

## **ACT ON SECURITIES AND INVESTMENT SERVICES (THE SECURITIES ACT)**

The full text of the Act of the National Council of the Slovak Republic No. 566/2001 Coll., dated 9 November 2001, on securities and investment services (the Securities Act), as amended by Act No. 291/2002 Coll., Act No. 510/2002 Coll., Act No. 162/2003 Coll., Act No. 594/2003 Coll., Act No. 43/2004 Coll., Act No. 635/2004 Coll., Act No. 747/2004 Coll., Act No. 7/2005 Coll., Act No. 266/2005 Coll., Act No. 336/2005 Coll., Act No. 213/2006 Coll., Act No. 644/2006 Coll., Act No. 209/2007 Coll., those provisions of Act No. 659/2007 Coll. that became effective on 1 January 2008, and Act No. 70/2008 Coll..

The National Council of the Slovak Republic has adopted the following Act:

### **SECTION I**

#### **PART ONE**

#### **GENERAL PROVISIONS**

##### **ARTICLE 1**

##### **Scope of the Act**

(1) This Act regulates securities, investment services, some contractual relations involving securities, some relations associated with activities of persons providing investment services, the business of the central depository of securities (hereinafter "central depository"), some relations associated with activities of other entities in the financial market field, and capital market supervision (hereinafter "supervision") to the extent set out in this Act.

##### **ARTICLE 2**

(1) A security means any instrument or record which is assessable in monetary terms, made in a form stipulated by law, carrying rights as defined in this Act and in separate laws,<sup>1)</sup> in particular the right to demand certain assets or exercise certain rights against persons specified by law.

(2) The system of securities comprises:

- a) shares,<sup>2)</sup>
- b) interim certificates,<sup>3)</sup>
- c) shares in investment funds,<sup>4)</sup>
- d) bonds,<sup>5)</sup>
- e) certificates of deposit,<sup>6)</sup>
- f) treasury bills (Article 3),
- g) passbooks,<sup>7)</sup>

- h) coupons (Article 4),
- i) bills of exchange,<sup>8)</sup>
- j) cheques,<sup>8)</sup>
- k) traveller's cheques,<sup>9)</sup>
- l) bills of lading,<sup>10)</sup>
- m) warehouse certificates,<sup>11)</sup>
- n) warehouse warrants,<sup>12)</sup>
- o) goods warrants,<sup>12)</sup>
- p) shares in cooperatives,<sup>13)</sup>
- r) investment certificates
- s) other types of securities designated as such by a separate law.

### **ARTICLE 3**

#### **Treasury bills**

(1) A treasury bill is a security maturing within one year from its date of issue. Income generated by the treasury bill is determined as the difference between its nominal value and issue price. A treasury bill establishes the right of its holder to demand upon maturity the payment in cash of its nominal value. A treasury bill may also be issued, without giving a reason for its liability, to its own order by the National Bank of Slovakia, the Ministry of Finance of the Slovak Republic (hereinafter the "Ministry") on behalf of the Slovak Republic,<sup>14)</sup> by a bank, or by a foreign bank through its branch situated in the territory of the Slovak Republic;<sup>15)</sup> treasury bills are subject to the provisions of a separate law,<sup>16)</sup> unless provided otherwise in this Act or in a separate law.<sup>14)</sup>

(2) A treasury bill shall state:

- a) the issuer's designation, business name, registered office, and identification number if the issuer is a bank or a foreign bank;
- b) the title of the treasury bill and its ISIN number; except for treasury bills issued by the Ministry or the National Bank of Slovakia;
- c) the nominal value of the treasury bill -
  1. in the Slovak currency, at least SKK 1,000 or more in one-thousand increments;
  2. in the euros, at least EUR 25, and any higher amounts always in whole multiples of EUR 25, or
  3. in other currency, if the treasury bill is denominated in other currency;
- d) the method of determining the yield and the date due for its payment;
- e) a recognition by the issuer that it owes the nominal value of the treasury bill to its holder;
- f) date of payment of the nominal value of the treasury bill;
- g) the commitment of the issuer to pay the nominal value of the treasury bill on the due date, the method for such payments, and the identification of the place of payment;
- h) in the case of treasury bills issued in their holder's name, the following information on their initial holder -
  1. business name, registered office, and identification number, if a legal person;
  2. name, permanent residence, and birth registration number if a natural person; if a foreign natural person, the date of birth may be given instead of the birth registration number.

## **ARTICLE 4**

### **Coupons**

(1) For exercising the right to income from shares, interim certificates, bonds, or shares in investment funds, coupons may be issued as registered paper securities or order securities.

(2) Coupons shall be issued in the form of coupon sheets. A coupon sheet may include a talon which entitles the holder to receive a coupon sheet. The talon is not a security.

(3) A coupon must contain information about:

- a) type, issuer, and numerical identification of the security it relates to, with the exception of the numerical designation of a book-entry security,
- b) amount of dividend or the way it is determined, and
- c) date and place where the right to the dividend may be exercised.

## **ARTICLE 4a**

### **Investment certificates**

(1) Investment certificate is a security whose value is tied to the value of indexes, interest rates, shares, debt securities, exchange rates, commodities, or other underlying assets (baskets), or a combination thereof. Attached to the investment certificate is the right to acquire the financial instrument which is the underlying asset of the investment certificate, or the right to settlement in cash, or a combination thereof. Investment certificate may be issued by banks or branches of foreign banks only.

(2) Investment certificate may only have the form of a bearer security or a registered security.

(3) Investment certificate must state

- a) business name, registered office, identification number of issuer,
- b) ISIN, title and form of investment certificate,
- c) total number of investment certificates issued in the respective issue,
- d) nominal value of investment certificate,
- e) maturity or settlement date, provided that under the issuing terms there is attached to the investment certificate the right to acquire a financial instrument which is the underlying asset of the investment certificate,
- f) in regard to registered investment certificates, also the below details of the first holder:
  1. business name, registered office, identification number, if it is a legal person,
  2. name and surname, permanent residence and national identification number, if the holder is a natural person; in regard to a foreign natural person, date of birth may be stated instead of the national identification number.

(4) Issuing terms include the rights and obligations of issuer and holder of investment certificates as well as the rights attached to investment certificates. Issuing terms include, in particular:

- a) data pursuant to paragraphs 3a) to 3e),
- b) title of investment certificate,

- c) method of determination of yield and date of its payment, provided that under the issuing terms there is attached to the investment certificate the right to settlement in cash,
- d) method of determination of yield, settlement conditions and settlement date, provided that under the issuing terms there is attached to the investment certificate the right to acquire a financial instrument which is the underlying asset of the investment certificate,
- e) highest amount of nominal values and issue rate,
- f) date of commencement of issue, expected issue period, method of issue,
- g) information whether an application for admission of investment certificates to trading on a regulated market shall be filed, and identification of such regulated market,
- h) other rights and obligation attached to investment certificates.

(5) Issuer is not allowed to change issuing terms of the issued investment certificates, except for change of business name and registered office of the issuer and payment place.

(6) Issuer shall be required to publish issuing terms of investment certificates, in a manner described in Article 125a, not later than one week before the date on which investment certificates started to be issued. Issuer shall be required to publish changes in issuing terms of investment certificates under paragraph 5, in a manner described in Article 125a, not later than 10 days from entry into force of such changes.

(7) Issue of investment certificates without prior publication of approved prospectus of investment certificate is prohibited. Provisions of Articles 120 to 125c shall apply accordingly to prospectus of investment certificate and to conduct of the issuer in issuing investment certificates; this is applicable also in the case no public offer of securities is made in issuing investment certificates. Should prospectus of investment certificate include information whose content corresponds with the information in issuing terms of investment certificates, the respective sections of prospectus shall substitute issuing terms of investment certificates; provision of paragraph 6 hereof shall not apply in such case. In regard to modification of that information in prospectus of security which substitutes issuing terms of investment certificates, paragraph 5 hereof shall apply; if no amendment to the prospectus of investment certificate is simultaneously prepared in respect of such changes, this fact shall be stated therein. The changes shall be published in a way set forth in Article 125c.

(8) Should issuer be in delay with payment of yield or settlement of yield from investment certificate, it shall notify the National Bank of Slovakia on this fact without delay. As far as investment certificates admitted to trading on a regulated market are concerned, issuer shall be required to publish without delay a notice on delay in payment of yield or settlement of yield from investment certificate in a state-wide periodical press publishing news from securities market. Investment certificate which is acquired by its issuer before its maturity date shall not cease to exist, unless the issuer decides otherwise. The rights and obligations attached to investment certificates which are in possession of issuer shall be terminated as at the maturity date of investment certificate, unless they have been terminated earlier based on the issuer's decision.

(9) Issuer shall submit the issuing terms of investment certificates to the National Bank of Slovakia within 15 days from the date on which the investment certificates started to be issued; this shall not apply if all information included in issuing terms of investment certificates fully correspond with the content of the respective prospectus of investment certificate

## **ARTICLE 5**

### **Financial instruments**

(1) The following are financial instruments:

- a) transferable securities;
- b) money market instruments;
- c) fund shares or securities issued by foreign collective investment undertakings;
- d) options, futures, swaps, forwards and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- e) options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
- f) options, futures, swaps and any other derivative contract relating to commodities that can be settled in cash provided that they are traded on a regulated market or a multilateral trading facility,<sup>16a)</sup>
- g) options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be settled in cash and are not mentioned in subparagraph (f), and not being for commercial purposes,<sup>16b)</sup> which have the characteristics of other derivative financial instruments,<sup>16b)</sup> having regard to whether they are cleared or settled through the clearing and settlement system or are subject to regular margin calls;
- h) derivative instruments for the transfer of credit risk;
- i) financial contracts for differences;
- j) options, futures, swaps, forwards and any other derivatives concerning climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled at the option of one of the parties (otherwise than by reason of insolvency or other termination event), as well as any other derivatives concerning assets, rights, obligations, indices and other factors not otherwise mentioned in subparagraphs (a) to (i), which have the characteristics of other derivative financial instruments,<sup>17)</sup> having regard to whether they are traded on a regulated market or multilateral trading facility, are cleared or settled through the clearing and settlement system or are subject to regular margin calls

(2) By a decree to be promulgated in its full text in the Collection of Laws of the Slovak Republic (hereinafter 'the Collection of Laws'), the National Bank of Slovakia may lay down details of what is meant by financial instruments as mentioned in paragraph (1).

## **ARTICLE 6**

### **Investment services, investment activities and ancillary services**

(1) The following are investment services and investment activities:

- a) reception and transmission of client orders in relation to one or more financial instruments;
- b) execution of orders on behalf of clients;
- c) dealing on own account;
- d) portfolio management;
- e) investment advice;

- f) underwriting or placing of financial instruments on a firm commitment basis;
- g) placing of financial instruments without a firm commitment basis;
- h) operation of multilateral trading facilities.

(2) The following are ancillary services:

- a) safekeeping and administration of financial instruments for the account of clients, including custodianship and related services, such as cash/collateral management;
- b) granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the provider of the credit or loans is involved in the transaction;
- c) advice on capital structure and business strategy, and advice and services relating to the merger, consolidation, transformation or splitting of undertakings or the purchase of undertakings;
- d) foreign exchange services where these are connected to the provision of investment services;
- e) investment research and financial analysis or the other forms of general recommendation relating to transactions in financial instruments;
- f) services related to the underwriting of financial instruments;
- g) services and activities mentioned in paragraph (1)(a) to (f) related to the underlying of the derivatives included in under Article 5(e) to (g) and (j), where these are connected to the provision of investment or ancillary services.

(3) 'Execution of orders on behalf of clients' means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients.

(4) 'Dealing on own account' means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments; the management of proprietary capital does not constitute dealing on own account.

(5) 'Portfolio management' means managing portfolios of financial instruments in accordance with mandates given by clients at the discretion of the portfolio manager.

(6) 'Investment advice' means the provision of personal recommendations to a client, either upon its request or at the initiative of the securities dealer, in respect of one or more transactions relating to financial instruments.

(7) 'Personal recommendation' means a recommendation given to an investor or potential investor, or the intermediary of an investor or potential investor, whether to:

- a) buy, sell, subscribe for, exchange, redeem, hold or underwrite one or more specific financial instruments, or
- b) to exercise or not to exercise any right conferred by a specific financial instrument to buy, sell, subscribe for, exchange or redeem one or more specific financial instruments, where this recommendation is held out to the recipient as being suited to, or based on a consideration of, their personal circumstances.

(8) A recommendation pursuant to paragraph (7) made solely through distribution channels or for the public shall not be deemed to be a personal recommendation.

(9) 'Underwriting' means the acquisition of financial instruments from their issuer, upon their issuance, for the purpose of selling them to third parties. 'Placing' means ensuring the sale of an issuer's financial instruments at the time of their issuance. 'Firm commitment' means a commitment to ensure the sale of financial instruments for a pre-agreed price, including a commitment to purchase unsold financial instruments from the issuer.

(10) 'Custodianship' means administration whereby an administrator, in its own name and for the account of client who owns a security, performs legal acts required for the exercise and upholding of rights attached to that security vis-à-vis third parties, such as:

- a) acceptance of a financial instrument to the credit of a the client's account;
- b) the delivery of a financial instrument to the debit of the client's account;
- c) the crediting of interest, dividends and other payments arising from the holding of a financial instrument to the client's account.

(11) 'The holding of client financial instruments' means the safekeeping and administration of a client's financial instruments by and in the name of a securities dealer for the account of the client; 'holding' also means the use of financial instruments received from a client for the purpose of ensuring the provision of other investment services and investment activities.

## **Definitions**

### **ARTICLE 7**

(1) An issuer is a legal person or natural person who has issued, issues or has decided to issue a security pursuant to provisions in this Act or in separate legislation.

(2) Fungible securities are securities of the same class (Article 2(2)) and type (Article 11) issued by the same issuer and carrying identical rights.

(3) An issue of securities is a set of fungible securities.

(4) The ISIN number is the numerical identification of a security according to an international security identification system.

(5) The nominal value of a security is the financial amount stated on the security.

(6) The issue price of a security is the price for which an issuer sells the security upon issue.

(7) The price of a security is the price determined and published by a stock exchange in a manner laid down by the stock exchange rules.<sup>18)</sup>

(8) An owner of a security under Article 10 (1)(a) is a legal person or natural person which has acquired the security under a contract after fulfilling the obligation set out in Article 20, or by virtue of any other legal fact specified by law, unless otherwise provided in this Act.

(9) An owner of a security under Article 10 (1)(b) is a legal person or natural person which has acquired the security under a contract or by virtue of any other legal fact specified by

law, and which is recorded as its owner in a register established pursuant to Article 10 (4)(b) and (c), Article 99 (3)(b), Article 104 (2), and Article 164 (1) unless otherwise provided by this Act.

(10) Anonymous transactions are transactions concluded on a stock exchange through the acceptance of offers addressed to a non-specific group of legal persons or natural persons.

## ARTICLE 8

For the purposes of this Act:

- a) 'portfolio' means assets comprising financial instruments, other securities, or funds intended for the purchase of financial instruments or other securities;
- b) 'trustworthy person' means a natural person who in the past ten years -
  1. has not been lawfully sentenced for a criminal offence committed in connection with a management office or an intentional criminal offence; these facts shall be evidenced by a criminal record extract, <sup>19)</sup> not older than three months, or, if a foreign citizen, by a similar certificate of integrity issued by a competent authority of his home country or the country of its usual residence;
  2. has not held an office mentioned Article 55 (2)(d) with a stock brokerage firm or a financial institution pursuant to paragraph (c) whose licence has been revoked, or an office mentioned in Article 56 (2)(c) with a branch of a foreign stock brokerage firm whose licence to operate as a foreign stock brokerage firm in the Slovak Republic has been revoked, at any point within one year before the licence revocation; this condition shall not apply if the nature of the matter implies that, with respect to the office specified in Article 55 (2)(d), or Article 56 (2)(c), the person concerned could not have influenced the activities of the stock brokerage firm, financial institution under letter (c), or a foreign stock brokerage firm, nor have caused the consequences that led to revocation of the licence, and has been recognised as trustworthy by the National Bank of Slovakia in licensing proceedings <sup>20)</sup> held in accordance with this Act;
  3. has not held an office mentioned in Article 55 (2)(d) with a stock brokerage firm, or a financial institution pursuant to paragraph (c) which has been placed under compulsory administration, at any point within one year before the introduction of compulsory administration; this condition shall not apply if the nature of the matter implies that, with respect to the office specified in Article 55 (2)(d), the person concerned could not have influenced the activities of the stock brokerage firm or financial institution pursuant to paragraph (c), nor have caused the consequences that led to compulsory administration, and has been recognised as trustworthy by the National Bank of Slovakia in licensing proceedings conducted in accordance with this Act;
  4. has not held an office mentioned in Article 55 (2)(d) with a stock brokerage firm or a financial institution pursuant to letter (c) which has been declared bankrupt <sup>21)</sup> or gone into liquidation, at any point within one year before the declaration of bankruptcy or the start of liquidation. This condition shall not apply if the nature of the matter implies that, with respect to the office specified in Article 55 (2)(d), the person concerned could not have influenced the activities of the stock brokerage firm or financial institution pursuant to letter (c), nor have caused the consequences that led to a declaration of bankruptcy or entry into liquidation, and has been recognised as trustworthy by the National Bank of Slovakia in licensing proceedings conducted in accordance with this Act; nor shall this condition apply if the person held an office mentioned in Article 55 (2)(d) in a

- supplementary pension insurance company which entered into liquidation owing to its transformation in accordance with a separate law;<sup>21a)</sup>
5. has not been validly fined more than 50% of the sum that could be imposed in accordance with Article 144 (7);
- c) 'financial institution' means a bank, a branch of a foreign bank,<sup>15)</sup> an asset management company,<sup>22)</sup> an insurance company,<sup>23)</sup> a supplementary pension insurance company or supplementary pension company,<sup>24)</sup> the central depository or an entity engaged in a similar activity which has its registered office outside the Slovak Republic, or a pension fund management company;<sup>24a)</sup>
- d) 'derivative' means any right or obligation, assessable in monetary terms, relating to or derived from securities, commodities, interest rates, exchange rate indices of funds held in the Slovak currency or a other currency, or other assets used for this purpose in trade; a derivative is also any right or obligation, assessable in monetary terms, relating to or derived from securities contracts; derivatives are in particular the financial instruments mentioned in Article 5 (1) (d) to (j);
- e) 'group with close links' means two or more natural persons or legal persons, where one of the legal persons or natural persons has in the other legal person a direct or indirect interest in its share capital or voting rights of 20 percent or more, or directly or indirectly controls the legal person, or any relation between two or more legal persons controlled by the same legal person or natural person;
- f) 'qualified participation' means a direct or indirect share, or their sum, representing at least 10 percent of the share capital or voting rights of a legal person, or the ability to exercise influence over the management in this legal person comparable with the interest corresponding to this share (hereinafter referred to as "significant influence");
- g) 'indirect share' means a share held through an intermediary, namely through a legal person or persons controlled by the legal person;
- h) 'control' means -
1. a direct or indirect share of more than 50 percent of the share capital or voting rights of a legal person;
  2. the right to appoint or dismiss the statutory body, the majority of members of the statutory body, the Supervisory Board, or the director of a legal person;
  3. the ability to exercise influence over the management of a legal person (hereinafter referred to as "decisive influence"):
    - 3a. comparable with the influence that would attach to a holding under point 1, whether on the basis of the articles of association of the legal person, or a contract concluded between the legal person and its partner or member;
    - 3b. on the basis of the relationship between a partner or member of the legal person and a majority of the members of the statutory body or a majority of the members of the supervisory board or a majority of the persons constituting another management, supervisory or oversight body of the legal person, established on the basis of their appointment by the respective partner or member of the legal person, where the relationship so established lasts until the preparation of the next consolidated financial statements after the right of the respective partner or member of the legal person has expired under point 2;
    - 3c. comparable with the influence that would attach to a holding under point 1, on the basis of an agreement between the partners of the legal person; or
  4. the ability to exercise decisive influence in any other way;
- i) 'subsidiary' means a legal person controlled in the meaning of paragraph (h) and any subsidiary of such subsidiary;

- j) 'parent company' means a legal person exercising control in the meaning of paragraph (h);
- k) 'money market instruments' means instruments which are normally dealt in on the money market, such as treasury bills and certificates of deposit, and excluding instruments of payment,<sup>24b)</sup>
- l) 'participation' means a direct or indirect interest, or their sum, representing at least 20% of the share capital or voting rights of a legal person, or the possibility to exercise influence over the management of this legal person comparable with the interest corresponding to this share;
- m) 'transferable securities' means those classes of securities which are normally dealt in on the capital market, with the exception of instruments of payment, such as:
  1. shares, interim certificates, or other securities which in terms of the rights they carry are similar to shares issued in the Slovak Republic or abroad, and depository receipts<sup>24c)</sup> representing shares issued in the Slovak Republic or abroad;
  2. bonds or other debt securities created by the securitization of credits or loans issued in the Slovak Republic or abroad, and depository receipts<sup>24c)</sup> representing such securities issued in the Slovak Republic or abroad;
  3. any securities not mentioned in points one or two, whether issued in the Slovak Republic or abroad, which give the right to acquire securities under points one or two or give rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
- n) 'equity securities' means -
  - 1) shares;
  - 2) other securities carrying rights similar to those attached to shares;
  - 3) transferable securities<sup>24c)</sup> giving the right to acquire any shares or securities mentioned in subparagraph (2) as a consequence of their being converted or the rights conferred by them being exercised, provided that such transferable securities are issued by the issuer of the shares or securities under subparagraph (2) or by an entity belonging to the group (Article 138) of the said issuer;
- o) 'non-equity securities' means all securities that are not equity securities;
- p) 'offering programme' means a plan serving as the basis for the continuous or repeated issue of the following over a specified period -
  - 1) non-equity shares of the same type;
  - 2) warrants in any form;
- q) 'securities issued in a repeated or continuous' manner means issues on tap or at least two separate issues of securities of the same type over a period of 12 months.

## **ARTICLE 8a**

### **Clients**

(1) For the purposes of this Act, 'client' means any natural or legal person to whom a securities dealer provides investment or ancillary services.

(2) For the purposes of this Act, 'professional client' means a client who possesses the expertise, experience and knowledge to make its own investment decisions and properly assess the risks that it incurs. The following shall be regarded as professional clients:

- a) securities dealers, foreign securities dealers, financial institutions, commodity and commodity derivatives dealers, persons under Article 54(3)(j), and entities authorized to

operate in the financial market by a competent authority or whose activity is separately regulated by generally binding legal regulations;

- b) large undertakings meeting the conditions laid down in paragraph (3);
- c) state, regional or municipal authorities, state or regional authorities of other countries, the Debt and Liquidity Management Agency, public authorities of other countries that are charged with or intervene in the management of public debt, the National Bank of Slovakia, other central banks, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organizations;
- d) legal persons not mentioned in subparagraphs (a) to (c) whose main activity is to invest in financial instruments, including entities that carry out the securitization of credits and loans or other financing transactions;
- e) entities which may at their request be treated as professional clients provided that the conditions laid down in paragraph (6) are met.

(3) An undertaking shall be regarded as a large undertaking where it meets two of the following requirements on an individual basis:

- a) a balance sheet total of not less than EUR 20 000 000;
- b) net annual turnover of not less than EUR 40 000 000;
- c) own funds of not less than EUR 2 000 000.

(4) Where an entity mentioned in paragraph (2)(a) to (d) deems that it is unable to properly assess or manage the risks involved in a specific investment service or ancillary service, it may request to be treated the same as client that is not a professional client (hereinafter a 'retail client'). Such treatment will be provided when the client enters into a written agreement with the securities dealer to the effect that it shall not be treated as a professional client for the purposes of applying business conduct rules vis-à-vis the client. Such agreement shall specify whether it applies to one or more investment services or ancillary services or to one or more types of financial instrument or transaction.

(5) Where a client is an entity referred to in paragraph (2)(a) to (d), the securities dealer must inform it prior to any provision of services that, on the basis of the information available to the securities dealer, the client is deemed to be a professional client and will be treated as such unless otherwise agreed. The securities dealer must also inform the client that when concluding any agreement, it may request to be treated the same as a retail client.

(6) A securities dealer may treat an entity referred to in paragraph (2)(e) as a professional client where the client meets at least two of the conditions laid down in Article 120(8) and provided that:

- a) the securities dealer has assessed the client's expertise, experience and knowledge and has issued a written statement that these give reasonable assurance, in light of the nature of the envisaged transactions or investment or ancillary services that the client is capable of making his own investment decisions and understanding the risks involved;
- b) the client has stated in writing to the securities dealer that it wishes to be treated as a professional client, in regard to one or several investment services, ancillary services or transactions, or to one or several types of financial instrument or transaction;
- c) the securities dealer has given the client a clear written warning of the protections and investor compensation rights it may lose;
- d) the client has stated in writing, in a separate document from the contract, that it is aware of the consequences of losing the rights mentioned in subparagraph (c).

(7) Securities dealers shall implement appropriate written internal policies and procedures to categorize clients.

(8) Professional clients shall keep the securities dealer informed about any change that could affect their current categorization as a professional client. Should the securities dealer become aware that the client no longer fulfils the initial conditions which made it eligible to be categorized as a professional client, the securities dealer must take appropriate action to recategorize it.

## **ARTICLE 9**

(1) The provisions of this Act shall apply to all types of securities, unless otherwise provided by a separate law.

(2) The provisions of the Civil Code on movable items shall apply to securities, unless otherwise provided by this Act or a separate law.

(3) Any legal relationships arising under the exercise of those rights attached to securities which may only be exercised against the issuer or another legal or natural person specified by law shall be governed by applicable provisions of the Commercial Code or Civil Code on contractual relations, unless otherwise provided by this Act or a separate law.

## **ARTICLE 10** **Form of a security**

(1) Securities may be in the form of:

- a) a certificate on which there is a record in accordance with Article 2 (1) (hereinafter a "paper security"); or
- b) a record pursuant to Article 2 (1) which is kept in a register established under this Act (hereinafter a "book-entry security").

(2) The issuer shall decide on the form of securities and on any change in their form unless this Act or a separate law <sup>25)</sup> stipulates that a specific security must have either of the forms defined in paragraph (1).

(3) Bearer shares, shares in closed-end investment funds, bearer shares in open-end investment funds, bonds, investment certificates, and treasury bills must have the form of book-entry securities.

(4) The register referred to in paragraph (1)(b) above is:

- a) the register kept by the central depository pursuant to Article 99 (3), or
- b) the central register of short-term securities kept by the National Bank of Slovakia <sup>26)</sup> for treasury bills issued by the Ministry or by the National Bank of Slovakia to cover the state budget deficits or to regulate the money market; the manner in which this register shall be kept is stipulated by the operating rules issued by the National Bank of Slovakia.

- c) in the case of shares in open-end investment funds, apart from the register mentioned in paragraph (a), a separate register of book-entry shares in open-end investment funds that is kept by the asset management company and the depository of the open-end fund (hereinafter a "separate register in accordance with a separate law"<sup>26a)</sup>). At the request of the issuer, the register mentioned in subparagraph (b) or (c) may also be kept by the central depository. In that case, the keeping of the register shall be subject to the provisions of Article 99 (3) and Article 103.

## **ARTICLE 11**

### **Type of a security**

- (1) Securities may be issued as registered securities, order securities, or bearer securities.
- (2) The issuer shall decide on the type of securities, unless this Act or a separate law<sup>27)</sup> stipulates that a security may only be one of the types mentioned in paragraph (1).
- (3) Paper certificates of deposit and passbooks may only be issued as registered securities.

## **ARTICLE 12**

### **Particulars of securities**

(1) Each security shall specify the type of security as defined by law; a depository receipt may also be designated a deposit certificate or a certificate of deposit. The particulars of book-entry securities include their ISIN number; this shall not apply to treasury bills issued by the Ministry, to shares in open-end investment funds kept in a separate register, or to treasury bills issued by the National Bank of Slovakia. An ISIN number may be allocated also to another financial instrument, when so requested by a legal person or natural person which has issued such instrument.

