of customer data to third parties is prohibited and any deviation from this rule

requires a written waiver granted (in the form specified in the relevant regulation) by the customer of the financial organisation or the customer's legal representative. The waiver must identify precisely the scope of secrets that may be released. Nevertheless, legal regulations grant exemption from the general rule to a number of precisely defined organisations proceeding in their specific competences.

The *protection of customer receivables* is ensured primarily by the rules on deposit insurance and investor protection. It should be noted that a branch of an organisation headquartered in another Member State of the European Union is not obliged to join the National Deposit Insurance Fund or the Investor Protection Fund, provided it is covered by a scheme specified in the relevant Directive.

Branches not covered by such a scheme are required to join the Fund in order to provide protection of at least the level prescribed by the Community Directive.

In the case of insurance companies and funds the protection of the customer receivables is ensured primarily by investment rules which impose tight limits on the asset management activities of such types of financial institutions.

Unique consumer protection rules pertaining to certain special types of contracts are separated from the general rules governing consumer protection. Such rules may, for instance, include the rules of consumer loans for the money market or the rules governing money, the standard return ratio relating to the issuing of securities in the capital market or the disclosure rules relating to life products in the insurance sector.

The *rules governing qualification requirements* are designed to ensure that employees, agents and advisors distributing the products of a financial organisation are thoroughly familiar with and fully understand the services they are offering and that they have the competence to evaluate the relationship between various financial products to ensure the delivery of high quality services to customers. Meeting the requirements of the qualifications regulation is a condition precedent to market entry. Similar qualifications requirements pertain to insurance brokers, who will not be registered by the HFSA unless they certify compliance.

Certain consumer protection rules cannot be classified under any of the previous categories, the most important being the power of the HFSA relating to *unauthorised financial activities* and its authority to take action against them. Another important power is the use the *income from fines* for promoting consumer interests.

The information provided in this Guide is, as a matter of course, only aimed at providing an insight and due to this fact financial organisations incorporated in the European Union have to comply with all of the effective Hungarian legal regulations as well. As no part of this Guide constitutes legal rules or legislation by itself, compliance with the regulations outlined here does not grant exemption from the duty to abide by any other obligation which may arise from an effective legal regulation or an individual act.

The Hungarian Financial Supervisory Authority laid down its expectations in *CEO letters* addressed to financial service providers. To view the letters, click on this link: http://www.pszaf.hu/bal_menu/szabalyozo_eszkozok/vezkorlevelek

As legal provisions and other regulations keep changing, the information contained in this Guide must also be reviewed and updated. To ensure that entities wishing to enter the market

as a branch or to engage in business by delivering cross border services are kept updated about the current situation and about effective regulations as amended from time to time, the HFSA keeps reviewing this Guide by removing regulations that have lost effect and by inserting newly adopted legislation.

Hungarian Financial Supervisory Authority

CHAPTER 1

LEGAL REGULATIONS AND STANDARDS PERTAINING TO THE OPERATION OF SUPERVISED SECTORS

I. SHARED PROVISIONS

The HFSA offers the following information on legislation pursuant to the provisions in §32/E of the Act CXII of 1996 on Credit Institutions and Financial Enterprises (hereinafter: Banking Act) and in §32(1) and §82(1) of Act LX of 2003 on Insurance Institutions and Insurance Business (hereinafter: Insurance Act) and in §232(1), §287(5), §296/C(2), §302(1), §335(2) of Act CXX of 2001 on the Capital Market and in §172(2) of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers and on the Regulations Governing their Activities (IFCD Act) and pursuant to Act LXXXII of 1997 on Private Pensions and Private Pension Funds.

Financial institutions (credit institutions and financial enterprises), investment enterprises, insurance companies and private pension funds which are headquartered in a Member State of the European Union and do business in the territory of the Republic of Hungary as a branch or by providing cross-border services should pay special attention to compliance with the following legal regulations and standards (the list below is not exclusive in that it only shows regulations applicable to sectors supervised by the HFSA):

Acts:

1. Act LIII of 1994 on Judicial Enforcement;
2. Act IV of 1978 on the Criminal Code;
3. Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (Registrations Act);
4. Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings
5. Act CVIII of 2001 on Electronic Commerce and on Information Society Services;
6. Act XLVII. of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices
7. Act CLV of 1997 on Consumer Protection (hereinafter: Consumer Protection Act);
8. Act LVIII of 1997 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities
9. Act IV of 2006 on Business Associations (hereinafter: Company Act);
10. Act CXL of 2004 on the General Rules of Administrative Proceedings and Services;
11. Act XLVIII of 1996 on Public Warehousing;
12. Act LV of 2002 on Mediation;
13. Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies (Branch Office Act);
14. Act LVIII of 2001 on the National Bank of Hungary (NBH Act);
15. Act XXII of 1992 on the Labor Code (Labor Code);
16. Act XXX of 1997 on Mortgage Loan Companies and on Mortgage Bonds;
17. Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (Money Laundering Act);
18. Act CXXXV of 2007 on the Hungarian Financial Supervisory Authority (HFSA Act);
19. Act III of 1952 on the Rules of Civil Procedure (Civil Procedures Act.);

20. Act IV of 1959 on the Civil Code of the Republic of Hungary (Civil Code);
21. Act C of 2000 on Accounting (Accounting Act);
22. Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest ;
23. Act X of 2006 on Cooperatives;
24. Act LXIX of 2006 on European Cooperative Societies
25. Act XLV of 2004 on European Public Limited-Liability Companies
26. Act CXL of 2007 on Cross-Border Mergers of Limited Liability Companies
27. Act XXV of 2005 on Service Level Agreements Concluded in the Financial Sector in the Framework of Distance Selling;
28. Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (Unfair Practices Act).

Law-Decrees:

Law-Decree No. 13 of 1979 on International Private Law

Government Decrees:

Government Decree 18/1999 (II. 5.) on unfair terms set in consumer agreements

Other legal standards:

Joint Communication 8001/2002 (II.26.) by the Ministries of Foreign Affairs, Economy, Industry and Finance on the list of countries affected by and the publication of the existence of reciprocal practices relating to the international treaties mentioned in certain provisions of Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies.

Recommendations by the President of the HFSA or the HSFA Board:

1. Recommendation No. 15 of 2001 on the information of consumers by financial organisations;
2. Recommendation No. 2 of 2003 on the rules of data management by credit institutions, investment service providers, commodity exchange service providers and insurance companies;
3. Recommendation No. 3 of 2006 (1 March) on the calculation of returns and reference returns;
4. Recommendation No. 1 of 2009 (10 February) on Internet security risks;
5. Recommendation No. 3 of 2008 (20 November) on the Prevention and Combating of Money Laundering and Terrorist Financing ;
6. Recommendation No. 1/2000 of the President of the Hungarian Financial Supervisory Authority Concerning Financial Institutions' Internal Audit Systems;
7. Recommendation No. 10 of 2001 on the security requirements to be met by the operations of financial organisations;
8. Recommendation No. 14 of 2001 on the customer service operations of financial organisations.
9. Recommendation No. 4 of 2007 on the assessment of fit and proper of managers, directors and owners of financial organisations;

10. Recommendation No. 2 of 2008 on inside information and on delaying the publication of inside information for legitimate reasons and on the rules for maintaining insider lists based on the recommendation of the committee of European Securities Regulators;
11. Recommendation No. 11 of 2006 on setting up and using internal safeguards;
12. Recommendation No. 9 of 2006 on the principles of retail crediting provision of preliminary advice to clients and consumer protection

The Nature of this Guide:

The list laws and regulations is presented in this guide to provide information to service providers and compliance with these rules does not exempt financial organizations from the duty to abide by all of the applicable legal regulations in effect in Hungary in the course of their operations.

Nothing in this Guide pertains to activities pursued in the territory of the Republic of Hungary by financial enterprises not licensed in a member state of the European Union and such financial enterprises are required to submit to the HFSA an application for an operating license as envisaged in the applicable Hungarian legal provisions.

Further Conditions:

Motivated by public interests, the HFSA may impose further conditions on operators in respect of issues not covered by Hungarian laws and regulations with reference to

- European Parliament and Council Directive 2008/48/EC;
- Section (4) of Article 10 of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;
- Article 40(4) of Directive 2002/83/EC of the European Parliament and of the Council concerning life assurance.

The Banking Act, the Capital Market Act, the IFCD Act, the Insurance Act, the Money Laundering Act, the HFSA Act, the NBH Act, the Registrations Act, the Consumer Protection Act, Act X of 2006, Act LXIX of 2006, Act XLV of 2004, Act XXX of 1997 and Act CXIII of 1996 are available in English at the HFSA website at http://www.pszaf.hu/en/topmenu/legislation/naitonal_legislation.

II. SECTOR-SPECIFIC PROVISIONS

1. CREDIT INSTITUTIONS AND FINANCIAL ENTERPRISES

The HFSA offers the following information pursuant to §32/E of the Banking Act.

***Credit institutions* (hereinafter: credit institutions) and financial enterprises which are headquartered in a Member State of the European Union and do business in the territory of the Republic of Hungary as a branch or by providing cross-border services must pay special attention to compliance with the following legal regulations and standards:**

Acts:

1. Act CXII of 1996 on Credit Institutions and Financial Enterprises (Banking Act)
2. Act CXX of 2001 on the Capital Market (Capital Market Act)
3. Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers and on the Regulations Governing their Activities (IFCD Act)
4. Act XXXV of 2004 on Special Institutions Issuing Electronic Money;
5. Act XXX of 1997 on Mortgage Loan Companies and on Mortgage Bonds (Mortgage Act);
6. Act CXIII of 1996 on Home Savings and Loan Associations (Home Savings Act);

Engaging in this field of business requires awareness and the application of the following provisions in particular:

1. **Banking Act:** Articles 1, 3/A, 3/B, 14(4), 15(4) 32/E, 45, 47, 49 – 55/A, 97–107, 123, 139/A (7)-(8), 168/A, 201–206/A, 208-211, 212–214/D, 215 and 215/A, as well as Annex 2;
2. **Criminal Code:** Articles 177/A, 298/D, 299/A-299/B, and 303 – 303/C;
3. **Consumer Protection Act:** Articles 18 – 39;
4. **Civil Code:** Chapter XLIV (Bank and Credit Relations), Articles 522 – 535, 231 – 232, 251–276, 338/A–338/D, 373–375, 462–466.

Government Decrees:

1. Government Decree No. 180/2001 (X. 4.). on the execution of deposits and savings deposits;
2. Government Decree No. 41/1997 (III. 5.) on the calculation and disclosure of interests on deposits, the yields of securities and the total loan charge ratio;
3. Government Decree No. 250/2000 (XII. 24.) on the special provisions regarding the annual reporting and bookkeeping obligations of credit institutions and financial enterprises ;
4. Government Decree No. 244/2000 (XII. 24.) on the rules of calculating the capital required to cover trading book positions, exposures to risk, foreign exchange risk and major risk exposures and on certain rules of keeping trading books;
5. Government Decree No. 47/1997 (III. 12.) on the general contractual terms and conditions of home savings and loan associations;
6. Government Decree No. 297/2001 (XII. 27.) on money exchange services;

7. Government Decree No. 223/2000 (XII. 19.) on the specific features of annual reporting and keeping the books of voluntary pension funds .

Decrees issued by the Minister of Finance:

1. Decree No. 5/2004 (II. 12.) PM on the obligation to provide data for the Hungarian Financial Supervisory Authority by investment service providers and the branches of investment service providers resident abroad concerning their business and service providing activities and by investment enterprises and credit institutions concerning the keeping of their trading books and by commodity exchange service providers and clearing houses concerning their service providing activities;
2. Decree 45/2008 (XII. 31.) PM on the scope of data to be reported by credit institutions to the Hungarian Financial Supervisory Authority and the manner of reporting;
3. Decree 46/2008 (XII. 31.) PM on the scope of data to be reported by financial enterprises to the Hungarian Financial Supervisory Authority and the manner of reporting;
4. Decree 12/2002 (II. 20.) PM on the fees charged by the Hungarian Financial Supervisory Authority for conducting public administration procedures;
5. Decree 27/2007 (XII. 20.) PM on calculating guarantee capital and capital required on a consolidated basis;
6. Decree 23/2008. (VIII. 8.) PM on the trade related and examination requirements of qualifications in the competence of the Minister of Finance

Regulations issued by the National Bank of Hungary:

1. Regulation 13/2008 (XI. 18.) MNB on information to be reported for use in the central bank information system, the manner and deadline of providing data;
2. Regulation 10/2005 (VI. 11.) MNB on calculating, recording and depositing the mandatory central bank reserve
3. Regulation 21/2006 (XI.24.) MNB on managing cash transactions

Recommendations issued by the HFSA President or the HFSA Board:

1. Recommendation No. 3/2000 on risk management systems of investment firms;
2. Recommendation No. 2/2000 on Credit Institutions' Asset and Liability Management and the Management of Market Risks;
3. Recommendation No. 8/2001 on managing credit risk;
4. Recommendation No. 1/2008 on the recognition of external credit assessment institutions and their assessments;
5. Recommendation No. 9/2006 (XI.7.) On the principles of retail crediting provision of preliminary advice to clients and consumer protection;
6. Recommendation No. 4/2008 (XII.04) on preventing abuse related to mediation business, the control of mediators and on issues related to cash management and documentation
7. Recommendation No. 7/2006 (IX. 28.) On increasing the effectiveness of credit risk management;
8. Recommendation issued jointly by the Governor of the Magyar Nemzeti Bank and the Chairman of the Board of the Hungarian Financial Supervisory Authority on the systemic risks of foreign currency lending and institutional and consumer protection requirements relating to the prudent assessment and management of such risks, with special regard to Japanese yen-based lending

CEO Letters issued by the Hungarian Financial Supervisory Authority:

1. CEO Letter No. 6/2008 on behaviour promoting borrowing at Christmas time and on issues related to responsible lending
2. CEO Letter No. 8/2007 for the Chief Executive Officers of credit institutions and financial enterprises providing Japanese Yen-based loans, as well as forex loans with currency options
3. CEO Letter No. 1/2007 for the Chief Executive Officers of financial institutions dealing with motor vehicle loans and leasing

2. INVESTMENT FIRMS

The HFSA offers the following information pursuant to Articles 232(1), 287(5), 296/C(2), 302(1) and 335(2) of the Capital Market Act and Article 172(2) of the IFCD Act.

Investment firms (hereinafter: **investment firms**) which are headquartered in a Member State of the European Union and do business in the territory of the Republic of Hungary as a branch or by providing cross-border services should pay special attention to compliance with the following legal regulations and standards:

Acts

1. Act CXX of 2001 on the Capital Market (Capital Market Act)
2. Act LX of 2003 on Insurance Institutions and Insurance Business (Insurance Act)
3. Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers and on the Regulations Governing their Activities (IFCD Act)
4. Act XLVIII of 1996 on Public Warehousing.

Engaging in this field of business requires awareness and the application of the following provisions in particular:

1. *Capital Market Act*: Articles 1–5, 58–62, 65–80/A, 199–205/H, 210–228, 243, 252, 364–375, 376 and 404;
2. *Criminal Code*: Articles 303–303/C
3. *Consumer Protection Act*: Articles 18 – 39
4. *Civil Code*: Articles 338/A–338/D;
5. *Insurance Act*: Articles 52, 40-44, 67-68, 71, 111-114 and 119-120.

Government Decrees:

1. Government Decree No. 283/2001 (XII. 26.) on the personal, material, technical and security requirements concerning the performance of investment and commodity exchange service providing activities, custodian safekeeping of securities, securities deposit management and clearing house activities;
2. Government Decree 22/2008 (II. 7.) on the mandatory elements of the general terms of business issued by business organisations engaged in the provision of investment services, auxiliary investment services and commodity exchange services;
3. Government Decree No. 251/2000 (XII. 24.) on the specific features of the annual reporting and book keeping activities of investment enterprises;
4. Government Decree No. 41/1997 (III. 5.) on the calculation and disclosure of interests on deposits, the yields of securities and the total loan charge ratio;
5. Government Decree No. 284/2001 (XII. 26.) on the methods of producing, transmitting dematerialised securities, the relevant security rules and on the opening and keeping of securities account, central securities account and customer account;
6. Government Decree No. 244/2000 (XII. 24.) on the rules of calculating the capital required to cover trading book positions, exposures to risk, foreign exchange risk and major risk exposures and on certain rules of keeping trading books;
7. Government Decree No. 286/2001 (XII. 26.) on treasury bills;
8. Government Decree No. 285/2001 (XII. 26.) on bonds ;

9. Government Decree No. 287/2001 (XII. 26.) on certificates of deposit;
10. Government Decree 227/2006 (XI. 20.) on Money Transmission Services and Electronic Payment Instruments;
11. Government Decree 164/2008 (VI. 27.) on the public disclosure of information relating to risk taking and risk management by investment firms.

Decrees issued by the Minister of Finance:

1. Decree No. 6/2002 (II. 20.) PM on the notification obligation of investment service providers, organisations engaged in clearing house operations and the exchange;
2. Government Decree No. 331/2008 (XII. 30.) on the amendment of government decrees issued regarding the specific features of (annual) reporting and keeping the books of certain money and capital market organisations;
3. Decree No. 27/2007 (XII. 20.) PM on calculating guarantee capital and capital required on a consolidated basis;
4. Decree No. 12/2002 (II. 20.) PM on the fees charged by the Hungarian Financial Supervisory Authority for conducting public administration procedures;
5. Decree No. 7/2002. (II. 20.) PM on the manner and degree of reserves to be set aside by clearing organisation not classified as a clearing house;
6. Decree No. 5/2004 (II. 12.) PM on the obligation to provide data for the Hungarian Financial Supervisory Authority by investment service providers and the branches of investment service providers resident abroad concerning their business and service providing activities and by investment enterprises and credit institutions concerning the keeping of their trading books and by commodity exchange service providers and clearing houses concerning their service providing activities

Regulations issued by the National Bank of Hungary:

1. Regulation No. 8/2004. (XII.19) MNB on the range, method and date of information supply to the central bank information system;
2. Regulation 9/2009 (II.27.) MNB on the requirements regarding the general terms of business and the procedures of organisations acting as a clearing house as defined in the Capital Market Act.
3. Regulation 21/2006 (XI.24.) MNB on managing cash transactions

Recommendations issued by the President HFSA or the HFSA Board:

1. Recommendation No. 3/2000 on risk management systems of investment firms;
2. Recommendation No. 2 of 2008 on inside information and on delaying the publication of inside information for legitimate reasons and on the rules for maintaining insider lists based on the recommendation of the Committee of European Securities Regulators;
3. Recommendation No. 5 of 2006 on reporting transactions indicative of insider trading or market influencing;
4. Recommendation No. 4/2008. by the HFSA Board on the Prevention and Combating of Money Laundering and Terrorist Financing ;
5. Recommendation No. 11/2006 by the HFSA Board on setting up and using internal safeguards;
6. Recommendation No. 4/2006 by the HFSA Board on the presentation of the performance of portfolio managers, and on the expectations about the related disclosures;

7. Recommendation No. 3/2006. by the HSFA Board on the calculation of returns and reference returns;
8. Recommendation No. 2/2006 by the HFSA Board on the investment decision making process of those engaged in investment (asset) management, expectations related to their deals and the management of emerging risks;
9. Recommendation No. 1/2006 by the HFSA Board on the principles applicable in the course of informing clients using investment (asset) management services

3. INSURANCE COMPANIES

The HFSA offers the following information pursuant to Articles 32(1), 82(1) and 54(5) of the Insurance Act.

***Insurance companies* (hereinafter: insurers) which are headquartered in a Member State of the European Union and do business in the territory of the Republic of Hungary as a branch or by providing cross-border services must pay special attention to compliance with the following legal regulations and standards:**

Acts:

1. Act LX of 2003 on Insurance Institutions and Insurance Business (hereinafter: Insurance Act);
2. Act CXX of 2001 on the Capital Market (Capital Market Act);
3. Act CLIX of 2007 on Reinsurance;
4. Act LVIII of 2003 on Miklós Wesselényi Flood and Internal Water Indemnity Fund;
5. Act XXXI of 1996 on Fire Fighting, Technical Rescue and Extinguishing Fires

This line of business requires awareness of the following provisions in particular:

1. *Insurance Act:* Articles 31–32, 33–34, 36, 42, 46, 48, 52, 54–56, 79–82, 96–96/A, 153–167/A and 209–212;
2. *Criminal Code:* Articles 177/A, 298/D, 300, 303–303/C;
3. *Consumer Protection Act:* Articles 18–39;
4. *Civil Code:* Chapter XLV (Insurance), Articles 536–567;
5. *Capital Market Act:* Articles 272–273;
6. *Act XXXI of 1996:* Article 44

Government Decrees:

1. Government Decree No. 319/2004 (XII. 1.) on the minimum content required in agreements on independent insurance intermediation and insurance broker liability;
2. Government Decree No. 190/2004 (VI. 8.) on mandatory motor liability insurance by the operator of vehicles;
3. Government Decree No. 180/1998 (XI. 6.) on the rules of paying to the government budget, settling, using and controlling fire protection penalties and the fire protection contribution of fire units;
4. Government Decree No. 192/2000 (XI. 24.) on the specific features of annual reporting and accounting by insurance firms

Decrees issued by the Minister of Finance:

1. Decree No. 33/2002. (XI. 16.) PM on the form and content of customer information provided in respect of unit-linked life assurance products;
2. Decree No. 54/2001. (XII. 27.) PM on accounting for the profits/losses of the mandatory motor liability insurance product offered by insurers and the related reporting;
3. Decree No. 45/1996. (XII. 29.) PM on the limits of large exposures;

4. Decree No. 14/2005. (III. 30.) PM on the highest rate of technical interest rates;
5. Decree No. 23/2008. (VIII. 8.) PM on the trade related and examination requirements of qualifications in the competence of the Minister of Finance

Recommendations issued by the HFSA President or the HFSA Board:

1. Recommendation No. 5/2001 on the elaboration and application of the general contractual terms and conditions of insurance institutions;
2. Recommendation No. 8/2006 on the terms and conditions for the settlement of claims based on compulsory motor liability insurance and the related management of compulsory motor liability insurance contract;
3. Recommendation No. 4/2008 on preventing abuse related to mediation business, the control of mediators and on issues related to cash management and documentation;
4. Recommendation No. 6/2006 on the rules of returning the surplus-yield

CEO Letters issued by the Hungarian Financial Supervisory Authority:

1. CEO Letter No. 1/2008 for the chief executive officers of insurance companies selling motor liability insurance
2. CEO Letter No. 11/2007 about the contents and certain formal requirements of the insured person's consent that provides a legal basis for the insurer's handling their health-related data
3. CEO Letter No. 10/2007 to the Chief Executive Officers of insurers selling unit linked life insurance products
4. CEO Letter No. 3/2007 for the Chief Executive Officers of insurance companies selling savings type life insurance and for Chief Executive Officers of independent insurance intermediaries

Methodological Guide issued by the Hungarian Financial Supervisory Authority:

Methodological Guide No. 2/2006 on identifying demand for life insurance and product briefs

4. PRIVATE PENSION FUNDS

Acts:

Act CXVII of 2007 on Private Pension and Private Pension Funds

Government Decrees:

Government Decree No. 399/2007. (XII. 27.) on the specific features of the annual reporting and book keeping activities of private pension funds

CHAPTER 2

RULES GOVERNING THE OPERATION OF BRANCH OFFICES

Article 2b) of the Branch Office Act contains a definition of branch offices and provides that a branch office is a unit of organisation without legal personality of a foreign enterprise, which manages its business independently and is registered in the domestic corporate register as a branch of a foreign enterprise, which is an independent company form.

Notwithstanding anything to the contrary in the Act, a branch office is treated as a foreign exchange resident. The operations and business activities of a branch, its behaviour in the market are subject to the rules governing establishments headquartered in Hungary based on the principle of national treatment.

As a foreign exchange resident, a branch concluding foreign trading agreements is treated at par with domestic entities, i.e. it may conduct business under the same legal and administrative terms as domestic businesses. For instance, bank guarantees issued by a credit institution operated as a branch office shall rank at par with bank guarantees issued by a credit institution headquartered in Hungary, which is why no additional guarantee is required.

A branch may operate at several sights (premises) in several towns (settlements).

A branch is established upon registration in the company register and may start to pursue business activities once registered by the HFSA.

Branches are wound up upon removal from the company register.

Articles 1-24 of the Branch Office Act set forth the detailed rules of establishing, operating and winding up branch offices.

I MONEY MARKET

Branch Offices of Credit Institutions

Hungary's accession to the European Union paved the way for enforcing community legislation in Hungary to ensure the operation of the internal market without barriers. These rules grant a Single European Passport (SEP) to credit institutions headquartered in an EU Member State and the SEP authorises credit institutions headquartered in an EU Member State to render mutually recognised financial and investment services in another Member State without the duty to obtain a separate licence, provided the institution holds a licence for the same issued by the supervisory authority of the country of establishment.

The competent authorities of the member state of establishment are responsible for the prudential supervision of a credit institution establishing a branch (with the latter integrated into the former), including the supervision of the lines of business the credit institution is licensed to pursue.

Accordingly, the operations (e.g. rules of organisation and operation, internal audit) of the Hungarian branch of a credit institution established in a Member State shall first of all be subject to the rules of its country of establishment, and the provisions of the Banking Act or any other financial legislation will apply only in case the Banking Act contains an explicit provision to that effect.

In its capacity as the supervisory authority of the receiving state, the HFSA is required to monitor the liquidity of the branch offices of credit institutions in cooperation with the competent authorities of the Member State of establishment. The supervisory authority of the receiving state may require branch offices of credit institutions domiciled in other Member States make to report the information demanded from national credit institutions in an effort to control their liquidity. Furthermore, the HFSA verifies whether or not branch offices comply with consumer protection, anti-money laundering and terrorist financing regulations. If any of the operations performed via a branch office in the territory of Hungary violates the regulations in force in Hungary, or if the HFSA observes any deficiency in the operations of a branch, the HFSA may instruct the branch to terminate the irregularity with reference to section 168/A of the Banking Act. If a branch office fails to abide by the instruction, the HFSA will notify the regulator of the Member State of establishment of the non-compliance or will take steps to get the competent supervisory authority to take the necessary measures. The HFSA may act directly in case it determines that maintaining the con-compliant situation constitutes a material threat for the stability of the financial system or customer interests. The European Commission reviews any measures of this nature by the HFSA and performs ex-post evaluation of its legitimacy.

Under Hungarian law, a Hungarian branch office of a credit institution established permanently in a Member State is required to have the internal procedures listed below.

- Internal policy for preventing and combating money laundering

An interpreting clause of the AML Act provides that a branch is a service provider delivering financial services, and as such is required to draft internal procedures to be submitted to the HFSA for approval. The HFSA supervises the measures branches take to prevent and combat money laundering and terrorist financing.

- Policies for producing, registering, transferring dematerialised securities and related data management

Article 2 of Government Decree No. 284/2001 (XII. 26.) on the methods of producing, transmitting dematerialised securities, the relevant security rules and on opening and keeping securities accounts, central securities accounts and customer accounts provide that the production, registration and transfer of dematerialised securities and related data management must be covered by a policy approved by the HFSA and must use approved computers and media capable of ensuring that the terms required in the Government Decree are met. Accordingly, a branch office engaged in tasks associated with the production, registration and transfer of dematerialised securities is required to have a policy approved by the HFSA.

- General Terms of Agreement, General Terms of Business, Complaint Management Manual/Policy, Policy for Managing Banking and Securities Secrets

Article 32/E of the Capital Market Act provides that branch offices of a credit institution established in a Member State are required to comply with the consumer protection provisions set forth in Chapter XXIX of the Capital Market Act while operating in Hungary. Accordingly, a branch office must have in place in the Hungarian language General Terms of Agreement, General Terms of Business as described in Article 203(8) of the Capital Market Act, which is suitable for providing appropriate customer information, as well as a guide about the procedure of adjusting customer complaints and managing other customer

comments. Although the Banking Act does not explicitly specify the Policy for Managing Banking and Securities Secrets as one of the measures designed for protecting consumers, branch offices must have such a policy in place as it lays down rules related directly to consumer protection.

- Data Management Policy

Article 1/A (1) of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest provides that the Act is applicable to any management or processing of information involving the data of private individuals conducted in the territory of the Republic of Hungary, which is why branch offices are required to prepare their policy of data management.

- Liquidity Policy

The competent authorities of the receiving state (the HFSA and the NBH in Hungary) are responsible for monitoring the liquidity of each line of business pursued by a Hungarian branch office credit institutions established in a Member State, which is why each branch office is required to prepare its Liquidity Policy.

- Policy Determining the Order of Signatures

Article 4(7) of Government Decree 227/2006 (XI. 20.) on Money Transmission Services and Electronic Payment Instruments provide that credit institutions are required to regulate their internal procedures for filing, registering and examining signatures, which is why each branch office is required to have in place a policy describing this procedure, which may, however, coincide with the policy in use at the credit institution to regulate the same issue.

- Accounting Policy

Subsections a)-i) of Article 3(10) in Government Decree No. 250/2000 (XII. 24.). on the specific features of the annual reporting and book keeping activities of credit institutions and financial enterprises provide that financial institutions are required to prepare a policy for settlements between a branch offices and the head office and among branch offices as part of their accounting policy.

Other disclosures, applications for permits and reports to be submitted to the HFSA:

- Outsourcing

Article 13/A of the Banking Act and Articles 79-81 of the IFCD Act impose disclosure obligations on each outsourcing credit institution, which all financial service providers operating in Hungary with a banking licence must comply with. A branch that operates in Hungary provides services to Hungarian customers and is therefore required to comply with the rules governing banking secrets. The outsourcing rule grants legal authorisation to an independent provider of outsourced services to become familiar with, capture, store and process data created in the course the delivery of financial services, including naturally data classified as bank secret, which is why it is necessary for branch offices to report regularly to the HFSA the names, head offices of businesses providing outsourced services to them along with the lines of business involved and the duration of outsourcing.

- Agents

Hungarian regulations permit the use of two types of agents to act on behalf of a branch office in the market. To operate, the agents need a supervisory license from or must be reported to the HFSA depending on the nature and scope of their assignment.

Both the branch office and the agent have to apply to the HFSA for a licence when an agent intends to act for and on behalf of a branch with the branch remaining liable and taking the risks, the arrangement being that the agent performs the financial services or auxiliary financial services offered by a branch under an engagement contract.

Whenever an agent is not involved in managing customer monies or assets and does not accept liability independently on behalf of a branch office, the branch office is required to report the name and head office of the agent to the HFSA before the agent starts business.

- Reporting Data

Issued by the Minister of Finance, Decree 3/2008 (II. 26.) PM as superseded by Decree 45/2008 (XII.31.) PM, effective after 17 July 2009, and Decree 54/2005 (XII. 28.) PM provide that Branch Offices are required to file monthly, quarterly, annual and ad hoc reports with the HFSA.

- Bank Holidays

A credit institution may have two bank holidays a year. Such holidays in providing financial services on certain business days may involve accounting (accounting holiday) or cash desk services (cash desk holiday), or both accounting and the cash desk (accounting and cash desk holiday). Bank holidays must be announced in at least two national daily papers fifteen days in advance with simultaneous notice to the HFSA and the NBH. Moreover, the HFSA has the authority to declare a bank holiday in agreement with the NBH upon receipt of a request to that effect from a credit institution. The annual number of declared bank holidays may not surpass three days.

II CAPITAL MARKET

Branches of investment firms

Hungary's accession to the European Union paved the way for enforcing community legislation in Hungary to ensure the operation of the internal market without barriers. These rules grant a Single European Passport (SEP) to investment firms headquartered in an EU Member State and the SEP authorises credit institutions headquartered in an EU Member State to render mutually recognised financial and investment services in another Member State without the duty to obtain a separate licence, provided the institution holds a licence for the same issued by the supervisory authority of the country of establishment.

The competent authorities of the member state of establishment are responsible for the prudential supervision of an investment firm establishing a branch (with the latter integrated into the former), including the supervision of the lines of business the investment firm is licensed to pursue.

Accordingly, the operations (e.g. rules of organisation and operation, internal audit) of the Hungarian branch of an investment firm established in a Member State shall first of all be subject to the rules of its country of establishment, and the provisions of IFCD Act, the Capital Market Act or any other financial legislation will apply only in case the Capital Market Act or other legislation contains an explicit provision to that effect.

In its capacity as the supervisory authority of the receiving state, the HFSA verifies whether or not branch offices comply with consumer protection, anti-money laundering and terrorist financing regulations.

If any of the events listed in Articles 176-177 of the IFCD Act materialises, the HFSA is authorised to take direct measures or to notify the competent supervisory authority of the EEA Member State of establishment.

Under Hungarian law, a Hungarian branch office of an investment firm established permanently in a Member State is required to have the internal procedures listed below.

- Internal policy for preventing and combating money laundering

An interpreting clause of the AML Act provides that a branch is a service provider delivering investment services, and as such is required to draft written internal procedures to be submitted to the HFSA for approval. The HFSA supervises the measures branches take to prevent and combat money laundering and terrorist financing.

- Policies for producing, registering, transferring dematerialised securities and related data management

Article 2 of Government Decree No. 284/2001 (XII. 26.) on the methods of producing, transmitting dematerialised securities, the relevant security rules and on opening and keeping securities accounts, central securities accounts and customer accounts provide that the production, registration and transfer of dematerialised securities and related data management must be covered by a policy approved by the HFSA and must use approved computers and media capable of ensuring that the terms required in the Government Decree are met. Accordingly, a branch office engaged in tasks associated with the production, registration and transfer of dematerialised securities is required to have a policy approved by the HFSA.

- General Terms of Agreement, General Terms of Business, Complaint Management Policy

Government Decree 22/2008 (II.7.) provides that a branch office of an investment firm established in a Member State must have in place in the Hungarian language General Terms of Agreement, which is suitable for providing appropriate customer information, General Terms of Business, and a guide about the procedure of adjusting customer complaints and managing other customer comments.

- Data Management Policy

Article 1/A(1) of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest provides that the Act is applicable to any management or processing of information involving the data of private individuals conducted in the territory of the Republic of Hungary, which is why branch offices are required to prepare their policy of data management.

Other disclosures, applications for permits and reports to be submitted to the HFSA:

- Outsourcing

Articles 79-81 of the IFCD Act impose disclosure obligations on each outsourcing investment firm. A branch that operates in Hungary provides services to Hungarian customers and is therefore required to comply with the rules governing outsourcing. The Act requires branch offices to report regularly to the HFSA the names, head offices of businesses providing outsourced services to them along with the lines of business involved and the duration of outsourcing. Branch offices are also required to send to the HFSA their outsourcing agreements within three days after conclusion.

- Agents

A branch office may employ a dependent agent for performing its activities and are required to report to the HFSA the conclusion of an agreement with a dependent agent for the mediation of investment services within five business days of execution. The filing must contain the name and head office of the agent and the mediated line of business.

- Reporting Data

Issued by the Minister of Finance, Decree 5/2004 (II.12.) PM provides that Branch Offices are required to file monthly, quarterly, annual and ad hoc reports with the HFSA.

III INSURANCE MARKET

Specific rules governing the operation of branches of insurance firms and intermediaries

Article 2b) of Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies (Branch Office Act) contains a definition of branch offices and provides that a branch office is a unit of organisation without legal personality of a foreign enterprise, which manages its business independently and is registered in the domestic corporate register as a branch, which is an independent company form.

Notwithstanding anything to the contrary in the Act, a branch office is treated as a foreign exchange resident. The operations and business activities of a branch, its behaviour in the market are subject to the rules governing establishments headquartered in Hungary based on the principle of national treatment.

As a foreign exchange resident, a branch concluding foreign trading agreements is treated at par with domestic entities, i.e. it may conduct business under the same legal and administrative terms as domestic businesses. For instance, policies issued by a branch office rank at par with policies issued by an insurance firm headquartered in Hungary.

Hungary's accession to the European Union paved the way for enforcing community legislation in Hungary to ensure the operation of the internal market without barriers. These rules grant a Single European Passport (SEP) to insurance firms and intermediaries headquartered in an EU Member State and the SEP authorises insurance firms and intermediaries headquartered in an EU Member State to render mutually recognised insurance and insurance mediation services in another Member State without the duty to obtain a

separate licence, provided the institution holds a licence for the same issued by the supervisory authority of the country of establishment.

The competent authorities of the member state of establishment are responsible for the prudential supervision of an insurance firm or insurance intermediary establishing a branch (with the latter integrated into the former), including the supervision of the lines of business the insurance firm or insurance intermediary is licensed to pursue.

Accordingly, the operations (e.g. rules of organisation and operation, internal audit) of the Hungarian branch of an insurance firm or insurance intermediary established in a Member State shall first of all be subject to the rules of its country of establishment.

In its capacity as the supervisory authority of the receiving state, the HFSA is responsible for supervising in cooperation with the competent authorities of the Member State of establishment whether or not branch offices comply first of all with consumer protection, anti-money laundering and terrorist financing regulations. The HFSA may request ad hoc reports from the branch offices of insurance firms headquartered in another Member State about the terms of insurance contracts they distribute and the related documents to verify compliance with Hungarian laws and regulations.

Furthermore, the HFSA verifies whether or not branch offices comply with anti-money laundering and terrorist financing regulations.

If any of the operations performed by an insurance firm or intermediary via a branch office in the territory of Hungary violates the regulations in force in Hungary, or if the HFSA observes any deficiency in the operations of a branch, the HFSA may demand that the branch terminate the non-compliance with reference to section 210(1) of the Insurance Act. If a branch office fails to abide by the HFSA ruling in due course, the HFSA will notify the regulator of the Member State of establishment of the non-compliance or will initiate the necessary measures.

The HFSA may act directly to prevent the conclusion of new insurance contracts in case it determines that maintaining the non-compliant situation constitutes a material threat for the stability of the insurance market or customer interests.

Internal policy of a Hungarian branch office of an insurance firm or intermediary for preventing and combating money laundering

An interpreting clause of Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (the AML Act) provides that a branch is a service provider delivering insurance or insurance mediation services, and as such is required to draft written internal procedures to be submitted to the HFSA for approval. The HFSA supervises the measures branches take to prevent and combat money laundering and terrorist financing. The provision quoted above is not applicable to branches of insurance intermediaries which are only licensed by the supervisory authority of the Member State of establishment to mediate non-life products.

General Terms of Agreement (GTA) of Hungarian branch offices of insurance firms

Branch offices of insurance firms shall also prepare a GTA in Hungarian.

Other disclosures to be submitted to the HFSA

The HFSA keeps a register (HFSA register) of insurance intermediaries licensed or registered under the Insurance Act.

Article 34 of the Insurance Act provides that registration in the HFSA register is a condition precedent to engaging in insurance intermediation, unregistered entities (the exceptions listed in the Insurance Act notwithstanding) may not pursue this line of business. However, insurance intermediaries registered in another Member State of the European Union need not register with the HFSA to qualify for conducting insurance mediation as a business.

An insurance firm or intermediary employing a natural person to perform insurance mediation must register such a person by filing a disclosure with the HFSA in the manner specified by the HFSA.

Based on the above, if a branch office intends to employ an insurance intermediary headquartered in Hungary, the branch office must apply for access to the HFSA register of insurance intermediaries to be able to comply with its registration duty. The employment of insurance intermediaries must be filed electronically with the HFSA register within thirty days of the effective date of the contract of employment.

Branch offices employing insurance intermediaries are required to observe the limitations set forth in section 33(7) of the Insurance Act, which provides that:

1. a person performing insurance intermediation activities for an insurance intermediary under an employment contract, a contract of engagement or other agreement for the purpose of job performance may not conclude an employment contract, a contract of engagement or any other agreement for the purpose of performing insurance intermediation jobs with another insurance firm or insurance intermediary,

2. a person performing insurance intermediation activities for an insurance intermediary under an employment contract, a contract of engagement or other agreement for the purpose of job performance may not conclude another contract of engagement or other agreement for the purpose of job performance, which is not classified as employment, with another insurance firm or insurance intermediary.

Branch offices engaging in non-life lines business as defined in Articles 3-5, 6(a) and 7-11 of the Insurance Act, are liable to pay fire protection contribution as envisaged by Article 44 of *Act a XXXI of 1996 and Government Decree 180/1998 (XI. 6.)*.

Hungarian Representation of Foreign Insurance Firms, Intermediaries and Advisors

Foreign insurance firms, intermediaries and advisors may set up a permanent representation (hereinafter: representation) in the territory of the Republic of Hungary. A representation communicates on behalf of the represented insurance firms, intermediaries and advisors the line of business they engage in, but may not conduct insurance, mediation or consulting business on its own behalf.

The name of a representation must identify the name of the insurance firm, intermediary or advisor represented and must refer to the nature of representation.

A representation is classified as permanent if

a) the foreign service staff or the foreign service replacement staff employed as representatives reside in Hungary for more than 180 days during a calendar year; or

b) the foreign service staff perform their activities in circumstances indicating permanent character (e.g. leasing premises), regardless of the duration of such activities.

The establishment of a representation must be reported to the HSFA within 30 days. The filing must contain:

a) a certificate of clean criminal record of the chief executive of the representation,

b) the name, form of organisation, place and date of registration, scope of business, net assets and key financial management data of the insurance firm (intermediary or advisor) represented,

c) an identification of the line of business the representation intends to engage in along with data identifying the manager(s) it intends to employ,

d) the address of the representation,

e) the scheduled duration of the operation.

The termination of a representation and any change of the data in their filings must be reported to the HSFA within 30 days.

(cf. Articles 55-56 of the Insurance Act)

Supervision fee payable to the HSFA

The Hungarian *representation* of a foreign insurance firm, intermediary and advisor is required to pay to the HFSA a supervisory fee as foreseen in Article 207 of the Insurance Act. Insurance firms headquartered in another Member State of the European Union conducting business in Hungary via a *branch office* are liable to pay a variable *fee* equivalent to 0.1 thousands of the annual balance sheet total shown in the Annual Report of the Hungarian branch office of the insurance firm.

(cf. Article 207 of the Insurance Act)

CHAPTER 3
CONSUMER PROTECTION PROVISIONS

I. COMMON PROVISIONS

1. The common rules of DISTANCE SELLING

In the case of services provided within the framework of distance selling, special rules apply to the supply of information to consumers:

Before the consumer makes his declaration of intent to contract, the service provider shall disclose the following information to the consumer in due time – with regard to the nature of service and the means of telecommunication used:

a) in relation to the service provider:

aa) the corporate name (name), registered seat, main scope of activity, company or court registration number and contact address of the service provider,

ab) the name, address and contact address of the service provider's representative (if any) having a registered seat in the Member State in which the consumer resides,

ac) the name, address and type of relationship with the service provider of the entity that is different from the service provider, or from the representative of the service provider contributing to contract signing, which entity maintains business relations with the consumer, and acts in the interest of the service provider, if this is necessary,

ad) the name and registered seat of the supervisory authority that authorises the service provider's activity or that registers the service provider,

ae) the professional or other organisation that keeps records of the service provider, as well as the registration number of the service provider;

b) in relation to the service:

ba) the material characteristics of the subject of the contract,

bb) the compensation, including other payment obligations, related to the service, and – in case compensation cannot be exactly determined – about the basis for fee calculation,

bc) possible payment obligations (including taxes) imposed on the consumer in addition to the payment of compensation,

bd) the possible special risks related to the service, as well as that the provision of the service and compensation depend on market fluctuations, and that past performances do not guarantee future performances,

be) the possible temporal restrictions of the validity of the given data,

bf) the conditions of payment and performance,

bg) the potential additional costs payable by the consumer for the use of the given means of telecommunication;

c) in relation to the contract:

ca) the right to cancel (terminate) the contract as specified in Section 6, or the lack of such right; the terms and conditions, ways and legal consequences of exercising the right to cancel (terminate) the contract, including the provisions stipulated in Section 8; and the address (electronic mail address, telefax number) to which the consumer must send his intention to cancel (terminate) the contract,

cb) the shortest duration of the contract in case the services undertaken in the contract are provided on a continuous basis or repeatedly,

cc) the possibility and consequences of the unilateral termination of the contract before the expiration date,

cd) the legal regulations to be applied regarding the obligation of cooperation and information supply to be observed by the parties before contract forming, the language of the preliminary information supply,

ce) the language of the contract, the language or languages of communication with the consumer during the effective period of the contract (agreed upon with the customer), as well as

cf) the possible selection of the applicable law, the specification of an exclusive scope or jurisdiction;

d) in relation to the proceeding to be applied in case of legal disputes:

da) forums that are available for the out-of-court settlement of legal disputes arising from the contract,

db) the fact whether there exists a special guarantee fund (or other possible way of indemnification) – other than the National Deposit Insurance Fund and the Investor Protection Fund to which the consumer may turn to.

The service provider shall meet the information supply obligation in a clear, understandable and accurate manner, suitable for the means of telecommunication used for this purpose. The service provider shall clearly formulate its intention to contract.

If the service provider proposes the consumer contract signing or an invitation to bid over the phone, before doing so it must at least disclose its corporate name (name), registered seat and telephone number, and shall expressly call the consumer's attention to its intention to contract.

When proposing contract forming or making an invitation to bid over the phone – provided the consumer gives his express consent – the service provider shall provide the following information, notwithstanding the provisions of the above section:

a) the name of the person that maintains contact with the consumer, and the relationship between such person and the service provider,

b) the material characteristics of the subject of the contract,

c) the compensation, including other payment obligations related to the service, and – in case compensation cannot be exactly determined – the basis for fee calculation,

d) possible payment obligations (including taxes) imposed on the consumer in addition to the payment of compensation,

e) the conditions of payment and performance,

f) the right to cancel (terminate) the contract as specified in Section 6, or the lack of such right; the terms and conditions, ways and legal consequences of exercising the right to cancel (terminate) the contract, including the provisions stipulated in Section 8; and the address (electronic mail address, telefax number) to which the consumer must send his intention to cancel (terminate) the contract,

g) the fact that the consumer may request additional information, and the nature of such additional information.

Before the consumer makes his declaration of intent to contract, the service provider shall notify the consumer in due time – with regard to the nature of service and the means of telecommunication used – about the terms and conditions of the financial service contract to be formed in the framework of distance selling, and about the information specified in Sections 3 (2) and (4) in a paper format or on another permanent data carrier accessible by the consumer.

If upon the consumer's request the contract was concluded via a means of telecommunication that does not make preliminary information supply possible, the service provider shall provide the information specified in the above section immediately after contract forming.

Upon the consumer's request the service provider shall make the contract terms and conditions available on paper at any time during the term of the contract.

During the term of the contract the consumer has the right to change the means of telecommunication used, if this is compatible with the concluded contract and with the type of service. (Sections 3 to 5 of Act XXV of 2005)

2. Rules pertaining to UNFAIR TRADING PRACTICES

Unfair commercial practices are prohibited by Act XLVII of 2008 on the prohibition of unfair business-to-consumer commercial practices (hereinafter referred to as the Act on Unfair Commercial Practices) as follows:

A commercial practice shall be unfair if:

a) it is contrary to the requirements of professional diligence, i.e. the trader acting in commercial practices fails to use the standard of special skill and care which a trader may reasonably be expected to exercise, commensurate with honest market practice and/or the general principle of good faith (hereinafter referred to as "requirements of professional diligence"); and

b) it materially distorts or is likely to materially distort the economic behavior with regard to the product of the average consumer whom it reaches or to whom it is addressed, using this practice to impair the consumer's ability to make an informed decision and thereby causing the consumer to take a transactional decision that he would not have taken otherwise; (hereinafter referred to as "materially distort the economic behavior of consumers").

The Schedule contains the list of those commercial practices which shall in all circumstances be regarded as unfair.

In accordance with the above written, deceptive or aggressive practices are *especially* unfair.

A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

a) the existence or nature of the goods, taking into account the statutory provisions relating to the names of products;

b) the main characteristics of the goods, in particular:

ba) their execution, composition, technical features, accessories;

bb) their quantity;

bc) their geographical or commercial origin;

bd) their method and date of manufacture or provision;

be) their availability, delivery;

bf) their usage, facts regarding use and maintenance;

bg) their fitness for purpose, results to be expected from its use, benefits;

bh) their dangers, risks;

bi) their environmental impact;

bj) their impact on health; or

bk) the way they are controlled or tested and the results;

- c) the price of the goods or the manner in which the price is calculated, or the existence of a specific price advantage or discount;
- d) tax exemption, tax allowance or the use of other tax advantage provided in connection with the goods;
- e) the need for a service, part, replacement or repair in connection with the goods;
- f) after-sale customer assistance and complaint handling provided in connection with the goods;
- g) the nature, attributes and rights of the business entity or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
- h) the extent of the business entity's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to sponsorship or approval of the business entity or the product; or
- i) the consumer's rights or the risks of unfavorable legal outcomes he may face in connection with the transaction.

(2) A commercial practice shall also be regarded as misleading if it involves:

- a) a commercial practice which creates confusion with any business entity or its corporate name, or with any products, trade marks, trade names or other distinguishing marks of such business entity;
- b) non-compliance by the business entity with commitments contained in codes of conduct by which the business entity has undertaken to be bound, where:
 - ba) the commitment is not merely aspirational but is firm and is capable of being verified; and
 - bb) the business entity indicates in a commercial practice that he is bound by the code, if taking account of the factual context it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

A commercial practice shall be regarded as misleading if:

- a) taking account of all its features and circumstances and the limitations of the communication medium, it omits or conceals material information that the average consumer needs, according to the context, to take an informed transactional decision, or provides such information in an unclear, unintelligible, ambiguous or untimely manner, or fails to identify the commercial intent of the commercial practice if not already apparent from the context; and
 - b) thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise
- (hereinafter referred to as "misleading omission").

Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader acting in commercial practices to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted, and whether it constitutes a misleading omission.

A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence for exploiting a position of power in relation to the consumer so as to apply pressure, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct and the consumer's ability to make an informed decision with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

In determining whether a commercial practice is aggressive, account shall be taken of:

- a) the timing, location, nature or persistence of the commercial practice;
- b) the use of threatening, frightening or abusive language or behavior in commercial practices;
- c) the exploitation by the trader acting in commercial practices of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;
- d) any onerous or disproportionate non-contractual barriers imposed by the trader acting in commercial practices where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;
- e) any threat to take any action that cannot legally be taken.

(1) Liability for any violation of the prohibition of unfair commercial practices shall lie with the business entity directly connected with the promotion, sale or supply of goods to which the commercial practice in question pertains.

(2) The business entity referred to in Subsection (1) shall be held liable also if the commercial practice is carried out under contract by another person acting on behalf of or for the business entity in question.

(3) By way of derogation from Subsection (2), liability for any infringement arising in connection with the representation of commercial communication shall also lie with the person who uses means suitable for the publication of commercial communication to disseminate commercial communication, and with the person professionally involved in producing or creating commercial communication in the context of his economic activities, or in providing other related services, with the exception if the infringement originates from the carrying out of the instructions of the business entity referred to in Subsection (1). The aforesaid persons shall bear joint and several liability with the business entity referred to in Subsection (1) for damages resulting from such unlawful commercial practices.

In the case of the infringement of the prohibition of unfair commercial practices, action shall be taken by the consumer protection authority in all cases but the one described below.

The HFSA shall act in case the given commercial practice is related to an activity of the enterprise that is supervised by the HFSA pursuant to the Act on the Hungarian Financial Supervisory Authority.

Contrary to the above written, action shall be taken by the Competition Office in case the commercial practice is suitable to significantly influence the economic competition.

(Sections 3 through 10 of the Act on Unfair Commercial Practices.)

3. The common rules of COMPLAINT PROCESSING

The business entity shall inform consumers concerning his registered office, the place for handling complaints - if other than the place of sale - and the procedure consistent with the activity, form or mode of commerce in question, furthermore, with a view to sending complaints, concerning the mailing address of the business entity or the customer service center of the business entity and - if complaints may be lodged this way - electronic mailing address or website address, and phone number.

Business entities offering public utility, financial, pension fund and insurance services, and institutions for occupational retirement provision governed under Act CXVII of 2007 on Occupational Retirement Pension and Institutions for Occupational Retirement Provision, and other companies specified in specific other legislation shall set up a customer service center

for handling consumer correspondence, investigating and handling complaints and for providing information to consumers at a location which is open for customers.

The business entity shall establish the policy and business hours and shall provide the operating conditions of the customer service center so as to avoid causing undue difficulties to consumers in terms of access to the customer service center, taking into consideration the number of consumers served and their geographical location. To this end, the business entity shall make arrangements to *inter alia* provide that:

a) the customer service center set up in a location which is open for customers to receive consumers between 8:00 hours and 20:00 hours on at least one day of the week, or in the case of call centers, it is able to receive calls between 8:00 hours and 20:00 hours on at least one day of the week;

b) if the customer service center is set up in a location which is open for customers, facilities shall be provided to consumers to make an appointment electronically or over the phone for a future time to appear in person; or

c) electronic customer assistance centers are accessible any time, with alternate facilities made available on demand, in the event of any malfunction.

Call centers and customer service centers in connection with phone calls for appointments for personal interview shall have sufficient facilities to answer and handle incoming calls within a reasonable period of time. All oral complaints lodged to call centers, and the conversation between the call center and the consumer must be recorded, and the recording shall be retained for a period of five years. The consumer shall be informed of this before the commencement of the phone conversation. The recording shall be made available to the consumer upon request.

The customer service centers shall communicate the position of the business entity concerning the complaint, including any measures taken, and offer a written justification for all complaints and send a copy to the consumer within fifteen days of receipt of the complaint, except if the consumer lodged the complaint in person and the business entity complied immediately.

As part of the procedure of handling consumer complaints and providing information to consumers, the customer service center must cooperate with non-governmental organizations for the protection of consumers' interests.

Where a complaint is rejected, the business entity shall inform the consumer affected in writing concerning the authority or arbitration body, as applicable, where he may seek remedy. The mailing address of the competent authority or the arbitration board of jurisdiction by reference to the business entity's registered office shall also be provided.

(Sections 17/A-17/B of Act CLV of 1997)

Companies offering, in addition to electronic commercial services, public utility, financial, pension fund and insurance services shall set up customer services that may be consulted by the recipient of their services by way of electronic means to handle consumers' notices, investigate and remedy complaints and to provide information.

The companies referred above - if they offer services to the recipients exclusively by way of electronic means - and the companies engaged exclusively in providing information society services shall be authorized to operate electronic customer services only. In the event of any malfunction, these operators shall open a call center to provide access to the said customer service. (Section 15 of Act CVIII of 2001)

In connection with any infringement upon the statutory provisions governing the operations and activities of the bodies and persons, upon the Authority's resolutions or the internal regulations of the bodies and persons or any conduct in violation of the provisions of Act XLVII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities (hereinafter referred to as "UCPA"), anyone may lodge a notification or complaint with the Authority.

A notification shall be made by submission of a petition containing data for the identification of the notifier and the notified person [name (corporate name) and home address (registered office or business establishment) or temporary residence (place of accommodation) of the notifier and the body or person implicated in the notification], a description of the alleged infringement, description of the actual conduct that is deemed illegal, and any facts and evidence that may be admitted to support the alleged infringement. The Authority shall publish on its official website a standard form to facilitate the submission of petitions to be regarded as notifications.

The Authority shall have powers to obtain the data necessary for examination of the notification, to conduct a hearing of the parties concerned, and to clarify the relevant facts to the extent necessary for examination of the notification with the help of other authorities or experts.

Within thirty days from the date of receipt of the notification, the Authority:

- a) if there is reason to believe, relying on the data supplied in the notification or obtained in the ensuing proceedings, regarding the whole or parts of the notification, that the body or person to which they pertain operates in violation of the provisions laid down in the regulations governing the operations of the bodies and persons referred to in Section 4, Authority resolutions or the internal regulations of the bodies and persons referred to in Section 4, or the provisions of the UCPA, shall launch supervisory control proceedings and close out the notification proceedings by way of a ruling;
- b) if the conditions laid down in Paragraph a) are not satisfied for opening supervisory control proceedings regarding the whole or parts of the notification, shall terminate the proceedings as applicable by way of a ruling;
- c) if regarding the whole or parts of the notification:
 - ca) supervisory control proceedings are already in progress against the body or person to whom the notification pertains, or
 - cb) the Authority has already adopted a decision concerning the notification on the same grounds and under the same legal regulations, shall terminate the proceedings as applicable by way of a ruling, and shall simultaneously inform the notifier concerning its resolution adopted in the previous proceedings; or
- d) if the notification falls within the jurisdiction of another authority, it shall transmit the case to the body vested with powers and jurisdiction by way of a ruling.

The time limit may be extended in justified cases by thirty days.

The HFSA may hear the complainant and the entity against whom the complaint was lodged, and may ask for further clarification and information. On the basis of the complaint – if that proves to be substantiated – the HFSA shall decide about the required official measures, and shall notify the complainant about said measures.

Insurance companies shall investigate any written report or complaint forwarded by the HFSA within thirty days, and shall inform the HFSA about the results of such investigations.

(Sections 26/A; 26/B and 26/C of Act CXXXV of 2007)

The Authority shall handle any submission that is not construed as a notification as a complaint.

Complaints shall be investigated within thirty days from the date of receipt. If the inquiry is estimated to take more than thirty days, this time limit may be extended by not more than fifteen days, of which the Authority shall inform the complainant within the original time limit.

The HFSA recommendations pertaining to the customer service activities of financial organisations are contained in *Recommendation No, 14/2001 issued by the President of the HFSA*.

The HFSA has issued a sample complaint regulation and a standard complaint form, which can be found on the website of the HFSA via the route <http://www.pszaf.hu> / Szabályozó eszközök / Mintaszabályzatok / Panasz Mintaszabályzat.

http://www.pszaf.hu/bal_menu/szabalyozo_eszkozok/mintaszabalyzatok/panasz_mintaszabalyzat.html

4. The common rules of the ENFORCEMENT OF CONSUMER CLAIMS AND RIGHTS

An unfair contractual term that has been incorporated into the contract as a standard contract condition may be contested by the injured party.

A contractual term that has been drafted in advance by the party entering into a consumer contract with the consumer and which has not been individually negotiated but is incorporated into the contract as a standard contract condition, shall be null and void. Nullity can only be cited in the interest of the consumer.

A contractual term that has been incorporated into the contract as a standard contract condition may be contested in the court of law by an organization described in specific other legislation. The court may declare the unfair term null and void in favor of all of the parties with which the party imposing the condition has a contractual relationship.

The organization described in specific other legislation may request to have a standard contract term or condition declared unfair, that has been defined for consumer contracts and made available to the general public, regardless of whether or not the term or condition in question had in fact been applied or not.

The court, in its proceedings, if it finds the contested contractual term or condition unfair, shall declare it null and void for future purposes in favor of all of the parties with which the party who has made the term or condition in question available to the public has a contractual relationship. Following such judgment the user of the unfair term or condition shall satisfy any claim the consumers may have against him. The court's judgment may also contain a clause banning the party who made the term or condition in question available to the public from the further use of such.

The lawsuit may be launched against any party who publicly recommends the use of any unfair standard contract term or condition that has been defined for consumer contracts and made available to the general public. The court, if it finds the contested contractual term or condition unfair, shall declare it null and void for future purposes and shall ban any further recommendation for use. (Sections 209/A-B of the Civil Code)

The consumer protection authority, non-governmental organization for the protection of consumers' interests or the public prosecutor may file charges against any party causing substantial harm to a wide range of consumers by illegal activities aimed at enforcing the interests of consumers even if the identity of the injured consumers cannot be established.

The legal action referred to in Subsection (1) may be filed within one year of the occurrence of the infringement.

In its resolution the court may authorize the party enforcing the claim to publish the resolution in a national newspaper at the cost of the infringing party.

The infringing party shall satisfy the claims of the injured consumer in accordance with the resolution. This shall not effect the right of the consumer to have his claims enforced against the said infringing party in accordance with the provisions of civil law.

The entitlement to file for legal action shall be afforded, pursuant to Subsections (1)-(4), to all qualified entities established under the laws of any Member State of the European Economic Area with respect to the consumer interest they protect that are included in the list published in the Official Journal of the European Communities pursuant to Article 4 (3) of Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests, provided that the claim for which the action is filed pertains to the infringement of a legal regulation on the transposition of the Community legislation listed in the Annex to Directive 98/27/EC of the European Parliament and of the Council.

(Section 39 of the Consumer Protection Act)

The Authority may file for civil action on behalf of consumers against a person engaged in any infringement of the provisions of the acts listed under Section 4, legislation adopted under authorization by such acts or the provisions of the UCPA, where such illegal action affects a wide range of consumers whose identity can be established relying on the circumstances of the infringement.

The Authority shall be entitled to file for such lawsuit only after the opening of proceedings in connection with the infringement in question.

No lawsuit may be instituted after three years following the time of commission of the aforementioned infringement. Failure to observe this deadline shall constitute forfeiture of right.(Section 56 of Act CXXXV of 2007)

The competence of the arbitration board shall cover the disputes between consumers and business entities regarding the quality and safety of products and services, the application of product liability regulations, the quality of services, and relating to the conclusion and performance of contracts (hereinafter referred to as “consumer dispute”) with a view to reach an extra-judicial settlement, or failing this to adopt a decision in the case to enforce consumer rights simply and practically and under the principle of cost-efficiency.

The arbitration board functions as an independent body attached to the competent county (Budapest) chamber of industry and commerce (hereinafter referred to as “chamber”).

The State shall provide for the support of arbitration boards in the annual budget act consistent with the number of cases they handle.

Local governments of communities may choose to participate in the work of the arbitration boards.(Section 18 of the Consumer Protection Act)

According to Act LV of 2002 on *mediation*, the parties may use the services of a mediator too in order to promote the out-of-court settlement of civil law disputes. Mediators shall be responsible for mediating negotiations between the parties to the best of their abilities in an unbiased and conscientious manner in order to reach an agreement in conclusion of the process.

5. The common rules of ADVERTISING

It is forbidden to disseminate misleading advertisements.

For the purpose of a definition of misleading advertising, the information conveyed in the advertisement shall be taken into consideration which pertains to:

- a) the general characteristics of the goods;
- b) the price of the goods or to the pricing method, and to other contractual conditions relating to the supply of such goods; and
- c) the disposition of the advertiser, such as its particulars, the rights, financial condition and/or endowments of or the awards received by the advertiser.

Comparative advertising:

- a) may not injure the reputation of another company or the name, merchandise, brand name and other marking of such company;
- b) may not lead to any confusion between the advertiser and another company or the name, merchandise, brand name and other marking of such company;
- c) may not result in any unfair advantage derived from the reputation of another company or the name, merchandise, brand name and other marking of such company;
- d) may not violate the provision of Section 6 of Act LVII of 1996 on the Prohibition of Unfair or Restrictive Market Practices (hereinafter referred to as “UMPA”) on the prohibition of imitating the merchandise of another company or the characteristics of such merchandise. (Sections 12 and 13 of Act XLVIII of 2008)

(1) Subject to the exceptions set out in Subsections (2) and (4), the consumer protection authority shall have jurisdiction in connection with any infringement of the provisions relating to commercial advertising and sponsorship.

(2) In connection with any advertisement disseminated in violation of what is contained Sections 12 and 13, and in connection with any code of conduct inciting such conduct the Hungarian Competition Authority or the court shall have jurisdiction in accordance with Subsection (3).

(3) The Hungarian Competition Authority shall have powers to establish the infringement of Sections 12 and Subsection (2) of Section 13, and to determine whether the code of conduct is inciting the infringement of those provisions, and the court shall have jurisdiction to establish the infringement of Subsection (1) of Section 13, and to determine whether the code of conduct is inciting the infringement of those provisions.

(4) The National Communications Authority shall have jurisdiction in accordance with the ISSA in connection with any infringement of the provisions of Section 6 relating to advertisements disseminated by information society services, exclusive of voice telephony services, and by way of electronic communication.

(5) Proceedings conducted under this Act shall not preclude the possibility for the aggrieved party to file a civil suit to enforce his claim arising in connection with any infringement of the provisions of this Act. (Section 24 of Act XLVIII of 2008)

‘Electronic communication’ shall mean any information society service or, exclusive of voice telephony services, any electronic message in the form of:

- a) commercial advertisement as specified in Paragraph *d*) of Section 3 of Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities (hereinafter referred to as “CAA”), or
- b) information relating to the implementation of social and societal aims, other than advertisement.

(2) Electronic communication shall also mean any form of communication conveyed for the sole purpose of obtaining the consent defined in Subsection (1) of Section 6 of the CAA.

(3) The following do not in themselves constitute electronic communications:

- a) information allowing direct access to the activity of the company, organization or person, in particular a domain name or an electronic-mail address;
- b) communications relating to the goods, services or image of the company, organization or person compiled in an independent manner, particularly when this is without financial consideration.

The following information shall be presented clearly and unambiguously in connection with any electronic communication:

- a) it shall be clearly identifiable as such immediately when it is made accessible for the recipient of the service;
- b) the electronic advertiser, or the person on whose behalf the electronic communication is transmitted by way of electronic mail or equivalent individual communications shall be clearly identifiable immediately when it is made accessible for the recipient of the service;
- c) promotional offers, such as discounts, premiums and gifts shall be clearly identifiable as such, including the conditions which are to be met to qualify for them;
- d) promotional competitions or games shall be clearly identifiable as such, including the conditions for participation.

Advertisements may be delivered *by electronic mail* or an equivalent means of individual communication exclusively with the express prior consent of the recipient of the service.

The consent may be declared in any form allowing the identification of the person granting the consent as well as expressing that the consent has been given voluntarily after the receipt of adequate information.

The declaration of consent may be withdrawn free of charge, at any time without any restriction or justification. In such a case the name of the person having sent the declaration shall be forthwith deleted from the register and no further electronic advertisement may be transmitted to such a person.

Upon the transmission of an electronic advertisement described above the addressee shall be advised of the electronic mail address and other contact details where he may request the prohibition of the transmission of electronic advertisements by using information society services.

The electronic advertiser, the electronic advertisement service provider and the publisher of electronic advertisement shall keep a register on persons having granted their consent to receiving advertisements. The data –pertaining to the recipient of the service – entered in the register may be disclosed to any third party solely upon the prior consent of the recipient of the service.

Electronic advertisers, electronic advertisement service providers and publishers of electronic advertisements may only send electronic advertisements by electronic mail or an equivalent means of individual communication to those entities that are included in the register. The prohibition of transmission to entities that have not been entered into the register shall apply to all electronic advertisements delivered by electronic advertisers, electronic advertisement service providers and publishers of electronic advertisements.

(Section 14 of Act CVIII of 2001)

(1) Unless otherwise provided by specific other legislation, advertisements may be conveyed to natural persons by way of direct contact (hereinafter referred to as “direct marketing”),

such as through electronic mail or equivalent individual communications - subject to the exception set out in Subsection (4) -, only upon the express prior consent of the person to whom the advertisement is addressed.

(2) The statement of consent may be made out in any way or form, on condition that it contains the name and address of the person providing it, and - if the advertisement to which the consent pertains may be disseminated only to persons of a specific age - his place and date of birth, furthermore, any other personal data authorized for processing by the person providing the statement, including an indication that it was given freely and in possession of the necessary legal information.

(3) The statement of consent may be withdrawn freely any time, free of charge and without any explanation. In this case all personal data of the person who has provided the statement must be promptly erased from the records and all advertisements must be stopped.

(4) Advertisement material may be sent by mail in accordance with Act CI of 2003 on Postal Services to natural persons within the framework of direct marketing in the absence of the prior express consent of the person to whom it is addressed; the advertiser and the advertising service provider, however, are required to provide facilities for the person to whom the advertisement is addressed to unsubscribe at any time from receiving further advertisement material, freely and at no cost to the addressee. Such unsolicited advertisement material may not be sent by way of direct marketing to the person affected.

(5) Advertisers, advertising service providers and publishers of advertising shall maintain records on the personal data of persons who provided the statement of consent to the extent specified in the statement. The data contained in the aforesaid records - relating to the person to whom the advertisement is addressed - may be processed only for the purpose defined in the statement of consent, until withdrawn, and may be disclosed to third persons subject to the express prior consent of the person affected.

(6) The notice of withdrawal and the notice to unsubscribe may be transmitted by way of the postal service or by electronic mail, with facilities to ensure that the person sending the notice is clearly identifiable.

(7) In the advertisement disseminated by way of the means specified in Subsections (1) and (4), a clear and prominent statement shall be inserted to inform the person to whom it is addressed concerning the address and other contact information to which the statement of consent for receiving such advertisement and the aforesaid notice to unsubscribe has to be sent, furthermore - in the case referred to in Subsection (4) - the advertisement material must contain a return envelope for sending the notice to unsubscribe in the form of registered mail with postage prepaid and with notice of delivery.

(8) The consignment sent for requesting the statement of consent mentioned in Subsection (1) may not contain any advertisement, other than the name and description of the company.

General prohibitions and limitations on advertising:

No advertisement may be disseminated if it contains violence, or if it encourages any conduct that is likely to jeopardize personal or public safety.

No advertisement may be disseminated if it encourages any conduct that is likely to jeopardize the natural or man-made environment.

No advertisement may be disseminated if it is capable of harming the physical, intellectual or moral development of children and young persons.

No advertisement addressed to children and young persons may be disseminated if it has the capacity to impair the physical, mental or moral development of children and young persons, in particular those that depict or make reference to gratuitous violence or sexual content, or that are dominated by conflict situations resolved by violence.

No advertisement may be disseminated if it portrays children or young persons in situations depicting danger or violence, or in situations with sexual emphasis.

No advertisement of any kind may be disseminated in child welfare and child protection institutions, kindergartens, grammar schools and in dormitories for students of grammar schools. This ban shall not apply to the dissemination of information intended to promote healthy lifestyles, the protection of the environment, or information related to public affairs, educational and cultural activities and events, nor to the display of the name or trademark of any company that participates in or makes any form of contribution to the organization of such events, to the extent of the involvement of such company directly related to the activity or event in question.

No advertisement may be disseminated if it displays sexuality in a gravely indecent manner, meaning in particular the open display of sexual intercourse or genitals (pornographic advertisement).

No advertisement of sexual services may be disseminated. The definition of sexual services and additional restrictions pertaining to the advertisement of such services are laid down in specific other legislation.

No advertisement that is aimed to arouse sexual interest may be disseminated.

Advertising is prohibited for goods whose production or marketing is illegal.

The dissemination of subliminal advertising is prohibited.

(Section 6 through 11 of the Act on Advertising)

6. The common rules of UNAUTHORISED ACTIVITIES

Market Surveillance Procedure

The Authority shall conduct inspections in an effort to identify any operations conducted without proper authorization or notification in the fields of financial services and activities auxiliary to financial services, stock exchange and commodity exchange services, investment fund management, venture capital fund management services, central depository services, clearing or settlement services, voluntary mutual insurance services, private pension services, insurance services, reinsurance services, insurance agency and insurance consulting services, occupational retirement provision, investment services and activities auxiliary to investment services, insider dealing or market manipulation, and also in connection with the enforcement of regulations relating to company takeovers (hereinafter referred to collectively as “market surveillance procedure”).

The Authority in its proceedings to identify any operation conducted without proper authorization or notification shall adopt a resolution within ninety days from the date of opening the proceedings ex officio. The Authority may extend the administrative time limit in justified cases on one occasion, by maximum thirty days.

At the Authority’s request and with the reason and purpose indicated, the bodies and persons referred to in Section 4 shall, in connection with a market surveillance procedure and of the procedure as relating to a client:

- a) produce documents;
- b) provide information; and
- c) disclose any personal data that the Authority is authorized to process under specific other legislation.

At the Authority's request and with the reason and purpose indicated, the bodies and persons referred to in Section 4 shall, in connection with a market surveillance procedure and of the procedure as relating to a client:

- a) produce documents;
- b) provide information; and
- c) disclose any personal data that the Authority is authorized to process under specific other legislation.

When an activity is found to be illegal the Authority shall:

- a) prohibit further conduct of the unauthorized activity;
- b) file charges with the competent investigation authority if in the Authority's opinion there is any criminal element involved in accordance with Act IV of 1978 on the Criminal Code;
- c) take supervisory actions or shall order exceptional measures; and/or
- d) impose a fine.

(2) In connection with any activity performed without notification the Authority shall:

- a) prohibit further conduct of the unauthorized activity;
- b) take supervisory actions or shall order exceptional measures; and/or
- c) impose a fine.

The maximum amount of penalty that may be imposed in a market surveillance procedure is ten million forints.

(Section 49, 51 of Act CXXXV of 2007)

7. The common rules pertaining to PROCEEDS FROM FINES

The proceeds from fines imposed by the Authority may be used exclusively for the following purposes:

- a) training banking experts, insurance experts, finance and fund experts;
- b) promoting the preparation and publication of studies on supervisory activities and the activities supervised;
- c) providing information to the customers of the bodies and persons referred to in Section 4;
- d) assistance to compensate the losses of the public-benefit organization conducting the liquidation of the bodies referred to in Section 4;
- e) support and training for the arbitration board;
- f) making payments into the National Deposit Insurance Fund, or voluntary fund specified in the CIFE, or to the Investor Protection Fund specified in the CMA; and
- g) providing training to judges and public prosecutors in the field of financial markets.

(Section 26 of Act CXXXV of 2007)

II. SECTOR-SPECIFIC PROVISIONS

1. MONEY MARKET

1.1. STANDARD SERVICE AGREEMENT

Financial institutions (credit institutions and financial enterprises) are required to lay down the standard general contract terms and conditions for the services they provide under authorisation in a standard service agreement. (Section 207 of the Act on Credit Institutions) The most important document of a financial institution is its *standard service agreement*. In the case of certain businesses (e.g. deposit transactions, bank credits and loan transactions) the act specifies the mandatory minimum content of the standard service agreement (Sections 208 and 209 of the Act on Credit Institutions).