(2) When changing the type of a security, the issuer shall apply for a new ISIN number if the ISIN number is a required particular of the security concerned.

- (3) The following are not required particulars of a book-entry security:
- a) numerical designation;<sup>28)</sup>
  - b) a signature or a facsimile of the signature or signatures of persons authorised to act on behalf of the issuer;
  - c) information about authorisation from the National Bank of Slovakia for the issue of securities, of which the security is a part, if authorisation for the issue is required under a separate law.<sup>29)</sup>

(4) Certificates of deposit shall contain the particulars set out in Article 3 (2). The particulars of a certificate of deposit include the commitment of the issuer to make payments on the agreed dates, the method of such payments, and the identification of the place of payment.

(5) A separate law may stipulate other required particulars of a security.

(6) The required particulars of different classes of securities must be stated on the securities upon their issue, unless otherwise provided by a separate law.

(7) The procedure for changing the particulars of a security shall be governed by the provisions of this Act and of separate laws.

### **ARTICLE 13** **Issue of a security**

(1) A security is deemed issued at the moment it contains all the particulars defined in this Act or in a separate law and when it becomes the possession of its initial owner in a way established by law or where, in the case of book-entry security, it is credited to an owner's account, client account or holder's account.

(2) The provisions of this Act shall apply to procedures to be followed by an issuer when issuing securities, unless otherwise provided by a separate law.

(3) On the request of an issuer of securities, the central depository shall assign an ISIN number to a security without undue delay.

### **ARTICLE 14** **Termination of a security**

- (1) A security shall cease to exist:
- a) with the dissolution of the issuer, on the date of dissolution, except if the issuer is dissolved with a legal successor or if the underlying liability has not been transferred to another legal person or natural person;
  - b) based on a decision by the issuer, on the date set by the issuer, unless otherwise provided by a separate law;
  - c) based on valid court order, on the date stated in this order;
  - d) upon the fulfilment of other legal conditions stipulated for the termination of a security by this Act or by a separate law, on the date when whichever of these legal conditions is fulfilled first.

(2) A security giving the right to a certain financial performance shall cease to exist upon its redemption in full or the date of its early redemption, provided that early redemption is permitted by the issue terms or under an agreement between the issuer and the security's owner. Unless otherwise provided by a separate law, a security giving the right to a non-financial performance shall cease to exist upon the discharge of all obligations arising under the security. For a security to be discharged, it must be paid along with any yield thereon, where such yield is due. The acquisition of a security by its issuer prior to the maturity date shall be deemed an early redemption of the security only if stipulated by a separate law.<sup>31)</sup>

(3) The procedure to be followed by a legal person or natural person upon termination of a security shall be subject to the provisions of this Act, unless otherwise provided by a separate law.

(4) Where a book-entry security is terminated, the central depository or member of the central depository (hereafter referred to as the “member”) shall delete the security from the register established in accordance with this Act.

(5) Where a security is terminated pursuant to this Act or a separate law, the central depository shall cancel the ISIN number on the request of the issuer or on the basis of a decision of an authorised person.

### **Conversion of a security**

#### **ARTICLE 15**

(1) To convert a security means to change a paper security into a book-entry security of the same type, or to change a book-entry security into a paper security of the same type.

(2) An issuer shall publish its decision to convert a security without undue delay in the Commercial Bulletin and in a national newspaper covering stock exchange news at least once a week.

(3) The conversion of any security shall apply to the whole issue of securities.

(4) An issuer shall be liable for any damage caused as a result of its failure to comply with this Act when converting a security.

#### **ARTICLE 16**

(1) Where an issuer decides to convert a paper security into a book-entry security of the same type, the issuer shall, without undue delay after its decision, publish in the Commercial Bulletin and in national daily publishing stock exchange news at least once a week, the deadline by which the owners of the securities are required to submit their paper securities. In the case of a conversion of registered paper shares, the issuer shall give written notice to all shareholders without undue delay after taking its decision.

(2) The deadline for returning paper securities for conversion may not be less than two months or more than six months from the date of the publication of the decision to convert the securities.

(3) When the deadline for returning paper securities for conversion has passed, the issuer shall have the security conversion registered with the central depository. To that end, the issuer shall conclude a written contract with the central depository for the provision of services related to the conversion of a paper security into a book-entry security. After the central depository has concluded the contract, it shall, without undue delay, proceed with the registration by entering the book-entry security into the register specified in Article 10 (4)(a).

(4) If all paper securities from the relevant issue have been submitted before the deadline referred to in paragraph (1), the central depository may, on the issuer's request, proceed in accordance with paragraph (3) even before the deadline specified in paragraph (1).

(5) The issuer shall keep a separate register of paper securities which are subject to conversion and have not been submitted. .

(6) From the end of the deadline for returning paper securities for conversion, to the registration of the securities by the central depository in the register of the issuer of securities (hereinafter "issuer's register"), no trading may take place in any of the paper securities that have not been returned to the issuer. The owner of such a security may only claim a yield on the security when he submits it to the issuer.

(7) If an owner of a registered paper security is late in submitting the security, the issuer shall give him reasonable time to make the submission, which shall not be less than one month, and advise him that otherwise the security shall be declared invalid. If an owner of a bearer security is late in submitting the paper security, the issuer shall publish in the Commercial Bulletin a call for the submission of the security within a reasonable deadline set in the announcement, which may not be shorter than one month, giving notice that otherwise the security shall be declared invalid. If the security has still not been submitted by the extended deadline, the issuer shall follow the same procedure as that laid down in the Commercial Code for the non-return of paper shares.

## **ARTICLE 17**

(1) Within 30 days after concluding a contract with the issuer on providing services for the conversion of book-entry securities into paper securities, the central depository shall deliver to the issuer an extract from the issuer's register and a list of the owners of the book-entry security, prepared in cooperation with members of the central depository by not later than the date set by the issuer for the conversion of the security and to the extent of the registered data pertaining to the security the form of which is being converted. From the date of delivery of this extract, the central depository may not make any entries in its register pertaining to the security which is being converted.

(2) Except as provided in paragraph (6), the central depository shall cancel the registration of the security referred to in paragraph (1) on the date of the security's conversion as stated by the issuer in the contract mentioned in paragraph (1). The central depository shall also notify this fact to the stock exchange, if the security has been admitted to trading on a market organised by the stock exchange.

(3) The issuer shall proceed after receiving the extract pursuant to paragraph (1) in such a way that no more than thirty days elapse until the cancellation of registration of the security pursuant to paragraph (2). On the date of cancellation of registration of the security pursuant to paragraph (2), the owner of the security is entitled to receive the paper security from the issuer. The issuer shall publish this fact and a period for collecting the paper securities in the manner specified in Article 16(1).

(4) Any suspension of the right to use a security registered pursuant to Article 28 (hereinafter referred to as "suspension of the right of use") shall be lifted as of the date when the book-entry security is deregistered.

(5) If a book-entry security which is being converted is subject to a lien as of the date when the extract mentioned in paragraph (1) is delivered, the central depository shall notify the lienor of the situation without undue delay. The deregistration of a book-entry security which is being converted shall not affect the consequences of any lien to which the security is subject as of the date of deregistration. The lienor shall be entitled to receive the paper security. The issuer may also fulfil this duty by placing the security into safekeeping (Article 39) with the approval of the lienor or by depositing it (Article 42), provided that the safekeeper or depository is also given the original or an officially certified copy of the lien agreement. If the conversion concerns an order security in paper form, the lienor shall on behalf of the owner write on the security that it has been pledged pursuant to Article 45(4). If at time the book-entered security is being converted into paper form a lien has no effect vis-à-vis the owner of the security pursuant to Article 53a (4) and Article 53b (2). The right to issue the security belongs to the security owner mentioned in the list pursuant to paragraph (1).

(6) The form of a book-entry security may only be changed after the notice mentioned in paragraphs (4) and (5) has been given.

(7) If the owner of a converted book-entry security is late in collecting the paper security, the issuer shall follow the same procedure as that laid down in the Commercial Code for the non-return of paper shares.

## **ARTICLE 18**

### **Transmission of securities**

(1) A transmission of a security means a change of its owner based on a valid inheritance decision, a valid decision by another state authority, or based on other legal facts defined by law.<sup>32</sup>

(2) Where the owner of a book-entry security is changed by transmission in accordance with paragraph (1), to the credit or debit of the account of an owner of a book-entry security (hereinafter referred to as an 'owner's account') under Article 105, or a holder's account under Article 105a, or an account maintained in accordance with Article 71h(2), such change shall be registered as at the date of transmission by the central depository, member or, in accordance with Article 71h(2), the securities dealer.

(3) If securities are transferred on the basis of a company sale agreement,<sup>33</sup> the provisions on the transmission of securities shall apply.

(4) An order for registration pursuant to paragraph (2) shall be made by the person acquiring the respective security, or by a stock brokerage firm or a foreign stock brokerage firm such person may authorise.

(5) The order mentioned in paragraph (4) shall be accompanied by the original or an officially certified copy of the document attesting the legal fact on the basis of which the transmission was made.

## **ARTICLE 18a**

## **Movement of a security**

(1) The movement of a security shall not give rise to a change in the owner of the security, but shall involve the transfer of the security from the owner's account to another account held by the same owner.

(2) The movement of a security from one account of the owner to another account of the same owner shall be performed by a central depository or member on the same day.

(3) The movement of a security shall be subject, as appropriate, to provisions on the transfer of securities.

## **General provisions on the transfer of securities**

### **ARTICLE 19**

(1) A transfer of a security means a change in the owner of the security based on an agreement pursuant to this Act.

(2) The transferability of a security can be precluded or restricted only if this is provided for by a separate law.<sup>34)</sup> The issuer may not preclude or restrict the transferability of bearer securities.

(3) Unless otherwise provided by a different law,<sup>35)</sup> the transferee of a security shall become its owner even if the endorser did not have the right to transfer the security, except if the transferee knew or ought to have known at the time of transfer that the endorser did not have the right to transfer the security.

(4) The rights attached to a security may be transferred separately without the security and be the subject of a separate transaction only if so stipulated by a separate law.<sup>36)</sup>

### **ARTICLE 20**

The obligation to transfer a paper security shall be fulfilled if the paper security is delivered to the transferee, unless otherwise provided by this Act or a separate law or a contract. Other particulars of a transfer may be established by a separate law.

### **ARTICLE 21**

(1) For the transfer of an order security, an endorsement shall also be required. Through the endorsement, which must be unconditional, all rights attached to the paper security are transferred unless otherwise provided by a separate law.<sup>37)</sup>

(2) Unless otherwise provided by a separate law,<sup>35)</sup> an endorsement must contain the signature of the endorser, the business name, registered office and identification number of a legal person, or the name, permanent residence and birth registration number of a natural person, which is the transferee of the security. If the security is acquired by a foreign legal person,<sup>38)</sup> an

identification number shall be specified, if assigned. If a foreign natural person is the transferee, the date of birth shall be stated instead of the birth registration number.

## **ARTICLE 22**

### **Registration of transfers**

(1) The obligation to transfer a book-entry security is fulfilled when the transfer is registered by the central depository or a member, based on an order to register a transfer of a book-entry security (hereinafter referred to as a "transfer registration order") if the transferred security corresponds with the contract.

(2) To register the transfer of a book-entry security means to make an entry in the legally stipulated register of the owners of book-entry securities, namely by debiting the account of the endorser or holder's account under Article 105a and crediting the account of the transferee or holder's account under Article 105a. The central depository or a member shall make the entries in both accounts as of the same date.

## **ARTICLE 23**

(1) Unless otherwise provided in this Act, a transfer registration order shall be submitted by the transferor and the transferee to the members with whom the transferor or transferee have an owner's account, or to the central depository with whom the transferor or the transferee have an owner's account, or to an entity for whom the central depository maintains a holder's account; it shall do this within an agreed period, and if such period has not been agreed, then within seven days after concluding the contract. The central depository, member or entity for whom the central depository maintains a holder's account shall carry out the registration without delay after receiving materially identical transfer orders from the transferor and the transferee.

(2) If the orders to register a transfer are not identical, the central depository or a member shall not make the registration and shall, without undue delay, return the transfer registration orders to the persons who made them. If a transfer registration order is not accompanied by a valid decision of prior approval required under Article 70 (1)(a) and Article 102 (1)( a) and (b), or under a separate law,<sup>39)</sup> the central depository or the member which has received the transfer registration orders shall, without undue delay after registration of the transfer, notify the competent authority whose approval should have been enclosed in the transferee's.

(3) Any party that gives an order to register a transfer without proper authority, or that gives such order incorrectly, incompletely or belatedly is liable for any damage incurred as a result of this.

## **ARTICLE 24**

(1) Where a stock brokerage firm or a foreign stock brokerage firm procures the purchase or sale of a book-entry security, it shall, without undue delay, submit a transfer registration order. The stock brokerage firm or a foreign stock brokerage firm shall present the central depository or

a member with evidence of its authorisation to make the transfer registration order. The central depository or a member shall, without undue delay, proceed to register transfer after receiving the identical transfer registration orders, without prejudice to the provision of Article 23 (2).

(2) Article 23 (3), shall also apply to the liability of a stock brokerage firm or a foreign stock brokerage firm.

## **ARTICLE 25**

(1) Where a transfer of a book-entry security is taking place on a stock exchange, the transfer registration order shall be submitted by the stock exchange, which shall present the central depository or a member with evidence of its authorisation to make the transfer registration order. The central depository or a member shall, without undue delay, proceed to register the transfer after receiving this transfer registration order, without prejudice to the provision of Article 23 (2).

(2) Article 23 (3) shall apply to the liability of the stock exchange.

(3) The provisions of paragraphs (1) and (2) shall apply, in the same way, to transactions concluded on a multilateral trading facility and to the operator of the facility.

## **ARTICLE 26**

The central depository or a member shall register transfers in the order in which it received the identical transfer registration orders.

## **ARTICLE 27**

(1) A transfer registration order shall include:

- a) the following information on the endorser -
  1. business name, registered office and identification number, if a legal person,
  2. name, address and birth registration number, if a natural person;
- b) the following information on the transferee -:
  1. business name, registered office and identification number, if a legal person,
  2. name, address and birth registration number, if a natural person,
- c) ISIN number and the number of units of the security transferred;
- d) information on whether this is a paid transfer or a gratuitous transfer, and in the case of a paid transfer also the price for which the security is transferred, unless this is precluded by the nature of the transfer; if the nature of the transfer precludes specifying the price, the transfer registration order must contain information which makes it evident that the price cannot be specified;
- e) legal grounds of the transfer;
- f) business name and registered office of the central depository or a member with which the endorser and transferee have an owner's account.

(2) Where a purchase or sale of a book-entry security is procured by a stock brokerage firm or a foreign stock brokerage firm, the transfer registration order must also contain the business name and identification number of the stock brokerage firm, or the business name and registered office of the foreign stock brokerage firm.

(3) Where a transfer registration order is submitted by a stock brokerage firm or a foreign stock brokerage firm which procured only the purchase of the book-entry security, the transfer registration order shall contain, instead of information specified in paragraph (1)(a), the information specified in paragraph (2) on the stock brokerage firm or foreign stock brokerage firm from which the security was acquired.

(4) Where a transfer registration order is submitted by a stock brokerage firm or a foreign stock brokerage firm which procured only the sale of the book-entry security, the transfer registration order shall contain, instead of information specified in paragraph (1)(b), the information specified in paragraph (2) on the stock brokerage firm or foreign stock brokerage firm from which the security was acquired.

(5) Where a transfer registration order is submitted by a stock exchange, it shall contain, in addition to information specified in paragraph (2), the business name, registered office and identification number of the stock exchange.

(6) The provisions of paragraphs (1) to (5) shall apply, as appropriate, to transfers of securities carried out by the securities dealer the records of which are kept by that securities dealer in accordance with Article 71h(2).

(7) Where a transfer order is submitted in electronic form, the provision of paragraph (1) shall apply as appropriate.

## **ARTICLE 28**

### **Registration of a suspension of the right of use**

(1) The central depository or a member shall register a suspension of the right of use on the basis of an order to register a suspension of the right of use.

(2) To register a suspension of the right of use means to make an entry to that effect in the register of the central depository, and where information on the book-entry security and its owner are registered in the owner's account maintained by a member, then also in the register of that member.

(3) An order to register a suspension of the right of use may be given by:

- a) the owner of the book-entry security;
- b) a stock brokerage firm or a foreign stock brokerage firm, if it was instructed by the owner of the book-entry security to acquire this security or if this ensues from a contract concluded between the stock brokerage firm or the foreign stock brokerage firm and the owner of the book-entry security;
- c) a stock exchange or multilateral trading facility provided that the book-entry security is to be sold on that stock exchange or multilateral trading facility, or by a central depository during the clearing and settlement of transactions in book-entry securities,

- d) a lienor who accepted the security as collateral under the lien agreement, National Bank of Slovakia, European Central Bank or another central bank of the Eurosystem simultaneously with filing order for registration of the contractual lien on a book-entered security in accordance with Article 53a(4) and the National Bank of Slovakia where it orders a suspension of the right of use in the pledged security pursuant to Article 45 (6);
- e) an issuer, not more than ten days before payments of interest yields, redemption of the nominal value, registering a conversion or termination of the security;
- f) an issuer of shares or interim certificates, for a period of not more than five days before a General Meeting is held of that joint stock company, and an issuer of shares in cooperatives, for not more than five days before a Members' Meeting of that cooperative is held;
- g) the central depository or a member, if it is to make a correction or addition to its register pursuant to Article 108(1) to (3);
- h) a competent state authority;<sup>40)</sup>
- i) an authority exercising supervision pursuant to this Act or separate laws<sup>41)</sup> if, when exercising this supervision, it finds any breach of the applicable legislation and where further use of the security risks causing damage;
- j) an executor if an execution should be carried out by a sale of the security.<sup>42)</sup>
- k) a central depository or member, where a natural or legal person whose owner's account is entered in the register maintained by the central depository or member is more than 14 days in arrears in the payment of any part of its monetary liability to the central depository or member, and such order shall be made in the necessary extent vis-à-vis the amount of the receivable. In the event that the monetary liability or its outstanding amount is met, the central depository or member shall without undue delay submit an order to register the cancellation of this suspension of the right of use.

(4) An order to register a suspension of the right of use, or an order to register a cancellation of a suspension of the right of use, shall contain the particulars concerning the book-entry security and its owner as set out in Article 27 (1) and shall indicate the period during which the right of use in the security is suspended, unless a suspension of the right of use is sought for an indefinite period. If the order does not include all the requisites, it is invalid and the central depository shall not carry out its registration.

(5) Where an order to register a suspension of the right of use, or an order to register a cancellation of a suspension of the right of use, applies to an entire issue, the person authorised under paragraph (3) shall give the central depository an order to register a suspension of the right of use or an order to register a cancellation of a suspension of the right of use. The provision of paragraph (4) shall not apply to the submission of orders in accordance with the previous sentence. An order to register a suspension of the right of use which applies to an entire securities issue, and an order to register the cancellation of this right must contain:

- a) identification information on the issuer to the extent set out in Article 27 (1)(a);
- b) the ISIN number of the securities issue to which the order applies;
- c) the period for which the right of use is suspended.

(6) A suspension of the right of use pursuant to paragraph 3(a) to (c), may only be registered if no other suspension of the right of use pursuant to paragraph (3)(a)(c) is registered for the respective security.

(7) After a suspension of the right of use has been registered, the owner of the book-entry security may not, for the period of the suspension, conclude any contract to purchase the security, contract to donate the security, contract to lend the security, contract to procure its sale, or give any order to sell the security.

(8) While the registration of a suspension of the right of use is in effect, the central depository or a member shall not register any transfers of the book-entry security; if the central depository or a member registers a transmission of the security pursuant to Article 2(2)(d), it shall notify the person ordering the suspension of the right of use in writing without undue delay.

(9) A suspension of the right of use ceases upon the entry of its cancellation in the relevant register of the central depository or a member. The central depository or a member shall make the entry either upon completion of the period for which the right of use was suspended, or on the order of a stock brokerage firm which, pursuant to Article 51, is selling securities that are subject to a lien and is cancelling the suspension of the right of use registered under paragraph (3)(a) to (d), or on the basis on the order of legal person or natural person which demonstrates to the central depository its authorisation to cancel an order to register a suspension of the right of use or the central depository or member, where the entity which issued the order to register the suspension of the right of use has ceased to exist, or where the securities dealer or foreign securities dealer has ceased to provide investment services as defined in this Act.

(10) Where the central depository or a member carries out an order to cancel the registration of a suspension of the right of use, it shall, without undue delay, notify this fact in writing to the person which ordered the suspension of the right of use. This shall not apply where the central depository or a member cancels an order to register the suspension of the right of use in respect of an entity that has ceased to exist since issuing the order for the registration or in respect of a securities dealer or foreign securities dealer that has ceased to provide investment services as defined in this Act.

(11) Anyone who gives an unauthorised order to suspend the right of use or an order pursuant to paragraph (9), or who gives such order incorrectly, incompletely or belatedly shall be liable for any damage arising as a result.

(12) The central depository or a member is required to notify the stock exchange of the registration of any suspension of the right of use affecting a whole issue of book-entry securities.

(13) The procedure mentioned in paragraphs (1) to (12), except for paragraph (5), shall insofar as it applies to a central depository or member apply also to a securities dealer which keeps records in accordance with Article 71h(2).

## **ARTICLE 29**

(1) The provisions of Articles 22 to 28, Articles 45 to 53e, Article 99 (17) and Article 107a shall apply, as appropriate, to transfers of treasury bills registered in the central register of short-term securities kept by the National Bank of Slovakia, to a suspension of the right of use in these treasury bills, to securing liabilities with such treasury bills, to the irrevocability of transfer registration orders for them, to the protection of collateral provided in transactions involving them, and to the system of clearing and settling transactions in them, while the

National Bank of Slovakia shall perform activities related to the registration of treasury bills in the central register of short-term securities.

(2) The provision of Articles 22 to 28, Articles 45 to 53e shall apply, as appropriate to transfers of book entry securities registered in the individual records, to a suspension of the right of use in such shares, to securing liabilities with such shares, to the protection of collateral provided in transactions involving them, while the depositary of the open-end investment fund and the asset management company shall perform activities related to the register of such book entry shares in their individual records. If the depositary of the open-end investment fund and the asset management company organise also the system of clearing and settling transactions of shares registered in the individual records, the provisions of Articles 99 (16) and Article 107a shall apply, as appropriate, to the irrevocability of transfer registration orders for shares, and to the system of clearing and settling transactions in them..

## **PART TWO**

### **CONTRACTS ON SECURITIES**

#### **ARTICLE 30**

##### **Contracts to purchase securities and contracts to donate securities**

(1) Contracts to purchase securities shall be governed by the provisions of the Commercial Code on purchase contracts, unless otherwise provided in this Act. For a contract to purchase securities to be valid, it must identify the class, number, purchase price and, if assigned, the ISIN number of the securities to be transferred.

(2) Without specifying the price, a contract to purchase securities is only valid if both parties express their will to make the contract without setting a price. In such case, the transferee shall pay a purchase price equivalent to the lowest price at which a fungible security was traded on public markets on the date when the contract was concluded. If the security was not traded on public markets on that date, the transferee shall pay the lowest price for which the security was previously traded on public markets. If the purchase price cannot be determined in this way, the transferee shall pay a price that could be achieved with due professional care (Article 73).

(3) Contracts to purchase a registered paper security and, if so provided by a separate law, contracts to purchase an order security in paper form, shall be made in writing.

(4) A contract to donate securities is governed by the provisions of the Civil Code on a donation contract, unless otherwise provided in this Act. Contracts to donate securities must be made in writing.

##### **Commission agent contract to procure the purchase or sale of a security**

#### **ARTICLE 31**

(1) In a commission agent contract to procure the purchase or sale of a security, the commission agent ("agent") undertakes to procure in its own name and for the account of the client the purchase or sale of a security, or to perform activities directed towards this objective, and the client undertakes to pay the agent a commission.

(2) Unless otherwise provided in this Act, a commission agent contract is governed by the provisions of the Commercial Code on commission agency contracts. A commission agent contract to procure the purchase or sale of a security must be made in writing.

(3) Unless otherwise provided in the commission agent contract to procure the purchase or sale of a security, the client's instruction on the basis of which the commission agent procures the purchase or sale of a security shall be in writing. If the client's instruction is not made in writing, the commission agent is required to give the client, at its request, a confirmation of a received instruction.

#### **ARTICLE 32**

(1) Where a client instructs a commission agent to procure the purchase of a security, the commission agent may ask for an advance payment.

(2) Where a client instructs a commission agent to procure the sale of a security, the commission agent may request, in the case of a paper security, to be given this security, or in the case of a book-entry security, to have a suspension of the right of use in this security registered in the central depository's register or in individual register.

(3) For so long as the commission agent is bound by an instruction to procure a sale of a security, the client may not use this security.

### **ARTICLE 33**

(1) A commission agent may discharge its obligation by selling the client a security from its portfolio or by buying a security from the client, provided that this is allowed under the commission agent contract to procure the purchase or sale of the security.

(2) Unless otherwise provided in the commission agent contract to procure the purchase or sale of a security, and provided that the commission agent is able to do so, the commission agent is required, even without the client's consent, to sell the security for a price higher than that stated in the instruction or to buy the security at a price lower than that stated in the instruction; otherwise it shall be liable for the damage incurred by the client.

(3) If the purchase price or the sale price is not specified in the client's instruction, the commission agent is required to buy or sell the security at the best price for the client, which can be obtained with due professional care.

### **ARTICLE 34**

Securities entrusted to a commission agent for sale shall remain the property of the client until they are acquired by a third party.

### **ARTICLE 35**

The ownership of securities that a commission agent acquires for a client shall, in the case of physical securities, pass to the client on the date of their endorsement, if required, and delivery to the commission agent, and, in the case of book entry securities, once they are credited to the owner's account or holder's account of the commission agent. After the client has paid the purchase price for the securities and the fee mentioned in Article 31(1), the commission agent shall without delay make the endorsement of the physical securities, if required, and deliver them to the client, or shall without delay ensure the transfer of the book-entry securities to the owner's account of the client. The commission agent shall not be so obliged if, under the contract, he is required on behalf of the client to provide safekeeping and administration of the securities or to deposit them (Articles 39 and 41 or Article 42), or if he performs for the client the ancillary service of custodianship as defined in Article 6(2)(a) and

details of securities' owners are contained in records that the commission agent maintains under Article 71h(2).

### **ARTICLE 36**

#### **Mandate contract to procure the purchase or sale of securities**

(1) In a mandate contract to procure the purchase or sale of securities, the mandatory undertakes to buy or sell, on the mandator's behalf and for its account, a security as instructed by the mandator, or to take action leading to that end, and the mandator agrees to pay a fee for this. The provisions of Article 33 on rights and duties of a commission agent apply to the rights and duties of a mandatory.

(2) Unless otherwise provided in this Act, a mandate contract to procure the purchase or sale of securities is governed by the provisions of the Commercial Code on mandate contracts. A mandate contract must be made in writing.

### **ARTICLE 37**

#### **Contract on brokerage in the purchase or sale of securities**

(1) In a contract on brokerage in the purchase or sale of securities, the broker undertakes to act so as to enable the bidder to sell or buy a security and the bidder agrees to pay a fee for this.

(2) Unless otherwise provided in this Act, a contract on brokerage in the purchase or sale of securities shall be governed by the provisions of the Commercial Code on mandate contracts. A contract on brokerage in the purchase or sale of securities must be made in writing.

### **ARTICLE 37a**

**cancelled with effect from 1 November 2007**

### **ARTICLE 38**

#### **Contract on the loan of a security**

(1) In a contract on the loan of security, the lender undertakes to transfer to the borrower a certain number of fungible securities, and the borrower agrees to transfer to the creditor the same number of fungible securities after the completion of an agreed period. The borrower also undertakes to pay a fee, if agreed. Instead of a financial fee, it may be agreed that the number of fungible securities returned will be greater than the number which the creditor lent to the borrower.