All contracts of financial institutions for financial services and auxiliary financial services must be made in writing or in the form of electronic document executed with a qualified electronic signature. The financial institution must provide one original copy of each written contract to the customer. The agreement for financial services and auxiliary financial services must clearly indicate the interest rates, fees and all other charges and conditions, including the legal consequences of default payment, and the procedure for the enforcement of collateral obligations made in security of the contract and the legal ramifications involved. (Sections 210 (1) and (2) of Act on Credit Institutions)

Due to the amendment of the Act on Credit Institutions effective from 1 August 2009, Section 210 of the Act on Credit Institutions shall be supplemented with the following subsections (3) to (9):

(3) In loan contracts or financial leasing contracts concluded with consumers or micro-enterprises exclusively the interest, fee or cost can be unilaterally modified – to the detriment of the customer – in case this is made possible by the contract, provided there are changes in the cause and effect conditions affecting the interest, fee or cost elements to be modified. Proving that modification is made possible by the contract shall be the responsibility of the financial institution. If the changes in the conditions justify the reduction of the interest, fee or cost element, that modification must also be enforced. A change in a condition can justify the modification only one interest, fee or cost element.

(4) In the case of contracts specified in Subsection (3), the unilateral modification of the interest, fee or cost to the detriment of the customer – with the exception of interest modification in the case of an interest linked to a reference interest rate – shall be published in a notice at least sixty days before such a modification take effect. The customers affected shall be notified about the modification and the resulting change in the loan repayment instalments not later than sixty days before the modification takes effect, by mail, or in any other direct way specified in the contract. Furthermore, where services are also provided in electronic commerce, customers shall be notified by way of electronic means, too, in an easily accessible format.

(5) In the case of contracts specified in Subsection (3), should the interest, fee or cost be modified to the detriment of the customer – with the exception of the interest linked to a reference interest rate – the customer is entitled to cancel the contract free of charge before the modification takes effect in all cases but the one specified in Subsection (6).

(6) In the case of loan contracts financed with mortgage bonds, if the customer exercises his right to cancel the contract for the modification of the interest, fee or cost to his detriment, the

credit institution has the right to enforce its costs associated with the early repayment of the loan.

(7) In the case of contracts not regulated in Subsection (3), the interest, fee, cost or any other contractual term or condition can be unilaterally modified to the detriment of the customer if this is made possible by the contract for the financial institution in the case of clearly definable conditions or circumstances. The amendment of the contract that would entail the modification of the interest, fees or costs to the detriment of the customer shall be published in the form of a notice 15 days before the modification takes effect, and, where services are also provided in electronic commerce, by way of electronic means, too, in an easily accessible for the customers.

(8) The contract cannot be unilaterally modified by the introduction of a new fee or cost. The method of calculation, concrete amount or upper limit of the different fees specified in the contract may not be modified unilaterally to the detriment of the customer.

(9) Modifications in the general contract terms and conditions of loan contracts or financial leasing contracts concluded with consumers or micro-enterprises shall be reported to the HFSA not later than on the day on which they take effect.

(Sections 210 (3) to (9) of Act on Credit Institutions effective from 1 August 2009)

The financial institution shall publish its standard service agreement, which must also contain its standard contract terms and conditions, in the form of a posted notice in the customer area of its premises, and where services are also provided in electronic commerce, by way of electronic means, too, in easily accessible format (Section 203 (1) of Act on Credit Institutions).

The standard service agreement containing the terms and conditions of deposit transactions shall include, in particular

- a) the full name of the credit institution, the number and date of its authorisation,
- b) the method of computation of interests and average interests, and whether the interest rate is fixed or variable,
- c) the minimum amount accepted by the credit institution as a deposit,
- d) the minimum period during which the deposit may not be withdrawn at all, or during which the deposit may be withdrawn only when the interest is lost in part or in full,
- e) deductions, if any, by the credit institution from the interest to be paid,
- f) the procedure for the termination of the deposit account and any costs involved,
- g) information on the insurance coverage of deposits,
- h) in the case of registered deposits, the personal identification data recorded by the financial institution. (Section 208 of Act on Credit Institutions)

The standard service agreement containing the standard contract terms and conditions of bank credit and bank loan operations shall comprise at least

- a) the full name of the credit institution, number and date of its authorisation,
- b) whether the interest rate is fixed or variable and, if so, how,
- c) method of computation of interests,
- d) other fees and costs,
- e) additional obligations in security of the contract,
- f) the regulations on data processing in connection with the Central Credit Information System (hereinafter: KHR), and an indication of the legal remedy available (Section 209 of Act on Credit Institutions).

All home savings and loan associations shall in their standard service agreements determine the general contract terms and conditions of interim financing, loan extension and account management to include at least the following:

- a) the extent and frequency of services to be performed by the home savings account holder and by the home savings and loan association, and the legal consequences of any delays of such fulfilment,
- b) the interest falling due on the sums to be deposited in accordance with the agreement,
- c) the conditions for receiving housing loans, minimum savings ratio, minimum savings value, aspects considered for credit rating, the cases for rejecting housing loan applications,
- d) interest rates and handling charges on housing loans,
- e) the method of determining the sequence among housing loan applicants, the determination of accounts to be disbursed, due date of housing loans and the execution of their disbursement,
- f) the conditions and legal consequences of extraordinary deposit placement and of amending the agreement, in particular of increasing or decreasing the contract amount,
- g) the cases and legal consequences of termination of the agreement,
- h) the conditions of the maximum duration of suspension of making deposits, and the conditions of transferring accounts,
- i) the instances of eligibility for interim financing,
- j) documents required to verify the use of the loan for housing purposes.

Home savings and loan associations are required to determine their general contract terms and conditions in a manner so as to provide for long-term harmony between the obligations assumed by the home savings and loan associations and those by home savings account holders.

Any amendment in the standard service agreement shall require the permission of the HFSA. (Section 18 of the Act on Home Savings and Loan Associations)

(1) Contract terms which have not been individually negotiated shall become part of a contract only if they have previously been made available to the other party for perusal and if the other party has accepted the terms explicitly or through conduct that implies acceptance.

(2) The other party shall be explicitly informed of any standard contract conditions that differ substantially from the usual contract conditions, the regulations pertaining to contracts, or any stipulations previously applied by the same parties. Such conditions shall only become part of the contract if, upon receiving special notification, the other party has explicitly accepted it.

(Section 205/B (2) of the Civil Code)

The provider of an information society service shall, prior to sending its offer for electronic contracting, make the general contract terms and conditions pertaining to the information society service available in a manner that allows the recipient to store and retrieve such terms and conditions. (Act CVIII of 2001)

1.2. INFORMATION SUPPLY

General customer information

The financial institution must publish the following in *the form of a posted notice* in the customer area of its premises, and where services are also provided in electronic commerce, *by way of electronic means, too* in an easily accessible format:

- a) the standard service agreement, also containing the standard terms and conditions;

b) the contract terms and conditions for financial services and auxiliary financial services (transactions) offered for customers;

c) rates of interest, service fees, and other costs charged to the customers, default interests and the method of computation of interests.

The financial institution shall make available free of charge upon a customer's request:

a) its standard service agreement, and

b) the data to be published under the provisions of legal regulations.

Prior to entering into a contract, the financial institutions shall – unless otherwise prescribed by law – inform prospective clients if some law other than Hungarian law is to be used for settling legal disputes in connection with the contract, or if Hungarian courts are not vested with exclusive jurisdiction.

In the case of personal loan contracts with clients treated as consumers, provided in a foreign currency or that involve a real property with an option to buy, the financial institution shall expressly specify in the contract the risks to which the client is exposed, and the client shall verify acknowledgement by his signature.

The **statement of risk** shall include the items specified in Section 203 (5) of the Act on Credit Institutions.

Unless otherwise agreed, financial institutions shall supply the information referred to above *in the Hungarian language*. (Section 203 of the Act on Credit Institutions).

Statement (extract)

In the case of continuous contracts (contracts on the repeated fixing of deposit amounts), the financial institution shall send the client a clear, unambiguous and comprehensive written statement (extract) at least once a year, and at contract expiration. The statement sent on the account – unless otherwise stipulated by the standard service agreement or another contract – shall be considered accepted if the customer does not raise any objection in writing within sixty days of receiving the statement; this, however, shall not affect the enforceability of deposit to which it pertains. The client may request – at his own cost – a statement on individual transactions carried out in the past five years preceding the request. The credit institution is obliged to send such statements in writing to the client within ninety days. The method and frequency of providing statements on current accounts are regulated as decreed by the President of the National bank of Hungary (NBH). Unless otherwise agreed, credit institutions shall make out and supply the extract and the statement in the Hungarian language. (Section 206 of the Act on Credit Institutions)

The central credit information system

The central credit information system (hereinafter referred to as “KHR”) is a closed database designed to provide facilities for better and more reliable credit information, and hence to expand the spectrum of lending, and to help to reduce the credit risk of reference data providers with a view to guaranteeing their prudent and safe operation.

Reference data are any data, including the personal identification data of the registered entity, which the financial enterprise managing the central credit information system may handle pursuant to the Act on Credit Institutions.

Reference data providers include financial institutions that extend credits and money loans, provide financial leasing, issue electronic money and payment instruments and provide

related services, undertake surety and bank guarantee and other banking obligations, the Student Loan Centre, legal entities engaged exclusively in undertaking guarantee and joint and several guarantee, credit institutions and investment firms engaged in the activities specified in Item *c*) of Section 5 (2) of the Act on Investment Activities, as well as credit institutions, investment firms, investment funds, investment fund managers, organisations engaged in clearing house activities, voluntary mutual insurance funds, private pension funds, financial institutions, central depositories and insurance companies engaged in securities lending.

The financial enterprise operating the KHR shall be allowed to receive reference data only from reference data providers, and shall be allowed to convey reference data to reference data providers only from this database. (Sections 130/A. (1)-(3) of the Act on Credit Institutions)

The KHR is supplied with data by the reference data providers, who are also authorised to use said data during the appraisal of loan applications. The database of the KHR contains all data the registration of which is required according to the Act on Credit Institutions. The KHR consists of two systems. One of them contains records on companies, while the other manages the credit information of private individuals.

The corporate system stores the data – required to be included in the KHR – of corporate customers of the reference data providers in three subsystems (corporate credit registration, insolvent companies, as well as records on the cancelled contracts on the acceptance of cash equivalent instruments).

The retail system includes the particulars of all natural persons that have violated their loan or loan-type contracts, or contracts on the use of cash equivalent instruments – in a manner detailed in the Act on Credit Institutions – concluded with the reference data providers. The retail system is also divided into three subsystems (loan default, fraudulent use of banking cards, subsystem recording loan applications rejected due to fraud).

The corporate credit registration subsystem of the corporate system is a complete list database, which includes all records on the loan or loan-type contracts of companies. The other two subsystems of the corporate system, as well as all three subsystems of the retail system contain negative list databases, which include only those customers that commit infringements according to the provisions specified in the Act on Credit Institutions.

Credit institutions whose registered seats are in Hungary shall join the KHR as soon as they enter the market.

Branch offices are not mandated, but are entitled to join the KHR system. Branch offices are recommended to join the KHR system in case they are engaged in the extension of loans, financial leasing, the issuance of cash equivalent instruments, or undertake surety or guarantee.

The detailed provisions pertaining to the KHR are contained in Sections 130/A through 130/O of the Act on Credit Institutions. Other information on the KHR and the financial enterprise operating the KHR can be read on the website of BISZ Zrt. (<http://www.bisz.hu/index.php?lang=en>).

Customer protection in the case of KHR membership

The branch office that is a member of the KHR system (reference data provider) shall supply information in writing to natural persons indicating the purpose of disclosure, the type of data that may be disclosed, the legal remedy available, and indicating, furthermore, that the financial enterprise operating the KHR has the right – following the transmission of data to the KHR – to disclose the reference data to other reference data providers for the reasons specified in the Act:

- a) prior to the initiation of contracting, the data subject shall be notified that his data may be recorded in the KHR in the case specified in Section 130/D;
- b) prior to the planned transmission of data, the data subject shall be notified that his data may be recorded in the KHR in the cases specified in Sections 130/C and 130/E, also indicating the specific reasons;
- c) thirty days before the planned transmission of data, the data subject shall be notified that his data may be recorded in the KHR in the case specified in Section 130/C in the event of his failure to satisfy his contractual obligations; and
- d) within maximum eight days from the date of the data transmission, the data subject shall be notified that the transmission has been completed.

Prior to the conclusion of the contract the reference data provider shall supply information in writing to companies indicating the purpose of disclosure and the type of data that may be disclosed, and indicating, furthermore, that the financial enterprise operating the KHR has the right – following the transmission of data to the KHR – to disclose the reference data to other reference data providers for the reasons specified in Subsection (4) of Section 130/A, that their reference data may be recorded in the KHR in the case specified in Section 130/F.

Any person may request information from any reference data provider inquiring as to his data that are recorded in the KHR, and about the reference data provider that has supplied such data.

(Section 130/J of the Act on Credit Institutions)

Information requirements relating to certain deposit and loan agreements

In the cases defined in Government Decree 41/1997 (III. 5.), the commercial communication shall contain information concerning the uniform deposit rate index (EBKM), or the annual percentage rate (APR) for credit relating to personal loans for terms of over three months. The regulations for the calculation of these indexes and for the means of display are laid down in Government Decree 41/1997 (III. 5.)

(Section 214/D of the Act on Credit Institutions)

Information on interest payment on deposit contracts and debt securities:

In its standard service agreement the credit institution shall publish, in addition to the fix interest calculation method used for deposit contracts it offers, ***the uniform deposit interest rate index (hereinafter: EBKM)***, too, by specifying the abbreviation, with an accuracy of two decimals. In the case of a deposit contract created specifically for one customer, the credit institution shall calculate the EBKM, and shall include the value thereof in the contract.

In the case of deposits committed for an indefinite period, or in the case of uncommitted deposits the blocking period shall be assumed to be one year, however the credit institution has the right to issue an index calculated for a blocking period it considers typical. During the

calculation of the index the blocking period stipulated in the contract shall be taken into account.

In the case of home savings and loan associations the value of the EBKM shall be determined in the commercial communication assuming that HUF 20,000 is deposited monthly on a continuous basis.

During the calculation of the EBKM, only the amount to be actually paid (credited) can be taken into account in the amount of the interest; if the interest payable is burdened with any deduction under any legal title (e.g. commission, fee), the amount of the interest shall be reduced with the amount of the deductions.

The financial institution must publish the following information in the form of a posted notice in the customer area of its premises:

- a) the formula of interest calculation;
- b) the first and last day of interest payment;
- c) the date (dates) of crediting interest;
- d) the terms and conditions for the withdrawal of funds before the expiration date;
- e) all facts, information and conditions that affect the amount paid during, at or after maturity;
- f) by indicating the abbreviation, the value of the EBKM with an accuracy of two decimals.

(Sections 2 through 5 of Government Decree 41/1997. (III. 5.))

In the case of *debt securities*, if the interest on the security was determined by the issuer for the entirety of the remaining maturity period, investment firms and credit institutions, as well as the organisations that are authorised to negotiate own-debt securities without using a broker in accordance with the law, shall calculate and publish in the manner described below the *standardised rate of return on securities (hereinafter: EHM)*.

Information supply regarding the fees associated with loan agreements:

The standard service agreement, public information and offer posted by the financial institution in its premises shall conspicuously include the *annual percentage rate (hereinafter: APR)*. The provisions pertaining to the calculation and publication of this value shall be applied in the case of consumption loans extended by financial institutions with a maturity of over three months.

The APR is the internal interest rate at which the principal and loan fee repayable by the consumer equal the loan amount decreased with all costs paid in relation to the loan until disbursement.

When calculating the APR, the costs paid by the customer to the financial institution, and from among costs paid to third parties, the fee for the appraisal of the collateral offered by the customer, and in the case of home construction, the fees of the on-site survey shall be taken into account.

In relation to the application of the APR Sections 8 through 13 of the Government Decree contain provisions.

In the case of loans denominated in a foreign currency, the payments made by the customer shall be taken into account in Hungarian forint in the formulas specified in Section 10 of the above Government decree.

The financial institution shall make it possible for its customers to get to know, before signing the contract:

- a) the draft credit contract,
- b) the possible costs of modifying the credit contract,
- c) the expected costs of credit prolongation,
- d) the default interest rate and the conditions for credit withdrawal in case of non-performance by the customer,

- e) the interest rate calculated for the entire loan term,
- f) the APR by indicating the abbreviation, with an accuracy of two decimals, the method of APR calculation, as well as the specification and expected amount of other costs that were neglected during the calculation of the APR, including especially the notary's fee and the insurance fee required to be paid for the disbursement of the loan,
- g) all costs payable to the financial institution in relation to taking out the loan, and
- h) other terms and conditions set by the financial institution for the disbursement of the loan.

In addition to the fees and costs specified in the notice given in accordance with the previous section the financial institution is not authorised to charge the customer further costs and fees under further legal titles in case the transaction is completed according to the contract.

The standard service agreement, public information and offer posted by the financial institution in its premises shall conspicuously show the APR including the following supplementary information:

- a) the APR was determined with regard to the conditions and legal regulations in force, and its rate may be modified in case the conditions change,
- b) the value of the APR does not indicate the foreign exchange risk of the loan,
- c) the value of the APR does not indicate the interest risk of the loan.

Sections b) and c) indicated above shall be applied in the case of foreign currency denominated and variable interest loans, respectively.

In the case of housing loans different from the ones specified above, it is not mandatory to include the APR in the standard service agreement.

If the commercial communication of the financial institution, or the commercial communication of a third party mediating the loan of the financial institution includes the interest rate, any associated costs and repayment instalments of the loan, or any other reference that can be associated with said elements, the value of the APR shall be included in the communication immediately after said information, with the indication of the abbreviation, and with an accuracy of two decimals at least in the same size and in the same visualisation in an easily understandable manner.

If the loan provider takes into account a discount during the calculation of the APR in accordance with Section 9 (3) of the Government Decree, and this discount depends on a certain condition (either on the loan provider's or on the customer's side), the commercial communication must at least include the accessibility of the detailed conditions.

Commercial communication pertaining to credit cards advertised with preferential conditions shall also include the value of the APR calculated on the basis of standard conditions.

Commercial communication pertaining to credit cards advertised with preferential conditions shall also include the account period taken into account during the calculation of the APR.

(Sections 12 and 13 of Government Decree 41/1997. (III. 5.))

Information supply to the account holders is also regulated in detail. The credit institution shall inform the account holder about the terms and conditions of account keeping and any changes thereto at the time of bank account opening and then on a continuous basis in accordance with Sections 203 and 206 of the Act on Credit Institutions.

Information on the execution of payment orders:

The credit institution shall make available to its actual and prospective customers in writing, in a clearly understandable form, *prior information* on conditions for executing payment orders. The information shall include at least:

- a) in the case of the originator's institution, the period of time needed for the amount credited to the account of the beneficiary's account keeper and the start of calculating that period,
- b) in the case of the beneficiary's institution the time needed for the amount credited to the account of the beneficiary's account keeper to be credited to the beneficiary's account,
- c) the value date applied by the institution,
- d) the method of calculation of any commissions, fees, charges and interest payable by the originator,
- e) details of complaint and redress procedures available and the way to use them,
- f) the type of exchange rate used for the conversion of the amount of the payment order.

The institution carrying out remittance in cash shall provide information in writing when accepting payment orders, which shall include at least:

- a) the information referred to in Paragraphs d)-f) of the above section,
- b) the place of cash withdrawal,
- c) the period of time needed for the amount of the payment order to arrive at the beneficiary and the start of calculating that period.

(Section 4 of Decree 21/2006. (XI. 24.) of the Governor of the NBH)

Credit institutions shall provide prior information to the originator about the costs and deadlines of the performance of each payment order. Credit institutions shall notify the account holders of the turnover and balance of their bank accounts by way of bank account statements in accordance with the content and frequency specified in the NBH Decree. Subject to agreement with the account holder, the bank account statement may also be forwarded by electronic means. (Section 5 of Decree 21/2006. (XI. 24.) of the Governor of the NBH)

Upon signature of the agreement at the latest, the issuer of the electronic payment instrument shall communicate to the client (holder) the contractual terms and conditions governing the use and safekeeping of the electronic payment instrument as well as the related liability.

(Government Decree 227/2006. (XI. 20.))

Information supply by electronic means:

The provider of information society services shall publish at least the following data and information in Hungarian, by electronic means, directly and on an ongoing basis, in an easily accessible manner:

- a) the service provider's name,
- b) the registered address and premises of the service provider, or in the absence of such information, its residential address,
- c) contact details of the service provider, in particular its e-mail address regularly used for maintaining contact with the recipients of the services,
- d) when the establishment of the service provider or the commencement of the service provider's activity is subject to statutory public registration, the name of the court or authority that registered the service provider, as well as its registration number,
- e) when the service provider's activity is subject to statutory licensing, a statement on this fact along with the name and contact details of the licensing authority, and the number of the licence,
- f) if the service provider is subject to VAT payment, the VAT registration number of the service provider;
- g) if the service provider is engaged in a regulated profession:
 - ga) the name of the trade advocacy organisation (chamber) which the service provider joined, either under statutory regulation or voluntarily, as a member;

- gb) the qualification, professional or academic rank of the natural person service provider and the Member State where this qualification or rank was obtained;
- gc) reference to professional codes applicable to the regulated profession in the state of establishment of the service provider and their accessibility (Section 4 of the Act CVIII of 2001).

1.3. COMPLAINT PROCESSING

The general rules of complaint processing are included in Section I/3 of the part titled Consumer Protection Provisions (Chapter 3).

Special complaint processing rules apply to foreign exchange offices/money changers. Foreign exchange offices/money changers shall ensure the submission of complaints in writing by providing a form produced especially for this purpose. A copy of the completed form shall be returned to the complainant after certifying the receipt. Foreign exchange offices/money changers shall confirm the complainant the receipt of complaints reported in any other manner in five days from the receipt of the complaints. The form shall inform the complainant about the deadline for the written reply, the possibility to settle consumer disputes out of court by way of mediation, as well as about the name and address of the public administration authority supervising the given activity. Foreign exchange offices/money changers shall keep central records about the complaints submitted to them. The records or their annexes shall contain reference to measures taken for the prevention of similar cases in relation to fully or partially justified complaints.

(Section 27 of Government Decree 297/2001. (XII. 27.))

1.4. ENFORCEMENT OF CONSUMER CLAIMS AND RIGHTS

The general rules pertaining to the enforcement of consumer claims and rights are included in Section I/4 of the part titled Consumer Protection Provisions (Chapter 3).

1.5. ADVERTISING RULES

Advertisements on behalf of credit institutions, when acting as the advertisers, for inviting *persons of minor age* for placing money on deposit, borrowing or using other financial services must be published in at least two national daily newspapers, and in at least one local newspaper and one national newspaper when transmitted on behalf of cooperative credit institutions.

Drawings, except for premium deposits, may not be advertised.

In connection with any infringement of the above provisions the consumer protection authority shall have power to act according to Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities. In the application of the Act CLV of 1997 on Consumer Protection, these provisions are treated as consumer protection regulations. (Sections 201 through 201/B of the Act on Credit Institutions).

Offers, advertisements and notices related to *deposit contracts* shall call attention to the fact that the detailed description of the deposit contract is contained in the standard service agreement. Advertisements and notices about individual deposits, and the offers for concluding deposit contracts shall present conspicuously the value of the EBKM – indicating the abbreviation and with an accuracy of two decimals.

It is prohibited to use information on the deposit insurance, the Fund, or on the voluntary deposit and institution protection fund for the purposes of increasing the deposits, including especially for advertising purposes.

If the notice of the financial institution, or the notice of a third party mediating the loan of the financial institution includes the interest rate, any associated costs and repayment instalments of the loan, the value of the APR shall also be indicated at least in the same size and in the same visualisation.

(Sections 5 and 12 of Government Decree 41/1997. (III. 5.))

1.6. CONFIDENTIALITY AND DATA PROTECTION

All facts, information, know-how or data in the financial institution's possession on customers relating to the person, data, financial standing, business activities, management, ownership and business relationships as well as the balance and money movements on the account of a customer maintained with the financial institution as well as to his contracts entered into with the financial institution shall be construed *bank secrets*.

For the purposes of the provisions of the Act on Credit Institutions regarding bank secrets, any person who receives financial services from the financial institution shall be considered a customer of the financial institution.

Bank secrets may only be disclosed to third parties, if

- a) so requested by the customer of the financial institution or his legitimate representative in a public document or in a private document with full probative force that expressly indicates the bank secrets relating to the customer that may be disclosed; it is not necessary to make the request in a public document or in a private document with full probative force if the customer provides a statement to that extent as an integral part of the contract with the financial institution,
- b) the Act grants an exemption from the obligation of bank secrecy,
- c) so facilitated by the financial institution's interests for selling its receivables due from the customer or for the enforcement of its outstanding receivables.