(2) A contract on the loan of a security must be made in writing. For a contract to borrow securities to be valid, it must specify the class, number and, if assigned, the ISIN number of the securities transferred.

(3) The liabilities arising under a contract on the loan of a security for a fee are governed by the general provisions of the Commercial Code on commercial obligations.<sup>43)</sup> The liabilities arising under a contract on the loan of a security for a fee are governed by the general provisions of the Civil Code on loans.

### **Contract on safekeeping of paper securities**

#### **ARTICLE 39**

(1) In a contract on safekeeping of paper securities the safekeeper undertakes to receive a paper security into individual or bulk safekeeping, and the consignor agrees to pay the safekeeper a fee. The contract must identify the persons who have the right to use the security placed in safekeeping. If the contract does not specify the fee for the service, the safekeeper is entitled to a fee that is usual at the time the contract is concluded. If the security is a fungible security, the safekeeper must be a stock brokerage firm, a foreign stock brokerage firm, or the central depository. As a rule, unless the contract provides otherwise, a fungible security shall be placed in bulk safekeeping and a non-fungible security in individual custody. A contract on safekeeping of paper securities must be made in writing.

(2) Individual safekeeping means keeping a paper security of one consignor separately from paper securities of other consignors. The safekeeper shall return the consignor the same paper security as the consignor entrusted to his safekeeping. The safekeeper is liable for any damage arising to the entrusted paper security, unless such damage was unavoidable even when exercising due professional care.

(3) Bulk safekeeping means keeping a fungible security of one consignor together with other fungible securities of other consignors. The safekeeper shall return the consignor a fungible security, but the consignor does not have the right to receive the same paper security as he entrusted to the safekeeper. The safekeeper is liable for any damage arising to a paper security placed in safekeeping, unless such damage was unavoidable even when exercising due professional care. Fungible securities in bulk safekeeping are the joint property of the consignors. The share of any consignor in this joint property is determined by the ratio of the sum of nominal values of the fungible securities that he placed in bulk safekeeping to the sum of the nominal values of all the fungible securities in bulk safekeeping. If the fungible securities do not have a nominal value, the number of fungible paper securities will be used instead. The provisions of the Civil Code on joint ownership shall not apply to fungible paper securities in bulk safekeeping. Each of the consignors may exercise his rights towards the safekeeper separately.

(4) A safekeeper shall keep records of paper securities placed in safekeeping. The records shall contain the business name or name, registered office and identification number, or the name, address and the birth registration number of the consignor and the issuer of the security and its nominal value, if any. For a paper security under individual safekeeping, the records shall also contain its number and place of safekeeping.

(5) If the safekeeper is not in possession of the paper security at the time the contract is concluded, it is obliged to receive the security and keep it.

(6) The safekeeper shall take due professional care to protect the paper security against loss, destruction, damage, or depreciation.

(7) The consignor may at any time require the safekeeper to surrender the paper security to him and may at any time return it to the safekeeper, unless the contract on safekeeping of paper securities has expired.

(8) The consignor or the safekeeper may terminate the contract on safekeeping of paper securities. If a termination notice has not been agreed, the safekeeper may terminate the contract as of the end of the calendar month following the delivery of the termination notice, and the consignor may terminate it with immediate effect.

(9) The contract on safekeeping of securities shall also be deemed as terminated when the consignor has collected all the paper securities from safekeeping, unless otherwise implied by the contract on safekeeping of securities or by an expression of will from the consignor in regard to the collection of the securities.

(10) In order to secure its rights under the contract on safekeeping of paper securities, the safekeeper shall have a lien on the paper security received into safekeeping, provided that the security is in his possession.

(11) If the assets of the safekeeper are subject to a bankruptcy declaration,<sup>21)</sup> the receiver shall take all necessary steps towards returning the paper securities placed in individual and bulk safekeeping to the respective consignor in accordance with their shares as defined in paragraph (2) and (3). If it is not possible to return the paper securities to all the consignors, the receiver shall entrust the non-returned securities to another safekeeper under similar terms and conditions, having regard to protecting the interests of the consignor. The receiver has the right towards the bankrupt to be compensated for costs related to the return of the paper securities. Such costs shall be met by the consignors according to the proportion of their shares.

## **ARTICLE 40**

(1) A safekeeper that has received a paper security under a contract on safekeeping of securities may, even without the consignor's consent, entrust the security into the safekeeping of another safekeeper, unless otherwise provided by the contract.

(2) Entrusting a paper security into the safekeeping of another safekeeper shall in no way affect the consignor's rights towards the safekeeper with whom it has concluded the contract on safekeeping of securities.

## **ARTICLE 41**

### **Contract on administration of securities**

(1) In a contract on administration of securities, the administrator undertakes for the duration of the contract to take whatever legal steps are necessary to exercise and uphold the rights attached to the respective security, and the owner of the security agrees to pay the administrator a fee. If the contract does not specify the fee for the service, the administrator is entitled to a fee that is usual at the time contract is concluded. A contract on administration of securities must be made in writing.

(2) The administrator mentioned in paragraph (1) must be a person authorised to conduct such activities under a licence specified in Article 54 or Article 100.

(3) The administrator shall, even if not instructed by the client, act with due professional care to take whatever steps are necessary to exercise and uphold the rights attached to the security, and in particular it shall demand the fulfilment of liabilities arising under the security, as well as the exercising replacement and pre-purchase rights attached to the security, unless otherwise provided by the contract on administration of securities.

(4) The administrator shall to fulfil instructions of the client; which must be given in writing unless the contract on administration of securities allows for a different form. An administrator must give the client prompt notification of any incorrect instructions.

(5) If so required by the nature of an action to be taken by the administrator, the owner of the security must deliver the administrator the paper security or the required written power of attorney, without undue delay after being asked for it by the administrator. If the action concerns a book-entry security, its owner shall, on the administrator's request, take whatever steps are necessary so as to enable the administrator to issue instructions for using the book-entry security.

(6) If an administrator should exercise voting rights attached to a security, it may require the necessary written power of attorney from the owner of the security. If the owner of the security gives the administrator instructions on how the voting rights should be exercised, the administrator shall be obliged to vote for the owner of the security in the specified manner.

(7) An administrator shall deliver the paper security to its owner without undue delay after completing the action for which the security was required, unless otherwise implied by the nature of the action. For so long as the it is in possession of the security, the administrator is liable for damage to the security pursuant to Article 39(2).

(8) Unless otherwise agreed, the fee for the administration of a security also covers any costs that an administrator incurred in the fulfilment of his obligation.

(9) Unless otherwise provided by the contract, the administrator shall take legal steps concerning the administration of a security in the name of the owner of the security and for the owner's account; the rights and duties of the parties are determined, as appropriate, by the provisions of the Commercial Code on a contract of mandate. If, under the contract, the administrator should take legal steps in his own name and for the account of the owner of the security, the provisions of the Commercial Code on a commission agent contract and this law shall apply, as appropriate.

(10) The provisions of Article 39(8), shall apply, as appropriate, to the termination of a contract on administration of securities, unless otherwise provided by this contract.

## **ARTICLE 42**

### **Contract on depositing securities**

(1) In a contract on depositing securities, a depositary undertakes to accept a security for safekeeping and management, and the depositor agrees to pay a fee for the service. If the contract does not specify the fee for the service, the depositary is entitled to a fee that is usual at the time that the contract is concluded. A contract on safekeeping of securities must be made in writing.

(2) A depositary pursuant to paragraph (1) must be a person authorised to carry out such activities under a licence specified in Article 54 or 100.

(3) The provisions governing safekeeping and administration of securities shall apply, as appropriate, to contracts on depositing securities.

(4) A depositary is obliged to submit an annual report on the state of the deposited paper securities.

(5) A depositary that has upon request returned a paper security to a depositor shall not be obliged to administer the security for the time that it is not in his possession.

(6) A depositor may limit the obligation of a depositary to duties arising under the contract on safekeeping of securities or duties arising under a contract on administration of securities. In such case, the fee that the depositor should pay shall be reduced accordingly.

(7) A depositary may deposit a paper security into secondary safekeeping, or secondary safekeeping and administration only with the written consent of the depositor. A person who accepts a paper security for secondary safekeeping and administration may not be authorised to exercise voting rights attached to this security.

## **ARTICLE 43**

### **Contract on portfolio management**

(1) In a contract on portfolio management, a portfolio manager undertakes to manage a client's portfolio at the portfolio manager's discretion and within the scope and extent defined by the contract, and the client agrees to pay a fee for this service. This contract must be made in writing.

(2) A portfolio manager pursuant to paragraph (1) may only be a person authorised to carry out such activities under a licence specified in Article 54.

(3) A portfolio management company shall, even without instructions from the client, procure the purchase and sale of securities, as well as their primary market acquisition, and shall, unless the contract provides otherwise, perform activities specified in Articles 39 and 41 with the objective of ensuring long-term professional care for the client's portfolio. A client may limit the obligations of the portfolio management company only to duties related to the purchase, sale, and subscription of securities. In such case, the fee that the client should pay shall be reduced accordingly.

(4) A portfolio management contract may be terminated. Unless a termination notice has been agreed upon, the contract may be terminated with effect from the end of the second month following the delivery of a termination notice.

(5) Unless the subject-matter implies otherwise, the provision of Article 39(7) shall apply as appropriate.

(6) The provisions on contracts set out in Articles 31 to 36 and 39 to 41 shall apply, as appropriate, to contracts on portfolio management.

#### **ARTICLE 44**

##### **Immobilisation of securities**

(1) A contract on bulk safekeeping pursuant to Article 39(3) may also be concluded by the issuer of these securities as the consignor. The provisions of this Act concerning book-entry securities shall apply, as appropriate, to securities deposited by an issuer in this way (hereinafter referred to as "immobilised securities"). If the securities are in bulk safekeeping with a stock brokerage firm, the provisions of this Act on paper securities shall apply.

(2) In the case of issued securities, the provisions of Article 16 shall apply, as appropriate, to the procedure described in paragraph (1).

(3) An owner of an immobilised security may ask the issuer to deliver him the paper security without undue delay.

#### **ARTICLE 44a**

(1) The provisions on securities contracts under Articles 39 to 42 shall also apply, as appropriate, to contracts on book-entry securities.

(2) The provisions on securities contracts under Articles 31 to 44 shall also apply, as appropriate, to contracts on financial instruments that are not securities.

## **PART THREE**

### **USING SECURITIES AS COLLATERAL FOR LIABILITIES**

#### **Contractual lien ARTICLE 45**

(1) Unless otherwise provided by this Act, a contractual lien is established upon its registration in a separate register of securities subject to liens (hereinafter referred to as a "lien register").

(2) A lien register for paper securities shall be kept by the central depository. The lien register for book-entry securities shall be kept by the central depository for securities recorded in the issuer's register. The lien register for book-entry shares in open-end investment funds, the issuer's register of which is recorded by the depository of an open-end investment fund in accordance with a separate law,<sup>26a)</sup> shall be kept by this depository or asset management company in individual register.

(3) When registering a lien established on paper securities, the central depository shall mark a "subject to lien" clause on the paper securities concerned.

(4) For a contractual lien to be established on a paper security transferable by endorsement, it is required that the owner makes a written statement on the security (hereinafter referred to as a "lien endorsement"). The lien endorsement shall identify the lienor. In addition, the lien endorsement must contain the appropriate particulars set out in Article 21(2). The lienor may not further transfer a security containing a lien endorsement.

(5) The provisions of paragraph (4) are without prejudice to the provisions of a separate law.<sup>44)</sup>

(6) A contractual lien on a book-entered security in favour of the National Bank of Slovakia shall be established by concluding a credit transaction with the National Bank of Slovakia<sup>45)</sup>, and it shall exist for the period of business relationship established by the concluded transaction. The central depository shall register the contractual lien in the register of liens by order of the National Bank of Slovakia. Simultaneously, the National Bank of Slovakia shall issue an order to register a suspension of the exercise of the right to use the pledged security in accordance with Article 28(3), the term of which suspension shall be equal to that of the business relationship arising from the concluded transaction

#### **ARTICLE 46**

(1) A contractual lien on securities shall arise or terminate upon the registration of a change or termination of a lien on securities in the lien register.

(2) Upon registration of a change or termination of a lien on paper securities, the central depository shall mark the change or termination on the paper security concerned.

#### **ARTICLE 47**

- (1) The lien register shall contain the following information:
- a) business name or name, and registered office of the lienee, if a legal person, or the name, and address of the lienee, if a natural person;
  - b) identification number or birth registration number of the lienee;
  - c) identification of the security subject to lien: the class of the security, ISIN number, business name or name, and registered office of the issuer, if a legal person, or name and address of the issuer, if a natural person;
  - d) business name or name, and registered office of the lienor, if a legal person, or name and address of the lienor, if a natural person;
  - e) identification number or personal identification number of the lienor,
  - f) number of securities;
  - g) amount of the liability for which the contractual is established and its due date;
  - h) date when the lien was recorded in the lien register.

(2) On the written request of the legal person or natural person, the central depository shall issue extract from the lien register containing information to the extent specified in paragraph (1)(a), (c), (f) and (h).

#### **ARTICLE 48**

(1) Contracts on pledging securities shall be governed by the provisions of the Commercial Code and Civil Code on the right of lien, unless otherwise provided in this Act.

(2) Contracts on pledging securities must be made in writing.

(3) A contractual lien may not be established on securities already subject to a lien.

#### **ARTICLE 49**

(1) If a contractual lien is established on a paper security that has been placed in safekeeping or deposited, the consignor or depositor shall notify the fact to the safekeeper or depository. The consignor's or depositor's notice must be accompanied by an original or an officially certified copy of the contract on pledging of the security.

(2) A pledged security subject to a lien which is in individual safekeeping must be kept separately from other securities of the client. The pledged security may not be released to the client without the lienor's consent, or unless a document is presented that the lien has expired. The same applies to pledged paper securities deposited under a contract on the deposit of securities.

#### **ARTICLE 50**

##### **Registration of a contractual lien**

(1) An order to register a contractual lien on a security may be given by a lienor, a lienee, or the National Bank of Slovakia, provided that the lien registration is in accordance with Article

45(6). The lienor or lienee shall attach to the registration order for the contractual lien a written confirmation regarding the content of the contract to pledge the security. This shall not apply if an order for registration of contractual lien on a security is issued by pledgee or pledgor in accordance with Article 53a(4), or by the National Bank of Slovakia in accordance with Article 45(6).. The written confirmation regarding the content of the contract to pledge the security shall include in particular the information mentioned in Article 47 (1) (a) to (g) and the signatures of the lienee and lienor. An order to register a contractual lien on a security shall include the information mentioned in Article 47 (1) (a) to (g).

(2) Where details of the owner of a security are recorded in an owner's account maintained by a central depository or a member, or in records maintained by a securities dealer under Article 71h(2), an order to register a contractual lien on the security shall be submitted to that central depository, member or securities dealer. A member or securities dealer that keeps records under Article 71h shall, after receiving the order to register a contractual lien on a security, forward this order to the central depository without delay.

(3) After entering a contractual lien in the register of liens, a central depository shall without delay record this fact in the owner's account maintained in its register, or it shall forthwith notify this fact to the member with which the owner of the pledged security has his owner's account, or to the securities dealer which has details of the security's owner in the records it maintains under Article 71h(2). A member or securities dealer that keeps records under Article 71h(2) shall, after being notified by the central depository of the registration of the contractual lien, record this fact without delay in the relevant account or in records mentioned in Article 71h(2).

(4) In the event of a change in the information concerning a contractual lien, the person whom this change concerns shall order an amendment to the registration in the register of liens, without delay after the date of the occurrence that gave rise to the change in the information regarding the lien. If a person whom the change in information concerns cannot be determined, this obligation shall fall to the lienee. If the obligation to order the registration of a change in the information falls to more than one person, this obligation shall be deemed discharged where the order is made by any one of these persons. If a change in a contractual lien on a security concerns information contained in the written confirmation under paragraph (1), the lienee or lienor shall enclose with the order a written confirmation on the change in the content of the contract to pledge the security, or a document proving another reason for the change in the contractual lien on the security. The written confirmation of a change in the contract to pledge the security shall include mainly the information mentioned in Article 47(1) and the signatures of the lienee and lienor. When registering a change in a contractual lien on a security, the procedure set out in paragraphs (2) and (3) shall be followed. An order to register a change in a contractual lien on a security shall include the information mentioned in Article 47(1).

(5) After grounds have arisen for the termination of a lien, the lienor shall without delay order the registration of the termination of the lien. The lienee may also make an order to register the termination of a lien, in which case he shall enclose with the order a written confirmation of the fulfilment of the obligation or another document, made out by the lienor, proving a reason for the termination of the contractual lien. When registering the termination of a contractual lien on a security, the procedure set out in paragraphs (2) and (3) shall be

followed. An order to register the termination of a contractual lien on a security shall include the information mentioned in Article 47(1).

(6) Any party that gives an order to register a contractual lien without having proper authority to do so, or that gives such an order incorrectly, incompletely or belatedly shall be liable for any damage which arises as a result.

## **ARTICLE 51**

(1) In regard to the use of a pledged security, the right of lien shall also apply to any transferee unless otherwise provided by this Act or a separate law. The lienee and transferee shall register the change of lienee in the register of liens. For any damage caused by the breach of this obligation, they shall be jointly and severally liable. The obligation laid down in this paragraph shall not apply where the transferee acquired the securities under paragraph (5).

(2) The lienee in regard to a contractual lien on a security must be the owner of the security.

(3) For so long as a contractual lien on a security is in effect, the right of lien shall also apply to any income from the pledged security.

(4) Pledged securities may not be traded in anonymous transactions, except as provided in paragraph (5).

(5) Where a claim secured by a contractual lien on a security is not paid in due and prompt manner, the lienor may sell the pledged security through a stock brokerage firm. The lienor shall notify the lienee in advance of the intended sale, unless otherwise provided in the contract on pledging of the security.

(6) A sale pursuant to paragraph (5) of securities admitted to a market of stock exchange-listed securities shall be made on the stock exchange by an anonymous transaction through a stock brokerage firm. If the stock-exchange listed security has not been traded in the last three months, it may be offered for sale through a stock brokerage firm for the highest price which can be achieved with due professional care.

(7) A sale pursuant to paragraph (5) of securities which are not stock exchange-listed shall be made through a stock brokerage firm for the highest price which can be achieved with due professional care.

## **ARTICLE 52** **Statutory lien**

(1) Statutory liens on securities shall be governed by the provisions of a separate law,<sup>46)</sup> unless otherwise provided in this Act. A statutory lien on a security, and a change to or termination of the lien, shall be registered in the lien register as at the date when the statutory lien on the security is established, changed or terminated.

(2) Where details of the owner of a security are recorded in an owner's account maintained by a central depository or a member, or in records kept by a securities dealer under Article 71h (2), an order to register, change or terminate a statutory lien on the security shall be submitted by the competent state authority <sup>47)</sup> to that central depository, member or securities dealer. The order shall be accompanied by a legally valid decision to establish, change, or cancel the statutory lien. Procedure in registration of the statutory lien shall be subject to Article 50(3).

(3) An order to register, change or terminate a statutory lien must contain the particulars specified in Article 47(1).

(4) The provisions of Article 51(1), (3) and (4), shall also apply to statutory liens on securities.

### **ARTICLE 53**

#### **Transfer of securities as collateral**

(1) Contracts for the transfer of securities as collateral shall be governed by the provisions of the Civil Code on securing liabilities by the transfer of a right. Contracts for the transfer of securities as collateral shall be made in writing and shall, to a similar extent as laid down in Article 47(1), state information on the debtor, the creditor, the securities transferred, and liabilities secured by the transfer of securities, as appropriate according to Article 47(1).

(2) Transfers of securities as collateral shall be registered by the central depository in a separate register of securities transferred as collateral, unless otherwise provided by this Act or a separate law.

(3) The provisions of Article 45(1), (2) and (6), and Articles 46, 47 and 50, shall apply, as appropriate, where transfers of securities as collateral are executed, established, changed or terminated.

(4) Anyone who gives an order to register a transfer of securities as collateral without having proper authority to do so, or who gives such order incorrectly, incompletely or belatedly shall be liable for any damage arising as a result.

### **Special provisions on financial collateral**

#### **ARTICLE 53a**

(1) The provisions of Article 45(3) and (4), Article 46, Article 50(3) and Article 51(4) to (7) shall not apply where the lienor or lienee in relation to the lien on securities are any of the following entities:

- a) a public authority of a Member State;
- b) the National Bank of Slovakia or the central bank of another state, the European Central Bank, the International Monetary Fund, the European Investment Bank, the International Development Bank<sup>47a</sup> or the Bank for International Settlements;
- c) a bank, foreign bank, stock brokerage firm, foreign stock brokerage firm, insurance company, foreign insurance company, insurance company from another Member State, asset

management company, foreign asset management company, electronic money institution, foreign electronic money institution, collective investment undertaking, or a foreign collective investment undertaking;

- d) an entity other than an entity mentioned in paragraph (c), which is subject to prudential supervision and which, within the scope of its core business, performs activities that may in accordance with a separate regulation <sup>47b)</sup> be performed by a bank; or an entity having its registered office abroad which performs similar activities;
- e) an entity other than an entity mentioned in paragraph (c), which is subject to prudential supervision and which, within the scope of its core business, acquires interests in assets in accordance with a separate regulation <sup>47c)</sup>, or an entity having its registered office abroad which performs similar activities;
- f) the central depository, payment system operator, <sup>47d)</sup> settlement agent, <sup>47e)</sup> clearing house, <sup>47f)</sup> joint representative of the owners of the securities or other debt securities, or an entity having its registered office abroad which performs similar activities, including an entity which performs clearing and settlement of transactions in financial instruments or which performs the activities of a central counterparty though is not a foreign central depository.

(2) A contractual lien on a paper security in accordance with paragraph (1) shall be established by the surrender of the security to the lienor or a third party for safekeeping or for safekeeping and administration, if so agreed by the lienee and lienor. For a contractual lien to be established under paragraph (1) on a paper security that is transferable by endorsement, the lien endorsement shall also be required. The lien endorsement must include a "subject to lien" clause and state the entity that is the lienor. Otherwise the lien endorsement must state, as appropriate, the particulars mentioned in Article 21(2). If the lien on a paper security that includes a lien endorsement ceases to exist, the lienor is required to indicate on the pledged paper security that the lien has expired. The provision of this paragraph is without prejudice to the provisions of a separate law. <sup>44)</sup>

(3) A contractual lien on a book-entry security under paragraph (1) shall be established, changed or terminated when the lien is recorded in the owner's account in the register of a central depository, or in the register of a member with which the owner of the pledged security has his owner's account, or in another register mentioned in Article 10 (4)(b) and (c), in accordance with the procedure laid down in Article 50, or in records maintained by a securities dealer under Article 71h (2), in accordance with the procedure laid down in Article 50. In such case, the order to register the contractual lien shall be accompanied by a confirmation of the content of the contract on pledging securities may be used instead of an attested copy of the contract. This shall not apply if an order for registration of contractual lien on a book-entered security is given by pledgee or pledgor in accordance with paragraph (4).

(4) The contractual lien under paragraph (1) established on a book-entered security in favour of the National Bank of Slovakia, European Central Bank or another central bank of the Eurosystem <sup>47h)</sup> by order of the National Bank of Slovakia, European Central Bank or another central bank of the Eurosystem, or by order of pledgor shall be established, changed or terminated by its registration in the owner's account kept in records of the central depository; this is without prejudice to the establishment of lien under Article 45(6). Simultaneously, the pledgee shall issue an order to register a suspension of the exercise of the right to use the pledged security in accordance with Article 28(3)(d), the term of which suspension shall be equal to that of the business relationship arising from the concluded transaction.

(5) A contractual lien on a security under paragraph (1) shall apply to a transferee unless the transferee was unaware of the lien at the time of the transfer or in the case of anonymous transactions.

### **ARTICLE 53b**

(1) The lienor may use the pledged security in accordance with Article 53a(1), and exercise the rights attached to it, even without the consent of the lienee if so agreed in the contract on pledging of the security; in such case, the lienor shall act on behalf of and for the account of the lienee. Anonymous transactions with the pledged security may only be made if the lienee and lienor have agreed to them in the contract on pledging of the security, or in regard to the exercise of the lien in accordance with paragraph (4).

(2) If the lienor has used the collateral prior to the occurrence of the event entitling him to enforce the lien, the lienor shall, unless otherwise agreed with the lienee, be required to procure for his own account and on behalf of the lienee an equivalent collateral as a replacement for the original collateral and to do so not later than the last day of the repayment period for the secured receivable. The equivalent collateral that replaces the original collateral shall be subject to the same lien; the lien on the equivalent collateral shall be deemed to have been established at the same moment as the lien on the original collateral. If the lienor has used the collateral prior to the occurrence of the event entitling him to enforce the lien, the lien shall not apply to any transferee of the original collateral. If so agreed by the contracting parties in the contract on pledging of the security, the lienor may set off the equivalent collateral against the secured receivable or use the equivalent collateral to settle the receivable.

(3) For the purposes of paragraph (2), the equivalent security shall be understood to mean a fungible security or other asset on the basis of the contract on the pledged receivable.

(4) If the receivable secured by the contractual lien is not paid promptly and duly, or if there occurs another event which the contract on pledging of the security defines to be an event entitling enforcement of the lien, the lienor may enforce the lien in the manner laid down by law or agreed in the contract on pledging of the security, in particular through the sale of the collateral, foreclosure on the collateral, set-off against the secured receivable, or by using the collateral to settle the secured receivable. The lienor may enforce the lien by foreclosing on the collateral if the contracting parties so agreed when the contract on the secured receivable was concluded and if at the same time they agreed on a valuation method for the pledged security. The fulfilment of other terms and conditions in accordance with this Act and with separate regulations<sup>47g)</sup> is not required.

(5) The lienor is not required to give the lienee advance notice of the enforcement of the lien.

(6) In regard to the sale of a security pledged in accordance with Article 53a(1), the lienor is required to proceed with due care in order to ensure that the pledged security is sold for a price for which the same security is usually sold under comparable conditions at the time and place of the sale of the pledged security.

(7) When using a pledged book-entry security in accordance with paragraph (1), and also when enforcing a lien on a book-entry security, the lienor shall issue on behalf of the lienee an order to register the transfer of the pledged book-entry security from the account of the lienee to the account of the lienor. The lienor may also issue a transfer order on behalf of the lienee when procuring an equivalent collateral under paragraph (2) for the account of the lienee. When using the pledged security, the lienor may request a statement on the account of the lienee.

#### **ARTICLE 53c**

In order to establish, change or terminate transfers of securities as collateral, the requirement of Article 53 for a written contract and the entry of such transfers in a separate register shall not apply if the contracting parties are any of the entities mentioned in Article 53a(1). In that case, the book-entry securities shall be subject, as appropriate, to the provision of Article 53a(3).

#### **ARTICLE 53d**

The validity, effectiveness and enforcement of a lien on, or collateral transfer of, securities to which the ownership right and similar rights are entered in a register or account, including contracts under which such rights were established, shall be governed exclusively by the national law under which the ownership right or similar right to the securities is evidenced by an entry in a register or on an account, and this shall also apply to the. Parties to a contract on pledging book-entry securities or a contract on the transfer of securities as collateral are precluded from electing the applicable law.

#### **ARTICLE 53e**

(1) If the lienor or lienee includes more than one entity and any one of them is not an entity under Article 53a(1)(a) to (d), the provisions of Article 53a to 53d shall not apply.

(2) If a lien was established in accordance with Article 53a(1) and over the course of its duration there was a change of the lienee or lienor or an accession to the side of the lienee or lienor, the lien shall be governed by the provisions of Article 53a to 53d.

(3) The provisions of paragraphs 1 and 2 shall apply, as appropriate, also to the transfer of securities as collateral.