Based on the provisions of the above Paragraph b), the obligation to keep bank secrets shall not apply in cases specified in Section 51 of the Act on Credit Institutions. Further rules pertaining to bank secrets are contained in Sections 52 through 55 of the same act.

1.7. PROTECTION OF CUSTOMER CLAIMS, THE NATIONAL DEPOSIT INSURANCE FUND

Credit institutions with a registered seat in Hungary must join the National Deposit Insurance Fund (hereinafter referred to as "NDIF").

Pursuant to Section 97(3) of the Act on Credit Institutions, branch offices of credit institutions registered in other Member States of the European Union are not required to join the NDIF if they are covered by a deposit-guarantee scheme under Directive 94/19/EC of the European Parliament and of the Council. Any branch office of a credit institution established in another Member State of the European Union that is not covered by a deposit-guarantee scheme prescribed under Directive 94/19/EC of the European Parliament and of the Council must join the NDIF in order to obtain the supplementary cover.

The type of deposit insurance available for the credit institution intending to establish a branch office, shall be reported to the HFSÁ by the supervisory authority of the Member State having jurisdiction over the registered seat, in the notice on the establishment of the branch

office. In case the branch office joins the deposit guarantee scheme of its own Member State, it is required to prepare a Hungarian information material containing the types of deposits insured by the deposit insurance fund, the extent of insurance, the conditions for the payment of indemnification, as well as the rules of the procedure indispensable for the utilisation of the insurance scheme.

Detailed provisions pertaining to the NDIF are contained in Sections 97 through 127 of the Act on Credit Institutions. Other information can be found on the NDIF's website (<http://www.oba.hu/index.php>).

The credit institution shall inform, in an understandable manner, the depositor about material issues that affect him in relation to the NDIF, foreign deposit guarantee institutions, as well as voluntary deposit insurance and guarantee funds specified in Chapter XX of the Act on Credit Institutions (in case the credit institution belongs to such an organisation), including especially the types of deposits insured by the NDIF, the extent of insurance, and – in case deposits are frozen or the credit institution is liquidated – about the conditions of compensation payment according to Section 101 (1) of the Act on Credit Institutions (which will take effect on 30 June, 2009), as well as about the procedure to be followed for the utilisation of the insurance scheme.

A credit institution shall inform its depositors if its membership in the NDIF or in a foreign deposit-guarantee institution has been terminated, and it shall remove all mention of the deposit insurance stipulated by the Act referred to above in all notices. Such notices shall contain the rights of depositors and the procedure for asserting such rights. (Section 203 of the Act on Credit Institutions).

Unless otherwise agreed, financial institutions shall supply the information referred to above *in the Hungarian language*. The credit institution shall also inform the depositors about the fact that the insurance of the NDIF shall not apply to deposits specified in Section 100 and Section 126 (4) of the Act on Credit Institutions. (Sections 204-205 of the Act on Credit Institutions)

Credit institutions may only enter into deposit contracts (release deposit documents) or issue debt securities if the deposit is insured by the NDIF in accordance with the Act on Credit Institutions. If the insurance provided by the NDIF does not cover the deposit, the precondition for the above activity is that the contract (deposit documents) shall contain a warning that the insurance provided by the NDIF does not cover the deposit. (Section 211 of the Act on Credit Institutions)

The insurance provided by the NDIF does not cover deposits specified in Sections 100 (1) and (2) of the Act on Credit Institutions.

If a credit institution that is a member of the NDIF carries out deposit transactions through another legal entity, such legal entity must also indicate the credit institution on behalf of which it is accepting the deposit. Deposit documents (asset accumulating securities) made out in the form of securities must visibly indicate that the contract serving as the basis thereof is a savings deposit contract. (Section 211 of the Act on Credit Institutions)

The NDIF shall compensate persons entitled to compensation for the principal and interest on frozen deposits up to a maximum amount of *fifty million euros* per person and per credit institution on the aggregate. The forint amount of compensation shall be determined on the basis of the official foreign exchange rate published by the NBH on the day immediately

preceding the starting date specified in Section 105 (1). In the case of foreign currency deposits, the amount of compensation and the amount limit specified in this Subsection shall be determined based on the official NBH exchange rate in effect on the day immediately preceding the starting date of compensation specified in Section 105 (1), regardless of the time of payment. (Section 101 (1) of the Act on Credit Institutions)

1.8. RULES PERTAINING TO CERTAIN CONTRACTS

A *bank loan contract* is valid only if it is concluded in writing. The debtor is not obliged to take over the amount of the loan, however in this case it must indemnify the creditor's losses arising from the conclusion of the contract. If the creditor is a financial institution, it shall not be entitled to indemnification, however for the period during which the creditor holds the loan committed for the debtor – either on the basis of a loan contract or without it – the debtor shall pay a commitment fee.

Special consumer protection rules apply to *consumer loans* that stipulate the annulment of the contracts in the absence of the minimum contractual content (subject of the contract, annual percentage rate and other costs, number and amount of instalments, dates of repayment, etc.). A consumer loan is a loan provided to consumers for the purchasing or repair of consumer goods primarily used for personal, family or household purposes, or for using services, without making such loan attached to a specific purpose of use. (Section III/5 of Schedule 2 of the Act on Credit Institutions).

Any contract clause differing from the rules for consumer loan contracts to the consumer's detriment shall be null and void, however a contract may only be nullified in the consumer's interest. The creditor must inform the consumer, at the time a consumer loan contract is concluded, of all of the contract conditions that will become part of the contract pursuant to legal regulation. In the case of consumer loans, the customer – in the interest of termination of the agreement – may in all cases exercise his right of early (premature) repayment (redemption). If the consumer exercises the right of early (premature) repayment (redemption), the creditor is obliged to reduce the cost of credit accordingly. (Sections 212 through 214 of the Act on Credit Institutions)

The annual percentage rate must be contained in all consumer loan contracts, too. The APR is the charge payable for the loan by the consumer, which includes the interest rates, disbursement commissions and all other costs payable in relation to the utilisation of the loan. The *consumer protection rules pertaining to the circulation of money and to electronic payment instruments* are contained in a separate rule of law. These rules specify the deadlines for the performance of payment orders, the deadlines for the revocation or modification of the payment orders, the auxiliary rules of cost-bearing, the obligation to pay a default interest, as well as the obligation of immediate repayment in case the order is aborted.

Issuers shall make available to their client (holder) an electronic payment instrument exclusively upon the express request of such client, and in the process of issuing the issuer shall ascertain that no person other than the client (holder) gains access to the client's personal identification number or other similar identifier of the client necessary for the use of the electronic payment instrument. The rule of law stipulates the minimum content of the contract, which shall also include that the holder shall immediately notify the issuer or the institution commissioned by the issuer and specified in the contract, after becoming aware

- a) of the electronic instrument no longer being in his possession (being kept by him);

b) of any unauthorised third person becoming privy to the personal identification code or any other similar identifier necessary for the use of the electronic payment instrument;
c) of the fact that an unauthorised transaction was recorded on his bank statement and account,
and furthermore, stipulates the specific rules for the amendment of the contract, which in this case means a 30-day prior notice.
(Section 14 of Government Decree 227/2006. (XI.20.))

The issuer shall provide means to enable the holder to the notification mentioned above via telecommunication means at any time on any day of the week. The issuer shall maintain records of the notifications containing facilities to ascertain the time and content of notifications reliably and unchangeably for at least five years. The issuer, upon the request of the client, shall provide the holder with a certificate of the time and content of his notification.
(Section 17 of Government Decree 227/2006. (XI.20.))

The notification related to the disappearance of the electronic payment instrument is regulated by separate rules on responsibility and liability for loss, according to which the issuer shall be liable for the damage sustained in consequence of the loss or theft (with or without force) of the electronic payment instrument arising after the notification, if the loss has occurred for reasons other than deliberate and grave breach of contract on the part of the holder. In this case the client (holder) shall bear the loss sustained prior to the notification of up to forty-five thousand Forints. Separate strict rules apply to electronic money instruments.
(Section 18 of Government Decree 227/2006. (XI.20.))

2 CAPITAL MARKET

2.1 STANDARD SERVICE AGREEMENT

The standard service agreement - elaborated in accordance with the activities described below – of economic organisations (hereinafter referred to as *companies*) engaged in investment service activities, in ancillary services relating to investment service activities (hereinafter referred to as *ancillary services*), as well as in commodity exchange services defined under the IFCD Act shall contain:

- a) the list of the investment service activities, ancillary services, commodity exchange services licensed by the Supervisory Authority as well as the activities defined under Subsection (5) of Section 8 of the IFCD Act,
- b) the number and date of the resolution which was issued by the Supervisory Authority authorised the performance of the activities set out in point a), the name, the contact address and website of the Supervisory Authority,
- c) the languages in which the client may communicate with the investment firm, as well as
- d) the method and means of communication to be used between the client and the investment firm, including those for the sending and reception of orders.

In connection with the conclusion, performance, amendment and termination of the contract, the standard service agreement of the investment firm shall include

- a) the detailed rules for the identification of the client,
- b) the list of documents and declarations that are suitable for carrying out the fitness and compliance tests prescribed for the companies, as well as the list of the rules for client classification,

- c)* the detailed rules for transactions that can be concluded within the framework of investment service activities, ancillary services or commodity exchange services, including the manner and detailed rules, by transaction, for the clients' access to the financial instruments and funds the companies manage for the clients,
- d)* the reasons for the refusal of contracting with the client, as defined by law,
- e)* the manner and deadline of settlement with the client,
- f)* the detailed rule for the amendment and termination of a contract, including the rescission and termination deadlines, and
- g)* the Schedules which are defined in Section 6 and constitute a part of the standard service agreement,
- h)* the manner of providing data protection information.

The standard service agreement of the company shall contain:

- a)* the general rules relating to account transfer,
- b)* the company's obligation towards the client – including the manner of extraordinary disclosure to clients – when the company's activity licence is withdrawn, the performance of certain activities is partially or fully suspended or limited and when the licences granted for pursuing the activity are withdrawn,
- c)* the obligation and risk assumption of the company and the client per transaction type when the activity of the company is limited or suspended by the exchange or by the Supervisory Authority, or if a measure by the clearing house or the central contracting party affects the client order.

When managing securities accounts and clients accounts, the standard service agreement shall contain:

- a)* the detailed conditions for opening an account,
- b)* the frequency and method of sending notification to client concerning all transactions to and from the account as well as on the balance of the account. If the company accepts orders from the client by way of telephone, fax or other electronic means, the standard service agreement shall provide for detailed rules thereof, thus in particular,
 - a)* the procedure to be followed when placing orders by way of telephone, fax or other electronic means (sound recording or written recording by the recipient of the order), the manner of preparing written contracts and the date of fixing them in writing,
 - b)* the duration for which the sound recording should be retained.

If the company makes a sound recording of an order, the standard service agreement shall provide for the right of access to the sound recording.

The standard service agreement of the company shall contain that – save for the cases specified by law and for the client's serious breach of contract not settled in spite of a notice - the company may not restrict or exclude its liability for the performance of the contract. The standard service agreement shall contain, by type of transaction, the cases deemed as the client's serious breach of contract, as well as the rights and obligations of the parties in the event of a breach of contract by the parties.

The standard service agreement of the company shall contain the frequency and method of sending notifications and providing information to clients, and their cost effects.

When the company meets its obligation to provide information specified in the IFCD Act in a durable medium, its standard service agreement shall explicitly draw the attention of the client to the detailed rules relating to the method of providing information.

The standard service agreement of the company may not exclude the client's requesting information about the execution of orders the client has given and about the balance of client's account the company manages in other manner than set out in the standard service agreement.

The standard service agreement of the company shall contain

- a)* the frequency, timing and nature of the report concerning the investment service activities performed, ancillary services or commodity exchange services provided for the client,
- b)* when managing the client's financial instruments or funds, the summary of the measures ensuring the safeguarding of these assets, including information about the investor protection scheme available to the client and about its operation.

The standard service agreement of the company shall explicitly draw the attention of the client to

- a)* the provisions set out in laws on the combating of money laundering,
- b)* the governing law in the event of a legal dispute between an investment firm and a client.

Schedules to the company's standard service agreement:

- a)* form sheets relating to contracts to be concluded between investment firms and clients,
- b)* the range of outsourced activities and the list of entities engaged in outsourced activities,
- c)* the list of intermediaries used by investment firms,
- d)* the list of fees applied by investment firms also containing the costs and fees charged to the client related to contracting as well as to the individual transactions in case of a formerly concluded contract and a contract in force (framework agreement),
- e)* the indication of the business hours,
- f)* the general terms and conditions of the contract,
- g)* the rules for complaints handling,
- h)* the execution policy of the investment firm,
- i)* summary description of the investment firm's conflict of interest policy.

The company's standard service agreement shall be submitted – within eight days from approval by the executive body - duly signed on each page, in a consolidated structure with amendments, to the Supervisory Authority with the purpose of providing information.

(Government Decree 22/2008 (II. 7.))

Investment service providers and commodity dealers may take orders exclusively in the manner defined in the standard service agreement.

All contracts between investment firms and clients must be fixed in writing in accordance with the provisions of the standard service agreement with the exception of the following.

Agreements for the execution of transactions on behalf of the client under portfolio management services relating to financial instruments (hereinafter referred to as order) shall not be made out in writing if placed under an existing framework agreement, if such framework agreements made out in writing and if the investment firm records the order electronically.

Following the execution of orders on behalf of the client under commodity exchange services, commodity dealers shall promptly provide information to the client relating to the execution of orders with the exception of the cases specified below - in the manner specified in the standard service agreement.

The above information needs not be provided if the client can promptly obtain the same information from third parties.

In addition to satisfying the above, commodity dealers shall provide information to the client at client's request about the actual status of orders.
(Section 52 of the IFCD Act)

The securities intermediary shall record all transactions to and from a securities account on the date of the transaction and shall send this confirmation to the account holder in the manner specified in the standard service agreement. A power of attorney supplied to the securities intermediary shall be accepted only if made out in writing in the manner and content specified in the standard service agreement. The signature specimen of authorised signatories shall be supplied to the securities intermediary in the manner stipulated in the standard service agreement. (Sections 142-143 of the Act on the Capital Market – hereinafter referred to as CMA)

Special rules relating to investment fund management:

The special rules relating to operations of investment fund management companies shall be laid down in the fund management protocol - subject to the Authority's approval - as illustrated in Schedule No. 16 of the CMA, which protocol contains the standard terms and conditions of service between the investors and the fund management company. When purchasing investment units, investors shall supply a statement of acknowledgement of the terms and conditions contained in the fund management protocol.

Fund management companies shall proceed in the client's best interest in compliance with legal provisions and with their own internal regulations, and as stipulated in the fund management protocol as amended from time to time.

Investment fund management companies shall act under the principle of equal treatment with respect to investors. However, any diversity in the rights and obligations embodied in investment units among any series of such investment units, and the fund manager's actions taken as a consequence, in accordance with the relevant legal regulation and the investment fund's management protocol, shall not be considered a violation of this principle.

The fund management protocol shall contain all information necessary for investors to make an informed judgement of the operation, investment strategies and management of the investment fund.

(Subsections (1)-(4) of Section 236 of the CMA)

Any investment fund management company may create and operate several separate investment funds, and shall have powers to decide for the offering of investment units of different series in any one investment fund.

The investment fund management company must handle and keep records of the assets of the fund and clients separately from its own assets.

The assets which comprise part of a portfolio managed by an investment fund management company shall not be construed as the property of the fund manager.

Investment fund management companies shall keep records of the assets of each investment fund and each client separately.

Investment fund management companies may not acquire any holding in an issuer for the benefit of the funds they manage to an extent entailing any future purchase obligation.

As regards real estate funds, the investment fund management company must maintain comprehensive insurance coverage for all of the (insurable) properties that are part of the fund's portfolio, with the fund named as the beneficiary covering all risks.

(Subsections (1)-(6) of Section 239 of the CMA)

2.2 PROVISION OF INFORMATION

Companies shall make their standard service agreements publicly accessible in the offices open for clients, furthermore, when electronic commercial services are provided they shall make such agreements continuously and easily accessible by way of electronic means as well and make it possible for the clients to store and retrieve such.

(Sections 4- 5 of Government Decree 22/2008 (II. 7.))

General provisions for information to clients

Investment firms shall make available to clients and potential clients information in a comprehensible form – including any investment research and advertisement, that is fair, clear and accurate, and shall not supply any information to clients and potential clients that is misleading.

As regards the information provided to retail clients and potential clients after they are bound by any agreement, the investment firm shall:

- a) indicate the name of the investment firm;
- b) not withhold any essential information, or provide any misleading information intentionally, and shall not present any essential information, fact or circumstance as immaterial;
- c) not emphasize any potential benefits of any investment service activities, ancillary services or a specific financial instrument without simultaneously specifying their disadvantages, and without also giving a fair and prominent indication of any relevant risks;
- d) not use terms or any grammatical structures which are clearly incomprehensible or unintelligible for the clients and potential clients, and shall set the length of the information as appropriate to the nature and extent of the service; and
- e) proceed in accordance with Subsections (3)-(10), taking into consideration what is contained in Schedule No. 3.

The above provisions shall also apply to information - including investment research and advertisements - that is prepared for others, however, it becomes accessible to retail clients and potential clients after they are bound by any agreement.

If the information made available by an investment firm contains a comparison between investment firms, investment service activities, ancillary services or financial instruments:

- a) the comparison must be meaningful and presented in a fair and balanced way;
- b) the sources of the information used for the comparison must be specified; and
- c) the key facts and assumptions used to make the comparison must be included separately from the facts.

Where the information made available by an investment firm contains an indication of past performance of a financial instrument, a financial index or indicator, or an investment service, or any changes in such index, the following conditions shall be satisfied:

- a) that indication must not be the most prominent feature of the communication;
- b) the information must include appropriate performance information which covers the immediately preceding five calendar years relating to the financial instrument, a financial index or indicator in question, or any changes in such index, or performance information which covers the immediately preceding five calendar years in the case of investment services;
- c) the investment firm shall ensure that the reference period used for assessment and the source of information is clearly stated;
- d) the information must contain a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results, yield, changes and performance;

e) where the indication relies on figures and information denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident, or where his home address or registered office is located, the investment firm shall ensure that the currency be clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

f) where the indication is based on gross performance, figures and information covering commissions, fees or other charges, the investment firm shall ensure that the effect of commissions, fees or other charges on the return is disclosed.

In connection with the obligation referred to in Paragraph b) hereabove, if there is no information available relating to the financial instrument, financial index or indicator in question which covers their yield or performance during the immediately preceding five calendar years, or performance information which covers the immediately preceding five calendar years in the case of investment services:

a) but information is available for at least one year, information on yield or performance shall be provided for the entire twelve-month period for which such information is available;

b) and information is not available for any full twelve-month period either, no comparison of performance may be applied relating to the financial instrument, financial index or indicator in question, nor to investment service activities.

Where the information made available by an investment firm contains a simulation of past yield or performance, or reference thereto, of a financial instrument, a financial index or indicator, or an investment service, or any changes in such index, the information shall also contain a reference to the financial instruments, financial index or indicator underlying the financial instruments or financial index or indicator to which it pertains, and:

a) the simulation of past yield or performance, or changes therein, must be based on the specific past yield or performance, or changes therein, of the financial instruments, financial index or indicator underlying the financial instruments or financial index or indicator in question;

b) where the specific past yield or performance of the underlying product referred to in Paragraph a) is applied, the provisions contained in Paragraphs a)-c), e) and f) of Subsection (5) and also in Subsection (6) must also be satisfied;

c) the information must contain a prominent warning that the figures and information refer to simulated past yield or performance, or changes therein, and that past performance is not a reliable indicator of future results, yield and performance, or changes therein.

If the information provided by the investment firm relates to the future yield or performance of the financial instruments, financial index or indicator, or changes therein, or to the future performance of the investment service:

a) the information must not be based on or refer to simulated past yield or performance of the financial instruments, financial index or indicator, or changes therein, nor to simulated past performance of the investment service;

b) it must be based on reasonable and objective assumptions supported by objective data;

c) where the indication is based on gross performance figures and information covering commissions, fees or other charges, the investment firm shall ensure that the effect of commissions, fees or other charges on the return is disclosed;

d) the information must contain a prominent warning that the figures and information refer to simulated performance and that such forecasts are not a reliable indicator of future results, yield, changes and performance.

Where the information made available by the investment firm refers to a particular tax treatment or tax implication, it shall prominently state that the tax treatment or implication

depends on the individual circumstances of each client and may be subject to change in the future.

The information made available by the investment firm shall not use the name of any competent supervisory authority in such a way that would indicate or suggest endorsement or approval by that supervisory authority of the products or services of the investment firm, its activities or specific financial instruments.

In connection with carrying out investment service activities and providing ancillary services, investment firms shall provide information to clients and potential clients about:

- a) the investment firm in general;
- b) the policies of the investment firm governing operations and activities;
- c) the rules for the management of financial instruments and funds held for or belonging to a potential client;
- d) the financial instruments involved in transactions executed under contract;
- e) the transactions executed under contract, including any publicly available information that concerns the transaction in question and the risks involved;
- f) the execution venues referred to in Paragraph i), Subsection (2) of Section 62 of the IFCD Act;
- g) contractual costs and associated charges, and the costs and associated charges of transactions relating to previous contracts which are still in effect (hereinafter referred to as framework agreement) and charged to clients.

The information referred to hereabove shall be made available in good time, having regard to the urgency of the situation and the time necessary for the client to absorb and react to the specific information provided, the client's need for sufficient time to read and understand it before taking an investment decision.

Where, according to this Act, investment firms are required to provide information in a durable medium, it shall be provided:

- a) in writing; or
- b) in another form of durable medium.

Where, as prescribed by the IFCD Act, information is required to be provided in a durable medium referred to above, investment firms shall be permitted to provide that information in a durable medium only if:

- a) the provision of that information in that medium is appropriate to the contractual context in which the business between the investment firm and the client or potential client is, or is to be, carried on; and
- b) the client or potential client specifically chooses the provision of the information in the medium referred to in Paragraph b) of the previous Subsection.

In the cases defined in this Act, an investment firm may be allowed to provide information - in compliance with the requirements to provide information - to a client or potential client by means of a website, where that information is not addressed personally to the client or potential client, subject to the following conditions:

- a) the provision of that information in that medium is appropriate to the contractual context in which the business between the firm and the client or potential client is, or is to be, carried on;
- b) the client or potential client must specifically consent to the provision of that information in that form;
- c) the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

- d) the information on the website must be up to date; and
 - e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.
- (Sections 40-42 of the IFCD Act)

The securities intermediary shall record all transactions to and from a securities account in a statement and shall send this confirmation to the account holder as prescribed in the standard service agreement. The securities intermediary shall supply an account statement indicating the transactions in the securities account whenever one is requested by the account holder. (Subsection (1) of Section 142 of the CMA)

Obligation to provide prior information

1) Under Subsection (1) of Section 43 of the IFCD Act, in connection with carrying out investment service activities and providing ancillary services, investment firms shall provide information in good time prior to the signature of the given contract to potential clients and retail clients after they are bound by any agreement, concerning:

- a) the conditions of the contract, and
- b) the data which are directly relating to the provisions of the contract and are specified in Subsections (3) -(4) and Paragraphs *a)-c)* of Subsection (5).

2) Under Subsection (2) of Section 43 of the IFCD Act, in connection with carrying out investment service activities and providing ancillary services, investment firms shall provide information specified in Subsection (1) in good time prior to the signature of the contract provision of the service to:

- a) retail clients concerning the provisions contained in Subsections (3)-(5) and (7)-(9); and
- b) professional clients concerning the provisions contained in Paragraphs d) and e) of Subsection (8).

3) The information that investment firms are required to provide under Paragraph a), Subsection (1) of Section 41 of the IFCD Act to retail clients or potential retail clients after they are bound by any agreement shall include:

- a) the name and registered address of the investment firm, and any other means of contact;
- b) the languages in which the client may communicate with the investment firm;
- c) the methods of communication to be used between the investment firm and the client including those for the sending and reception of orders;
- d) the number of the investment firm's authorization to engage in investment service activities and to provide ancillary services, and the name and contact address of the competent supervisory authority that has issued the authorization; and
- e) where the investment firm is acting through a tied agent, a statement of this fact specifying the EEA Member State in which that agent is registered.

4) Where investment firms propose to provide portfolio management services to retail clients or potential retail clients after they are bound by any agreement, they shall provide, in addition to the information required under Subsection (2), the following to the clients:

- a) information on the method and frequency of valuation of the financial instruments in the client portfolio, as specified in the contract;
- b) details of any delegation of the discretionary portfolio management of all or part of the financial instruments or funds in the client portfolio;
- c) a specification of any benchmark against which the performance of the financial instruments in the client portfolio will be compared;

- d) the types of financial instrument that may be included in the client portfolio and the types of transaction that may be carried out in such instruments, including any limits;
- e) the management objectives, the level of risk to be reflected in the portfolio manager's exercise of discretion, and any specific constraints in connection with the portfolio manager's exercise of that discretion.