## **PART FOUR**

### **STOCK BROKERAGE FIRM**

#### **Licence to provide investment services**

#### **ARTICLE 54**

(1) A securities dealer shall be a joint-stock company which has its registered office in the territory of the Slovak Republic and whose scope of business comprises the provision of one or more investment services to clients, or the performance of one or more investment activities on the basis of an investment services licence issued by the National Bank of Slovakia.

(2) A licence to provide investment services allows a person to establish a stock brokerage firm or a branch of a foreign stock brokerage firm in the Slovak Republic and to carry on the business of a stock brokerage firm or a branch of a foreign stock brokerage firm in the extent and under the terms and conditions defined in the licence.

(3) It is prohibited for an entity other than a securities dealer to provide investment services or ancillary services under Article 6(2)(a) or to perform investment activities if it has not been licensed to do so by the National Bank of Slovakia in accordance with paragraph (1), unless otherwise provided in this Act or in a separate law.<sup>48)</sup> The licence mentioned in paragraph (1) shall not be required in respect of the following:

- a) activities of members of the European System of Central Banks, the National Bank of Slovakia under a separate law,<sup>49)</sup> other national central banks, the Debt and Liquidity Management Agency for certain activities related to the management of public debt and liquidity that it is delegated to perform under a separate regulation,<sup>49a)</sup> and public authorities of other countries that are charged with or intervene in the management of public debt;
- b) persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for the subsidiaries of their parent undertakings;
- c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by generally binding legal regulations or a code of ethics governing the profession which do not exclude the provision of that service;
- d) persons who do not provide any investment services or activities other than dealing on own account unless they are market makers or deal on own account outside a regulated market or a multilateral trading facility on an organized, frequent and systematic basis by providing a service accessible to third parties in order to engage in dealings with them; a market maker here means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his propriety capital at prices defined by him;
- e) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;
- f) persons which provide investment services comprising the administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for the subsidiaries of their parent undertakings;
- g) persons dealing on own account in financial instruments or providing investment services in commodity derivatives or derivative contracts included in Article 5(1)(j) to clients,

provided this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Act or banking services under a separate law;<sup>15)</sup>

- h) persons providing investment advice in the course of providing another professional activity not covered by this Act provided that the provision of such advice is not specifically remunerated;
- i) persons whose main business consists of dealing on own account in commodities or commodity derivatives. This exemption shall not apply where the persons that deal on own account in commodities or commodity derivatives are part of a group the main business of which is the provision of other investment services, investment activities or banking services within the meaning of a separate law;<sup>15)</sup>
- j) firms which provide investment services or investment activities consisting exclusively of dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the purpose of hedging positions on derivatives markets, or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets.

(4) A foreign stock brokerage firm is a legal person or natural person having its registered office outside the territory of the Slovak Republic which provides investment services and which has a licence to perform these activities in its home country.

(5) A branch of a foreign stock brokerage firm is an organisation unit of the foreign stock brokerage firm located in the territory of the Slovak Republic,<sup>50)</sup> which performs all or some investment services; all branches of a foreign stock brokerage firm established in the Slovak Republic by a foreign stock brokerage firm with its registered office in a Member State shall be deemed to be a single branch of a foreign stock brokerage firm in terms of the licence to provide investment services.

(6) A foreign stock brokerage firm may provide investment services in the territory of the Slovak Republic only through its branch and only if it has been granted a licence by the National Bank of Slovakia to provide investment services under Article 56, unless otherwise provided by this Act.

(7) A stock brokerage firm or a branch of a foreign stock brokerage firm may not perform for third parties any activities other than investment services, except for intermediation for other financial institutions under a separate law, the performance of a member's activities, and the production and dissemination of investment recommendations, without prejudice to activities carried out under a separate law by a stock brokerage firm which is also a bank, or by a branch of a foreign stock brokerage firm which is also a branch of a foreign bank.

(8) The business name of a stock brokerage firm other than a bank must contain the words "stock brokerage firm" or the abbreviation "o.c.p." No other entities may use this designation in their business name.

(9) The provisions of the Commercial Code shall apply to stock brokerage firms and branches of foreign stock brokerage firms, unless this Act or a separate law<sup>15)</sup> provides otherwise.

(10) A stock brokerage firm may issue securities only as registered book-entry securities; a change of their type or form is not allowed.

(11) The share capital of a stock brokerage firm shall be at least EUR 730,000 unless this Act provides otherwise.

(12) (12) Share capital of a securities dealer that provides investment services under Article 6(1) (a), (b) or (d) and is not authorized to provide investment service under Article 6 (1) (c) or underwrite financial instruments based on the fixed commitment shall be at least EUR 125,000.

(13) Share capital of a securities dealer under paragraph 12 that is not authorized, in providing investment services, to use funds or financial instruments of the client shall be at least EUR 50,000.

(14) A securities dealer as defined in paragraph (13) may not provide ancillary investment services under Article 6(2)(a).

(15) The share capital requirement under paragraph (13) may be substituted by professional indemnity insurance for the activity under the first sentence, including a minimum insurance benefit of EUR 1 million per insurance event and EUR 1.5 million in total for all insurance events in a single year, or a combination of initial capital and insurance in a ratio approved by the National Bank of Slovakia at the request of the securities dealer. Where a securities dealer also carries out insurance mediation under a separate law<sup>50a)</sup> and imposes insurance requirements under a separate law,<sup>50b)</sup> this securities dealer shall be subject to the sole additional requirements of EUR 25,000 in share capital or EUR 500,000 in insurance coverage for each insurance event and EUR 750,000 in total for all insurance events in a single year, or a combination thereof in a ratio approved by the National Bank of Slovakia at the request of the securities dealer.

## ARTICLE 55

(1) A licence to provide investment services shall be issued by the National Bank of Slovakia. An application for a licence to provide investment services shall be submitted to the National Bank of Slovakia by the founders of the stock brokerage firm, unless this Act provides otherwise. If a bank is applying for a licence to take up and carry on the business of a stock brokerage firm, the application shall be submitted by the Board of Directors of the bank.

(2) For the licence mentioned in paragraph (1) to be granted, the fulfilment of the following conditions must be evidenced:

- a) paid up share capital of the stock brokerage firm as required under Article 54;
- b) transparent and credible source of share capital and other financial resources of the stock brokerage firm;
- c) suitability of persons with qualified interest in the stock brokerage firm and transparency of relations between these persons, in particular transparency of their interests in share capital and voting rights;

- d) the professional competence and trustworthiness of persons nominated as members of the board of directors or managerial employees (hereinafter 'senior management'), persons responsible for the compliance function, risk management function or internal audit function;
- e) transparency of a group with close links of which a shareholder with qualified interest in the stock brokerage firm is a member;
- f) close links within a group mentioned in paragraph (e) do not prevent effective supervision;
- g) the law and its application in the country where a group mentioned in paragraph (e) has close links do not prevent effective supervision;
- h) a securities dealer shall have its registered office and head office in the territory of the Slovak Republic; 'head office' means the place from where the operation of the securities dealer is managed or the place where the securities dealer keeps the documents on its operation that are required for the exercise of supervision;
- i) the professional competence and trustworthiness of natural persons who are members of the statutory body of the financial holding company or mixed financial holding company, and the suitability of shareholders controlling the financial holding company or the mixed financial holding company, where the grant of the licence under paragraph (1) would mean the stock brokerage firm becoming part of the consolidated financial group under Article 138, of which the financial holding company is a part, or becoming part of the financial conglomerate under Article 143b, of which mixed financial holding company is a part.

(3) An application for a licence pursuant to paragraph 1 shall contain:

- a) business name and registered office of the future stock brokerage firm;
- b) identification number of the future stock brokerage firm if it has already been assigned;
- c) amount of share capital of the future stock brokerage firm;
- d) list of shareholders with qualified interest in the future stock brokerage firm; the list shall contain the name, permanent residence and birth registration number, if a natural person, or business name, registered office, and identification number, if a legal person, and the size of their qualified interest;
- e) proposed range of investment services to be provided by the stock brokerage firm and in relation to which financial instruments; the applicant must specify at least one of the investment services,
- f) material, personnel, and organisational provisions for providing services of a stock brokerage firm,
- g) name, permanent residence and birth registration number of proposed members of the Board of Directors, members of the Supervisory Board, proxies, and executive officers<sup>51)</sup> of the stock brokerage firm reporting directly to the Board of Directors, and persons responsible for internal control, and information about their professional competence and trustworthiness,
- h) a representation by the applicants that the supplied information is complete and true.

(4) Attached to an application pursuant to paragraph (1) shall be:

- a) a founder's deed or founder's contract;
- b) draft articles of association of the stock brokerage firm;
- c) draft organisational structure of the stock brokerage firm, operating rules of the stock brokerage firm (Article 71) and a proposed commercial strategy of the stock brokerage firm;
- d) brief professional resume, document certifying achieved education and professional experience of persons proposed as members of the Board of Directors and executive officers<sup>51)</sup> of the stock brokerage firm reporting directly to the Board of Directors;

- e) extracts from the criminal register not older than three months for persons specified in Article 3(g), and their declaration that they comply with requirements established by this Act;
- f) a written statement by the founders that neither bankruptcy was declared nor a compulsory settlement<sup>52)</sup> permitted on their property;
- g) proof that the share capital was paid up;
- h) draft rules of a multilateral trading facility,<sup>52a)</sup> if the securities dealer is to organize a multilateral trading facility.

(5) The National Bank of Slovakia shall decide on an application pursuant to paragraph (1), within a deadline stipulated by a separate law,<sup>53)</sup> based on an assessment of the application, its annexes, and an evaluation of material, personnel, and organisational provisions in relation to the proposed range of investment services, investment activities and ancillary services, but not later than six months after the submission date of the application mentioned in paragraph (1).

(6) The National Bank of Slovakia shall reject an application pursuant to paragraph (1) if the applicant does not comply with any of the conditions specified in paragraph (2). The reason for rejection of an application under paragraph (1) may not be the economic needs of the market.

(7) Prior to commencing the performance of licensed activities, a securities dealer shall demonstrate to the National Bank of Slovakia that in technical, organizational and personnel terms it is prepared for carrying out the licensed activities.

(8) A securities dealer may begin to perform activities stated in its investment services licence after being notified in writing by the National Bank of Slovakia that it has fulfilled the condition laid down in paragraph (7).

(9) A stock brokerage firm is required to comply with the conditions defined in paragraphs (2) and (7) throughout the term of its licence to provide investment services.

(10) The form of documenting compliance with the conditions specified in paragraph (2) shall be stipulated by a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws.

(11) Professional competence of persons proposed as members of the Board of Directors and executive officers<sup>51)</sup> of the stock brokerage firm reporting directly to the Board of Directors, and persons in charge of internal control means a university degree together with at least three years' experience in the financial market field, or the completion of full secondary education or full secondary vocational education with at least ten years' experience in the financial market field, including at least three years in a management position reporting directly to the statutory body of a stock brokerage firm or the branch of a foreign stock brokerage firm. For one of the persons proposed as executive officer reporting directly to the Board of Directors, the applicant shall evidence at least five years' experience in the capital market field. A member of the statutory body of a financial holding institute or mixed financial holding company shall be deemed to have professional competence if he is a natural person with expertise and experience in the financial field.

(12) A person is deemed suitable with regard to evaluation of conditions pursuant to paragraph 2(c), if it can reliably document meeting the conditions specified in paragraph 2(b), and it is under all circumstances evident that the person will ensure proper performance of investment services in the interest of financial market stability.

(13) Suitability of shareholders controlling a financial holding company or mixed financial holding company means having the ability to ensure in the interest of financial market stability the due and secure performance of the activities of regulated entities that are part of a consolidated financial group controlled by the financial holding company, or part of a financial conglomerate controlled by the mixed financial holding company.

## **ARTICLE 56**

(1) A licence for a foreign stock brokerage firm to provide investment services through its branch in the Slovak Republic shall be issued by the National Bank of Slovakia. An application for a foreign stock brokerage firm's licence to provide investment services shall be submitted to the National Bank of Slovakia by the foreign stock brokerage firm.

(2) The following conditions must be met to obtain the licence mentioned paragraph (1):

- a) sufficient volume and transparency of finances provided by the foreign stock brokerage firm to its branch with respect to the range and risk level of the business of the branch;
- b) trustworthiness of the foreign stock brokerage firm and its financial strength corresponding to the scope of business of the branch;
- c) professional competence and trustworthiness of persons proposed by the foreign stock brokerage firm as executive officers of its branch;
- d) transparency of a group with close links of which the foreign stock brokerage firm is a member;
- e) close links within a group pursuant to paragraph (d) do not prevent effective supervision,
- f) the law and its application in the country where the group mentioned in (d) has close links do not prevent effective supervision;
- g) the foreign stock brokerage firm seeking to operate through its branch in the Slovak Republic has its principal place of business in the country where it has its registered office;
- h) the laws of the country in the foreign securities dealer has its registered office require compliance with conditions regarding the performance of activities and maintenance of capital adequacy which are not lower than those stipulated for securities dealers under this Act.

(3) In the licence application pursuant to paragraph (1), a foreign stock brokerage firm shall provide information as specified in Article 55(3)(d) and (e) and in addition:

- a) business name and registered office of the foreign stock brokerage firm, and the location of its branch in the territory of the Slovak Republic;
- b) material, personnel, and organisational provisions for providing services pursuant to paragraph (1) in the territory of the Slovak Republic;
- c) name and permanent residence of the manager of the branch of the foreign stock brokerage firm and his deputy, as well as information about their professional qualifications and their residence.

(4) Attached to an application under paragraph (1) shall be:

- a) a licence to provide services in the field of securities in the latest complete wording issued in accordance with applicable legislation of the country where the foreign stock brokerage firm has its registered office;
- b) audited financial statements for the past three years; if the foreign stock brokerage firm is a part of a consolidated group, it shall include consolidated financial statements for the past three years;
- c) an extract not older than three months from the criminal register for persons specified in paragraph 2(c); a foreign natural person shall present a document of similar nature issued by a competent authority in the country of which he is a citizen, and countries in which the person resided for at least six straight months over the past five years; if these countries do not issue such documents, a natural person may satisfy the obligation with a declaration instead;
- d) a brief career resume, a document certifying completed education and professional experience of persons proposed as the manager of the branch of the foreign stock brokerage firm and his deputy;
- e) consent of a competent authority of the country where the foreign stock brokerage firm has its registered office to the incorporation of a branch of the foreign stock brokerage firm in the Slovak Republic, if such approval needs to be issued according to the law of the country where it has its registered office;
- f) an opinion of the supervisory authority of the country where the foreign stock brokerage firm has its registered office as to the establishment of a branch in the Slovak Republic, as well as a written commitment of the supervisory authority to give the National Bank of Slovakia timely notification in writing about any changes in capital adequacy of the foreign stock brokerage firm and other facts that could impair the ability of the foreign stock brokerage firm and its branch to meet its liabilities;
- g) draft rules of a multilateral trading facility, <sup>52a)</sup> if the foreign securities dealer is to organize a multilateral trading facility.

(5) Prior to commencing the performance of licensed activities, the branch of a foreign securities dealer shall demonstrate to the National Bank of Slovakia that in technical, organizational and personnel terms it is prepared for carrying out the licensed activities. The branch of a foreign securities dealer may begin to perform activities stated in its investment services licence after being notified in writing by the National Bank of Slovakia that it has fulfilled the condition laid down in the first sentence.

(6) The National Bank of Slovakia shall decide about an application pursuant to paragraph (1) within a deadline stipulated by a separate law <sup>53)</sup> based on an evaluation of the application and its annexes.

(7) The National Bank of Slovakia shall reject an application pursuant to paragraph (1) if the applicant does not comply with any of the conditions specified in paragraph (2) and the National Bank of Slovakia has not refrained from demanding information and documents as provided in paragraph (5). A reason for the rejection of an application pursuant to paragraph (1) may not be economic needs of the market.

(8) A reason for rejection of an application may not be that the legal form of the foreign stock brokerage firm does not correspond to the legal form of a joint stock company.

(9) The conditions set out in paragraphs (2) and (5) must be met throughout the term of the licence to provide investment services.

(10) The method for documenting compliance with the conditions specified in paragraph (2) shall be stipulated by a generally binding legal regulation to be issued by the National Bank of Slovakia.

(11) Professional competence of persons proposed as the manager of a branch of a foreign stock brokerage firm and his deputy means a university degree together with at least three years' experience in the financial market field, or the completion of full secondary education or full secondary vocational education with at least ten years' experience in the financial market field, including at least three years in a management position reporting directly to the statutory body of a stock brokerage firm or the branch of a foreign stock brokerage firm.

## **ARTICLE 57**

(1) A licence to provide investment services may not be granted if this would be at variance with an international agreement binding upon the Slovak Republic.

(2) Where the Commission of the European Communities (hereinafter 'the Commission') has come to the view that Community securities dealers in a non-Member State do not operate under conditions comparable to those ensured for foreign securities dealers which have their registered office in that non-Member State, and that the conditions of effective market access are not fulfilled, the National Bank of Slovakia shall suspend proceedings on the issuance of an investment services licence, or proceedings on the prior approval mentioned in Article 70(1)(a), if the issuance of such licence or prior approval would result in the securities dealer becoming a subsidiary of a parent undertaking based in that non-Member State. The proceedings mentioned in the first sentence may be suspended for not longer than three months, unless the Commission has decided to grant an extension.

## **ARTICLE 58**

(1) The National Bank of Slovakia shall consult with competent authority of supervision, banking sector supervision or insurance sector supervision of the Member State granting a licence under Article 55 to a legal person which is:

- a) a subsidiary of a legal person or natural person specified in Article 65(1), or of a bank with its registered office in the territory of a Member State;
- b) a subsidiary of a parent company of a legal person specified in Article 65(1), or of a bank with its registered office in the territory of a Member State;
- c) controlled by the same natural persons or legal persons that control a foreign stock brokerage firm with its registered office in a Member State or a foreign bank with its registered office in a Member State, which is not a foreign stock brokerage firm;
- d) a subsidiary of a bank or insurance company with its registered office in the territory of a Member State;
- e) a subsidiary of a parent company of a bank or insurance company with its registered office in the territory of a Member State;

f) controlled by the same persons that control a bank or insurance company with its registered office in the territory of a Member State.

(2) The subject-matter of a consultation in accordance with paragraph (1) is in particular the suitability of shareholders of stock brokerage firm, the trustworthiness and professional competence of persons mentioned in Article 55(2)(d) who work for an entity under paragraph (1), and the assessment of the observance of the conditions under which such entities conduct their activities. On the request of a supervisory authority, banking supervisory authority or insurance supervisory authority, the National Bank of Slovakia is required to provide the authority with the information required to assess the suitability of shareholders of a foreign stock brokerage firm and the trustworthiness and professional competence of persons working for a foreign stock brokerage firm, or information required to assess the observance of the conditions under which entities that are subject to supervision by the National Bank of Slovakia conduct their activities.

## **ARTICLE 59**

(1) A licence to provide investment services is granted for an indefinite period and may not be transferred to another legal or natural person, and does not pass on to a legal successor. An investment services licence shall be valid in all Member States and shall allow a securities dealer to provide the licensed activities in the territory of another Member State either through the establishment of a branch or the freedom to provide services in accordance with Articles 63, 64 and 66.

(2) In addition to general information specified by a separate law, <sup>54)</sup> the decision granting a licence to provide investment services shall state:

- a) business name and registered office of the stock brokerage firm or business name, registered office, and location of a branch of a foreign stock brokerage firm;
- b) what investment services the stock brokerage firm or foreign stock brokerage firm may provide and in relation to what financial instruments or derivatives it may provide them;
- c) name, permanent residence and birth registration number of members of the Board of Directors and the Supervisory Board, or the manager of the branch of a foreign stock brokerage firm.

(3) A licence to provide investment services must contain at least one of the core investment services. A licence to provide investment services may also specify conditions that a stock brokerage firm or a foreign stock brokerage firm must comply with before beginning to perform, or while performing any of the licensed activities. A licence to provide investment services may restrict the performance of some investment services.

(4) On the request of a stock brokerage firm or a foreign stock brokerage firm, the National Bank of Slovakia may change a licence to provide investment services by issuing a decision to this effect. The National Bank of Slovakia shall proceed, as appropriate, in accordance with the provisions of Article 55 or Article 56 when assessing an application to change a licence to provide investment services. Any changes in the licence to provide investment services prompted merely by a change of the name or permanent residence, of persons already approved pursuant to Article 70 as members of boards of a stock brokerage firm or a branch of a foreign stock brokerage firm do not require further approval by the National

Bank of Slovakia. The stock brokerage firm or foreign stock brokerage firm, however, shall notify the change in writing to the National Bank of Slovakia within 30 days from its being made.

(5) Stock brokerage firms or foreign stock brokerage firms shall file an application with a competent court for the registration in the Commercial Register of their licensed activities based on a licence to provide investment services, or a change thereto, within ten days after this licence or its change comes into force, and they shall be obliged to submit to the National Bank of Slovakia an extract from the Commercial Register within ten days after the entry into force of a court order to make the entry in the Commercial Register or to change the corresponding entry. The obligation to submit to a court an application for such entry in the Commercial Register shall not apply where the licence to provide investment services is no more than a prerequisite for the grant or change of a licence pursuant to a separate law.<sup>15)</sup>

(6) A securities dealer or foreign securities dealer shall without delay notify the National Bank of Slovakia of any change in the conditions on which basis its investment service licence was issued where this could affect the ability of the securities dealer or foreign securities dealer to perform activities within the scope of the licence, and in particular any change in the facts referred to in Article 55(3) or in Article 56(3). In the case of changes for which the prior approval of the National Bank of Slovakia is required, this obligation shall be deemed fulfilled by the submission of the application for that prior approval. In the case of changes relating to managerial employees, there shall also be stated information that allows an assessment of whether a new managerial employee fulfils the conditions laid down in Article 55(2)(d).

## ARTICLE 60

(1) A licence to provide investment services ceases:

- a) for a stock brokerage firm, on the date it is dissolved for reasons other than revocation of a licence to provide investment services;
- b) for a stock brokerage firm, on the day bankruptcy is declared on property of the stock brokerage firm under a separate law;<sup>52)</sup>
- c) for a branch of a foreign stock brokerage firm, on the day bankruptcy is declared on property of the stock brokerage firm or on the day the licence was cancelled for reasons other than revocation of the licence to provide investment services;
- d) for a stock brokerage firm or a branch of a foreign stock brokerage firm, on the day of returning the licence; a licence can only be returned in writing within 30 days after the validity date of the decision to issue the prior approval under Article 70(1)(e);
- e) if a stock brokerage firm or a foreign stock brokerage firm fail to file an application for an entry into the Commercial Register pursuant to Article 59(5);
- f) on the date of the sale of a stock brokerage firm or a branch of a foreign stock brokerage firm;<sup>33)</sup>
- g) for a branch of a foreign stock brokerage firm, on the date when the foreign stock brokerage firm discontinues its operations;
- h) where the securities dealer or foreign securities dealer has not paid the initial contribution within the period specified in Article 85(1).

(2) A stock brokerage firm, a foreign stock brokerage firm, and a branch of a foreign stock brokerage firm are obliged to inform the National Bank of Slovakia in writing about the facts specified in paragraph (1)(a),(b),(c),(d),(e) and g) within 30 days after they occur.

## **ARTICLE 61**

### **Investment broker**

(1) An investment broker is a legal or natural person who:

- a) is not authorised to provide investment services other than the reception and transmission of client orders in relation to fungible securities, shares in open-end investment funds, securities of foreign collective investment undertakings and the provision of investment advice in regard to such financial instruments and the promotion of them;
- b) is not authorised to accept funds or financial instruments of clients and may under no circumstances get into a position of owing money or securities to its clients;
- c) in providing services under letter (a), it transmits orders only to a bank or a branch of a foreign bank, a stock brokerage firm, or a branch of a foreign stock brokerage firm, an asset management company, or a foreign asset management company.

(2) A legal or natural person may perform the activities mentioned in paragraph (1) only under an investment broker's licence granted by the National Bank of Slovakia. This does not apply to a stock brokerage firm whose licence to provide investment services covers investment services that allow for the performance of activities in accordance with paragraph (1). When performing activities under paragraph (1), a stock brokerage firm is required to comply with the conditions mentioned in paragraph 5(b).

(3) In an application for the licence referred to in paragraph (2), an applicant shall specify:

- a) name, permanent residence and birth registration number, if a natural person; or business name, registered office, and legal form, including name, birth registration number, and address of person or persons constituting the statutory body, if the applicant is a legal person;
- b) share capital, if the applicant is a legal person;
- c) an extract from the Commercial Register not older than three months, if the entity is registered in the Commercial Register, or another document evidencing its incorporation;
- d) documents proving that the conditions set out in paragraphs (4) and (5) have been met;
- e) repealed as of 1 January 2005.

(4) In order to be granted a licence under paragraph (2), the applicant that is a natural person must:

- a) be trustworthy;
- b) be 18 years or older;
- c) have legal capacity;
- d) have completed secondary education and have at least three years' financial market experience, or have passed an examination designed to assess its knowledge of capital market legislation.

(5) In order to be granted a licence under paragraph (2), the applicant that is a legal person must meet the following conditions:

- a) its share capital must not be less than SKK 1,000,000;

- b) the natural persons by whom its licensed activities will be performed must satisfy the conditions set out in paragraph (4), (a) to (c);
- c) the members of its statutory body and executive officers<sup>51</sup> of the applicant must satisfy the conditions set out in paragraph 4(a) to (c); at least one member of the statutory body or one executive officer<sup>51</sup> must meet the condition mentioned in paragraph 4(d).

(6) The National Bank of Slovakia shall decide on an application made pursuant to paragraph (2) within 30 days from its submission or, as the case may, from the delivery of additional information.

(7) The National Bank of Slovakia shall reject an application made pursuant to paragraph (2) if the applicant fails to meet any of the conditions defined in paragraphs (4) and (5).

(8) A legal person granted a licence by the National Bank of Slovakia under paragraph (2) may not begin carrying out the licensed activity until it has taken out an insurance policy against liability for damage resulting from the performance of an activity under paragraph (1), with a minimum insurance coverage of SKK 5,000,000; this does not apply to a legal person whose share capital is at least SKK 2,500,000 or where the person mentioned in paragraph (1) on whose behalf it is to act has not assumed this liability for damage. The legal person shall deliver a copy of the insurance policy to the National Bank of Slovakia within 15 days from when it was concluded.

(9) A legal or natural person granted a licence by the National Bank of Slovakia pursuant to paragraph (1) is obliged to comply with the conditions defined in paragraphs (4) and (5) throughout the term of its licence.

(10) The proficiency examination mentioned in paragraph (4)(d), shall be arranged by the National Bank of Slovakia or a legal person it may authorise. The applicant shall pay an examination fee which shall not be refunded in the case of failure to pass the examination. The examination fee constitutes a state budget revenue. If the examination is organised by a legal person authorised by the National Bank of Slovakia, the examination fee constitutes a revenue of such legal person.

(11) The content of the proficiency examination, the manner in which it is conducted, and the examination fee shall be determined by a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws.

(12) An investment intermediary shall be subject to the provisions of Articles 73 to 73h, Article 75 and Article 112 to 134 as appropriate.

(13) The activities of a legal person or natural person granted a licence by the National Bank of Slovakia under paragraph (2) are subject to supervision pursuant to this Act. The provisions of Article 60 apply, as appropriate, to the expiry of the licence.

(14) A legal person or natural person granted a licence by the National Bank of Slovakia under paragraph (2) are required to notify the National Bank of Slovakia without undue delay of any change in the facts mentioned in paragraph 3(a), paragraph 4(a) and (c) and paragraph (5)(a).

(15) Where an investment intermediary is an entity that must be entered in the Commercial Register, it shall, within 30 days after its licence to operate as an investment intermediary has taken effect, file a petition with the relevant court for the entry of its licensed activities in the Commercial Register and it shall, within ten days after the validity date of the court's decision to make the entry in the Commercial Register, submit its extract from the Commercial Register to the National Bank of Slovakia. If an investment intermediary has failed to file the petition for registration mentioned in the first sentence, its licence to operate as an investment intermediary shall expire.

#### **ARTICLE 61a**

(1) A securities dealer may use tied agents for the purposes of promoting the investment services and ancillary services provided by the securities dealer, soliciting business or receiving orders from clients or potential clients and transmitting them, placing financial instruments and providing investment advice in respect of such financial instruments and investment or ancillary services offered by that securities dealer. A tied agent is a natural or legal person who, on the basis of a written agreement with and under the full and unconditional responsibility of a securities dealer, performs the activities mentioned in the first sentence on behalf of that securities dealer. A natural or legal person may perform such activity for only one securities dealer. A securities dealer may only appoint a tied agent who is entered in the register mentioned in paragraph (4) or in a similar register maintained in another Member State.

(2) A securities dealer shall ensure that its tied agent discloses the capacity in which he is acting and the securities dealer for which he is acting when contacting or before dealing with any client or potential client. A securities dealer shall monitor the activities of its tied agents so as to ensure that it continues to comply with generally binding legal regulations and its internal regulations when acting through tied agents.

(3) A tied agent may not handle clients' money or financial instruments.

(4) A register of tied agents shall be established and maintained by the National Bank of Slovakia. The persons that the National Bank of Slovakia enters in the register of tied agents shall meet the registration conditions laid down in this Act.

(5) A petition to make, change or delete an entry in the register of tied agents, the registration proceedings, and conditions for making, changing or deleting an entry, shall be subject, as appropriate, to Article 61(3) to (7) and (13), and a professional examination shall not be required. Persons entered in the register of tied agents must have permanent residence or their registered office in the territory of the Slovak Republic, or be a branch of a foreign legal person. A person from another Member State may be entered in the register only if that Member State does not maintain a similar register and if the tied agent will act on behalf of a securities dealer which has its registered office in the territory of the Slovak Republic, or he comes from a host Member State (Article 63) providing investment services in accordance with Article 64.

(6) The petition mentioned in paragraph (5) shall be filed electronically or in writing by the securities dealer on whose behalf the tied agent will be acting. The securities dealers

shall pay a fee prior to filing the petition mentioned in paragraph (5). If the National Bank of Slovakia rejects the petition, the fee shall not be returned. The fee constitutes income of the National Bank of Slovakia.

(7) The following information and any changes thereto shall be entered into the register of tied agents:

- a) registration number;
- b) business name or title, or forename and surname;
- c) identification number or birth registration number;
- d) registered office or address of permanent residence;
- e) address of place of business, if different from the registered office or address of permanent residence;
- f) name of the country in whose territory the tied agent performs his activity;
- g) the business name and registered office of the securities dealer or foreign securities dealer which filed the petition for the entry of the tied agent in the register of tied agents;
- h) the date when the complete petition for entry in the register of tied agents was received;
- i) the date when the entry in the register of tied agents was made;
- j) the date when the entry in register of tied agents was cancelled.

(8) The National Bank of Slovakia shall publish on its website information from the register of tied agents as specified in paragraph 7(a), (b), (d) and (e).

(9) Tied agents shall be subject, as appropriate, to Article 61(9), (13) and (14).

## **ARTICLE 62**

### **Establishing branches abroad**

(1) A stock brokerage firm having decided to establish a branch in another country is obliged to announce to the National Bank of Slovakia in writing

- a) the country in the territory of which it plans to set up the branch,
- b) plan of operations of the branch containing specification of planned activities,
- c) expected address of the branch,
- d) names of the manager and deputy manager of the branch,
- e) organisational structure of the branch and information on whether the branch plans to use tied agents.

(2) A stock brokerage firm has the duty to inform the National Bank of Slovakia without undue delay of receiving a permit to establish a branch in another country.

## **ARTICLE 63**

(1) A securities dealer may, within the scope of its investment services licence issued by the National Bank of Slovakia, provide investment services, ancillary services or investment activities in another Member State on the basis of the freedom to provide services, whether through a branch or without establishing a branch; the same shall apply to the provision of investment services, ancillary services and investment activities by a bank, within the scope of the investment services, ancillary services and investment activities stated

in its banking licence. A foreign securities dealer may, within the scope of its investment services licence issued by the competent authority of the home Member State, provide investment services, ancillary services or investment activities in the Slovak Republic on the basis of the freedom to provide services, whether through a branch or without establishing a branch; the same shall apply to the provision of investment services, ancillary services and investment activities by a bank, within the scope of the investment services, ancillary services and investment activities stated in its banking licence issued by its home Member State. Ancillary service may only be provided together with an investment service or investment activity.

(2) 'Home Member State' means:

- a) in the case of a securities dealer whose registered office is in the Slovak Republic, the Slovak Republic;
- b) in the case of a foreign securities dealer that:
  1. is a natural person, the Member State in which its head office is situated;
  2. is a legal person, the Member State in which its registered office is situated;
  3. has, under its national law, no registered office, the Member State in which its head office is situated.

(3) 'Host Member State' means the Member State in which a securities dealer has established a branch or provides investment services, ancillary services or investment activities. The Slovak Republic is the host Member State for a foreign securities dealer from another Member State.

## **ARTICLE 64**

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

(2) In the notification referred to in paragraph (1), the securities dealer shall state:

- a) the Member State in whose territory it intends to operate;
- b) a programme of operations stating in particular the nature and range of the investment services, investment activities and ancillary services which it intends to provide, and whether it intends to use tied agents in the territory of the Member State in which it intends to provide services.

(3) The National Bank of Slovakia shall, at the request of the competent authority of the host Member State and without delay, communicate the details of the tied agents that the securities dealer intends to use in that Member State.

(4) Within 30 days after receiving the information stated in the notification under paragraph (1), the National Bank of Slovakia shall forward it to the competent authority of the host Member State. The securities dealer may not begin to provide investment services,

ancillary services or investment activities in the host Member State until the competent authority of the host Member State has received the notification mentioned in paragraph (1).

(5) In the event of any change in any of the particulars communicated in accordance with paragraph (2), the securities dealer shall give written notice of that change to the National Bank of Slovakia at least 30 days before implementing the change. The National Bank of Slovakia shall without delay notify the competent authority of the host Member State thereof.

## **ARTICLE 65**

(1) A foreign securities dealer whose registered office is in a Member State may provide investment services, ancillary services or investment activities in the territory of the Slovak Republic – even without establishing a branch, on the basis of the freedom to provide services – where prior to the investment service or investment activity being provided for the first time, the National Bank has received from the competent authority of the Member State a written notification in the scope defined in Article 64(2).

(2) The National Bank of Slovak shall inform the foreign securities dealer that it has received the notification mentioned in paragraph (1).

(3) If the notification mentioned in paragraph (1) states that the foreign securities dealer intends to use tied agents in the Slovak Republic, the National Bank of Slovakia shall request the competent authority of the host Member State to provide it with details of these tied agents and shall disclose this information.

## **ARTICLE 66**

(1) Where a securities dealer states in the notification mentioned in Article 62(1) that it intends to establish a branch in the territory of a Member State, the National Bank of Slovakia shall within three months after receiving the notification under Article 62(1), deliver this notification and information on the conditions for client protection (Article 80) under this Act to the competent supervisory authority of the host Member State, and inform the securities dealer concerned accordingly.

(2) If the National Bank of Slovakia has reason to doubt the information stated in the notification under Article 62(1) in regard to the organisational structure or the financial position of the securities dealer and to the licensed activities of the securities dealer, it shall refuse to deliver that notification to the competent authority of the host Member State and it shall give reasons for its refusal to the securities dealer concerned within the period mentioned in paragraph (1).

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

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

(5) In the event of any change in any of the particulars stated in Article 62(1), the securities dealer shall give written notice of that change to the National Bank of Slovakia at least 30 days before implementing the change. The National Bank of Slovakia shall without delay inform the competent authority of the host Member State of this change as well as any changes in the conditions for client protection (Article 80) under this Act.

(6) The National Bank of Slovakia may, after informing the competent authority of the host Member State, carry out on-site inspections in the branch of a securities dealer established in that Member State.

(7) Where the competent authority of a host Member State requests, for statistical purposes required for the exercise of supervision, that a securities dealer report on its activities in the territory of that Member State, the securities dealer shall comply accordingly.

## **ARTICLE 67**

(1) A foreign securities dealer whose registered office is in a Member State may provide investment services and investment activities through its branch without being authorized under Article 56, but with the approval of the competent authority of the home Member State delivered in a written statement to the National Bank of Slovakia.

(2) The branch of a foreign securities dealer may, in accordance with paragraph (1), commence its operation in the territory of the Slovak Republic once it has received from the National Bank of Slovakia the statement mentioned in paragraph (1), or failing such communication at the latest after two months from the date of transmission of the statement mentioned in paragraph (1).

(3) The branch of a foreign securities dealer under paragraph (1) shall, when operating in the territory of the Slovak Republic, be subject to the provisions of Articles 73b to 73m, Articles 73o to 73t, Articles 73v, 75(3) and (4), 78, 78a and 78b. The supervision of the branch of a foreign securities dealer for compliance with these provisions shall be exercised by the National Bank of Slovakia.

(4) National Bank of Slovakia may require the branch of a foreign securities dealer under paragraph (1) to provide any information required for exercising supervision of its

compliance with the provisions mentioned in paragraph (3). The National Bank of Slovakia may not require of a foreign securities dealer under paragraph (1) the submission of information that it could not require of a securities dealer.

(5) The National Bank of Slovakia may, for statistical purposes, require a foreign securities dealer under paragraph (1) to report to it periodically on its activities in the territory of the Slovak Republic.

## **ARTICLE 68**

(1) Where the National Bank of Slovakia ascertains during the exercise of supervision that a foreign securities dealer operating in the territory of the Slovak Republic in accordance with Article 65 or Article 67 is in breach of the obligations arising from this Act, and it is not within its power to take action against this foreign securities dealer, the National Bank of Slovakia shall refer those findings to the competent authority of the home Member State.

(2) If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the securities dealer persists in acting in a manner that is clearly prejudicial to the interests of investors or the orderly functioning of markets in the Slovak Republic, the National Bank of Slovakia, after informing the competent authority of the home Member State, may take the measures are needed in order to protect investors and the proper functioning of the markets, which may include preventing this securities dealer from continuing its operation in the territory of the Slovak Republic.

(3) Where the National Bank of Slovakia ascertains that a foreign securities dealer under Article 65 or Article 67 is in breach of legal regulations in respect of the provision of investment services, ancillary services or investment activities in the territory of the Slovak Republic, it shall require the foreign securities dealer to put an end to its irregular situation within a stipulated period.

(4) If the foreign securities dealer referred to in paragraph (3) fails to take the necessary steps within the stipulated period, the National Bank of Slovakia shall take all appropriate measures to ensure that the foreign securities dealer concerned puts an end to its irregular situation. The National Bank of Slovakia shall inform the competent authority of the home Member State of the measures taken.

(5) If, despite the measures taken under paragraph (4), the foreign securities dealer persists in breaching the legal regulations, the National Bank of Slovakia may, after informing the competent authority of the home Member State, take all the measures necessary to put an end to its irregular situation, including measures required to prevent or terminate the operation of the foreign securities dealer in the territory of the Slovak Republic. The foreign securities dealer concerned shall implement the respective measures.

(6) The National Bank of Slovakia shall without delay inform the Commission of the measures taken under paragraphs (2) and (5).

(7) Where the competent authority of a host Member State notifies the National Bank of Slovakia that a securities dealer providing investment services, ancillary services or

investment activities within the territory of that Member State is in breach of legal regulations, the National Bank of Slovakia shall take the measures necessary to put an end to the irregular situation.

(8) If a securities dealer is providing investment services, ancillary services or investment activities in the territory of a host Member State while in breach of the legal regulations of that Member State, it shall also implement or countenance measures imposed by the competent authority of that Member State.

## **ARTICLE 69**

(1) The National Bank of Slovakia shall inform the Commission at its request of any application for the issuance of an investment services licence to an entity which is the subsidiary of a foreign securities dealer governed by the law of a non-Member State, or whenever, in accordance with Article 70, it is informed that the parent undertaking governed by the law of a non-Member State proposes to acquire a holding in a securities dealer, in consequence of which the latter would become its subsidiary.

(2) National Bank of Slovakia shall inform the Commission of general difficulties that a securities dealer encounters in establishing itself or in setting up a branch in any non-Member State and any facts which prevent its proper operation in such countries.

(3) National Bank of Slovakia shall inform the Commission and the competent authorities of other Member States that it is charged with carrying out the duties which European Union legislation regulating markets in financial instruments imposes on supervisory authorities and that it is the contact point for the exchange of information and cooperation in the exercise of supervision related to the implementation of that legislation.

## **ARTICLE 70**

### **Prior approval of the National Bank of Slovakia**

- (1) Prior approval of the National Bank of Slovakia shall be required to:
- a) acquire or exceed an interest in share capital or voting rights of a stock brokerage firm of 20%, 33% or 50% or so that the securities dealer becomes a subsidiary of another parent undertaking, in one or several operations directly, or by action in concert;<sup>55)</sup>
  - b) reduce share capital of a stock brokerage firm, except as a consequence of a loss;
  - c) appoint persons proposed as members of the Board of Directors of a stock brokerage firm, manager of a branch of a foreign stock brokerage firm; if the activity of a stock brokerage firm is performed by a bank or a branch of a foreign bank, such prior approval applies only to those persons who would be in charge of the business of the stock brokerage firm;
  - d) change the registered office of a stock brokerage firm;
  - e) merge, consolidate, or split a stock brokerage firm, including a merger of another legal person with the stock brokerage firm, or to return the licence to provide investment services;
  - f) sell a stock brokerage firm, a branch of a stock brokerage firm, or any part thereof;<sup>33)</sup>
  - g) execute activities of a member.

(2) For prior approval to be issued by the National Bank of Slovakia, the conditions specified in Article 55(2), must be satisfied as appropriate. For prior approval pursuant to paragraph (1)(a), (e) and (f), to be issued, it is necessary to prove the transparent and trustworthy source of finances and their sufficient amount and suitable structure for the action the prior approval is sought for. For prior approval pursuant to paragraph (1)(g) to be issued, it is necessary to submit proof of technical and organisational readiness to execute the activities of a member. A split, consolidation, merger or dissolution of a stock brokerage firm, including a merger of another legal person with a stock brokerage firm, must not be to the detriment of creditors of the stock brokerage firm.

(3) The provisions of paragraph (1),(a), (b), (e) and (f), are without prejudice to the provisions of a separate law.<sup>56)</sup>

(4) An application for prior approval shall be made:

- a) under paragraph (1)(a), by legal persons or natural persons seeking to acquire holdings of share capital of a stock brokerage firm;
- b) under paragraph (1)(b), by a stock brokerage firm;
- c) under paragraph 1(c), by a stock brokerage firm, a branch of a stock brokerage firm, or a shareholder of a stock brokerage firm;
- d) under paragraph 1(d), by a stock brokerage firm;
- e) under paragraph 1(e), by a stock brokerage firm and, if the approval is sought for a merger or consolidation, by both a stock brokerage firm and a legal person which the stock brokerage firm plans to merge with or consolidate;
- f) under paragraph 1(f), jointly by a stock brokerage firm or a foreign stock brokerage firm and the entity that is acquiring the stock brokerage firm, a branch of the foreign stock brokerage firm, any part thereof;
- g) under paragraph 1(g), by a stock brokerage firm or a foreign stock brokerage firm.

(5) The particulars of an application for prior approval pursuant to paragraph (1) shall be stipulated by a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws.

(6) Where an entity intending to acquire an interest in the share capital or voting rights of a stock brokerage firm specified in paragraph (1)(a) is a foreign stock brokerage firm, foreign bank, foreign asset management company or insurance company, which is authorised in a Member State, or it is the parent company of such an entity or an entity controlling such an entity, and if as a result of this entity's acquisition pursuant to paragraph (1)(a), the stock brokerage firm would become a subsidiary of this entity, or would come under the control of the transferee, the grant of prior approval mentioned in paragraph (1)(a), must be the subject to consultations pursuant to Article 58.

(7) The National Bank of Slovakia shall decide on an application made pursuant to paragraph (1)(c), within 15 days from its delivery.

(8) If the acquisition referred to in paragraph 1(a) would result in a stock brokerage firm becoming part of consolidated financial group in the meaning of Article 138 to 143 of which a financial holding institution is also a part, or becoming part of a financial conglomerate in the meaning of Articles 143a to 143o of which a mixed financial holding company is also a part, the

grant of prior approval by the National Bank of Slovakia shall also be subject to proving the trustworthiness and professional competence of the natural persons who are members of the statutory body of this financial holding company or mixed financial holding company, and the suitability of the shareholders controlling the financial holding company or mixed financial holding company.

(9) If the acquirer of any holding referred to in paragraph 1(a) is a foreign securities dealer, foreign credit institution, foreign insurance company or foreign management company whose registered office is in another Member State, or the parent undertaking of such an institution, or a person controlling such an institution, and if, as a result of that acquisition, the securities dealer would become the acquirer's subsidiary or come under its control, the National Bank of Slovakia shall carry out the consultation provided for in Article 58 before issuing the prior approval mentioned in paragraph 1(a).

## **Organisation and management of a stock brokerage firm**

### **ARTICLE 71**

#### **Organization and management of a securities dealer**

(1) A securities dealer shall, as appropriate to the nature, scale and complexity of its business and the range of its investment services, ancillary services and investment activities:

- a) establish, implement and maintain decision-making procedures and an organizational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;
- b) ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions at all levels of the securities dealer;
- d) employ personnel with the experience, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;
- e) establish, implement and maintain effective internal reporting and communication of information at all levels of the securities dealer;
- f) maintain adequate and orderly records of its business and internal organization;
- g) ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular function in accordance with the principles of an honest business relationship and professional care and in the interests of its clients.

(2) A securities dealer shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

(3) A securities dealer shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems, the preservation of essential data and functions and the maintenance of investment services, ancillary services and investment activities, or, where that it is not possible, the timely recovery of such data and functions and the timely resumption of its investment services, ancillary services and investment activities.

(4) A securities dealer shall establish, implement and maintain accounting policies and procedures that enable them to submit without delay to the National Bank of Slovakia, at its request, financial reports which reflect a true and fair view of the financial position of the securities dealer and which comply with applicable accounting standards and rules.

(5) A securities dealer shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms, procedures and measures established in accordance with paragraphs (1) to (4) and take measures to address any deficiencies.

(6) 'Relevant person' in relation to a securities dealer means any of the following:

- a) a director, shareholder, managerial employee or tied agent of the securities dealer;
- b) a director, partner, shareholder or managerial employee of any tied agent of the securities dealer;
- c) an employee of the securities dealer or of tied agent, as well as any other natural person whose services are placed at the disposal and under the control of the securities dealer or tied agent and who is involved in the securities dealer's provision of investment services, ancillary services and investment activities;
- d) a natural person who is involved in the provision of services to the securities dealer or to its tied agent under an outsourcing arrangement for the purpose of the securities dealer's provision of investment services, ancillary services and investment activities.

#### **ARTICLE 71a**

(1) A securities dealer shall, as appropriate to the nature, scale and complexity of its business and the range of its investment services, ancillary services and investment activities, establish, implement and maintain policies and procedures designed to detect any risk of failure to comply with its obligations under this Act or separate regulations, and put in place measures and procedures designed to minimize such risk and to enable the National Bank of Slovakia to properly exercise supervision over the securities dealer.

(2) A securities dealer shall include in its administrative structure an employee or employees responsible for the compliance function, which for the purposes of this Act means:

- a) monitoring and, on a regular basis, assessing the effectiveness of the measures and procedures put in place in accordance with paragraph (1) and the actions taken to address any deficiencies in the securities dealer's compliance with its obligations;
- b) advising and assisting the relevant persons responsible for the provision of investment services, ancillary services and investment activities in regard to the securities dealer's compliance with its obligations.

(3) The compliance function shall operate independently from other organizational units and bodies of the securities dealer.

(4) A securities dealer shall:

- a) ensure that the persons performing the compliance function have the necessary authority, resources, expertise, and access to all relevant information;

- b) appoint a compliance officer to be responsible for the compliance function and for any reporting as to compliance required by Article 71d(3);
- c) ensure that the persons involved in the compliance function are not involved in the provision of investment services, ancillary services or investment activities which they monitor;
- d) ensure that the method of determining the remuneration of the persons involved in the compliance function does not and is not likely to compromise their objectivity.

(5) A securities dealer shall not be required to comply with the conditions laid down in paragraph (4)(c) or (d) if it is able to demonstrate that these are not appropriate to the nature, scale and complexity of its business and the range of its investment services, ancillary services and investment activities and that its compliance function continues to be effective.

## **ARTICLE 71b**

### **Risk management**

(1) A securities dealer shall:

- a) establish, implement and maintain adequate risk management policies and procedures which identify the risks relating its activities, processes and systems, and where appropriate, set the level of risk to be tolerated;
- b) adopt effective arrangements, processes and mechanisms to manage the risks relating to its activities, processes and systems, in light of that level of risk tolerance;
- c) monitor the following:
  1. the adequacy and effectiveness of the securities dealer's risk management policies and procedures;
  2. the level of compliance by the securities dealer and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with subparagraph (b);
  3. the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with them.

(2) A securities dealer shall include in its administrative structure an employee or employees responsible for the risk management function, which for the purposes of this Act means:

- a) implementing the policies and procedures referred to in paragraph (1);
- b) the provision of reports and advice to senior management in accordance with Article 71d(3).

(3) The risk management function shall be performed by one more employees of the securities dealer, or by other persons on a contractual basis, independently from other organizational units of the securities dealer and from bodies of the securities dealer.

(4) A securities dealer shall not be required to establish a risk management function as referred to in paragraph (2) if such function is not appropriate to the nature, scale and complexity of its business and the range of its investment services, ancillary services, and provided that the securities dealer can demonstrate that it has adopted the policies and procedures mentioned in paragraph (1).

(5) A securities dealer shall comply with the provisions of paragraphs (1) to (4), especially in relation to the risk defined in a separate regulation.<sup>56a)</sup>

#### **ARTICLE 71c**

##### **Internal audit**

(1) A securities dealer shall, except where paragraph (3) applies, include in its administrative structure an employee or employees responsible for the internal audit function, which for the purposes of this Act means:

- a) drafting, implementing and maintaining an audit plan to examine and evaluate the adequacy and effectiveness of the securities dealer's systems, internal control mechanisms and internal regulations;
- b) issuing recommendations based on the result of work carried out in accordance with subparagraph (a);
- c) verifying compliance with the recommendations made under subparagraph (b);
- d) reporting in relation to internal audit matters in accordance with 71d(3).

(2) The internal audit function shall be performed by one or more employees of the securities dealer, or by other persons on a contractual basis, independently from other organizational units of the securities dealer and from bodies of the securities dealer

(3) A securities dealer shall not be required to establish an internal control function as referred to in paragraph (1) if such function is not appropriate to the nature, scale and complexity of its business.

(4) By a decree to be promulgated in its full text in the Collection of Laws, the National Bank of Slovakia may lay down details of what is meant by 'appropriate to the nature, scale and complexity of the business and the range of the investment services, ancillary services and investment activities of a securities dealer' for the purposes mentioned in Articles 71, 71a, 71b and paragraph (3).

#### **ARTICLE 71d**

(1) A securities dealer shall, in its articles of association, allocate and regulate the powers and responsibilities of senior management in respect of ensuring compliance with the obligations under this Act or a separate law.

(2) Senior management and, where so stipulated in the articles of association, the supervisory board, shall assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations of the securities dealer under a generally binding legal regulation and shall take appropriate measures to address any deficiencies.

(3) Persons responsible for performing the functions mentioned in Articles 71a to 71c in a securities dealer shall submit to the senior management and supervisory board of the securities dealer, at least annually, written reports on the performance of activities under

Articles 71a to 71c; the articles of association may stipulate the submission of such reports on a more frequent basis. These written reports shall indicate, in particular, whether deficiencies have been identified in the operation of the securities dealer and whether remedial measures have been taken in the event of any deficiencies.

#### **ARTICLE 71e**

A securities dealer shall establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients or potential retail clients and shall keep a record of each complaint and the measures taken for its resolution.

#### **ARTICLE 71f**

(1) A securities dealer shall establish adequate arrangements aimed at preventing the following activities in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information in the meaning of Article 132 or to other confidential information by virtue of an activity carried out by him on behalf of the securities dealer:

- a) entering into a personal transaction where any of the following apply:
  1. that person is prohibited from entering into it under Article 132;
  2. the transaction involves the misuse or unlawful disclosure of that confidential information;
  3. the transaction conflicts or is likely to conflict with an obligation of the securities dealer under this Act or a separate law;
- b) advising or procuring, other than under the rights and obligations arising from his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by subparagraph (a) or Article 71o(1)(a) or (b), or Article 73s(3),
- c) disclosing other than in the normal course of his employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of such disclosure that other person could:
  1. enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by subparagraph (a), Article 71o(1)(a) or (b) or Article 73s(3); or
  2. advise or procure another person to enter into such a transaction.

(2) The provision of paragraph (1)(c) shall be without prejudice to Article 132(9)(b).

(3) 'Personal transaction' means a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met:

- a) the relevant person is acting outside the scope of the rights and obligations arising under the normal course of his employment;
- b) the trade is carried out for the account of any of the following persons:
  1. the relevant person,
  2. any person with whom he has close links, or with whom he is deemed, under the law of another Member State, to have a relationship equivalent to that of a spouse, or

another relative with whom he has been living in the same household for at least one year before the execution date of the trade in question;

3. a person whose relationship with the relevant person is such that the relevant person has a direct or indirect interest in the outcome of the trade, other than a fee or commission for the execution of the trade.

(4) The arrangements required under paragraph (1) must be designed to ensure that:

- a) each relevant person covered by paragraph (1) is aware of the restrictions on personal transactions, and of the measures established by the securities dealer in connection with personal transactions and disclosure, in accordance with paragraph (1);
- b) the securities dealer is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the securities dealer to identify such transactions. In the case of outsourcing arrangements under Article 71g, the securities dealer must ensure that the person to which the activity is outsourced maintains a record of personal transactions entered into by any relevant person and provides that information to the securities dealer promptly on request;
- c) a record is kept of the personal transaction notified to the securities dealer or identified by it, including any authorization or prohibition in connection with such a transaction.

(5) The provisions of paragraphs (1) to (4) shall not apply to the following kinds of personal transaction:

- a) personal transactions effected in the course of providing an investment service under Article 6(1)(d) where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
- b) personal transactions in shares/units in open-end mutual funds or foreign collective investment undertakings, or in securities of European mutual funds or foreign collective investment undertakings, which are subject to laws of Member States requiring an equivalent level of risk spreading in the investment of their assets, where the person for whose account the transactions are effected is not involved in the management of that open-end mutual fund, European mutual fund or foreign collective investment undertaking.

## **ARTICLE 71g**

(1) A securities dealer shall ensure, when outsourcing to a third party the performance of operational functions which are critical or important for the provision of continuous and satisfactory investment services to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes the steps required to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair the effectiveness of its internal control and the ability of the National Bank of Slovakia to monitor the securities dealer's compliance with all its obligations.

(2) 'Outsourcing' means a form of arrangement between a securities dealer and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the securities dealer itself.

(3) For the purposes of paragraph (1), an operational function shall be regarded as critical or important if a defect or failure in its performance would materially impair the compliance of a securities dealer with the conditions and obligations of its investment services licence, or its other obligations under this Act or a separate law, or its financial stability, or the soundness or the continuity of its investments services and investment activities. For the purposes of paragraph (1), the following functions shall not be considered as critical or important:

- a) the provision to the securities dealer of advisory services and other services which do not form part of the investment services or investment activities of the securities dealer, including the provision of legal advice to the securities dealer, the training of its personnel, billing services, and the security of the premises and personnel of the securities dealer;
- b) the purchase of standardized services, including market information services and the provision of price feeds.