5) The information that investment firms are required to provide relating to the policies of the investment firm governing operations and activities, under Paragraph b) of Subsection (1) of Section 41, to retail clients or potential retail clients after they are bound by any agreement shall include:

- a) the nature, frequency and timing of the reports on the performance of investment service activities or the provision of ancillary services by the investment firm to the client;
- b) if the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which is available to the clients;
- c) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm in accordance with Subsection (1) of Section 110; and
- d) details concerning the firm's execution policy referred to in Paragraphs a)-c) of Subsection (1) of Section 63 relating to the execution of client orders under the general provisions set out in Section 63.

6) Investment firms are required to provide further details of the conflicts of interest policy referred to in Paragraph c) of Subsection (5) to retail clients or potential retail clients after they are bound by any agreement at any time that the client requests it.

7) In connection with the management of financial instruments and funds held for or belonging to a client according to Paragraph c), Subsection (1) of Section 41 of the IFCD Act:

- a) the investment firm shall inform the retail client, where the financial instruments or funds of that client may be held by a third party acting on behalf of the investment firm, of the responsibility of the investment firm under the applicable national law for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party;
- b) where financial instruments of the retail client may, if permitted by the national law of the investment firm or the third party acting on behalf of the investment firm, be held in an omnibus account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks;
- c) the investment firm shall inform the retail client where it is not possible under national law or under the legal system of the country in which the third party is established for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the investment firm and shall provide a prominent warning of the resulting risks;
- d) the investment firm shall inform the client where accounts that contain financial instruments or funds held for or belonging to that client are or will be subject to the law of jurisdiction other than what is applicable to the contract between the investment firm and the client and shall indicate that the rights of the client relating to those financial instruments or funds may differ accordingly;
- e) the investment firm shall inform the client about the existence and the terms of any security interest or lien which the firm has or may have over the client's financial

instruments or funds, or - where applicable - it shall also inform the client of the fact that a depository may have a security interest or lien over those instruments or funds;

f) the investment firm, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a retail client, or before otherwise using such financial instruments for its own account or the account of another client, shall in good time before the use of those instruments provide the retail client with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

Investment firms shall provide the required information in writing, some other form of durable medium or by means of a website.

Investment firms are required to notify their clients in good time about any material change to the information provided relating to a transaction or financial instrument. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

(Section 43 of the IFCD Act)

Obligation to obtain prior information

Any investment firm that is engaged in providing investment advice or portfolio management services shall, to the extent required for such activities under Subsection (2) prior to the signature of the contract or - in the case of a framework agreement - before the execution of orders:

a) obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the financial instrument or transaction, his *risk profile* to determine whether it is appropriate to enable the client to take investment decisions on an informed basis; and

b) obtain the necessary information regarding the client's or potential client's financial situation and his investment objectives so as to enable the firm to recommend to the client or potential client the transactions and financial instruments that are suitable for him.

Having in possession the above information (hereinafter referred to as fitness test), the investment firm providing investment advice or portfolio management services to the client shall assess as to whether:

a) the specific type of service recommended is suitable for the client's or potential client's investment objectives;

b) the degree of risk related to the specific type of service recommended, even though it meets the investment objectives of the client or the potential client in question, is such that the client is able financially to bear it; and

c) in terms of the nature of the service recommended and risk assessment, the client or potential client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

As regards the investment objectives referred to in Paragraph a) hereabove, the investment firm shall obtain information on:

a) the length of time for which the client or potential client wishes to hold the investment;

b) the client's or potential client's preferences regarding risk taking, his risk profile; and

c) the purposes of the investment.

In connection with carrying out the fitness test, the investment firm shall have authority to request the client or potential client:

a) to provide a written statement of his financial situation;

- b) documentary evidence to support the statement mentioned in Paragraph a); or
 - c) to disclose any relationship with other investment service providers or commodity dealers.
- (Section 44 of the IFCD Act)

Reporting obligations in respect of the execution of orders

Investment firms shall, where they have carried out an order within the framework of investment service activities, other than for portfolio management, on behalf of a client, take the following action in respect of that order:

- a) the investment firm must promptly provide the client, in writing or in a durable medium, with the essential information concerning the execution of that order;
- b) in the case of a retail client, the investment firm must send the client a notice in writing or in a durable medium confirming execution of the order as soon as possible and no later than the first trading day following execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

(Section 67 of the IFCD Act)

Investment firms, which provide the service of *portfolio management* to clients within the framework of investment service activities, are required to provide each such client with a periodic statement prepared at least at six-month intervals - with the exceptions set out in Subsections (2) and (6) of the IFCD Act – in writing or in a durable medium.

(Subsection (1) of Section 68 of the IFCD Act)

Investment firms which carry out the service of *portfolio management* may guarantee to protect the capital invested (*capital guarantee*) and may undertake to guarantee the earnings (*yield guarantee*), where the yield guarantee incorporates a guarantee to preserve the capital invested. The capital and yield guarantee offered by investment firms shall be accompanied by a bank guarantee.

Investment firms which carry out the service of *portfolio management* may pledge to preserve the capital invested (*capital protection*) and make a pledge for earnings (*yield protection*), where the promise of yield incorporates a pledge to preserve the capital invested. Investment firms shall have an adequate investment policy in place concerning the financial instruments held to secure earnings to support the pledge to preserve the capital invested and a pledge for earnings.

Investment firms which carry out the service of portfolio management may not conduct any transactions financed from the client portfolio relating to securities which are not traded on a regulated market or on multilateral trading facilities with any person or body in which the investment firm holds a qualifying interest or that is holding a qualifying interest in the investment firm. (Section 71 of the IFCD Act)

Investment fund management companies shall proceed according to the principles laid down in Schedule No. 15 regarding the calculation and publication of any profit earned.

A securities account contract is to stipulate the securities intermediary's commitment to keep the account holder informed concerning all transactions to and from the account, as well as on the balance of the account. The securities intermediary shall record all transactions to and from a securities account in a statement and shall send this confirmation to the account holder as prescribed in the standard service agreement. The securities intermediary shall supply an account statement indicating the transactions in the securities account whenever one is requested by the account holder. (Sections 140 and 142 of the CMA)

When *securities are lent under a framework contract*, the investment firm or credit institution participating in the transaction shall notify the owner of the securities that his securities have been transferred under lending arrangements, indicating the quantity and the duration. Any investment firm or credit institution that fails to abide by the restrictions stipulated by the owner of the securities in question (the lender in fact), shall be subject to unlimited liability for damages caused by such negligence. (Subsection (3) of Section 170 of the CMA)

Unified securities yield indicator

As regards debt securities, if the interests of a security are established by the issuer for the whole period until maturity, investment firms, credit institutions and other organisations authorised by law to offer their self-issued securities without engaging a dealer in debt securities shall calculate the unified securities yield indicator and publish it in the manner specified below.

Publication of the yield of securities

Investment firms, credit institutions and investment fund management companies in cases specified in Subsection (4) of Section 6 of Government Decree 41/1997 (III. 5.) as well as organisations authorised by law to offer their self-issued securities without engaging a dealer in debt securities shall place in the client reception room:

- a) the concrete formula for the calculation of securities yield;
- b) the dates of interest and yield payment;
- c) the value of unified securities yield indicator to be indicated with the accuracy of two decimals;
- d) all facts, information, terms that have an effect the amount paid on the securities.

As regards the public offering and trading in the domestic territory of collective investment instruments issued by foreign issuers, foreign investment funds and other collective investment organisations shall comply with the *obligation to provide information* hereunder, including the requirements relating to the content structure and regular publication of the public-offer prospectus.

1) The open-ended fund's management protocol and the summary prospectus shall be supplied free of charge to any new investor when buying the fund's investment units, and the fund's prospectus and its most current annual and semi-annual reports shall be furnished to the investor upon request free of charge.

(Subsection (4) of Section 245 of the CMA)

2) Investors investing in a continuous issue of investment units shall be provided with the fund's summary prospectus and the regular prospectus, the fund's management protocol, annual or semi-annual reports, and the most current portfolio report free of charge; furthermore, in relation to verbal offers and electronic commerce, investors must be advised as to the place at which the above-specified documents can be reviewed.

(Section 248 of the CMA)

3) Fund management companies shall prepare biannual and annual reports in accordance with the provisions of Schedule No. 21 within forty-five days - or sixty days for foreign investment fund management companies - and one hundred and twenty days, respectively, at the end of the current six-month period (fiscal half-year) or the end of the current year (fiscal year) for each fund they manage. Fund management companies shall send such reports to the Authority and shall concurrently publish them by way of the means specified in Subsection (3) of Section 34 of the CMA.

Fund management companies shall be required to report monthly on the portfolios of the open-ended investment funds they manage, indicate the net asset value of the portfolios as recorded for the last business day of the month, send such information to the Authority and post the report at the points of sale and in its own headquarters as of the tenth business day following the date on which it was recorded. The report shall separately indicate the various investment instruments contained in the portfolio, any other category stipulated in the fund's investment policy, the fund's own capital and the net asset value per investment unit. (Section 289 of the CMA)

4) Fund management companies must send to the Authority and, by way of the means specified under Subsection (4) of Section 34 of the CMA, post the following in relation to the funds they manage, and they must make them available at the dealer offering the fund's investment units:

- a) announcements concerning transformation and merger, within thirty days prior to the effective date of the transformation or merger;
- b) any changes in investment regulations, within thirty days prior to the effective date of the change to which it pertains;
- c) when an open term is changed to fixed maturity and when a fixed period is reduced, within thirty days prior to the effective date of the change to which it pertains;
- d) any changes in the charges on the redemption of investment units, within five days of its effective date;
- e) any amendment in the fund's management protocol on or before the effective date;
- f) if the fund management company's authorization is revoked, within two working days;
- g) when management of the investment fund is transferred, within fifteen days before it takes effect;
- h) the date and the manner of payment of capital and dividends (if the fund's management protocol does not stipulate automatic payment of dividends), on or before the due date;
- i) any suspension of trading of the investment units, and when trading is restored, within two working days;
- j) if the fund management company is adjudicated in liquidation, within two working days;
- k) the notice of dissolution if the investment fund is terminated, at the same time when it is sent to the Authority;
- l) the net asset value of each certificate (except when dividends are paid) as compared to the previous net asset value, and, if a significant (more than twenty per cent) drop occurs within three days if evaluated daily, an explanation for such a decline, within two working days from the time of occurrence;
- m) the means of publication employed in compliance with the obligation of publication, within two working days;
- n) any change in the list of points of sale, on or before the business day immediately preceding the effective date of the change; and
- o) any change in the list of agents, on or before the working day immediately preceding the effective date of the change if the list is extended, or within two working days following the effective date of the change if the list is reduced;
- p) any changes in the rules pertaining to the redemption of investment units if they entail any increase in the redemption period referred to in Subsection (4) of Section 247, within thirty days prior to the effective date of the change.

(2) In terms of the obligation of an investment fund concerning the disclosure of information in its capacity as an issuer, for the purposes of Paragraph b) of Subsection (4) of Section 34 the issuer's website shall be understood as the fund management company's website.

(3) The fund management company of a foreign investment fund that offers its collective investment units in Hungary shall publish the announcement concerning the changes listed under Paragraphs a), b) and c) of Subsection (1) of Section 290 immediately after it is approved by the Supervisory Authority of the state of issue; such announcement shall be made available at the dealer offering the fund's investment units.
(Section 290 of the CMA)

Publication shall take place:

a) in one or more daily newspapers of nationwide circulation; or
b) on the website of the issuer, and of the dealer in securities, if applicable; or
c) on the website of the regulated market where the securities in question are traded; or
d) on the Supervisory Authority's website, if the Supervisory Authority provides such service in compliance with the obligation of publication prescribed in this Act. (Subsection (4) of Section 34 of the CMA)

5) The obligation of an investment fund concerning the disclosure of information in its capacity as an issuer shall be satisfied in the fund's name by the fund management company. The draft of all commercial communications that in any way or form pertains to public offering or trading of investment units in relation to an investment fund or a fund management company, and which are targeted at the investors shall be submitted to the Authority five days in advance, before it is made available to the investors. The Authority may ban the publication of a commercial communication if it contains any information that is in contrast with the draft version of the prospectus submitted and approved for publication, as well as any information that is misleading, or that falls within the scope of unfair business-to-consumer commercial practices according to the UCPA. Investment fund management companies shall proceed according to the principles laid down in Schedule No. 15 regarding the calculation and publication of any profit earned. (Section 293 of the CMA)

It is forbidden to communicate any data that deviate from what is contained in the prospectus and in the fund's management protocol, and to make any pledge concerning any profit or capital increment, with the exception of the case described hereunder:

An investment fund management company acting on behalf of an investment fund may guarantee the capital invested and the earnings (capital and yield guarantees). The yield guarantee incorporates a guarantee to preserve the capital invested. The capital and yield guarantees offered by an investment fund management company acting on behalf of an investment fund shall be accompanied by a bank guarantee.

An investment fund management company acting on behalf of an investment fund may pledge to preserve the capital invested and make a pledge for earnings (capital and yield protection). The yield promise incorporates a pledge to preserve the capital invested. The investment fund management company acting on behalf of an investment fund shall ensure that its pledge for the protection of capital and yield is secured by a sound investment strategy relating to financial instruments and exchange-traded instruments, of which the client must be informed in detail.

(Section 241 of the CMA)

The provision of information to Hungarian clients shall be in the *Hungarian language*.

The Authority may suspend the continuous issue of foreign-issued collective investment instruments to the public if it fails to comply with the requirements set out hereabove. The Authority may ban the continuous issue if compliance with the legal requirements is not

restored within thirty days from the order of suspension, or if suspension is warranted for the second time.

If the issuer has a prospectus that has been approved for publication by the competent supervisory authority of the state in which it is established, the prospectus for the offering in the domestic territory is to be prepared consistent with the said prospectus, complete with information pertaining to the local market, such as in particular the manner, place and date where and when such information will be available, any tax liability incidental to the securities, information relating to the risks inherent in the investment. (Section 252 of the CMA)

Members of the *Investor Protection Fund* (IPF) shall be required to provide investors with readily intelligible information in Hungarian concerning the extent of protection offered by the Investor Protection Fund and the conditions of settlement.

(Subsection (3) of Section 214 of the CMA)

General terms and conditions shall become part of a contract only if they have been previously made available to the other party and if the other party has accepted the terms explicitly or by implied acceptance. (Subsection (1) of Section 205/B of the Hungarian Civil Code).

The other party shall expressly and separately be notified of any general terms and conditions that substantially differ from the usual contractual practice, the regulations pertaining to contracts, or any stipulations previously applied by the same parties. Such conditions shall only become part of the contract if, upon receiving special notification, the other party has explicitly accepted is. (Subsection (2) of Section 205/B of the Hungarian Civil Code)

2.3 ENFORCEMENT OF CONSUMER CLAIMS AND RIGHTS

The special professional forum of money and capital market disputes is the *Money and Capital Markets Arbitration Tribunal* which is operated by trade organizations of the exchange markets, credit institutions and investment firms.

The Arbitration Tribunal shall have exclusive jurisdiction in certain disputes, furthermore, the Arbitration Tribunal shall have jurisdiction if the parties have stipulated to resort to arbitration in an arbitration agreement and if they are able to freely dispose over the subject of the proceeding. Its consumer protection role is limited to the costliness of its procedures and to the operation by financial market service providers. (Section 376 of the CMA)

2.4 RULES OF ADVERTISING

Any information conveyed in advertising or by some other means - other than a prospectus, abridged prospectus or a public announcement - relating to an offer to the public of securities published by the issuer, the offeror, an investment firm or credit institution functioning as a dealer or underwriting subscription guarantees, or by the person requesting admission of the securities to trading on a regulated market for the information of investors, shall be considered a *commercial communication*.

The information contained in the commercial communication must be consistent with the information contained in the prospectus.

The draft of all commercial communications shall be submitted to the Authority at least five working days before the conclusion of the marketing procedure or before the commencement of trading on a regulated market. The Authority may ban the publication of the commercial communication if it contains any information that is in contrast with the

draft version of the prospectus submitted and approved for publication, as well as any information that is misleading, or that falls within the scope of unfair business-to-consumer commercial practices according to the UCPA.
(Section 35 of the CMA)

The Authority may ban the publication of a commercial communication if it contains any information that is in contrast with the draft version of the prospectus submitted and approved for publication, as well as any information that is misleading, or that falls within the scope of unfair business-to-consumer commercial practices according to the UCPA.
(Sections 388 and 293 of the CMA)

Any corporation that is engaged in activities governed by the CMA must include its license number and an indication of its exchange membership in all business correspondence, documents, advertisements and commercial messages published in a written form (printed or electronic format). (Section 364 of the CMA)

It is prohibited to use any information relating to investor protection or to the Fund for the purpose of soliciting more investments holdings, in particular, for advertisements.
(Subsection (4) of Section 214 of the CMA)

If interests, actual yields or any charges relating to transactions are given in an offer or commercial communication relating to securities transactions, immediately after that the degree of the unified securities yield indicator (USYI) must also be advised – by the indication of the abbreviation, with the accuracy of two decimals – in a format equivalent in size and format, or it must be delivered in a language easily understandable.
(Subsection (2) of Section 7 of Government Decree 41/1997 (III. 5.))

2.5 CONFIDENTIALITY AND DATA PROTECTION

Securities secret shall mean all data and information that are at the disposal of an investment firm, an operator of multilateral trading facilities or a commodity dealer concerning specific clients relating to their personal information, financial standing, business operations and investments, ownership and business relations, and their contracts and agreements with any investment firm or commodity dealer, and to the balance and money movements on their accounts,
(Point 27 of Section 4 of the IFCD Act)

All data and information that are at the disposal of an investment fund management company, a venture capital fund management company, the exchange, a body providing clearing and settlement services, the central depository or central counterparty concerning specific clients relating to their personal information, financial standing, business operations and investments, ownership and business relations, and their contracts and agreements with any investment fund management company, venture capital fund management company, the exchange, a body providing clearing and settlement services, the central depository or central counterparty and to the balance and money movements on their accounts shall be construed as securities secrets.

For the purposes of legal provisions pertaining to securities secrets, any person who receives services from an investment fund management company, venture capital fund management company, the exchange, a body providing clearing and settlement services, the central depository or central counterparty shall be considered a client.
(Section 369 of the CMA)

(1) Any investment firm, commodity dealer and executive officer and employee of an investment firm and commodity dealer, as well as any other person who has obtained any securities secret in any way shall be subject to the requirement of confidentiality indefinitely.

(2) Any investment firm and commodity dealer may only disclose – by simultaneously providing information of such to the client - securities secrets to third persons if

a) the client or his legal representative requests or gives authorisation in a public document or a private document of probative value by precisely specifying the data that are classified as securities secrets and that he can legally be provided with,

b) the provisions set out in Subsections (3)-(4) and (7) grant exemption from the obligation of confidentiality relating to securities secrets, or

c) the sale of an investment firm's or commodity dealer's receivables from a client or the enforcement of his outstanding debts make it necessary.

Any person holding any business or securities secrets shall be subject to the requirement of confidentiality indefinitely, unless otherwise prescribed by law. No facts, information, solutions or data classified as business or securities secrets may be disclosed to any third person, other those authorized under this Act, without the consent of the client to whom it pertains, and may not be used for any purposes other than those authorized under this Act.

(Section 371 of the CMA)

2.6 PROTECTION OF CLIENT'S FUNDS

Investment firms are to use their clients' funds and assets only as instructed by the clients. Investment firms may not use the funds and assets of their clients as their own. Investment firms must have adequate facilities to ensure that their clients have access to their investment instruments, exchange-traded instruments and liquid assets (funds) at any given time.

Investment firms shall keep separate records of their clients' liquid assets and shall handle them separately from their own liquid assets. Investment firms must keep liquid assets recorded on the client accounts in accounts opened at banks or at clearing houses operating as specialized credit institutions, whereas the provisions on handling clients' liquid assets from that of their own apply in this case as well.

Investment service providers shall handle their clients' investment instruments and exchange-traded instruments separated from their own investment instruments and exchange-traded instruments.

The clients' receivables referred to in the above two paragraphs cannot be used for settling the debts of the investment service providers or the commodity dealers owed to creditors.

Client accounts and securities accounts shall contain separate columns for receivables and liabilities arising in connection with spot transactions, options and forward transactions.

(Section 209 of the CMA)

Joining the Investor Protection Fund (IPF)

On top of the asset management regulations, the operation of the *Investor Protection Fund (IPF)* is also designed to help meeting clients' claims. *Insured activities* can be pursued in the Hungarian capital market only if the economic organisation engaged in such activities enrolls as members of the Fund. (Section 210 of the CMA)

Insured activity shall mean the following services provided within the framework of regular business activities: receiving and transmitting client orders relating to financial instruments, the execution of orders on behalf of clients, dealing on own account, portfolio management,

safekeeping and administration of financial instruments and management of the related client account, safe custody services relating to securities for the account of clients, including the safekeeping and administration of printed securities for the account of clients;
(Section 5 of the IFCD Act)

The branches of organizations engaged in insured activities established in another Member State of the European Union shall not be required to join the Fund if they are registered under an investor-compensation scheme prescribed in Directive 97/9/EC of the European Parliament and of the Council. Any branch of an organization engaged in insured activities established in another Member State of the European Union that is not covered by an investor-compensation scheme in accordance with Directive 97/9/EC of the European Parliament and of the Council must join the Fund in order to obtain investor protection provided by the Fund.

If the maximum amount guaranteed by the investor protection scheme provided by the Fund, the scope of investments covered or the extent of coverage exceeds the maximum amount guaranteed, the scope of investments covered and the extent of coverage afforded by an investor protection scheme that covers the branch of an organization engaged in insured activities, the Fund shall, at the request of the branch, provide supplementary cover if the branch meets the Fund's requirements concerning membership. Supplementary compensation may be claimed if the competent Supervisory Authority of the country in which the head office of the branch is located notifies the Fund about the occurrence of events warranting compensation.

Detailed provisions concerning the IPF are set out in Sections 210-228 of the CMA. Other information is available on the website of the IPF: www.bva.hu.

2.7 RULES RELATING TO AGREEMENTS

Securities lending agreements must be concluded for a specific term. The term of the securities lending agreement may not exceed one year, any stipulation contrary to that is null and void. It is necessary to have a securities lending and/or borrowing framework contract with the owners of such securities, or a securities lending contract in order for the securities investment service provider to lend and/or borrow securities deposited by the client or registered on the client's securities account. Securities lending and/or borrowing framework contracts and securities lending contracts cannot be incorporated into any other contract made between the owner of securities and the borrower of the securities.

Securities lending and/or borrowing framework contracts and securities lending contracts must contain:

- a) the description, ISIN code and the series of the securities lent or proposed to be lent;
- b) the quantity of the securities lent or proposed to be lent;
- c) with respect to framework contracts, the period to which the securities lending contract pertains;
- d) the duration of lending;
- e) the amount of lending charges;
- f) a clause stipulating that the lender shall not be entitled to exercise the rights embodied in the securities in question and related rights under the life of the contract; and
- g) in connection with shares, an agreement of the parties for the exercise of voting rights.

(Sections 168 and 170 of the CMA.)

Although the internal regulations on the assessment of performance, documentation, disclosure concerning portfolio and investment fund management companies and entities engaged in the management of funds' assets (*Schedule No. 15 of the CMA*) would also belong to the regulations for investors, however, their special feature is that their activities is not related to individual investment instruments but to the body of invested assets.

The objective of the *internal regulations on the assessment of performance, documentation, disclosure* is to assure the investors that the information on earnings is complete and correct. Compliance with these provisions and the uniformity of the yield calculation methods serve the purpose of making the performance of the various portfolios - including the investment funds and the assets of the voluntary mutual insurance funds and of the private pension funds - as comparable as possible.

2.8 PROVISIONS ON INTERMEDIARIES

Investment firms may carry out investment service activities through intermediaries. The intermediaries may be *tied agents* or *investment firms*.

Investment firms shall bear full responsibility for the activities of their intermediaries and for compliance with the provisions of the IFCD Act.

Investment firms may enter into an agreement with a tied agent

- a) who has a registered office, permanent or temporary residence in the territory of the Republic of Hungary, and who is listed in the Supervisory Authority's register; or
- b) who has a registered office, permanent or temporary residence in another EEA Member State, who is authorized by the competent Supervisory Authority of the country where established for the activities in question, or who is registered by the Authority under Subsection (3) of Section 159 of the IFCD Act.