(4) Where a securities dealer outsources critical and important operational functions or any investment services or activities, it shall remain fully responsible for discharging all of its obligations under this Act or a separate law and comply with the following conditions:

- a) the outsourcing must not result in the delegation by senior management of its responsibility;
- b) the relationship and obligations of the securities dealer towards its clients under this Act must not be altered by the outsourcing;
- c) compliance with the conditions under which its investment services licence was issued under Article 55 must not be undermined, and none of the other conditions subject to which the investment services licence was issued must be removed or modified.

(5) A securities dealer shall exercise professional care when entering into, modifying or terminating any arrangement for the outsourcing of key or important operational functions, investment services or investment activities, and shall in particular ensure that the following conditions are satisfied:

- a) the service provider must meet the conditions required to perform the outsourced functions, services or activities reliably and professionally and must have any authorization required by law;
- b) the service provider must carry out effectively the outsourced functions, services or activities, and to this end the securities dealer must establish methods for assessing the standard of performance of the service provider;
- c) the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
- d) appropriate action must be taken if it appears that the service provider is not carrying out the functions, services or activities effectively and in compliance with generally binding legal regulations;
- e) the securities dealer must supervise the outsourced functions, services or activities and manage the risks associated with the outsourcing, and must retain the necessary expertise for that purpose;
- f) the service provider must disclose to the securities dealer any development that may have a material impact on its ability to carry out the delegated functions, services or activities in compliance with generally binding legal regulations;

- g) the securities dealer must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients;
- h) the service provider must cooperate with the National Bank of Slovakia in connection with the outsourced activities;
- i) the securities dealer, its auditors and the National Bank of Slovakia must have access to data related to the outsourced functions, services or activities, as well as to the business premises of the service provider; and the National Bank of Slovakia must be able to exercise those rights of access;
- j) the service provider must protect any confidential information relating to the securities dealer and its clients;
- k) the securities dealer and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;
- l) where a securities dealer outsources the service of portfolio management provided to retail clients to a service provider whose registered office is in a non-Member State, it shall ensure that the following conditions are satisfied:
  1. the service provider must be authorized or registered in the home country to provide that service and must be subject to prudential supervision;
  2. there must be an appropriate cooperation agreement between the National Bank of Slovakia and the supervisory authority of the service provider.

(6) Where one or both of the conditions mentioned in paragraph (5)(l) are not satisfied, a securities dealer may outsource investment services to a service provider whose registered office is in a non-Member State only if the securities dealer gives prior notification to the National Bank of Slovakia about the outsourcing arrangement and the National Bank of Slovakia does not object to that arrangement within 30 days following receipt of that notification. The National Bank of Slovakia shall publish a list of the competent authorities in non-Member States with which it has cooperation agreements that are appropriate for the purposes of point two of paragraph (5)(l).

(7) The National Bank of Slovakia shall publish in the form of a methodological instruction a statement of policy in relation to outsourcing covered by paragraph (6). That statement shall set out examples of cases where the National Bank of Slovakia would not, or would be likely not to, object to an outsourcing under paragraph (6) and it shall include a clear explanation as to why the National Bank of Slovakia considers that in such cases outsourcing would not impair the ability of securities dealers to fulfil their obligations under paragraphs (4) and (5).

(8) An arrangement for outsourcing must be made in writing and shall define precisely the rights and obligations of the securities dealer and the service provider.

(9) Where the securities dealer and service provider are members of the same group, the securities dealer may, for the purposes of complying with the conditions laid down in paragraphs (4) and (5), take into account the extent to which it controls the service provider or has the ability to influence its actions.

(10) The subject-matter of an outsourcing may not be a function, service or activity which the securities dealer performs in its capacity as a member under Article 104.

**ARTICLE 71h**  
**Safeguarding of client financial instruments and funds**

(1) Client assets placed with a securities dealer shall not be included in the assets of the securities dealer. A securities dealer may not use the funds or financial instruments that a client has placed with it for its own benefit or the benefit of any third party, unless the client has given his consent thereto.

(2) For the purposes of safeguarding clients' rights in relation to financial instruments and funds belonging to them, a securities dealer shall:

- a) keep such records and accounts that are necessary to enable it at any time and without delay to distinguish assets held for one client from assets held for any other client, and from their own assets;
- b) maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and funds held for clients;
- c) conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those assets are held;
- d) take the necessary steps to ensure that any client financial instruments deposited with a third party, in accordance with Article 71i, are identifiable separately from the financial instruments belonging to the securities dealer by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;
- e) take the necessary steps to ensure that client funds deposited in accordance with Article 71j are held separately from any accounts used to hold funds belonging to the securities dealer;
- f) introduce adequate organizational arrangements to minimize the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

(3) If, for reasons of the applicable law of the jurisdiction in which the funds and financial instruments are kept or held, the arrangements made by the securities dealer in compliance with paragraph (2) are not sufficient to safeguard clients' rights, especially in the event of the insolvency of the securities dealer, the securities dealer shall take additional measures in order to safeguard clients' assets.

(4) If the applicable law of the jurisdiction in which the client funds or financial instruments are held prevents a securities dealer from complying with the provisions of paragraph (2)(d) or (e), the securities dealer shall take equivalent measures which have the same effect in terms of safeguarding clients' rights.

(5) By a decree to be promulgated in its full text in the Collection of Laws, the National Bank of Slovakia may lay down details of what is meant by 'additional measures' and 'equivalent measures' for the purposes set out in paragraphs (3) and (4), details of the conditions for depositing financial instruments with a third party under Article 71i and the manner and method of reconciliations made under paragraph (2).

## **ARTICLE 71i**

(1) A securities dealer may deposit financial instruments that it holds on behalf of its clients into an account or accounts opened with a third party. In the selection and appointment of the third party and the conclusion of an agreement on the safekeeping and administration of those financial instruments, the securities dealer shall exercise due professional care. In this respect, the securities dealer shall also take into account and periodically review the expertise and market reputation of the third party, as well as any generally binding legal regulations or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

(2) If the safekeeping of financial instruments for the account of another person is subject to specific legal regulation and supervision in a jurisdiction where a securities dealer proposes to deposit client financial instruments with a third party, the securities dealer may not deposit those financial instruments in that jurisdiction with a third party which is not subject to such regulation and supervision.

(3) A securities dealer shall not deposit financial instruments held on behalf of clients with a third party in a non-Member State that does not regulate the holding and safekeeping of financial instruments for the account of another, unless one of the following conditions is met:

- a) the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that non-Member State;
- b) where the financial instruments are held on behalf of a professional client, that client requests the securities dealer in writing to deposit them with a third party in that non-Member State.

## **ARTICLE 71j**

(1) Where a securities dealer has received client funds, it shall promptly place those funds into one or more accounts opened with any of the following:

- a) a central bank;
- b) a credit institution or foreign credit institution with an operating licence in accordance with the laws of Member States;
- c) a bank authorized in a third country;
- d) a qualifying money market fund.

(2) The provision of paragraph (1) shall not apply to a credit institution, or a foreign credit institution whose registered office is in a Member State, in relation to deposits held by that institution.

(3) 'Qualifying money market fund' means an open-end mutual fund or European mutual fund, or another foreign collective investment undertaking, which is subject to supervision or has been issued an operating licence under the law of a Member State, and which satisfies the following conditions:

- a) its primary investment objective is to maintain the net asset value of the assets, either constant at par (net of earnings), or the value of the investor's initial capital plus earnings;
- b) assets in the qualifying money market funds are invested exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days,

or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days, or they are invested on an ancillary basis in deposits with credit institutions;

- c) it must ensure the liquidity of the deposited funds through same day or next day settlement.

(4) For the purposes of paragraph (3)(b), a money market instrument shall be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated this instrument. An instrument which is not rated by any competent rating agency shall not be considered to be of high quality.

(5) For the purposes of paragraph (4), a rating agency shall be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible rating agency within the meaning of a separate law.<sup>15)</sup>

(6) In the selection and appointment of the entity mentioned in paragraph (1) and the conclusion of agreements related to the depositing of client funds, a securities dealer shall exercise all due professional care and diligence. In this respect, the securities dealer shall also take into account and periodically review the expertise and market reputation of the entity mentioned in paragraph (1)(b) to (d), as well as any generally binding legal regulations or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

(7) A securities dealer shall give a client prior notice of its intention to place any of the client's funds in a qualifying money market fund, and the client may oppose the placement of his funds in this way.

#### **ARTICLE 71k**

(1) A securities dealer may not enter into arrangements for securities financing transactions<sup>57)</sup> in respect of financial instruments that it holds on behalf of a client, or otherwise use such financial instruments for its own account or the account of another client, unless the following conditions are met:

- a) the client has given his prior express consent to the use of the financial instruments on precisely specified terms, and has confirmed this consent; in the case of a retail client, this confirmation shall be evidenced by his signature or equivalent alternative method;
- b) the use of the client's financial instruments must be restricted to the exactly specified terms to which the client consents.

(2) A securities dealer may not enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in an omnibus account, or otherwise use financial instruments held in such an account for their own account or for the account of another client unless, in addition to the conditions set out in paragraph (1), the following conditions are met:

- a) each client whose financial instruments are held together in an omnibus account must have given prior express consent in accordance with paragraph (1)(a);

b) the securities dealer has in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with paragraph (1)(a) are so used.

(3) The records of the securities dealer shall include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his prior consent, so as to enable the correct allocation of any loss.

(4) For the purposes of this Act, 'omnibus account' means a holder's account and the accounts in which client assets of a securities dealer are held, including accounts maintained under the law of another country.

## ARTICLE 71I

(1) A securities dealer shall take the steps necessary to identify conflicts of interest between itself, including its senior management, employees and tied agents, or any person directly or indirectly linked to it by control and its clients, or between one client and another, which arise in the course of providing investment services, ancillary services or investment activities, or combinations thereof. Where a conflict of interest in the provision of investment services, ancillary services or investment activities is unavoidable, the securities dealer shall, prior to the provision of such service or activity, communicate to the client the nature and source of the conflict, and in the event that it provides either of them, it shall place the client's interest ahead of its own; in the event of a conflict of interest between clients, the securities dealer shall ensure equal and fair treatment for all clients.

(2) For the purposes of identifying the conflicts of interest mentioned in paragraph (1), it shall be taken into account, at a minimum, whether the securities dealer or a relevant person, or a person directly or indirectly linked by control to the securities dealer, is in a situation such that the securities dealer or that person:

- a) is likely to make a financial gain, or avoid a financial loss at the expense of the client;
- b) has an interest in the outcome of an investment service or ancillary service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
- c) has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;
- d) carries on the same business as the client;
- e) receives or will receive from a person other than the client an inducement in relation to an investment service or ancillary service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

(3) Where arrangements made by a securities dealer in accordance with Article 71m to manage conflicts of interest are not sufficient to ensure that risks of damage to client interests will be prevented, the securities dealer shall clearly disclose the nature and sources of conflicts of interest to the client before undertaking business on its behalf.

(4) The information mentioned in paragraph (3) shall be provided by the securities dealer to the client in a durable medium and in sufficient detail to enable the client to make an

informed decision, in full knowledge of the facts, with respect to the investment service or ancillary service in the context of which the conflict of interest arises.

### **ARTICLE 71m** **Conflicts of interest policy**

(1) A securities dealer shall establish, implement and maintain an effective conflicts of interest policy, set out in writing and appropriate to the size and organization of the securities dealer and the nature, scale and complexity of its business. Where the securities dealer is a member of a group, the policy must also take into account any circumstances, of which the securities dealer is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

(2) The conflicts of interest policy established in accordance with paragraph (1) shall fulfil the following conditions:

- a) it must identify, with reference to the specific investment services, investment activities and ancillary services carried out by or on behalf of the securities dealer, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;
- b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts of interest.

(3) The procedures and measures provided for in paragraph (2)(b) shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph (2)(a) carry on those activities at a level of independence appropriate to the size and activities of the securities dealer and of the group to which it belongs, and to the materiality of the risk to clients. Such procedures and measures shall include the following:

- a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may harm the interests of one or more clients;
- b) the separate supervision of relevant persons whose principal functions involve providing investment services and ancillary services to clients whose interests may be in conflict, or who represent different interests that may conflict, including those of the securities dealer;
- c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person provides investment services, ancillary services or investment activities;
- e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in the provision of separate investment services, ancillary services or investment activities where such involvement may impair proper management of conflicts of interest.

(4) If the adoption of any measures or procedures mentioned in paragraph (3) does not ensure the requisite degree of independence, the securities dealer shall adopt such alternative or additional measures or procedures as are necessary and appropriate for these purposes.

(5) By a decree to be promulgated in its full text in the Collection of Laws, the National Bank of Slovakia may define what is meant by 'alternative or additional measures or procedures' for the purposes of paragraph (4).

#### **ARTICLE 71n**

A securities dealer shall keep and regularly update records of any investment service, investment activity or ancillary service carried out by or on behalf of the securities dealer in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

#### **ARTICLE 71o**

(1) A securities dealer which produces, or arranges for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the securities dealer or to the public, under its own responsibility or that of a member of its group shall ensure the implementation of all the measures set out in Article 71m(3) in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated. That securities dealer shall have in place arrangements designed to ensure that:

- a) financial analysts and other relevant persons do not undertake personal transactions or trade on behalf of any other person, including the securities dealer, in financial instruments to which investment research relates, or in any related financial instruments, with knowledge of the likely timing or content of that investment research which is not publicly available and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it; this shall not apply to market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order;
- b) in circumstances not covered by subparagraph (a), financial analysts and any other relevant persons involved in the production of the investment research do not undertake personal transactions in financial instruments to which the investment research relates, or in any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the securities dealer's legal department or an employee responsible for the compliance function;
- c) the securities dealer itself, financial analysts, and other relevant persons involved in the production of the investment research do not accept any inducements from those with a material interest in the subject-matter of the investment research;
- d) the securities dealer itself, financial analysts, and other relevant persons involved in the production of the investment research do not promise issuers favourable research coverage;
- e) issuers, relevant persons other than financial analysts, and any other persons are not before the dissemination of the investment research permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose, other than verifying compliance with the

securities dealer obligations arising from generally binding legal regulations, if the draft includes a recommendation or target price;

(2) For the purposes of paragraph (1), 'investment research' means research or other information in the meaning of Article 132e which meets the following conditions:

- a) it is labeled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;
- b) if the recommendation in question were made by a securities dealer to a client, it would not constitute the provision of investment advice for the purposes of this Act.

(3) For the purposes of paragraph (1), 'related financial instrument' means a financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument. 'Financial analyst' means a relevant person vis-à-vis a securities dealer who produces the substance of investment research.

(4) A securities dealer that disseminates investment research produced by another person to the public or to clients shall not be subject to the provisions of paragraph (1) if:

- a) the person that produces the investment research is not a member of the group to which the securities dealer belongs;
- b) the securities dealer does not substantially alter the recommendations within the investment research;
- c) the securities dealer does not present the investment research as having been produced by it;
- d) the securities dealer verifies that the producer of the research is subject to requirements equivalent to the requirements under this Act in relation to the production of that research, or has established a policy setting such requirements.

(5) An investment recommendation (Article 132e) relating to financial instruments that does not meet the conditions set out in paragraph (2) shall be treated as a marketing communication for the purposes of this Act. Any securities dealer that produces or disseminates the recommendation shall ensure that it is clearly identified as such. That securities dealer shall also ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it has not been prepared in accordance with generally binding legal regulations designed to promote the independence of investment research and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

**ARTICLE 72**  
**cancelled with effect from 1 November 2007**

**ARTICLE 73**

(1) A securities dealer shall:

- a) inform clients whether the requested transaction is covered by a client protection scheme (Article 80) and about the terms and conditions of guarantees provided by that client protection scheme;
- b) when promoting investment services, refrain from using information on the compensation provided by a client protection scheme for advertising purposes.

(2) The National Bank of Slovakia may lay down by a generally binding legal regulation further details concerning the rules of conduct of a stock brokerage firm in relation to clients set out in paragraphs (1) to (7).

(3) In each transaction, a stock brokerage firm shall require the client to document its identity; the client shall be required to comply with the request in each transaction. A stock brokerage firm shall decline any transactions in which the client remains anonymous.

(4) For the purposes of paragraph (3), the identity of a client may be established by an identity document or a client signature, provided the stock brokerage firm knows the client in person and its signature matches the signature shown in a signature specimen deposited with the stock brokerage firm upon the signing of which the client established its identity by an identity document; if transactions are executed through technical devices, identity shall be evidenced by a personal identification number or a similar code assigned by the stock brokerage firm to the client, and by an authentication that had been agreed between the stock brokerage firm or by the branch of the foreign brokerage firm and the client, or by an electronic signature pursuant to another law. For minor clients, who do not possess an identity document, the stock brokerage firm shall check the identity document of its legal representative and request a document from which it is evident that the representative is authorised to represent the minor, and a birth certificate of the minor client.

(5) For each transaction with a consideration of at least EUR 15,000, a stock brokerage firm shall be required, to identify the ownership of the funds used by the client to conduct the transaction. For the purposes of this provision, ownership shall be established by a binding written statement of the client, in which the client shall be required to state whether it is the owner of the funds and whether it makes the transaction for its own account. If the funds are owned by a third party, or if the transaction is to be made for the account of a third party, the client shall specify in the statement the name, birth registration number or date of birth, and permanent residence of the natural person or, as appropriate, the name, registered office and identification number, if any, of the legal person who owns the funds and for whose account the transaction is being made; in such a case, the client shall also present the stock brokerage firm with a written consent of the person concerned to the use of its funds for the transaction and to making the transaction for its account. If the client fails to meet any of the conditions set out in this paragraph, the stock brokerage firm shall be required to refuse the transaction. The obligation to establish the ownership of funds shall not apply in cases where the client of the stock brokerage firm is another stock brokerage firm or financial institution executing a transaction on behalf of a client the ownership of whose funds has already been established by this other stock brokerage firm or financial institution; in the case of foreign stock brokerage firms or financial institutions, this obligation shall apply only if their registered office is in a country in which requirements for protection against the legalisation of income out of criminal activities and against financing terrorism are applied to the extent laid down in Member States of the Organisation for Economic Cooperation and Development. The other stock brokerage firm or financial institution shall prove these facts to the stock brokerage firm which executes the

respective transaction, and in the event of any doubt, the stock brokerage firm may insist on proof of ownership of the funds.

(6) The stock brokerage firm and the foreign stock brokerage firm shall retain data and copies of client identification and of documents identifying the owner of the funds used by the client to accomplish the trade for at least ten years from conclusion of the transaction.

(7) The provisions of paragraphs (1) to (6) shall also apply to a foreign stock brokerage firm in its operations in the territory of the Slovak Republic.

### **ARTICLE 73a**

(1) For the purposes of concluding and executing transactions with clients, and the follow-up control thereof, and for the purpose of identifying clients and for other purposes set out in paragraph (3), clients and their representatives shall, for each transaction, meet any request of the stock brokerage firm

a) to provide the following:

1. where the client is a natural person, including a natural person representing a legal person, personal identification information <sup>58a)</sup> that includes the client's name, address of permanent residence, address of temporary residence, birth registration number, if assigned, date of birth, citizenship, type and number of identity document; if the client is natural person-entrepreneur, also his business address, the designation of the official register or other official record in which the natural person-entrepreneur is registered, and the number of his entry in this register or record;
2. identification information that includes the client's name, identification number, if assigned, the address of his registered office, the address of his place of business or organisational units or the address of another place where his activities are carried out, and, if a legal person, a list of the member's of the statutory body of this legal person and information on them to the extent laid down in subparagraph (1), the designation of the official register or other official record in which the legal person is registered, <sup>58b)</sup> and the number of its entry in this register or record;
3. contact telephone number, fax number and electronic mail address, if any;
4. documents and information proving authorisation to represent the client, in the case of a representative, and to meet the other requirements and conditions for concluding and executing transactions as laid down in this Act or by separate regulation or which have been agreed with the stock brokerage firm;

b) to enable the following to be obtained by photocopying, scanning or other means of recording:

1. personal identification information <sup>58a)</sup> that includes a visual likeness, title, name, maiden name, birth registration number, date of birth, place and district of birth, address of permanent residence, address of temporary residence, citizenship, record of any restriction of legal capacity, type and number of the identity document, the issuing authority, date of issue and expiry date of the identity document; and
2. additional information from documents corroborating the information subject to letter (a)(1) to (4).

(2) For the purposes of concluding and executing transactions with clients, and the follow-up control thereof, and for the further purposes mentioned in paragraph (3), a stock brokerage firm may, for any transaction, require the client or his representative to provide the

information mentioned in paragraph (3)(a) and obtain it by a method pursuant to paragraph 3(b).

(3) For the purposes of concluding and executing transactions between stock brokerage companies and clients, and the follow-up control thereof, for the purposes of identifying clients and their representatives, for the protection and enforcement of the rights of stock brokerage firms towards clients, for documenting the activities of stock brokerage firms, for the exercise of supervision, and for meeting the tasks and obligations of stock brokerage firm in accordance with this Act or separate regulations,<sup>58c)</sup> stock brokerage firms may, without the consent of and without informing the persons concerned,<sup>58d)</sup> establish, obtain, record, store, use and otherwise process<sup>58e)</sup> personal information and other information to the extent laid down in paragraph (1); stock brokerage firms may, by automated or non-automated means, make copies of identity documents, and process the birth registration numbers and other information and documents referred to in paragraph (1).

(4) Even without the consent of and without informing the persons concerned,<sup>58d)</sup> stock brokerage firms shall, in the cases set out in this Act or in a separate law,<sup>58g)</sup> give other entities access to the information subject to paragraph (1) and (3) and provide it to them for the purposes of processing, and shall also provide this information to the National Bank of Slovakia for the purpose of exercising supervision in accordance with this law and separate laws.

(5) Even without the consent of and without informing the persons concerned,<sup>58d)</sup> stock brokerage firms may make available and provide<sup>58f)</sup> information from their information systems only to persons and authorities to which they are obliged to provide information protected under Article 134.

(6) The information subject to paragraphs (1) to (3) may be made available and provided abroad by stock brokerage firms only under the conditions laid down in a separate law<sup>58h)</sup> or where provided by an international agreement binding upon the Slovak Republic.

(7) The provisions of paragraphs (1) to (6) shall also apply to a foreign stock brokerage firm insofar as it carries on activities in the territory of the Slovak Republic.

### **Operating conditions for securities dealers in relation to clients**

#### **ARTICLE 73b**

(1) A securities dealer shall, when providing investment services, ancillary services or investment activities, act in the interests of clients in accordance with the principles of an honest business relationship and professional care. The securities dealer shall operate in such a way so as not to impair the security of the financial system and it may not perform any activities directed towards the manipulation of security prices.

(2) A securities dealer shall not be regarded as acting in accordance with the principles mentioned in paragraph (1) if, in relation to the provision of an investment service or ancillary service to a client, it pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit, other than the following:

- a) a fee, commission or non-monetary benefit paid or provided to or by the client, or a fee, commission or non-monetary benefit paid or provided to or by a person acting on behalf of the client;
- b) a fee, commission or non-monetary benefit paid or provided by a third party, or a fee, commission or non-monetary benefit paid or provided by a person acting on behalf of a third party, where the following conditions are satisfied:
  - 1. the existence, nature and amount of the fee, commission or benefit, or where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client in a manner that it is comprehensive, accurate and understandable, prior to the provision of the relevant investment service or ancillary service;
  - 2. the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the duty of the securities dealer to act in the best interests of the client;
- c) proper fees which enable or are necessary for the provision of investment services, such as custody costs, settlement fees, levies to regulated market operators, levies to the supervisory authority, administrative fees or legal fees, and which, by their nature, cannot give rise to conflicts with the duties of the securities dealer to act in accordance with paragraph (1).

(3) For the purposes of point one of paragraph (2)(b), the securities dealer may disclose to the client the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that it undertakes to disclose further details at the request of the client. The National Bank of Slovakia may suspend or terminate this right if it finds that securities dealer has failed to comply with the client's request for disclosure of further details.

### **ARTICLE 73c**

(1) A securities dealer shall ensure that all information it addresses to clients or potential clients, including marketing communications, is fair, clear and not misleading. Marketing communications must be identifiable.

(2) Where the information mentioned in paragraph (1) is addressed to retail clients or potential retail clients, it shall include the business name of the securities dealer and:

- a) it shall be accurate and it shall not emphasize any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks;
- b) it shall be presented in such a way that is likely to be understood by the average member of the group to whom it is directed in accordance with paragraph (1), or by whom it is likely to be received;
- c) it shall not disguise, diminish or obscure important items, statements or warnings.

(3) Where the information mentioned in paragraph (1), addressed to retail clients or potential retail clients, compares investment services or ancillary services, financial instruments, or persons providing investment services or ancillary services, the following conditions shall be satisfied:

- 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;
- c) the key facts and assumptions used to make the comparison must be included.

(4) Where the information mentioned in paragraph (1) contains an indication of past performance of a financial instrument, a financial index or an investment service, 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 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided if less than five years, or such longer period as the securities dealer may decide, and in every case that performance information must be based on complete 12-month periods;
- c) the reference period and the source of information must be 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 performance;
- e) where the indication relies on figures denominated in a currency other than that of a Member State in which the retail client or potential retail client is permanently resident, the currency must 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, the effect of commissions, fees or other charges must be disclosed; 'gross performance' means the performance including commissions, fees and other costs.

(5) Where the information mentioned in paragraph (1) includes or refers to simulated past performance, it must relate to a financial instrument or a financial index, and the following conditions shall be satisfied:

- a) the simulated past performance must be based on the actual past performance of one or more financial instruments or financial indices which are the same as, or underlie, the financial instrument concerned;
- b) in respect of the actual past performance referred to in subparagraph (a), the conditions set out in paragraph (4)(a) to (c), (e) and (f) must be complied with;
- c) the information must contain a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

(6) Where the information mentioned in paragraph (1) contains a forecast of future performance, the following conditions shall be satisfied:

- a) the information must not be based on or refer to simulated past performance;
- b) it must be based on reasonable assumptions supported by objective data;
- c) where the information is based on gross performance, the effect of commissions, fees or other charges must be disclosed;
- d) it must contain a prominent warning that such forecasts are not a reliable indicator of future performance.

(7) Where the information mentioned in paragraph (1) refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

(8) The information mentioned in paragraph (1) shall not use the name of the National Bank of Slovakia or the name of any other competent authority in such a way that would indicate that this authority has given its support or approval to the products or services provided by the securities dealer.

(9) The information contained in a marketing communication shall be consistent with any information the securities dealer provides to clients in the course of carrying out investment services and ancillary services.

(10) Where a marketing communication contains an offer to enter into an agreement in relation to a financial instrument or investment or ancillary service with any person who responds to the communication, or contains an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment or ancillary service, and the communication also specifies the manner of response or includes a form by which any response may be made, it shall include such of the information referred to in Article 73d as is relevant to that offer or invitation.

(11) The provision of paragraph (10) shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential retail client must refer to another document or documents, which alone or in combination, contain that information.

(12) By a decree to be promulgated in its full text in the Collection of Laws, the National Bank of Slovakia may lay down details of what is meant by 'marketing communication' under paragraphs (1) to (11).

## **ARTICLE 73d**

(1) A securities dealer shall provide information in a comprehensible form to clients or potential clients about:

- a) the securities dealer and its services;
- b) financial instruments and proposed investment strategies, including appropriate guidance on and warnings of the risks associated with investments in these instruments or in respect of particular investment strategies, and about the safeguarding of client financial instruments or client funds;
- c) execution venues;
- d) costs and associated charges;

so that they are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis.

(2) A securities dealer shall, in good time before a retail client or potential retail client is bound by any agreement for the provision of investment services or ancillary services or before the provision of those services, whichever is the earlier, provide that client or potential client with the following information:

- a) the terms of any such agreement;
- b) the information required by paragraph (1)(a) relating to that agreement or those investment or ancillary services.