Investment firms shall notify the Authority upon entering into an agreement for the mediation of investment service activities, ancillary services - if it involves a tied agent - within five working days following the signature of the agreement.

Activities for the intermediation of investment service activities, ancillary services may be carried out by a tied agent, acting as such, who is listed in the Authority's register and who is able to meet the conditions set out in Sections 111-116.

Intermediaries established in other EEA Member States may engage in operations in the territory of the Republic of Hungary in the form of cross-border services, or may set up a branch if authorized by the competent Supervisory Authority of the country where established for the activities in question, or if registered by the Authority under Subsection (3) of Section 159 of the IFCD Act.

The Authority shall register - upon request - any tied agent who is able to meet the conditions laid down in the IFCD Act.

(Sections 111-114 of the IFCD Act)

2.9 UNAUTHORISED ACTIVITY

The Supervisory Authority may impose a fine between HUF 2,000,000 and 20,000,000 for the provision of investment fund management services, venture capital fund management services, exchange services and clearing house services without authorisation (Section 406 of the CMA)

The Authority may prohibit the conducting of the unauthorized provision of investment service activities and the provision of ancillary services, and the unauthorized provision of commodity exchange services according the Paragraph b), Subsection (1) of Section 164 of the IFCD Act.

Under Paragraph a), Subsection (2) of Section 167 of the IFCD Act, the Authority may impose a fine - also subject to Subsection (5) - between HUF 2,000,000 and 20,000,000 for the performance of investment service activities or the provision of ancillary services and commodity exchange services without authorization.

2.10 COMPLAINTS HANDLING

Investment firms are required to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients in connection with their operations, and to keep a record (hereinafter referred to as “complaints handling policy”).

Investment firms shall maintain records on the complaints received from retail clients, and the actions and measures taken for their handling and resolution.

The records shall contain:

- a) a description of the complaint received from the retail client, and of the underlying event or fact;
- b) the date when the complaint was lodged;
- c) a description of the measures proposed for its handling and resolution;
- d) the time limit for taking the measures indicated in Paragraph c) and the person appointed to implement it.

Investment firms shall make available their complaints handling policy to their retail clients free of charge in writing or in another form of durable medium, or by means of a website. (Section 122 of the IFCD Act)

3. INSURANCE

3.1. CONTRACT CONDITIONS

One special document in the insurance business is the *product plan*. The product plan must be prepared for each product to be marketed and must include contract conditions, premium calculation and all additional data, i.e. the total contracted value calculated for three years, budget utilisation, expected premium revenues and payments. This document is not a public document (Section 98-100 and Schedule No. 4 of Act LX of 2003 on Insurance Institutions and the Insurance Business, i.e. the “Insurance Act”, hereinafter IA).

For consumers, the most important element is the stipulation of *minimum contents of insurance policies*.

All insurance contracts must contain the following:

- a) the definition of the insured peril and any exclusions;
- b) the procedure and deadline for reporting losses;
- c) the rules pertaining to premium payment, the contractual rights and obligations of the insured party, the contracting party and the beneficiary, the manner and time of performance, and the consequences for failure to perform such rights and obligations;
- d) a description of the services provided by the insurance company; the manner, time and special conditions of performance; and the conditions under which the insurance company is exempt from liability or its services are limited;
- e) the rules for inflation escalation, where applicable;
- f) a description of the rights of the insured, the contracting party, and the beneficiary and the obligations of the insurance company that apply when the contract is terminated, including information on the provisions contained in Subsections (2)-(5) concerning the termination of a contract;
- g) rules for the capitalization of regular payments of benefits in connection with health, accident and liability insurance, if applicable;
- h) the term of limitation on claims;
- i) the detailed rules for the provision of residual rights, and/or a life assurance policy loan, if it is available in the case of life assurance policies;
- j) method of daily access to information concerning the placement and value of unit-linked life assurance policies;
- k) theoretical and practical information on the handling of personal data if the contracting party or the policyholder is a natural person or a group entity consisting of natural persons,
- l) address of the insurance company or branch;
- m) procedure for crediting the surplus yield, if any, that is due to the policyholder.

(IA, Section 96)

3.2. INFORMATION

Insurance contracts shall come into existence through a written agreement between the parties.

A contract shall also be created if an insurer does not respond to an offer within fifteen days. In such a case, the contract shall be created retroactively as of the date on which the offer is conveyed to the insurer or its representative.

If a contract that is concluded without the explicit statement of the insurer deviates from the insurance regulations, the insurer shall be entitled to make a written proposal within fifteen

days to have the contract amended in accordance with the regulations. This period shall be calculated as of the day on which the proposal is conveyed to the insurer's office that is authorized to issue insurance policies. If the contracting party does not accept the offer or does not respond to it within fifteen days, he shall be entitled to terminate the contract in writing with thirty-days' notice within fifteen days of receiving the refusal or the proposal for amendment. (Civil Code, Section 537).

A written agreement or the insurer's statement of acceptance shall be replaced by the issuance of an insurance policy (certificate, insurance stamp). If the conditions of the policy differ from the party's offer and if this difference is not contested by the party within fifteen days, the contract shall be created in accordance with the contents of the policy. This provision can be applied to significant discrepancies only if the insurer expressly points out such discrepancies to the contracting party in writing at the time the policy is delivered. In the absence of a warning notice, a contract shall be created in accordance with the contents of the offer (Civil Code, Section 538, paragraph 1).

The Hungarian *branch offices* of insurers seated in another EU Member State must prepare the *documents certifying the conclusion and existence of the insurance contract, including the contract conditions, in Hungarian* (IA, Section 31).

A) The written information provided with insurance contracts shall contain at least the following:

- 1) the period and duration of coverage;
- 2) starting date of coverage;
- 3) description of the insured event;
- 4) terms of payment of premium and the manner by which to amend the premium, if allowed for the basic coverage and for supplementary risks;
- 5) description of the insurance company's services and the time of performance, the options available;
- 6) termination clauses;
- 7) conditions for cancellation;
- 8) conditions under which the insurance company is released from liability, exclusions;
- 9) mode and rate of inflation escalation;
- 10) extent and manner of refunding surplus yield;
- 11) name and address of the department of the insurance company that handles consumer complaints, facilities for lodging complaints with the consumer protection authority or with reconciliation bodies, information about the judicial process;
- 12) in respect of the branch offices of third-country insurance companies, in addition to what is laid down in this Schedule, the country where legal disputes are settled, description of the material and procedural provisions and the language of such proceedings;
- 13) list of the organizations to which the insurance company is entitled to disclose client data pursuant to Sections 153-161 and Section 165 of the Insurance Act;
- 14) an indication of the governing law under which the contract is concluded;
- 15) for mutual associations, description of the cases serving grounds for calling up additional contributions, and/or the possibility of any cutback in services
- 16) for mutual associations covering risks in connection with compulsory motor vehicle liability, description of the cases serving as grounds for calling up additional contributions,
- 17) tax laws relating to life assurance contracts,
- 18) for life assurance contracts, the amount to be retained by the insurance company from the premium paid in by the policyholder if the contract is cancelled by the policyholder within thirty days,

19) whether the insurance company offers any capital or yield guarantees on life assurance contracts.

B) Minimum contents of the product information of life assurance policies:

1) Brief description of the reasons, as determined by an interview, for offering the type of policy for the particular

- a) services,
- b) term, and
- c) amount.

2) An indication in the manner illustrated under Point 3 of the following applicable for the duration of the proposed life assurance policy - meaning the end of the term fixed for insurance policies under classes I and II of the life assurance branch or for at least 20 years if the term is not specified, or the end of the term fixed for insurance policies under class III of the life assurance branch or a maximum of five years - provided the policy features the option of surrender or premium-free reduction, for each year on the first day of the year insured:

- a) cash surrender value,
- b) discount value.

3) The following provisions shall be observed when determining the cash surrender value and the discount value:

3) 1. The contracting party shall be advised that the data shown in the manner expressed below are provided for information purposes only as they are, to some extent, based on assumptions.

3) 2. In the case of unit-linked life assurance policies, the client shall be advised that the value of the underlying units may show a gain or loss. Furthermore, the client must also be notified as to who is to bear the risks from changes in the value of these units determined in accordance with the provisions of the insurance contract pertaining to capital guarantees or capital and yield guarantees.

3) 3. Where the premium is to be regular, at the beginning of the year the status before the premium is paid shall be taken into consideration.

3) 4. The contract shall be concluded under the assumption that the key figures of the policy (premium, sum insured, various deductions etc.) remain constant during the term of the contract unless otherwise prescribed in the contract.

3) 5. In addition to what is contained in Point 3.4, unit-linked life assurance policies shall be contracted under the assumption that the value of the underlying units remain unchanged. Where the insurance company offers capital guarantees or capital and yield guarantees, the cash surrender value shall be determined accordingly.

3) 6. In the case of insurance policies under classes I and II of the life assurance branch with no technical interest rate, the provisions of Point 3.5 shall apply as appropriate.

(IA, Schedule No. 10)

In the insurance sector, insurance brokers have a key consumer protection role in keeping customers appropriately informed.

(1) Before concluding the insurance contract and upon the amendment or renewal of the contract relating to any change in the data contained in the information as provided, insurance intermediaries - unless otherwise provided by law - shall disclose the following information in the official language of the Member State of the commitment or in the language stipulated in the agreement concluded with the given client:

- a) the name of the insurance intermediary if a natural person, or the corporate name and registered office if an economic operator on whose behalf the insurance intermediary is acting, and the designation of the competent supervisory authority;

- b) the register of insurance intermediaries in which registered, including an indication as to where the register may be inspected;
 - c) any qualifying interest the insurance intermediary may have in the insurance company in question;
 - d) any qualifying interest the insurance company in question or the parent company of this insurer may have in the insurance intermediary;
 - e) the procedure for lodging complaints and the body vested with powers to hear such complaints;
 - f) the person to be held liable for any damage caused in his capacity as an insurance intermediary;
 - g) whether the insurance intermediary is acting as an independent or a tied insurance intermediary;
 - h) if a tied insurance intermediary or a multiple-insurance agent, the name of the insurance companies on whose behalf he is acting or authorized to act.
- (2) The information shall be supplied to persons who will be potential policyholders, beneficiaries of insurance (re-insurance) coverage or parties to the insurance (re-insurance) contract if concluded.
- (IA, Section 37).

Insurers are bound by rather extensive information obligations prior to concluding any life insurance contracts.

(2) Unless otherwise provided by law, before a life assurance contract is concluded, insurance companies and insurance intermediaries must furnish the policyholder with easily intelligible, clearly written and detailed information that is verifiable and documented - written in an official language of the Member State of the commitment - about the insurance company or the insurance intermediary (name of the company and its legal form, address of its head office, name of the Member State in which the head office is located and the competent Commission there, and, where appropriate, the address of the branch office concluding the contract) and the particulars of the assurance contract. This information may also be provided in a language specified in the agreement concluded with the client.

(3) Insurance companies and insurance intermediaries are required to supply information, supported by sufficient evidence, in the form of a product information guide containing the results of the customer survey before the life assurance policy is issued.

(7) Unless otherwise prescribed by law, before concluding a contract, the insurance company shall obtain a statement from the client, supported by sufficient evidence, to the effect that he has received the information specified herein. In the statement, the client shall also state any other information received in connection with the insurance policy in question prior to concluding the contract.

In the case of *life insurance contracts*, the insurer must obtain the statement confirming the receipt of the aforementioned information by the time the insurance policy is taken out at the latest.

(9) Once a life assurance contract has been concluded the insurance company shall provide written information to the policyholder at least once a year on the service value of the life assurance policy, its current cash surrender value and the amount of any surplus yield to be refunded.

(10) In connection with an inflation escalation clause in an insurance contract, the client is to be clearly informed concerning the components to which the inflation escalation clause

pertains. The insurance company shall be required to emphasize the existence of inflation escalation clauses, including the rights of the client relative to such clauses.

(6) The information provided in accordance with Subsection (2) shall be sufficient to focus attention on the conditions under which the insurance company is released from liability or entitled to limit its services, the exclusions stipulated in the insurance contract, and all other terms and conditions that differ substantially from common contractual practice, contracting regulations or any contract clause previously accepted by the parties, thus, for example, if some law other than Hungarian is stipulated as authoritative or if Hungarian courts are not vested with exclusive jurisdiction.

Before signing a life insurance contract (except for purely risk-based, life insurance contracts that do not contain a savings element and which are recommended by the financial institution in combination with a financial service offered by that institution or where the insurance amount does not exceed HUF 1 million), the insurer or the insurance broker is required to *assess* or, based on information received from the customer, at least *specify* the *customer's needs*.

(3) Insurance companies and insurance intermediaries are required to supply - in connection with life assurance policies where the customer survey referred to in Subsection (1) is required - information, supported by sufficient evidence, in addition to that listed in Subsection (2) in the form of a product information guide - Part B) of Schedule No. 10 - containing the results of the customer survey referred to in Subsection (1) before the life assurance policy is issued.

(IA, Section 166).

In the case of *unit-linked life insurance contracts*, the insurer is required to enable the contracting party to obtain information on the underlying investments, i.e. on the ratio, type and actual value of investment elements serving as coverage for the total investment.

With this type of life insurance, the insurer is required to provide the contracting party with written information on the items specified below at least annually and on the same calendar day of each year, encompassing a 12-month period:

a) actual balance of the customer's insurance contract (this balance must be itemized showing the number of investment units per asset funds and stating the purchase price of investment units as of the date when the information is provided or based on other finalised data);

b) in the period elapsed since the signing of the insurance contract or the issue of the last mandatory balance statement:

ba) insurance premiums received on the insurance contract,

bb) expenses related to the insurance contract,

bc) value of services and remaining rights used up by the contracting party under the insurance contract,

bd) time and ratio of reallocations between asset funds implemented on the instructions of the contracting party;

c) purchase price of investment units as of the date when the information is provided;

d) actual service value(s) and repurchase value of the insurance contract as of the date of the balance statement under this decree; value of additional returns if the contract stipulates payment of such returns.

The insurer must not charge any extra fee for the written balance statement issued once per year. This written statement must be sent to the contracting party within 15 days of the date it is generated and this date must be shown clearly on the document.

If the insurance contract is terminated, the insurer is required to provide the customer with the aforementioned information in writing within 15 days after termination for the period elapsed

between the signing of the contract or the date of the last written statement and the date of termination.

Upon request from the contracting party submitted in writing or in any other identifiable form, the insurer is required to inform the customer in detail as described above, either in writing or electronically, within 15 days. The insurer must not charge any extra fee for this service.

Regarding insurance premiums received, the statement must show regular and ad-hoc payments separately along with the respective receipt and investment dates. All cost types and deductions chargeable to the insurance contract must be stated for the period elapsed since the signing of the contract or since the date of the last written statement, showing the following in particular:

- a) insurance premium received but not invested, itemized per title (registration/investment asset fund management fee, risk fee, additional insurance premiums, other),
- b) expenses charged upon converting received insurance premiums (difference between purchase and selling price) per insurance premium paid,
- c) itemized per title, sum of expenses collected by the insurer by deducting investment units (asset fund management or registration fee, additional insurance premiums, initial cost, investing expenses, cost of transactions implemented on the contracting party's request, other).

Payments made by the insurer based on the insurance contract must be shown in the statement. In particular, the following payments may belong to this category:

- a) payment due to an insurance event,
- b) full or partial repurchase, including the regular withdrawal of sums.

Besides the amounts paid, deductions due to expenses must also be shown.

Mandatory expenses not yet charged by the insurer must also be stated along with the actual value of the bond loan taken out by the contracting party (the latter as a debt chargeable to the contracting party's account).

In addition to the elements described above, the written information provided annually must also include the following data:

- a) name of asset funds selected by the contracting party which actually relate to the contract,
- b) specification of the medium where the regular, mandatory information to customers is published,
- c) name and contact information of the contracting party's insurance broker or the description and contact information of the insurer's organisational unit where the contracting party can turn to for detailed information on his insurance contract.

On each business day, the insurer is required to publish regular information on the purchase price of investment units of unit-linked investments and on the net value of asset funds in one of the following ways:

- a) in a national daily,
- b) on the home page of the insurer, updated daily,
- c) offering a hotline service during business hours,
- d) announcements hanged on the wall at the insurer's customer service offices.

The insurer is required to publish on a monthly basis the composition of its assets found broken down by form of investment (stock, government bond, cash, other) in one of the ways cited above. (Ministry of Finance decree 33/2002 (XI. 16.))

(12) If a medical examination of the prospective policyholder is required for the conclusion of an insurance contract - life assurance and non-life insurance alike - the insurance company must inform the client of his/her right to obtain the results of such tests and examination pursuant to Act CLIV of 1997 on Health Care.

(IA, Section 166).

(1) Following conclusion of the life assurance contract, the insurance company shall notify - and provide sufficient evidence - the policyholder within thirty days of the operative date of the contract - in an official language of the Member State of the commitment or in another language if the policyholder so requests and if there is an agreement to that effect - that the contract has entered into existence.

(2) In the notification the insurance company shall inform the client - if the client is a natural person entering into the life assurance contract in a capacity other than self-employment or business activities - of the provisions contained in Subsections (2)-(3) of Section 96. Hereafter:

(2) A natural person entering into the life assurance contract in a capacity other than self-employment or business activities shall be entitled to cancel the life assurance contract in writing - without having to show cause - within thirty days from the date of receipt of the notification.

(3) Within thirty days following receipt of the client's written cancellation, the insurance company shall account for any and all payments made by the client in connection with the insurance contract in question.

(IA, Section 167).

Before concluding the insurance contract and upon the amendment or renewal of the contract relating to any change in the data contained in the information as provided, insurance intermediaries - unless otherwise provided by law - shall disclose the following information in the official language of the Member State of the commitment or in the language stipulated in the agreement concluded with the given client:

a) the name of the insurance intermediary if a natural person, or the corporate name and registered office if an economic operator on whose behalf the insurance intermediary is acting, and the designation of the competent supervisory authority;

b) the register of insurance intermediaries in which registered, including an indication as to where the register may be inspected;

c) any qualifying interest the insurance intermediary may have in the insurance company in question;

d) any qualifying interest the insurance company in question or the parent company of this insurer may have in the insurance intermediary;

e) the procedure for lodging complaints and the body vested with powers to hear such complaints;

f) the person to be held liable for any damage caused in his capacity as an insurance intermediary;

g) whether the insurance intermediary is acting as an independent or a tied insurance intermediary;

h) if a tied insurance intermediary or a multiple-insurance agent, the name of the insurance companies on whose behalf he is acting or authorized to act.

The information shall be supplied to persons who will be potential policyholders, beneficiaries of insurance (re-insurance) coverage or parties to the insurance (re-insurance) contract if concluded.

(IA, Section 37)

Independent insurance intermediaries shall act at all times in observation of the rules of professional conduct. Independent insurance intermediaries shall be held liable for any failure to fulfill the above-specified obligation (independent insurance intermediary misconduct), particularly for wrong or misleading advice, irregular handling of premiums and any delay in

forwarding declarations. This liability shall apply to all persons acting in the name of the independent insurance intermediary.
(IA, Section 42).

The activities of insurance brokers preparatory to the conclusion of insurance contracts shall include the analysis of other insurance contracts available on the market to the extent necessary.

Prior to conclusion of the insurance contract, the insurance broker shall interview the client so as to ascertain the needs and requirements of the client, as well as the reasons underlying the advice given by the intermediary in connection with the insurance product in question.

(IA, Section 46, paragraphs 3-4).

An additional informing obligation applies to insurers offering mandatory vehicle liability insurance regarding their annual premiums. These insurers are required to publish their annual premiums in two national dailies by 30 October each year and disclose the premiums to be applied in the coming year in their front offices and on the internet (Section 18 of Government decree 190/2004 (VI. 8.))

The *HFSA* is entitled to request the insurer or the Hungarian branch office of an insurance company seated in another Member State for *non-regular* information on *insurance conditions* communicated to customers and on the related documents to verify that they comply with national laws (IA, Section 82, paragraph 2 and Section 31, paragraph 4).

3.3. ENFORCEMENT OF CONSUMER CLAIMS AND RIGHTS

The insured party shall be entitled, under a liability insurance contract, to request the insurer to exempt him, up to the limit specified in the contract, from paying for damages for which he is legally liable.

The insurer must pay the amount of settlement to the aggrieved person; however, the aggrieved person shall not be entitled to enforce his claim directly against the insurer. The insured shall only be entitled to request the insurer to pay him if he settles the aggrieved person's claim.

The willful or grossly negligent conduct of the insured party shall not exempt the insurer with regard to the aggrieved person. The insurer, however, shall be entitled to demand reimbursement from the insured for the amount paid in those cases of willful conduct or gross negligence defined in the contract that result in damage, unless the insured is able to prove that the conduct of the person who caused the damage was not unlawful.

An agreement between the insured and an the aggrieved person shall be operative with respect to the insurer only if the insurer has acknowledged it, while a court ruling against the insured shall be operative only if the insurer has participated in the lawsuit, provided for the insured person's legal representation, or he has waived the above.

(Civil Code, Section 559)

In the case of mandatory vehicle liability insurance, the damaged party can also report the insurance event.

3.4. SECRECY AND DATA PROTECTION

In the insurance sector, specific data protection and secrecy rules apply which derive from the characteristic features of the insurance business.

Insurance secrets shall comprise all of the data - other than state secrets - in the possession of insurance companies, reinsurance companies, insurance intermediaries and insurance consultants that pertain to the particulars and financial situations (or business affairs) of their clients (including claimants), and the contracts of clients with insurance companies and reinsurance companies.

(IA, Section 153).

Unless otherwise provided by law, the owners, directors and employees of insurance companies, insurance intermediaries and insurance consultants and all other persons having access to insurance secrets in any way or form during their activities in insurance-related matters shall be required to maintain professional confidentiality with no time limit whatsoever.

(IA, Section 155, paragraph 3)

According to Act XLVII of 1997 on the Protection of Personal Data in the Field of Medicine, insurance companies shall be authorized to process any data pertaining to clients' health only for the reasons set out in Subsection (1) of Section 155 and only in possession of the express written consent of the data subject. (IA, Section 154)

(1) Insurance companies, insurance intermediaries and insurance consultants shall be allowed to process the insurance secrets of clients only to the extent that they relate to the insurance contract, with its creation and registration, and to the service. Processing of such data shall take place only to the extent necessary for the conclusion, amendment and maintenance of the insurance contract and for the evaluation of claims arising from the contract or for any other purpose specified in this Act.

(2) Insurance companies, insurance intermediaries and insurance consultants must obtain the data subject's prior consent for processing data for purposes other than what is contained in Subsection (1). The client shall not suffer any disadvantage if the consent is not granted, nor shall any advantage shall be given if it is granted.

(IA, Section 155, paragraph 1, 2).

Insurance secrets may only be disclosed to third parties under the express prior consent of the client to whom they pertain or his legal representative, and this consent shall precisely specify the insurance secrets that may be disclosed,

The requirement of confidentiality concerning insurance secrets shall not apply to:

n) with respect to the information required for settlement and for the enforcement of compensation claims, and also for the conveyance of these among one another, the body operating the Claims Security Account, the National Bureau, the correspondent, the Information Center, the Claims Organization, claims representatives and claims adjustment representatives, or the responsible party if wishing to access - in exercising the right of self-determination - the particulars of the other vehicle that was involved in the accident from the accident report for the purpose of settlement;

o) the outsourcing service provider with respect to data supplied under outsourcing contracts;

(IA, Section 156-157).

Insurance companies shall be entitled to process personal data relating to any frustrated insurance contract as long as any claim can be asserted in connection with the frustration of the contract.

Insurance companies, insurance intermediaries and insurance consultants shall be required to delete all personal data relating to their current or former clients or to any frustrated contract

in connection with which the data in question is no longer required, if the data subject has not given consent, or if it is lacking the legal grounds for processing such data.

Within the meaning of this Act, the processing of data related to deceased persons shall be governed by the statutory provision on the processing of personal data.

(IA, Section 161).

Insurance companies covering risks in connection with compulsory motor vehicle liability insurance shall set up and operate an Information Center. The Information Center shall immediately provide the injured party with the following information:

- a) the name and address of the insurance company carrying the policy of the vehicle at fault,
- b) description of the insurance policy (policy number),
- c) the name and address of the insurance company's claims representative in the injured party's state of residence.
- d) the name and address of the owner and/or operator of the vehicle at fault, where the injured party may have a legitimate interest in being informed about the identity of the owner and/or the operator.

The Information Center shall cooperate with the information centers of other Member States in order to ensure that the injured party is entitled for a period of seven years after the accident to obtain without delay the information referred to in Subsection (1)

- a) from the information center of the Member State where he resides,
- b) from the information center of the Member State where the vehicle is normally based, or
- c) from the information center of the Member State where the accident occurred.