(3) The information referred to in paragraphs (1), (2) and (6) to (8), in the case of retail clients, and in paragraphs (6) and (7), in the case of professional clients, shall be provided in good time before the provision of the respective investment service or ancillary service, in a durable medium or by means of a website provided that the conditions specified in Article 73v are satisfied. This information may be provided in a standardized format.

(4) In the following circumstances, the information required under paragraph (2) may be provided immediately after the client is bound by the agreement for the provision of investment services or ancillary services, and the information required under paragraph (1), immediately after the provision of the service has commenced:

- a) the securities dealer is unable to comply with the time limits specified in paragraph (3) because, at the request of the client, the agreement was concluded using a means of distance communication which prevents the securities dealer from providing the information in accordance with paragraph (1) or (2);
- b) in any case where the provisions of a separate law<sup>58ha)</sup> do not otherwise apply, the securities dealer complies with the requirements of that law<sup>58ha)</sup> in relation to the retail client or potential retail client, as if that client or potential client were a 'consumer' and the securities dealer were a 'supplier' within the meaning of that law.<sup>58ha)</sup>

(5) A securities dealer shall notify the client without delay about any material change to the information provided under paragraph (1) which is relevant to an investment service or ancillary service that the securities dealer is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

(6) A securities dealer shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a Member State and shall indicate that the rights of the client or potential client relating to the those financial instruments or funds may differ accordingly.

(7) A securities dealer shall inform the client about the existence and the terms of any financial collateral arrangement which the securities dealer has or may have in respect of the client's financial instruments or funds, or any right of set-off it holds in relation to those instruments or funds. Where applicable, the securities dealer shall also inform the client of the fact that a person with whom his financial instruments are registered may have a security interest or lien over, or right of set-off in relation to the client's financial instruments or funds.

(8) A securities dealer, before entering into securities financing transactions in relation to financial instruments belonging to 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 in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the securities dealer with respect to the use of those financial instruments, including the terms for their restitution and on the risks involved.

(9) A securities dealer shall, when providing the investment service of portfolio management, establish an appropriate method of evaluation and comparison, based on the investment objectives of the client and the types of financial instruments included in the client

portfolio, which the client for whom the service is provided can use as a benchmark to assess the performance of the securities dealer.

(10) In respect of shares in open-end mutual funds and securities of European mutual funds, a simplified prospectus complying with a separate law <sup>58hb)</sup> shall be regarded as appropriate information for the purposes of paragraph (1)(b) and (d) with respect to the costs and associated charges related to the open-end mutual funds or European mutual funds, including entry and exist commissions.

(11) By a decree to be promulgated in its full text in the Collection of Laws, the National Bank of Slovakia may lay down details of what is meant by 'information' under paragraph (1).

### **ARTICLE 73e**

(1) A securities dealer shall notify clients of their categorization as a retail client, professional client or eligible counterparty (Article 73u).

(2) A securities dealer shall notify clients in a durable medium about any right that client has to request a different categorization and about any limitations to the level of client protection that it would entail.

(3) A securities dealer may, either on its own initiative or at the request of the client concerned:

- a) treat as a professional or retail client a client that is an eligible counterparty;
- b) treat as a retail client a client that is considered as a professional client under Article 8a(2)(a) to (d).

### **ARTICLE 73f**

(1) When providing investment advice or portfolio management, a securities dealer shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of financial instrument or investment service or ancillary service, his financial situation and his investment objectives, so as to enable the securities dealer to recommend to the client or potential client the investment services and financial instruments that are suitable for him in light of the information about his knowledge and experience.

(2) Where a specific transaction is recommended or entered into in the course of portfolio management, the information that the securities dealer obtains under paragraph (1) must be such as is necessary to enable it to assess whether the transaction satisfies the following criteria:

- a) it meets the investment objectives of the client in question;
- b) it is such that the client is able financially to bear any related investment risk consistent with his investment objectives;
- c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(3) Where a securities dealer provides an investment service to a professional client, it is entitled to assume that, in relation to the products, transactions and services for which it is so classified, the client has the necessary level of knowledge and experience for the purposes of paragraph (2)(c). In the case that it provides investment advice to a professional client covered by Article 8a(2)(a) to (d), the securities dealer shall be entitled to assume for the purposes of paragraph (2)(b) that the client is able financially to bear any related investment risk consistent with his investment objectives.

(4) The information regarding the financial situation of the client or potential client under paragraph (1) shall include information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

(5) The information regarding the investment objectives of the client or potential client under paragraph (1) shall include information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of his investment.

(6) Where, when providing investment advisory or the investment service of portfolio management, a securities dealer does not obtain the information required under paragraph (1), the securities dealer shall not recommend investment services or financial instruments to the client or potential client.

### **ARTICLE 73g**

(1) When providing investment services other than those referred to in Article 73f, a securities dealer shall ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of financial instrument, investment service or ancillary service offered or demanded so as to enable the securities dealer to assess whether the client understands the risks involved in relation to that financial instrument, investment service or ancillary service offered or demanded and whether it is appropriate for the client.

(2) For the purposes of paragraph (1), a securities dealer shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or ancillary services or transactions, or types of transaction or financial instrument, for which the client is classified as a professional client.

(3) Where the securities dealer considers, on the basis of the information received under the previous paragraph, that the financial instrument or investment service or ancillary service is not appropriate to the client or potential client, the securities dealer shall warn the client or potential client. This warning may be provided in a standardized format.

(4) Where the client or potential client elects not to provide the information referred to under paragraph (1), or where he provides insufficient information regarding his knowledge and experience, the securities dealer shall warn the client or potential client that such a

decision will not allow the securities dealer to determine whether the investment service or ancillary service or financial instrument envisaged is appropriate for him. This warning may be provided in a standardized format.

(5) The information regarding a client's or potential client's knowledge and experience in the investment field as required under Article 73f and paragraph (1) shall include the following information, to the extent appropriate to the nature of the client, the nature and extent of the investment service or ancillary service to be provided and type of financial instrument or transaction envisaged, including their complexity and the risks involved:

- a) the types of investment service or ancillary service, transaction and financial instrument with which the client is familiar;
- b) the nature, volume and frequency of the client's transactions in financial instruments and the period over which they have been carried out;
- c) the level of education, and profession or relevant former profession of the client or potential client.

(6) A securities dealer shall not encourage a client or potential client not to provide information required for the purposes of Article 73f and paragraph (1).

(7) A securities dealer shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware the information is manifestly inaccurate or incomplete.

## **ARTICLE 73h**

(1) When providing investment services under Article 6(1)(a) or Article 6(1)(b), a securities dealer shall not be subject to Article 73g provided that the following conditions are met:

- a) the investment service in question relates to:
  1. shares admitted to trading on a regulated market or in an equivalent market in a non-Member State. A market in a non-Member State shall be considered as equivalent to a regulated market if it complies with equivalent requirements to those established by separate law,<sup>58hc)</sup> and it is stated in the list compiled by the Commission;
  2. money market instruments;
  3. bonds or other forms of securitized debt, excluding those securities that embed a derivative;
  4. shares in open-end mutual funds and securities of European mutual funds;
  5. non-complex financial instruments other than those mentioned in points one to four which meet the criteria set out in paragraph (2);
- b) the investment service is provided at the initiative of the client or potential client;
- c) the client or potential client has been clearly informed that in the provision of this service the securities dealer is not required to assess the suitability of the financial instrument or investment service provided or offered and that therefore he does not benefit from the corresponding protection based on rules for the conduct of business with clients as provided for in this Act; this warning may be provided in a standardized format;
- d) the securities dealer complies with its obligations under Article 71(l).

(2) For the purposes of point five of paragraph (1)(a), 'non-complex financial instrument' means a financial instrument which satisfied the following criteria:

- a) it is not a financial instrument in the meaning of point three of Article 8(m) or Article 5(1)(d) to (j);
- b) there are frequent opportunities to dispose of, redeem or otherwise realize that financial instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;
- c) it does not involve any actual potential liability for the client that would exceed the cost of acquiring the financial instrument;
- d) adequately comprehensive information on the characteristics of the financial instrument is publicly available and likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

### **ARTICLE 73i**

(1) The securities dealer shall establish a record that includes all the documents agreed between the securities dealer and the client that set out the rights and obligations of the parties, and the other terms on which the securities dealer will provide investment services or ancillary services to the client. The rights and obligations of the parties may also be stated in the record by reference to other documents or generally binding legal regulations.

(2) A securities dealer that provides an investment service other than investment advice to a non-professional shall enter into a written basic agreement in paper or another durable medium, with the client setting out the essential rights and obligations of the securities dealer and client. The rights and duties of the parties to that agreement may be incorporated by reference to other documents or generally binding legal regulations.

### **ARTICLE 73j**

(1) The securities dealer must provide the client with adequate reports on its investment services, including in particular the costs associated with the transactions and services undertaken on behalf of the client. Where a securities dealer has carried out an order, other than for the investment service of portfolio management, it shall:

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

(2) Paragraph (1)(b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person. Paragraph 1 shall not apply where orders executed on behalf of clients relate to bond funding mortgage loan agreements with the said clients, in which case the report on the

execution of the order shall be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.

(3) A securities dealer shall supply the client, on request, with information about the status of his order.

(4) In the case of orders for retail clients relating to shares in mutual funds or securities of foreign collective investment undertakings which are executed periodically, the obligation of the securities dealer under paragraph 1(b) shall be considered fulfilled provided that at least once every six months it provides the retail client with the information listed in paragraph (5) in respect of those transactions.

(5) The notice referred to in paragraph (1)(b) shall include the following information in accordance with a separate regulation:<sup>58hd)</sup>

- a) the identification of the securities dealer that sent the notice;
- b) the forename and surname or the business name or title under which the transaction was executed;
- c) the date and trading day;
- d) the trading time;
- e) the type of the order;
- f) the venue identification;
- g) the financial instrument identification;
- h) the buy/sell indicator of the financial instrument;
- i) the nature of the order if other than buy/sell;
- j) the quantity of the financial instrument;
- k) the unit price;
- l) the total consideration;
- m) the total sum of the accounting commissions and expenses charged and, where the retail client so requests, an itemized breakdown;
- n) the client's obligations in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and obligations have not previously been notified to the client;
- o) if the client's counterparty was the securities dealer itself or any person in the securities dealer's group or another client of the securities dealer, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

(6) For the purposes of paragraph (5)(k), where the order is executed in tranches, the securities dealer may supply the client with information about the price of each tranche or the average price. Where the average price is provided, the securities dealer shall provide the retail client with information about the price of each tranche upon request.

(7) The securities dealer may provide the client with the information referred to in paragraph (5) using standard codes if it also provides an explanation of the codes used.

## **ARTICLE 73k**

(1) A securities dealer which provides the investment service of portfolio management shall provide the client with a periodic statement in a durable medium of the portfolio

management activities carried out on behalf of that client, unless such a statement is provided by another person.

(2) In the case of retail clients, the periodic statement required under paragraph (1) shall include the following information:

- a) the business name of the securities dealer;
- b) the name or other designation of the retail client's account;
- c) a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable, the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;
- d) the total amount of fees and charges incurred during the reporting period, itemizing at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;
- e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the securities dealer and the client;
- f) the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;
- g) information about other actions of the securities dealer giving rights in relation to financial instruments held in the portfolio;
- h) for each transaction executed during the period, the information referred to in Article 73j(5)(c) to (l), unless the client elects to receive information about executed transactions on a transaction-by-transaction basis under paragraph (4).

(3) In the case of retail clients, the periodic statement referred to in paragraph (1) shall be provided once every six months. Where the retail client so requests, the securities dealer shall provide the periodic statement once every three months; the securities dealer shall inform retail clients that they have this right. In cases where paragraph (4) applies, the periodic statement shall be provided at least once every 12 months, unless the transactions are in financial statements covered by Article 73h(2)(a). Where the agreement between a securities dealer and a retail client for a portfolio management service authorized a leveraged portfolio, the periodic statement shall be provided at least once a month.

(4) In cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, the securities dealer shall provide promptly to the client essential information concerning that transaction in a durable medium. Where the client concerned is a retail client, the securities dealer shall send him a notice confirming the transaction and containing the information referred to in Article 73j(5) no later than the first business day following that execution or, if the confirmation is received by the securities dealer from a third party, no later than the first business day following receipt of the confirmation from the third party. The provision of the second sentence shall not apply where the confirmation would contain the same information as that contained in the confirmation to be promptly dispatched to the retail client by another person.

(5) Where a securities dealer provides portfolio management transactions or operates client accounts that include an uncovered open position in a contingent liability transaction, it shall also report to the client any losses exceeding any predetermined threshold, agreed between the securities dealer and the client, no later than the end of the business day in which

the threshold is exceeded or, if the threshold is exceeded on a non-business day, the close of the next business day.

### **ARTICLE 73l**

(1) A securities dealer that holds client financial instruments or client funds shall send at least once a year, to each client concerned, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement.

(2) Paragraph (1) shall not apply to a credit institution or foreign credit institution whose registered office is in a Member State in respect of deposits held by that institution.

(3) The statement referred to in paragraph (1) shall include the following:

- a) details of all the financial instruments or funds held by the securities dealer for the client at the end of the period covered by the statement;
- b) the extent to which any client financial instruments or client funds have been the subject of securities financing transactions;
- c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transaction, and the basis on which that benefit has accrued.

(4) Where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in paragraph (3)(a) may be based either on the trade date or the settlement date, provided that the same basis is applied to all such information in the statement.

(5) A securities dealer which holds financial instruments or funds and carries out the investment service of portfolio management for a client shall include the statement referred to in paragraph (1) in the periodic statement it provides under Article 73k.

### **ARTICLE 73m**

In cases where an investment service is offered as part of a financial product which is subject to the provisions of a separate regulation<sup>58he)</sup> or Member States' legislation related to credit institutions and consumer credits and governing risk assessment of clients or disclosure obligations, this investment service shall not be subject to the obligations set out in Article 73b to 73l provided that they have already been satisfied on the basis of those regulations.

### **ARTICLE 73n**

(1) Where a securities dealer receives an instruction to perform investment or ancillary services on behalf of a client through the medium of another securities dealer, it may rely on the client information transmitted by the latter securities dealer. The securities dealer which mediates the instruction will remain responsible for the completeness and accuracy of the information transmitted.

(2) A securities dealer that receives an instruction to undertake an investment service or ancillary service on behalf of a client in the way described in paragraph (1) shall also be able to rely on any recommendations in respect of the investment service or ancillary service or transaction that have been provided to the client by another securities dealer. The securities dealer which mediates the instruction will remain responsible for the reliability of the recommendation.

(3) The provisions of paragraphs (1) and (2) are without prejudice to the fact that a securities dealer under this Act which receives client instructions through the medium of another securities dealer shall remain responsible for performing the investment service, or ancillary service or transaction, based on any such information or recommendations, in accordance with paragraphs (1) and (2).

### **ARTICLE 73o**

(1) A securities dealer shall take the steps necessary to obtain, when executing orders, the best possible results for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to execution of the order. Nevertheless, whenever there is a specific instruction from the client in regard to an order or a specific aspect thereof, the securities dealer shall execute the order following the specific instruction, and in doing so it shall be deemed to have fulfilled its obligation to obtain the best possible result for its client.

(2) When executing client orders, a securities dealer shall take into account the following criteria for determining the importance of the factors referred to in paragraph (1):

- a) the characteristics of the client including the categorization of the client as a retail or professional client;
- b) the characteristics of the client order;
- c) the characteristics of financial instruments that are the subject of that order;
- d) the characteristics of the execution venues to which that order can be directed.

(3) Where a securities dealer executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order. Where there is more than one competing to venue to execute an order for a financial instrument, in order to assess the provision of the best possible results for the client, account shall be taken of the securities dealer's own commissions and costs for executing the order on each of execution venues listed in its order execution policy which is capable of executing that order.

(4) A securities dealer shall not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

(5) 'Execution venue' means a regulated market, a multilateral trading facility, a systematic internalizer, or a market maker or other liquidity provider, or an entity that performs a similar function in a non-Member State.

(6) 'Systematic internalizer' means a securities dealer which, on an organized, frequent and systematic basis, deals on own account by executing client orders outside a regulated market or a multilateral trading facility. Provision of a separate legal provision<sup>58hf)</sup> shall be used to determine whether the securities dealer is a systematic internaliser.

### **ARTICLE 73p**

(1) A securities dealer shall establish and implement an order execution policy that allows it to obtain, for its client orders, the best possible result in accordance with Article 73o. The order execution policy shall be reviewed at least annually and whenever a material change occurs that affects the ability of the securities dealer to continue to obtain the best possible result for the execution of its client orders.

(2) The order execution policy shall include, in respect of each class of instruments, information on the different venues where the securities dealer executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the securities dealer to obtain on a consistent basis the best possible result for the execution of client orders.

(3) A securities dealer shall provide its clients with appropriate information on its order execution policy, and, prior to providing investment services, the securities dealer shall obtain the consent of its clients to the order execution policy. In the case of retail clients, the securities dealer shall provide the client the following information in a durable medium, or by means of a website provided that the conditions specified in Article 73v are met, in good time prior to the provision of the service:

- a) an assessment of the importance the securities dealer assigns, in accordance with the criteria specified in Article 73o(2), to the factors referred to Article 73o(1), or the process by which it determines the importance of those factors;
- b) a list of the execution venues on which the securities dealer places significant reliance in meeting its obligation under Article 73o(1);
- c) a clear and prominent warning that any specific instructions from a client may prevent the securities dealer from proceeding in accordance with its order execution strategy in order to obtain the best possible result for the execution of orders in respect of that specific instruction.

(4) When determining what constitutes 'in good time', a securities dealer shall, according to the urgency of the situation, have regard to the time that the client requires to read and comprehend the information and the time that the client needs to react to the information prior to taking a decision thereon.

(5) Where the order execution strategy provides for the possibility that client orders may be executed outside a regulated market or a multilateral trading facility, the securities dealer shall inform its clients about this possibility. A securities dealer shall obtain a client's prior express consent before proceeding to execute his order outside a regulated market or a multilateral trading facility; this consent may be granted to the securities dealer either in the form of a general agreement or in respect of individual transactions.

(6) A securities dealer shall monitor the effectiveness of its order execution arrangements and order execution policy in order to identify and correct any deficiencies. In particular, it shall assess, on a regular basis and at least once a year, the effectiveness of the order execution policy according to whether execution venues included in the policy provide for the best possible result for the client or whether it needs to make changes to its order execution arrangements. A securities dealer shall notify clients of any material changes to its order execution arrangements or order execution policy.

(7) A securities dealer shall demonstrate to its client at his request that it has executed his order in accordance with the order execution policy.

### **ARTICLE 73r**

(1) A securities dealer, when providing the investment service of portfolio management, shall act in the interests of its client in accordance with Article 73b when placing orders with other entities for execution that result from decisions by the securities dealer to deal in financial instruments on behalf of its client; when providing a service under Article 6(1)(a), it shall act in the same way when placing orders with other entities for execution.

(2) A securities dealer shall, in the cases mentioned in paragraph (1), take steps so as to obtain the best possible result for its clients taking into account the factors referred to in Article 73o(1). The importance of these factors shall be determined in accordance with Article 73o(2) and, for retail clients, in accordance with the Article 73o(3).

(3) Where a securities dealer fulfils specific instructions of its client when placing an order with another entity for execution, it shall be deemed to have met its obligations set out in paragraph (1).

(4) A securities dealer shall establish and implement an order placement policy for the purposes of complying with the obligation in paragraph (2). The order placement strategy shall identify in respect of each class of instruments, the third parties with which the orders are placed or to which the securities dealer transmits orders for execution. Such third parties shall have regular order execution procedures implemented, which procedures shall enable the securities dealer to fulfil its obligations under this Act in placing or assigning orders for their execution to these third parties.

(5) A securities dealer shall provide clients with appropriate information on its order placement strategy.

(6) A securities dealer shall monitor the effectiveness of its order placement strategy and, in particular, the execution quality of the entities identified in that policy for the purposes of identifying and correcting any deficiencies. The securities dealer shall review the policy's effectiveness at least annually and whenever a change occurs that affects the ability of the securities dealer to continue to obtain the best possible result for its clients.

(7) The provisions of paragraphs (1) to (6) shall not apply when the securities dealer that provides the investment service under Article 6(1)(a) or (d) also executes the orders or the

decision to deal on behalf of its client's portfolio. In those cases, Article 73o and 73p shall apply.

### **ARTICLE 73s**

(1) A securities dealer which, under its investment services licence, is authorized to provide the investment service mentioned in Article 6(1)(b) shall implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders, relative to other client orders or the trading interests of the securities dealer. These procedures or arrangements shall allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the securities dealer, and the following conditions must be met:

- a) orders executed on behalf of clients must be promptly and accurately recorded and allocated;
- b) otherwise comparable client orders must be carried out sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise;
- c) where the securities dealer becomes aware of any material difficulty relevant to the proper carrying out of an order for a retail client, it shall promptly inform the client of that difficulty.

(2) Where a securities dealer is responsible for overseeing or arranging the settlement of an executed order, it shall take the steps necessary to ensure that any client financial instruments or client funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.

(3) A securities dealer shall not misuse information relating to pending client orders and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

(4) A securities dealer shall not carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:

- a) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any client whose order is to be aggregated;
- b) it must be disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
- c) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, in particular, how the volume and price of orders determines allocations and the treatment of partial executions.

(5) Where a securities dealer aggregates an order with one or more other client orders and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

(6) A securities dealer that has aggregated transactions for own account with one or more client orders shall not allocate the related trades in a way that is detrimental to a client.

(7) Where a securities dealer aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to itself. If the securities dealer demonstrates that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy.

(8) A securities dealer shall, as part of its order allocation policy, put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.

### **ARTICLE 73t**

(1) In the case of a client limit order in respect of shares admitted to trading on a regulated market which are not immediately executed under prevailing market conditions, the securities dealer shall, unless the client expressly instructs otherwise, take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants.<sup>58hf)</sup> This obligation shall be deemed to be met if the securities dealer transmits the client limit order to a regulated market or multilateral trading facility. 'Limit order' means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size.

(2) The National Bank of Slovakia may waive the obligation to make public a limit order under paragraph (1) where the order is large in scale compared with normal market size as determined under a separate law.<sup>58hg)</sup>

### **ARTICLE 73u**

(1) A securities dealer which, under its investment services licence, is authorized to provide the investment service mentioned in Article 6(1)(a), (b) or (c) may bring about or enter into transactions with eligible counterparties without being obliged to comply with the provisions of Articles 73b to 73m and 73o to 73t in respect of those transactions or in respect of any ancillary service directly related to those transactions.

(2) For the purposes of paragraph (1), the following shall be recognized as eligible counterparties:

- a) securities dealers and foreign securities dealers;
- b) credit institutions and foreign credit institutions;
- c) insurance companies, foreign insurance companies and insurance companies from another Member State;
- d) asset management companies, foreign asset management companies, mutual funds, European mutual funds, foreign investment firms and foreign mutual funds;
- e) pension fund management companies, supplementary pension companies, pension funds, supplementary pension funds, and similar foreign companies and funds;
- f) other financial institutions authorized or regulated under the law of the European Union or a Member State;
- g) persons mentioned in Article 54(3)(i) and (j);

- h) public authority bodies of the Slovak Republic or other countries, including the Debt and Liquidity Management Agency, which are charged with performing certain activities related to the management of public debt and liquidity in accordance with a separate regulation,<sup>49a)</sup> and authorities of other countries that are charged with or intervene in the management of public debt;
- i) the National Bank of Slovakia, other national central banks, and the European Central Bank;
- j) international organizations;
- k) professional clients as referred to in Article 8a(2)(a) to (c) which are not already mentioned in letters (a) to (j);
- l) professional clients as referred to in Article 8a(2)(e), at their request, only in respect of the investment services or ancillary services or transactions for which that client could be treated as a professional client.

(3) A securities dealer, when it enters into a transaction in accordance with paragraph (1) with a person mentioned in paragraph 2(k) or (l) shall obtain the confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty. This confirmation may be issued in the form of a general agreement or in respect of each individual transaction.

(4) An eligible counterparty under paragraph (2)(a) to (j) may request either on a general form or on a trade-by-trade basis, treatment as clients whose business with the securities dealer is subject to the provisions of Articles 73b to 73m and 73o to 73t. This request may be granted to the securities dealer either in the form of a general agreement or in respect of each individual transaction. Where, in the request mentioned in the first sentence, the eligible counterparty does not expressly request treatment as a retail client, the securities dealer shall treat that eligible counterparty as a professional client. However, where that eligible counterparty expressly requests treatment as a retail client, the provisions in respect of request of retail treatment specified in Article 8a shall apply.

## **ARTICLE 73v**

(1) Where, for the purposes of this Act, information is required to be provided in a durable medium, the provision of that information in a durable medium other than on paper shall be deemed to fulfil this obligation only if:

- a) the provision of the information in that durable medium is appropriate to the context in which the business between the securities dealer and the client is, or is to be, carried on;
- b) the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

(2) Where, pursuant to Article 73d and Article 73p(3), a securities dealer provides information to a client by means of a website and that information is not addressed personally to the client, it shall ensure that the following conditions are met:

- a) the provision of the information in that medium is appropriate to the context in which the business between the securities dealer and the client is, or is to be, carried on;
- b) the 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 must be up to date;
- e) the information must be accessible continuously by means of that website for such period of time as the client may need to inspect it.

(3) For the purposes of paragraphs (1) and (2), the provision of information by means of electronic communication shall be treated as appropriate to the context in which the business between the securities dealer and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address shall be treated as such evidence.

## **ARTICLE 74**

(1) A securities dealer shall calculate and systematically monitor the amount of its own funds.

(2) A parent securities dealer under Article 138(2)(a) shall calculate and systematically monitor the amount of own funds of the consolidated group.

(3) The own funds of a securities dealer shall comprise:

- a) the original own funds of the securities dealer and the supplementary own funds of the securities dealer, the total of which is reduced by the value of deductible items in accordance with a separate regulation;
- b) the additional own funds of the securities dealer.

(4) A securities dealer shall maintain its own funds at least at the level of its share capital referred to in Article 54. This is without prejudice to the provision of paragraph (5). In the case of a merger of two or more securities dealers, the own funds of the securities dealer established by the merger need not amount to the level of the share capital under Article 54 for a period which is set in a decision on prior approval issued under Article 70(1)(e); during this period, the own funds of the securities dealer established by the merger may not fall below the sum of the own funds held by the merged securities dealers at the time of the merger.

(5) A securities dealer shall permanently maintain its own funds in an amount not less than the total of:

- a) the amount corresponding to the capital requirement for the coverage of credit risk and dilution risk arising from the security dealer's activities recorded in the banking book;
- b) the amount corresponding to the capital requirement for the coverage of risk arising from positions recorded in the trading book;
- c) the amount corresponding to the capital requirement for the coverage of foreign exchange risk and commodity risk arising from the security dealer's activities recorded in the banking book and in the trading book;
- d) the amount corresponding to the capital requirement for the coverage of operational risk arising from all of the security dealer's trading activities.

(6) The own funds of a securities dealer may not fall to below one quarter of its average general operating costs for the preceding calendar year; if it is less than one year since the securities dealer was established, its own funds may not fall to below one quarter of the general operating costs set out in its business plan. The National Bank of Slovakia may adjust this requirement in the case of a major change in the securities dealer's activities over the past year.

(7) Unless otherwise provided, assets and receivables or liabilities which a securities dealer does not record in its balance sheet shall, for the purposes of calculating own funds, be valued in accordance with a separate regulation.<sup>58i)</sup>

(8) A securities dealer shall perform calculations for verifying compliance with the capital requirements laid down in paragraphs (4) to (6) as at the last day of the calendar month for which a report is to be submitted to the National Bank of Slovakia; the results of these calculations, including other required data, shall be reported to the National Bank of Slovakia in accordance with Article 77(7).