Within the meaning of this Act, the Information Center shall be authorized to convey data to Member States and to other countries where national legislation contains provisions for data protection that are equal or better than that which is provided under Hungarian law.

(IA, Section 109).

The bureau operating the register of compulsory motor vehicle liability insurance policies (hereinafter referred to as "bureau of insurance policy records") shall keep records of all compulsory motor vehicle liability insurance policies purchased for registered motor vehicles, and on the preliminary certificates of coverage issued by insurance companies (central policy records).

The central policy records shall contain the following data of insured motorists, the vehicle and the contract:

- a) name (corporate name), date of birth, mother's name and address (business address) of the contracting (insured) party;
- b) registration plate and chassis number of the vehicle;
- c) if the registration plate is replaced, the date when replaced and the number of the previous plate;
- d) name of the insurance company and policy particulars (number);
- e) starting date of coverage, date and reason of termination of coverage where applicable;

The bureau of insurance policy records shall have authority to process the data referred to in Paragraphs a)-e) above for seven years following termination of the insurance contract.

The following shall be entitled to request data from the central policy records:

- a) any insurance company covering risks under motor vehicle liability with a view to Paragraphs b), c) and e) of Subsection (4) of Section 105;
- b) the contracting (insured) party concerning the particulars of his contract with a view to Paragraphs a)-e) of Subsection (4) of Section 105;

c) with respect to all data of record, the manager of the Claims Security Account, the National Bureau, the Green Card Correspondent, the Information Center, the Commission and the police, to the extent required in their official capacity;

d) the health insurance administration agency and the pension insurance agency empowered to manage the National Pension Insurance Fund with respect to the data for the enforcement of settlement claims for the Health Insurance Fund.

Insurance companies shall be allowed access to all data they have originally conveyed to the central policy records.

Any aggrieved party shall have the right to request the name (corporate name) and address (place of business) of the contracting (insured) party to enforce his right or legitimate claim.

Insurance companies and the bureau of insurance policy records shall monitor the compliance of motorists with compulsory coverage of motor vehicle liability insurance by having access to the databank created by the bureau of insurance policy records by linking motor vehicle registration files and the central records of compulsory motor vehicle liability insurance policies. The databank created by the link cannot be used for any other purpose and must be destroyed within 180 days after the inspection is completed.

Insurance companies shall forthwith notify the authority of records through electronic channels of any new insurance contract concluded and their issue of preliminary certificates of coverage, and they shall provide the bureau of insurance policy records with the data indicated in Paragraphs a)-e) above.

Insurance companies shall forthwith notify the authority of records through electronic channels of the termination of preliminary certificates of coverage and existing compulsory motor vehicle liability insurance policies. Insurance companies shall notify operators whose insurance contracts are terminated on the grounds of non-payment of insurance premium within 15 days of the effective date of termination.

The original owner (operator) of a vehicle shall be required to produce documents in proof of the vehicle's removal from registration or the deed of sale within fifteen days to the insurance company. Whenever a policy is cancelled by the insured party, the insurance company shall notify the authority of records through electronic channels immediately upon receipt of the relevant documents.

(IA, Section 105-107).

3.5. PROTECTION OF CUSTOMER CLAIMS

The protection of customer claims is a specific aspect in the insurance business as the actual provision of insurance services is a customer interest to be protected.

The assets of an insurance company covering technical provisions shall be invested with a view to the class of insurance in which it is engaged and the maturity of liabilities in such a manner as to guarantee liquidity at all times while providing the highest yield under the safest conditions attainable.

In order to achieve the highest degree of safety, the insurance company shall diversify its investments and strive to reduce risk factors within a specific form of investment by spreading investment-related risks.

(IA, Section 132).

While the investment rules discussed above directly protect capital and return payments owed to policy owners, the Claims Security capital or aka Claims Fund is indented to protect customer interests regarding liability for the insurance service.

"Claims Security capital" means a fund created and funded by the insurance companies covering risks in connection with compulsory motor vehicle liability insurance policies

offered in the territory of the Republic of Hungary by making regular contributions for the purpose of providing compensation for damage to property or personal injuries caused by a vehicle for which the insurance obligation provided for by law has not been satisfied or by an unidentified vehicle subject to the limits laid down by legal regulation;
(IA, Section 3, point 32).

Independent insurance intermediaries shall maintain separate client accounts for handling moneys paid in by the client on behalf of the insurance company or by the insurance company on behalf of the client. Money deposited in a client account may under no circumstances be used to satisfy other creditors, nor in the event of bankruptcy or liquidation proceedings.
(IA, Section 42, paragraph 2).

Independent insurance intermediaries shall - at all times - carry professional indemnity insurance covering liability in connection with their activities, representing at least 1,120,200 euro applying to each claim and in aggregate 1,680,300 euro per year for all claims covering the entire territory of the European Union or 1,680,300 euro of secured financial reserves. Before authorization, the applicant independent insurance intermediary shall provide the Commission with proof of having contracted the aforesaid professional indemnity insurance or the existence of the secured financial reserves.
(IA, Section 39, paragraph 1).

Any damage caused by an insurance agent or any other person in the employ of the insurance agent for mediating insurance by contract or otherwise while engaged in mediating insurance shall be the liability of the insurance company. If the insurance agent is involved with more than one insurance company, liability for damages caused by the agent while engaged in mediating insurance shall fall upon the insurance company on whose behalf the mediation took place.
(IA, Section 48).

3.6. RULES APPLICABLE TO SPECIFIC CONTRACT TYPES

While each branch of the non-life sub-sector can be regarded as a special insurance field, there are two insurance types which are discussed extensively in relevant laws: Mandatory vehicle liability insurance and legal protection insurance.

With a *vehicle liability insurance contract*, the aggrieved party is entitled to enforce his indemnification claim under the insurance contract directly at the insurer of the vehicle operator who caused the damage. The insurer is required to satisfy the aggrieved party's claim even if the policy owner breached the contract in a way that would relieve by law the insurer from its obligations. The aggrieved party is required to report the damage event to the insurer within thirty days. In case this deadline is not met, except when the aggrieved party proves that such failure stemmed from reasons beyond his control, the legal consequences of late fulfilment cannot be applied against the insurer (Government decree 190/2004 (VI. 8.), Section 18)

If the insurer provides *legal protection insurance* and assigns another company in the legal protection insurance contract to settle the damages submitted to the legal protection branch and to provide legal advice in relation to that, such assignment can only be given to a joint stock corporation, limited liability company or the Hungarian branch office of a foreign enterprise dealing with settling legal protection insurance damages. As a precondition of any such assignment, the assignee must not have any financial, commercial or administrative

relationship with the insurer, or any other direct or indirect relationship with them which could influence the impartiality of the indemnification process. Furthermore, the assignee must not be engaged in any other activities which could impact the impartiality of indemnification. The settlement of legal protection insurance damages and the provision of legal advice to that effort must not be assigned to another insurer whose insurance services are not limited to legal protection insurance. Any data transfer between the legal protection insurer and the other company assigned to settle damages must be implemented in a way that prevents the use of such data by the legal protection insurer for settling any damages related to other insurance contracts.

In addition to the minimum conditions, the contract conditions for *legal protection insurance contracts* must state the following:

The right of the policy holder to freely select his legal representative in any court or public administration proceedings or prior to such proceedings during efforts to help avoid the legal proceedings in case such legal representation is necessary for protecting and representing the policy holder's interests. The definition of a reconciliation procedure designed to ensure impartiality which the insurer and the policy holder must follow upon any difference of opinion between them regarding the insurer's services. (In case the outcome of the reconciliation procedure is favourable for the policy holder, the costs of proceedings shall be borne by the insurer. Otherwise each party shall bear its own costs. Unless regulated otherwise in the insurance contract, the policy owner is entitled to use the services of an attorney of his choice upon a difference of opinion. In case the attorney accepts the standpoint of the policy holder, the insurer is required to act accordingly. The contract must state the policy holder's right to freely select his legal representative in case the reconciliation procedure is not successful (IA, Section 103).

If legal expenses coverage is provided as part of an insurance contract covering other risks as well, the legal expenses section of the insurance contract shall be clearly separated so that it may be easily identified by the clients. The insurance company shall be required to emphasize the existence of legal expenses coverage on all of the documents that are supplied to the client; furthermore, the premium payable for legal expenses insurance shall be shown separately from all other premiums in the currency in which the policyholder is required to pay the insurance premium.

(IA, Section 104)

3.7. QUALIFICATION REQUIREMENTS

Activities for the mediation of insurance and re-insurance (hereinafter referred to as "insurance mediation") shall be construed as regular for-profit activities directed at arranging insurance contracts and re-insurance contracts (hereinafter referred to as "insurance contracts"). These activities cover the preliminaries before the conclusion of insurance contracts, the presentation and offering of insurance products, disclosure of related information and the conclusion of insurance contracts, the organization of sales arrangements for insurance contracts and participation in the administration and performance of insurance contracts.

Dependent and independent insurance intermediaries may engage in insurance mediation activities.

A tied insurance intermediary (hereinafter referred to as "agent") is engaged in the mediation of insurance products on behalf of one insurance company, or on behalf of more insurance companies in the case of insurance products which are not in competition. All other insurance

intermediaries shall be construed as independent insurance intermediaries with the exceptions laid down in Subsection (5) of this Section and Subsection (1) of Section 35.

In case an *independent insurance broker* wishes to pursue cross-border activities or open a branch office abroad, the qualification requirements valid in the country where the broker is seated shall apply in Hungary and no special qualification examination must be taken.

Any person who carries on the activity of insurance mediation in addition to his principal professional activity is also considered as a tied insurance intermediary if the insurance is complementary to the goods or services supplied in the framework of this principal professional activity and the person does not collect premiums or amounts intended for the client.

Dependent insurance intermediaries are engaged in mediating insurance products as paid employees of insurance companies or in a self-employed capacity.

(IA, Section 33).

In case an *insurance agent* wishes to pursue cross-border activities or open a branch office abroad, he must obtain the qualification specified in *Schedule No. 1 to the IA*.

Agent activities can only be pursued by natural persons (as employees of an insurance intermediation firm or of an insurance intermediation subcontractor thereof) with no criminal record and possessing a college or university degree or specialist qualification as specified in Schedule No. 13 of the IA or in other laws and who, with the exceptions set out in the IA, obtained registration with the HFSA (IA, Section 34)

The requirement of professional qualifications prescribed in specific other legislation shall be considered satisfied with respect to an insurance agent or a natural person employed by the insurance agent to direct insurance mediation operations if attendance in basic training provided by an insurance company approved to provide such training by virtue of the specific other legislation referred to in the above Subsection and having passed the ensuing examination are properly verified by the insurance company.

(IA, Section 48).

The consultant and the director of consulting activities at a business association engaged in insurance consulting or a consulting branch office shall

a) have no prior criminal record,

b) have a college or university degree and at least three years of experience as an insurance executive or as an insurance consultant at an insurance company, a business association engaged in insurance mediation activities, in the government sector in the field of finance, or at a trade organization or shall have worked as an insurance consultant or have a total of at least eight years experience in the field of insurance in the employment of the above-specified organizations whether under contract of employment, civil service relationship or any other form of gainful employment,

c) have the professional qualifications specified in Schedule No. 13 to this Act.

(IA, Section 52).

The Commission shall keep a register for insurance intermediaries authorized and registered under this Act (central register).

In the course of the registration procedure, the Commission shall assign a registration number to each insurance intermediary, whether a natural person or an economic organization.

Natural persons who are engaged in insurance mediation activities shall be registered upon notification by their employer insurance company or independent insurance intermediary according to the procedure prescribed by the Commission.

(IA, Section 36, paragraphs 1, 2 and 5).

3.8. UNAUTHORISED ACTIVITIES

In the course of soliciting clients for any insurance product, it is forbidden to employ any method

- a) whereby any advantage is promised to the deficit of other persons in exchange for having the insured or the contracting party pursue others to conclude the same or a similar insurance contract, or
- b) that involves an investment on the part of the insured or the contracting party that is to be recovered in part or in full from other persons targeted to conclude the same or a similar insurance contract.

(IA, Section 6).

In order to enforce the obligations of insurance companies, independent insurance intermediaries and insurance consultants and/or to safeguard the interests of clients and in order to enforce compliance with the provisions of this Act and other relevant legal regulation on insurance activities and the activities of independent insurance intermediaries, consultants and insurance representations, and with the conditions of its resolutions; the Commission shall have powers to take various *measures*.

These various measures can also be applied in combination and repeatedly. One potential measure that should be highlighted is to

k) prohibit any unauthorized insurance company, independent insurance intermediary, principal agent or unregistered insurance consultant to further engage in insurance related activities;

l) remove an insurance intermediary from the register;

(IA, Section 195).

The Commission may order the insurance company, the managing director of an insurance company, the independent insurance intermediary, insurance consultant, the director of operations of an independent insurance intermediary or insurance consultant, and any person engaged in any of the activities governed by this Act without proper authorization or without being registered to pay a disciplinary fine

a) for any violation of the provisions of this Act or other legal regulations on insurance activities and the activities of independent insurance intermediaries and consultants,

b) for failure to comply or delayed compliance with the Commission's regulations, or

c) for failure to disclose data or satisfy the hearing obligation ordered by the Commission within the specified deadline.

(IA, Section 196).

The following shall be deemed a serious breach of obligations as set forth in this Act:

a) disclosure of any false information or fraudulent statement in any application for authorization or notification with an intent to mislead the Commission,

b) marketing of any illegal product or an infringement committed in connection with marketing,

c) unauthorized activities or if an insurance company or an independent insurance intermediary or consultant is engaged in activities that are not directly connected to the insurance underwriting or insurance mediating,

d) performing any activities that are subject to registration by the Commission without being registered.

(IA, Section 197).

4. INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION

Institution for occupational retirement provision (IORP): a private company limited by shares established pursuant to this law or an institution registered in another EEA country which operates independently of the employer or professional organisation with the purpose of providing pension in relation to employment pursuant to a membership agreement or other agreement concluded between employers and employees or their representatives, provided the institution pursues activities as stipulated in the agreement;

Branch office: the branch office of the IORP. A branch office for providing occupational pension fund services can only be established by an institution for occupational retirement provision;

Cross-border activities: receipt of payments made by an employer seated or having premises, branch offices or commercial representation in the Republic of Hungary by an IORP seated in another country, service provided by an occupational pension service provider seated in another EEA country to a member residing in the Republic of Hungary, payment by an employer seated or having premises, branch offices or commercial representation in another EEA country to an IORP seated in the Republic of Hungary and service provided by an IORP to a member residing in another EEA country;

(Act on Occupational Pension and the Related Institutions, Section 2, paragraphs 11, 14, 15)

Pursuing of cross-border activities

If an IORP wishes to provide such services in the territory of another country for the first time, it is required to report this plan to the HFSA in advance. This report shall include the host country, the name of the employer and the elements of the pension plan stipulated in the membership contract.

Within 30 days after receiving this report, the HFSA shall inform the supervisory authority of the host country on the following:

- a) the IORP is duly licensed to provide service
- b) the IORP has a solvency capital that exceeds the minimum capital adequacy requirement and has accumulated the required reserves.

The HFSA is required to communicate simultaneously this information also to the employer service provider institution that submitted the report.

The HFSA will refuse to provide this information if the IORP fails to provide in its preliminary report the data specified in paragraph (1) or if the IORP fails to comply with the conditions set out in points a)-b) of the paragraph above. If the HFSA refuses to provide this information, it is required issue a resolution notifying the reporting IORP of the refusal.

The HFSA will forward to the occupational pension institution any information received from the competent authorities of the host country regarding changes in local social and labour laws which relate to the provisions on occupational pension. The IORP is entitled to start activities within 65 days after the receipt of the information forwarded by the HFSA or if no information is forwarded, within 65 days of submitting the information.

In case any change occurs during operations regarding the data specified in points a)-b) in Section 22 of the Act on Occupational Pension and the Related Institutions (hereinafter AOPRI), the HFSA shall inform the competent authority in the host country.

When fulfilling the informing obligation to its members, the IORP must also comply with the requirements applicable in the country where the employer is seated.

In case the HFSA is notified by a competent authority of the other country that the IORP fails to comply with the provisions of that other country's social and labour law regarding occupational pension plans and the informing of members, the HFSA will conduct an ad-hoc investigation at the institution and take measures as necessary.

The HFSA will forward to the IORP any information received from the competent authorities of the host country regarding changes in local social and labour laws which relate to occupational pension and to the investment of IORP assets.

The HFSA may request ad-hoc information from the IORP on the contract conditions and the related documents applied in cross-border activities to verify that the contracts comply with the legal provisions of the country where the employer is seated (AOPRI, Section 22-23).

Services provided to members

The IORP is required to send a balance statement to the member at least once a year. The statement must show the registration of the member's eligibility and his balance in the year concerned. This statement must be sent out by 31 March each year and must relate to the balance in the previous year.

The balance statement sent to members must contain in particular the following:

- a) contact information of the IORP,
- b) member identification information,
- c) start date of membership,
- d) the address of the HFSA's internet home page and
- e) subsequent changes in legal provisions that occurred since the date of the previous balance statement.

In addition to the items above, the balance statements for payment-driven pension plans must include the following:

- a) opening balance or receivables taken over from other employer service provider in the year concerned,
- b) contributions paid by the employer and supplementary employee payments made in the year concerned,
- c) receivables credited to member accounts and accrued on beneficiary rights (other revenues credited),
- d) result of investment activities in the year concerned (a share of net revenues from returns allocated to the member account),
- e) closing book value (market value) of member receivables,
- f) evaluation variance,
- g) description of investment portfolio selected by the member, and
- h) returns accumulated since the beginning of membership.

In addition to the items specified above, the balance statement for service-driven pension plans must include the following:

- a) contributions paid by the employer and supplementary employee payments made in the year concerned,
- b) information on the expected amount of occupational pension service payments,
- c) information on expected occupational pension service payments in case employment is terminated,
- d) increase of value deriving from the indexation of eligible pensions in the previous year,
- e) the ratio of the IORP's technical reserves to total pension plan liabilities including biometric risks (coverage rate), and
- f) amounts transferred by other IORPs in the year concerned and receivables converted from those payments.

In addition to the items outlined above, the balance statement sent to the pensioner must include the following:

- a) amount of pension paid in the year concerned, and
- b) the amount of service payments expected in the following year.

Upon the request of the member or the pensioner or employee representation organizations, the IORP shall disclose its investment policy, annual report and financial statements and provide information on regulatory changes regarding the pension plan or, in the case of providers offering multiple pension plans, the regulatory changes of any of those plans.

The employee and the employee representation organization must be informed prior to the signing of the service contract and the collective bargaining agreement respectively on the provisions of the membership contract and on the investment policy followed.

On the request of the member or a pensioner, in addition to the regular information provided, the IORP shall also inform the member or the pensioner on the following:

- a) member-selected portfolios if applicable, the exposure of these portfolios, the portfolios selected by the member and the expenses incurred by portfolio selection,
- b) procedures to be followed in case the pension plan is transferred to another IORP upon the termination of employment, methodology of calculating the principal value upon eligibility in the case of service-driven pension plans.

When the member reaches pension eligibility age, the IORP shall inform him on occupational pension services available to him along with the way of using those services.

Pursuant to an agreement between the IORP and the employer, this information is provided to the employee either partly or completely by the employer. The agreement must specify that this information shall be provided to all eligible members (AOPRI, Section 28).

Occupational pension secrets

Occupational pension secret means any fact, information or data available to or obtained by the IORP under its regular business on any of its members or pensioners regarding their person, data, financial position, business activities, owner and business relations, member's account, data in the eligibility registry, contributions paid for them and supplements paid by them and the occupational pension payable to them.

An IORP is only allowed to manage business secrets and occupational pension secrets in conjunction with providing occupational pension services (AOPRI, Section 25).

Supervisory review

The IORP and the outsourcing service provider shall report data on a regular and ad-hoc basis pursuant to applicable laws and on an ad-hoc basis pursuant to HFSA resolutions.

The IORP is required to send to the HFSA

- a) besides the regular financial statements, an internal, non-public report assessing the IORP's performance once a year,
- b) the actuarial report on the IORP once a year,
- d) the data supporting proportionate differences between gender-dependent contributions and services annually
- c) on a quarterly basis, a report that also includes the estimated value of the IORP's key performance indicators (solvency capital, equity, technical and coverage reserves),

The IORP is required to enable the HFSA to perform audits and provide the HFSA with access to all data and information required for the audits (AOPRI, Section 56).

Operation of IORPs registered in another EEA country in the Republic of Hungary

An IORP registered in another EEA country is only allowed to function in the Republic of Hungary in the form of providing cross-border services if it is duly licensed for such activities in the country where it is seated and if it has obtained a preliminary license for providing this service across borders.

An employer wishing to provide supplementary pension to its employee based on an agreement that involves one or more employees may make payments to an IORP registered in another EEA state. The other way round, IORPs registered in another EEA state are entitled to provide service to a member residing in the Republic of Hungary.

Employers can only make payments to IORPs registered in another EEA state pursuant to legal relationships governed by Hungarian labour and social security laws.

IORPs registered in another EEA state must prepare all contracts and documents for fulfilling their information obligation to members and all other documents related to the provision of occupational pension services as specified by the HFSA in Hungarian language.

All services provided by the IORP shall be governed by the regulations regarding pension services.

Supervision of IORPs registered in another EEA state and providing cross-border services

IORPs and employers which have been registered in another EEA state and provide cross-border services are supervised by the HFSA.

If the HFSA receives notification from the competent authorities of the EEA state where the IORP is seated that the institution concerned intends to accept payment from an employer as part of cross-border services, the HFSA shall, within 60 days after the receipt of such notification, inform the authority concerned on the provisions in Hungarian labour and social laws concerning the operation of IORPs registered in another EEA state, on the obligation to inform members and on the requirements concerning asset investments by the IORP.

An IORP registered in another EEA state is allowed to start cross-border activities in Hungary if it has received the information described above from the competent authorities of the home country but not later than the end of the period mentioned above.

This information obligation should also encompass any changes to legal provisions which occur while the IORP of another EEA state operates in Hungary, provided these changes impact the features of the pension plan, the mandatory information to be provided to members or the investment rules. If so, the HFSA shall provide information to the competent home country authorities within 30 days after the amendments are announced.

The HFSA may request ad-hoc information from the IORP registered in another EEA state or from the employer on the contract conditions and the related documents in order to verify that the contracts comply with Hungarian legal provisions.

Regarding pension plans for members whose membership is based on employment in Hungary, the IORP registered in another EEA state must comply with the informing obligations set out in Section 28.

In case the HFSA detects that the operation of the service provider violates applicable laws, it shall notify the competent authorities of the home country without delay. The HFSA will cooperate with these competent authorities in order to ensure that the IORP registered in another EEA state terminates any non-compliant operations.

The HFSA is entitled to audit the activities of IORPs registered in other EEA states and is required to do so if requested by a competent supervisory authority of a home country. As part

of these audits, the HFSA is entitled to carry out on-site investigations regarding the cross-border services provided in Hungary by the IORP registered in another EEA state. Furthermore, subject to applicable data protection laws, the HFSA is entitled to request these IORPs to provide data regarding its operations.

On the request of the competent supervisory authority of the service provider's home country, the HFSA will take measures to freeze the assets placed at a deposit manager seated in the Republic of Hungary by an IORP registered in another EEA state.

In case non-compliant operations as per Hungarian social security and labour laws are continued despite or due to the lack of measures by the authorities of the service provider's home country, after providing advance notification to the authorities of the home country, the HFSA may take the following measures (or a combination thereof) in order to fulfil the obligations of the IORP registered in another EEA state, to protect the interests of members and to enforce compliance with this law:

- a)* warn for compliance with requirements that apply pursuant to this law and other legal provisions to the IORP registered in another EEA state and set a deadline for restoring compliance;
- b)* require the submission of a financial plan, liquidation plan, financial restoration plan aimed at eliminating non-compliances in within a specific timeframe in accordance with Sections 42-44 and may also set a deadline for implementation;
- c)* order a temporary ban on the admission of members in the Republic of Hungary;
- d)* impose a penalty;
- e)* restrict the activities in the Republic of Hungary of the IORP registered in another EEA state;
- f)* ban the operation in the Republic of Hungary of the IORP registered in another EEA state.

The penalty imposed on an IORP registered in another EEA state may range from HUF 100,000 to 10 million and it may be imposed repeatedly if non-compliances are not eliminated. The penalty must be paid to the account specified in the related resolution within 15 days after the resolution enters into effect.

If the IORP registered in another EEA state which violated the legal provisions has a venture registered in the Republic of Hungary whose seat or premises actually exist in Hungary, the penalty imposed by the HFSA can also be charged to that venture and collected from its material and immaterial assets subject to applicable legal provisions (AOPRI, Section 82-86).