(9) By a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws, there shall be stipulated:

- a) the items constituting and the items reducing the original own funds of a securities dealer;
- b) what is included in the supplementary own funds of a securities dealer, and how such funds are to be calculated;
- c) what is included in the deductible items by which the total of the original own funds and supplementary own funds of a securities dealer is reduced, and how such items are to be calculated;
- d) what is included in the additional own funds of a securities dealer, and how such funds are to be calculated;
- e) what is included in the calculation of own funds under paragraph (2);
- f) how to calculate the own funds of a securities dealer and how to calculate the own funds of a consolidated group.
- g) particulars of the application for prior approval in accordance with paragraphs (12) and Article 173f (4) and the documents to be enclosed with the application.

(10) A securities dealer shall calculate capital requirements using the same procedure as does a bank under a separate regulation,<sup>58j)</sup> unless otherwise provided by this Act. By a decree to be promulgated in the Collection of Laws, the National Bank of Slovakia shall lay down the calculation method for capital requirements.

(11) The provision of paragraphs (1) to (10) shall not apply to a securities dealer which is authorized to provide only a core investment service under Article 6(1)(a) and is not, in the provision thereof, authorized to use the customers funds or financial instruments.

(12) A securities dealer which is not authorized to provide the investment service mentioned in Article 6(1)(c) and (f) may, subject to the prior approval of the National Bank of Slovakia, substitute the capital requirement under paragraph (5) with the higher of the following amounts:

- a) the sum of capital requirements under paragraph (5)(a) to (c);
- b) the capital requirement under paragraph (6).

(13) The provisions of paragraph (12) are without prejudice to the provisions of a separate Act<sup>15)</sup> concerning the operational risk of a securities dealer."

## ARTICLE 74a

(1) Unless otherwise provided by this Act, a securities dealer shall continuously ensure that its exposures:

- a) corresponding to positions in the trading and non-trading books, including the date when the exposures arose, do not exceed:
  1. 20% of the sum of its original, supplementary and additional own funds less the respective deductible items vis-à-vis:
    - 1a. a parent undertaking;
    - 1b. a subsidiary;
    - 1c. a group of economically-related entities constituting the parent undertaking of the securities dealer and other subsidiaries thereof; or
    - 1d. a group of economically-related entities constituting subsidiaries of the securities dealer;
  2. 25% of the sum of its original, supplementary and additional own funds less the respective deductible items vis-à-vis:
    - 2a. another entity;
    - 2b. another group of economically-related persons; or
    - 2c. countries and central banks referred to in paragraph (10);
- b) corresponding to positions in the non-trading book, including the date when the exposures arose, does not exceed:
  1. 20% of the sum of its original and supplementary own funds less the respective deductible items vis-à-vis:
    - 1a. a parent undertaking;
    - 1b. a subsidiary;
    - 1c. a group of economically-related entities constituting the parent undertaking of the securities dealer and the other subsidiaries thereof; or
    - 1d. a group of economically-related entities constituting subsidiaries of the securities dealer.
  2. 25% of the sum of its original and supplementary own funds less the respective deductible items vis-à-vis:
    - 2a. another entity;
    - 2b. another group of economically-related entities; or
    - 2c. countries and central banks set out in paragraph (10).

(2) A securities dealer may not incur large exposures which in total exceed 800% of its own funds, unless otherwise provided by this Act.

(3) If a securities dealer exceeds any of the exposure limits laid down in paragraphs (1) or (2), it shall forthwith report that fact to the National Bank of Slovakia which may, where the circumstances warrant it, allow the securities dealer a limited period of time in which to comply with the limits.

(4) A securities dealer may exceed the exposure limits laid down in paragraph (1) or paragraph (2) where:

- a) it complies with the exposure limits laid down in paragraph 1(b);
- b) in relation to exceeding the exposure limits laid down in paragraph (3), it calculates additional capital requirements of the securities dealer;

- c) it ensures that that the exposures under paragraph (7)(d) have not exceeded 500% of its own funds, provided that not more than 10 days have elapsed since the limits were exceeded;
- d) it ensures that the total amount in excess of the limits is not more than 600% of its own funds, provided that not more than 10 days have elapsed since the limits were exceeded; and
- e) it submits to the National Bank of Slovakia on a quarterly basis a report on the limits exceeded in the respective quarter; the report shall contain information on the number of instances when the limits were exceeded, the amounts involved, and vis-à-vis which entities, groups of entities or other entities the limits were exceeded.

(5) A parent securities dealer under Article 138(2)(a) shall ensure compliance with the exposure limits mentioned in paragraphs (1) to (5) also in respect of the consolidated group. When calculating the exposures of a securities dealer within a consolidated group, the exposures between entities which are included in the consolidated group under Article 138(2)(a) shall not be taken into account.

(6) For the purposes of assessing exposures, the National Bank of Slovakia may exempt an entity from a group of economically-related entities where all the entities in this group, including the securities dealer, are subject to supervision on a consolidated basis exercised by the competent supervisory authority of a Member State

(7) For the purposes of this Act, ‘exposures’ of a securities dealer shall mean the sum of:

- a) the claims and other property rights of the securities dealer, including its claims and other property rights whose establishment is contingent on the fulfilment of a condition and which are not included in the records mentioned in Article 75(5);
- b) the future claims of the securities dealer which will arise on the basis of valid agreements concluded within the performance of the securities dealer’s activities – provided that they do not give rise to the possibility of withdrawal or unilateral renunciation – which are not included in the records mentioned in Article 75(5);
- c) derivative transaction exposures not included in the records mentioned in Article 75(5);
- d) the values of positions included in the records mentioned in Article 75(5).

(8) For the purposes of this Act, ‘large exposure’ shall mean an exposure to a single entity or group of economically-related entities which is equal to or more than 10% of own funds.

(9) For the purposes of this Act, ‘group of economically-related entities’ shall mean a group of entities representing a common risk which is the fact that:

- a) one entity of this group exercises control over the other entities; or
- b) the economic interrelationships in this group are of such a nature, and it is clear in all circumstances, that if one of the entities were to experience financial difficulties, the others would be unable to pay their liabilities on time.

(10) By a decree <sup>23)</sup> to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws, there shall be stipulated:

- a) details of how to calculate the exposures of a securities dealer and how to calculate exposures on a consolidated basis under paragraphs (1), (2) and (5);
- b) details of the exposures of a securities dealer and exposures on a consolidated basis;

- c) details of a group of economic-related entities;
- d) countries and central banks under paragraph (1);
- e) what is meant by derivative transaction exposures which are not included in the records under Article 75(5) and the positions included in the records under Article 75 (5);
- f) details of how to calculate additional capital requirements under paragraph (4)(b);

#### **ARTICLE 74b**

(1) A securities dealer shall disclose information regarding itself, its activities, any corrective measures or fines imposed on it, its financial indicators, the total remuneration of all members of its statutory body and all members of its supervisory board for the performance of their duties, including remuneration for the performance of their duties paid by an entity other than the securities dealer, information regarding selected shareholders of the securities dealer in the maximum extent of the information stipulated in Article 73a(1)(a) points 1 and 2, the percentage of the capital and voting rights in the securities dealer held by each of its shareholders, the financial indicators of the consolidated group in which the securities dealer is included and the structure of this consolidated group in terms of its interrelations and composition in accordance with Article 138, and information regarding:

- a) risks, and the objectives and policies of risk management for each risk separately;
- b) the extent of the application of prudential business rules on a consolidated basis;
- c) the own funds of the securities dealer;
- d) compliance with the minimum capital and internal capital requirements of the securities dealer and the internal capital of the securities dealer;
- e) credit risk and dilution risk;
- f) risk-weighted exposures under the standardized approach for credit risk, under the internal ratings based approach and under securitization;
- g) market risk in regard to the own model used for market risk calculation;
- h) operational risk;
- i) exposures in shares not included in the trading book;
- j) exposures to interest rate positions not included in the trading book; and
- k) mitigation techniques for credit risk and operational risk.

(2) A securities dealer shall not be required to disclose immaterial information, proprietary information or confidential information, except for that stipulated in paragraphs (1) and (4); for this purpose:

- a) 'immaterial information' means information the disclosure or inaccurate disclosure of which could not change or influence the assessment or decision of a user relying on that information for the purpose of making business decisions;
- b) 'proprietary information' means information the disclosure of which would undermine the competitive position of the securities dealer or could impair the value of its investments;
- c) 'confidential information' means information which the securities dealer has undertaken vis-à-vis a customer or another counterparty to keep confidential.

(3) The provisions of paragraphs (1) and (2) shall also apply to a branch of a foreign securities dealer.

(4) By a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws, there shall be stipulated:

- a) the extent of the information mentioned in paragraph (1) which the securities dealer or branch of a foreign securities dealer is required to disclose;
- b) how often, how and by when the information mentioned in paragraph (1) is to be disclosed;
- c) the extent of the information in respect of the consolidated group under paragraph (8).

(5) An EU parent securities dealer shall disclose the information mentioned in paragraph (1)(a) to (k) also in respect of the consolidated group.

(6) A securities dealer under paragraph (5) shall disclose the information stipulated by the National Bank of Slovakia under paragraph (4) in respect of its major subsidiary.

(7) A securities dealer controlled by an EU parent financial holding company, or in which an EU parent financial holding company has a participation, shall cooperate with that financial holding company in the disclosure of information under paragraphs (1) to (4) in respect of the consolidated group.

(8) A securities dealer under paragraph (7) shall disclose the information stipulated by a Decree of the National Bank of Slovakia under paragraph (4) also in respect of the consolidated group.

(9) The National Bank of Slovakia may decide that paragraphs (5) and (6) shall not apply either in full or in part to securities dealers whose parent undertakings have their registered office in a country which is not a Member State but yet imposes on the parent undertaking whose registered office is located in its territory a disclosure obligation comparable to that imposed on a consolidated group in the Slovak Republic.

#### **ARTICLE 74c**

(1) A securities dealer shall have in place its own system for assessing the adequacy of the internal capital which it considers appropriate for the coverage of risks to which it may be exposed. The system for assessing internal capital adequacy shall correspond to the nature, scope and complexity of its activities and shall include:

- a) a strategy for managing the amount of internal capital;
- b) a procedure for determining the adequate level of internal capital, the components of internal capital and the assigning of internal capital to risks; and
- c) a system for maintaining internal capital in the required amount.

(2) For the purposes of this Act, internal capital shall mean equity and the subordinate obligations of a securities dealer which are, on the basis of the security dealer's own assessment and evaluation of the risk of potential losses, held internally and used to cover that risk.

(3) As a consequence of a sudden and unexpected change in market interest rates, the economic value of a securities dealer may not fall by more than 20% of the value of its own funds; in the event that such a change, the result of which is calculated from positions recorded in the non-trading book of the securities dealer, causes the economic value of the

securities dealer to decline by more than 20% of its own funds, the National Bank of Slovakia shall impose a corrective measure on the bank in accordance with Article 144 (1)(m).

(4) For the purposes of this Act, 'economic value' shall mean the difference between the fair value of interest rate-sensitive assets recorded in the trading book and the fair value of interest rate-sensitive liabilities recorded in the non-trading book; interest rate-sensitive assets and interest rate-sensitive liabilities are assets and liabilities whose fair value varies according to changes in market interest rates."

## **Commercial documentation**

### **ARTICLE 75**

(1) Securities dealer shall keep logbook of orders received from the clients and of transactions concluded under such orders in accordance with a separate legal provision.<sup>58hf)</sup>

(2) Securities dealer shall keep in its logbook under paragraph 1 also records of the transactions concluded by the securities dealer on its own account in accordance with a separate legal provision.<sup>58hf)</sup>

(3) A securities dealer shall retain for a period of at least five years the records referred to in paragraphs (1) and (2) and any other documentation on its provision of services. Records which set out the rights and obligations of the securities dealer and client under an agreement to provide investment or ancillary services or the terms on which the securities dealer provides investment or ancillary services to the client shall be retained for at least the duration of the relationship with the client. The National Bank of Slovakia may, in exceptional circumstances, require a securities dealer to retain any or all of those records for such longer period as is justified by the nature of the instrument or transaction, if that it is necessary to enable the proper exercise of supervision by the National Bank of Slovakia. This documentation shall be provided to the National Bank of Slovakia, at its request, without undue delay.

(4) A securities dealer shall retain the records referred to in paragraphs (1) and (2) and any other documentation on its provision of investment or ancillary services in a medium that allows the storage of information in a way accessible for future reference by the National Bank of Slovakia, and in such a form and manner that the following conditions are met:

- a) the National Bank of Slovakia must be able to access them readily and to reconstruct each key stage of the processing of each transaction;
- b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
- c) it must not be possible for the records otherwise to be manipulated or altered.

(5) A securities dealer shall maintain and manage a trading book and make daily entries therein of positions in individual financial instruments and commodities which it holds for trading or for hedging of its financial instrument or commodity transactions recorded in the trading book, provided that these financial instruments or commodities are negotiable or that these financial instrument or commodity transactions can be hedged. In maintaining a trading book, a securities dealer shall follow the same procedure as that laid down for banks

by a separate regulation. <sup>58k)</sup> Requirements for how to manage the trading book and the obligation to comply with them shall be laid down by the securities dealer in an internal regulation. Provision which may be issued by the National Bank of Slovakia and which shall be published in the Collection of Laws shall govern further details on keeping the logbook of securities dealer.

(6) The provisions of paragraph (1) to (5) shall also apply to a branch of a foreign stock brokerage firm.

(7) The National Bank of Slovakia shall draw up and maintain a list of the minimum records securities dealers are required to keep under this Act or a separate law. <sup>15)</sup>

(8) By a decree to be promulgated in its full text in the Collection of Laws, the National Bank of Slovakia may lay down details of how to maintain and store records in accordance with paragraphs (1) to (5).

## **ARTICLE 76**

(1) In addition to financial statements prepared under a separate law, <sup>59)</sup> a stock brokerage firm shall also prepare interim financial statements as at the end of each calendar quarter.

(2) A stock brokerage firm and a branch of a stock brokerage firm are obliged to translate their assets and liabilities denominated in foreign currencies into Slovak koruna on a daily basis using the exchange rate published by the National Bank of Slovakia <sup>60)</sup> applicable on the date of translation.

(3) An auditor examining the financial statements of a stock brokerage firm shall be obliged to notify the National Bank of Slovakia without undue delay of any fact found during an audit, which:

- a) indicates a breach of the stock brokerage firm's duties arising from relevant laws and other generally applicable legislation;
- b) may affect the proper operation of the stock brokerage firm; or
- c) result in the rejection of the annual financial statements or expression of reservations.

(4) Paragraph 3 applies equally to auditors examining the financial statements of persons who constitute a group with close ties with the stock brokerage firm.

(5) A non-bank securities dealer shall in writing notify the National Bank of Slovakia of the auditor whose appointment has been approved by the supervisory board of the securities dealer, and shall do so by 30 June of the calendar year for which the audit is to be performed. The National Bank of Slovakia has the option of rejecting the auditor's appointment until 30 September of that year. Where the securities dealer was issued with investment services licence during the course of the year, the notification shall be given within three months from when the decision to issue the investment services licence took effect. In that case, the National Bank of Slovakia has the option of refusing the auditor's appointment until 30 days following delivery of the notification. Within 15 days after the decision took effect, the stock brokerage firm shall give the National Bank of Slovakia written notification of a new auditor approved by the Supervisory Board of the stock brokerage firm.

(6) An entity may not be selected as an auditor if it has a special relationship with the stock brokerage firm in the meaning of Article 87(8)(a) to (g), (i) and (j), for the reasons set out in a separate regulation,<sup>60a)</sup> or if it fails to meet the obligations laid down in paragraph (3). The same applies to a natural person performing audit activities in the name of an auditing company.

(7) On the written request of the National Bank of Slovakia, auditors shall provide documents on the matters set out in paragraph (3).

(8) A securities dealer shall ensure that its auditor reports at least annually to the National Bank of Slovakia on the adequacy of the securities dealer's arrangements under Articles 71h to 71k.

### **Reporting obligation of a stock brokerage firm** **ARTICLE 77**

(1) A stock brokerage firm and a foreign stock brokerage firm is obliged to submit to the Ministry and the National Bank of Slovakia, within two months from the end of each half of the calendar, a report on its financial performance (hereinafter the "mid-year report") and, within five months from the end of a calendar year, its annual financial report (hereinafter the "annual report").

(2) An annual report shall include:

- a) audited financial statements;
- b) a report on financial situation which states the following information –
  - 1. a comparative table with data from the balance sheet and the income statement of the consolidated accounts for the past two accounting periods, if prepared by the stock brokerage firm, the procedures used to produce the consolidated accounts, the business name, registered office and identification number of the corporate entities included in the consolidated accounts;
  - 2. a summary of bank loans and other credits received, and information on their maturity broken down into short-term credits and long-term credits;
  - 3. the class, type, form, number and nominal value of issued and unpaid securities and a description of the rights attached thereto; additionally for bonds, the commencement date of their issue, the redemption date of their nominal value, the method of determining yields thereon and the date of their payment, guarantees for the redemption of the nominal value or the payment of the yields thereon, including identification information on any persons who have assumed such guarantees;
  - 4. the number and nominal value of issued bonds to which is attached a right to request, within a time period stated therein, the issue of shares, and the procedures under which they may be exchanged for shares;
- c) information on the distribution of profits or the settlement of a loss;
- d) economic and financial projections for the next calendar year.

(3) If the financial statements are not audited within the period determined in paragraph (1), a stock brokerage firm or a foreign stock brokerage firm shall supply to the Ministry and the National Bank of Slovakia the auditor's report without undue delay after receiving the report.

- (4) A mid-year report shall comprise:
- a) financial statements for the past half year and the auditor's opinion, if the financial statements have been audited;
  - b) report on the financial situation in the extent specified in Article 2(b) for the past half year,
  - c) description of any major factors which have influenced the issuer's business performance in the period covered by the mid-year report,
  - d) economic and financial projections for the next calendar half year.

(5) A stock brokerage firm is obliged to notify the National Bank of Slovakia without undue delay of any changes in its financial situation and other circumstances that may affect its ability to meet its liabilities towards clients.

(6) A stock brokerage firm and a branch of a foreign stock brokerage firm shall supply to the National Bank of Slovakia information from its accounting and statistical books in form of statements, reports or summaries in the manner and within dates set for that purpose; such disclosure shall not be deemed a breach of the obligation of confidentiality pursuant to Article 134. The extent, manner and dates for such reporting shall be specified by a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws.

(7) A stock brokerage firm and a branch of a foreign stock brokerage firm shall prepare and present to the National Bank of Slovakia statements, reports and other disclosures in a manner and within dates set for that purpose. The content, form, layout, dates, manner and place for such reporting shall be specified by a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws. The data and information shown in the statements, reports and other disclosures must be comprehensible, easy-to-follow, supported by evidence, give a true picture of the facts reported, and be delivered in time. If the statements, reports and other disclosures do not comply with the applicable methodology, or if there is a reasonable doubt as to whether they are correct and complete, the stock brokerage firm or foreign stock brokerage firm concerned shall be required, at the National Bank of Slovakia's request, to supply necessary supporting documents and necessary explanations in a period set by the National Bank of Slovakia.

## **ARTICLE 78**

(1) A securities dealer which executes transactions in any financial instruments admitted to trading on a regulated market, whether on own account or on behalf of a client shall report details of such transactions to the National Bank of Slovakia no later than the close of the following working day. This obligation shall apply whether or not such transactions were carried out on a regulated market.

(2) The National Bank of Slovakia, in the course of cooperation with competent authorities of Member States, shall in accordance with a separate regulation <sup>60b)</sup> establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity <sup>60c)</sup> for the financial instruments mentioned in paragraph (1) receives this information in accordance with a separate regulation. <sup>60d)</sup>

(3) The report referred to in paragraph (1) shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and

time of execution, and the transaction prices and means of identifying the securities dealers to the extent set out in a separate regulation.<sup>60e)</sup>

(4) The obligation under paragraph (1) shall be deemed to be fulfilled when the required information in scope set out in paragraph (3) has been provided to the National Bank of Slovakia in the manner stipulated in a separate regulation by:<sup>60f)</sup>

- a) a person acting on behalf of the securities dealer;
- b) a trade-matching or reporting system approved by the National Bank of Slovakia in accordance with a separate regulation;<sup>60f)</sup> or by
- c) the regulated market or multilateral trading facility through whose system the transaction was completed.

(5) When, in accordance with Article 67(3), reports provided for under paragraphs (1) to (4) are transmitted to the National Bank of Slovakia, it shall transmit this information to the competent authority of the home Member State of the securities dealer, unless otherwise agreed. National Bank of Slovakia may agree with the competent authority of a host Member State not to receive reports referred to in paragraphs (1) to (4) that were provided to that competent authority in accordance with Article 66(4).

## **ARTICLE 78a**

(1) A systematic internalizer shall, in the manner prescribed in a separate regulation<sup>60g)</sup> publish a firm quote in those shares admitted to trading on a regulated market for which it is a systematic internalizer and for which there is a liquid market.<sup>60h)</sup> In the case of shares for which there is not a liquid market, a systematic internalizer shall disclose quotes to its clients on request.

(2) A systematic internalizer may decide the size or sizes at which it will make a firm quote in the shares referred to in paragraph (1). For a particular share each quote shall include a firm bid or offer price or prices for size or sizes which could be up to standard market size,<sup>60i)</sup> for the class of shares to which the share belongs. The prices shall also reflect the prevailing market conditions<sup>60j)</sup> for these shares.

(3) For the purposes of calculating the standard market size, shares shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that share. The standard market size for each class of shares shall be a size representative of the arithmetic average value of the orders executed in the market for the shares included in each class of shares. The market for each share shall be comprised of all orders executed in the European Union in respect of that share, excluding those large in scale compared to normal market size for that share.

(4) Where the National Bank of Slovakia is designated as the competent authority of the most relevant market in terms of liquidity as defined in Article 78, it shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that share, the class of shares to which it belongs in accordance with a separate regulation.<sup>60k)</sup> This information shall be published on its website.

(5) A systematic internalizer shall make public its quotes on a regular and continuous basis during normal trading hours. It shall be entitled to update its quotes at any time. It may, under exceptional market conditions, withdraw its quotes.

(6) Quotes shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.<sup>60l)</sup>

(7) A systematic internalizer shall be deemed to have fulfilled the obligation to obtain the best possible result for its clients in accordance with Article 73o where it executes orders from its retail clients in relation to the shares for which it is a systematic internalizer at the quoted prices at the time of reception of the order.

(8) A systematic internalizer shall execute the orders it receives from professional clients in relation to the shares for which it is a systematic internalizer at the quoted price at the time of reception of the order. It may execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size bigger than the size customarily undertaken by a retail investor.<sup>60m)</sup>

(9) The provisions of paragraph (8) shall not apply in the case of transactions where execution in several securities is part of one transaction,<sup>60n)</sup> or in respect of orders that are subject to conditions other than the current market price.<sup>60n)</sup>

(10) Where a systematic internalizer who quotes only one quote or whose highest quote is lower than the standard market size receives an order from a client of size bigger than its quotation size, but lower than the standard market size, it may decide to exercise that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the provisions of paragraphs (8) and (9). Where the systematic internalizer is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with the provisions of Article 73o, except where otherwise permitted under the provisions of paragraphs 8 and 9.

(11) A securities dealer shall:

- a) regularly update bid and offer prices published in accordance with paragraph (1) and maintain prices which reflect the prevailing market conditions;
- b) comply with the conditions for price improvement laid down in paragraph (8).

(12) A systematic internalizer may decide, on the basis of its commercial policy and in an objective non-discriminatory way, the investors to whom it gives access to its quotes. To that end there shall be clear standards for governing access to its quotes. A systematic internalizer may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

(13) In order to limit the risk of being exposed to multiple transactions from the same client, a systematic internalizer may limit in a non-discriminatory way the number of transactions from the same client which it undertakes to enter at the published conditions of the investment service. It may also, in a non-discriminatory way and in accordance with the

provisions of Article 73o, limit the total number of transactions from different clients at the same time provided that number or volume of orders sought by clients considerably exceeds the norm.

(14) The provisions of paragraphs (1) to (13) shall be applicable to systematic internalizers when dealing for sizes up to standard market size. Systematic internalizers that only deal in sizes above standard market size shall not be subject to the provisions of paragraphs (1) to (13).

## **ARTICLE 78b**

(1) A securities dealer which, either on own account or on behalf of clients, concludes transactions in shares admitted to trading on a regulated market outside a regulated market or multilateral trading facility shall make public in accordance with a separate regulation<sup>60o)</sup> the information set out in a separate regulation,<sup>60p)</sup> in particular, the volume and price of those transactions and the time at which they were concluded. This information shall be made public as close to real-time as possible, on a reasonably commercial basis, and in a manner which is easily accessible to other market participants.<sup>60l)</sup>

(2) The information which is made public in accordance with paragraph (1) and the time limits within which it is published shall be subject to the provision of a separate law,<sup>58hg)</sup> including the possibility to defer reporting for certain categories of transaction in shares as set out in a separate regulation.<sup>58hg)</sup>

(3) The provisions of paragraphs (1) and (2) shall apply, as appropriate, to bonds admitted to trading on a regulated market in the Slovak Republic. The rules of a stock exchange or multilateral trading facility may prescribe a different method for making public the information mentioned in paragraph (1) insofar as it concerns such bonds, and for disclosing the time limits and deferral option mentioned in paragraph 2.

## **ARTICLE 79**

(1) A legal person or a natural person intending to reduce its interest in the share capital or voting rights of a stock brokerage firm below 50%, 33% or 20%, or so that the securities dealer ceases to be a subsidiary of another parent undertaking, in one or several operations, or by action in concert,<sup>55)</sup> must notify the fact to the National Bank of Slovakia in writing.

(2) A notification pursuant to paragraph (1) must contain:

- a) name, birth registration number, and permanent residence, if a natural person, or business name, identification number, and registered office, if a legal person,
- b) the extent to which the legal or natural person intends to reduce its interest pursuant to paragraph (1) in the share capital of a stock brokerage firm.

(3) A stock brokerage firm is obliged to notify the National Bank of Slovakia of any change in its share capital, which results in the interest of a single person, or several persons acting in concert,<sup>55)</sup> growing above 10%, 20%, 33%, or 50%, or in the interest of a single

person, or several persons acting in concert<sup>55</sup>, falling below 50%, 33%, 20%, or 10%, without undue delay after becoming aware of the fact.

(4) A stock brokerage firm shall submit a list of its shareholders to the Ministry and the National Bank of Slovakia by 31 March of a calendar year.

### **ARTICLE 79a**

(1) A bank or foreign bank may provide investment services, investment activities and ancillary services where these are stated in its banking licence.

(2) The provisions of Articles 61a(1), (2), (4) to (9), 71 to 71o, 73 to 73v, 75, 76, 78, 78a, 78b, 80 to 98, 104, 135, 135a and 144 and the provisions of a separate law<sup>60r</sup> shall also apply to banks and foreign banks which provide one or more investment services unless otherwise provided in this Act. Banks and foreign banks that provide one or more investment services on the basis of the freedom to provide services as provided for under a separate law<sup>60s</sup> shall be subject to the provisions of Articles 61a(1), (2), (4) to (9), 63, 66(4), 67(3) to (5), 68, 75(3) and (4), 78, 78a, 78b, 104, 135, 135a and 144 and a separate law.<sup>60r</sup>

(3) The freedom to provide service within the European Economic Area shall not extend to the provision of investment services as counterparty in transactions carried out by public authorities charged with the management of public debt or by members of the European System of Central Banks performing their tasks as provided for by the Treaty establishing the European Community and the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions in accordance with the laws of a Member State.

(4) The provisions of Articles 8a, 71 to 71o, 73b to 73v, 76(8), 78 to 78b and provisions on the operation of a multilateral trading facility and on requirements for transparency in trading as set out in a separate regulation<sup>58hc</sup> shall also apply to the performance of activities in the territory of the Slovak Republic by foreign securities dealers whose registered office is in a non-Member State.

## PART FIVE

### INVESTMENT GUARANTEE FUND

#### ARTICLE 80

(1) An Investment Guarantee Fund is hereby established (hereinafter referred to as "the Fund"), which shall collect financial contributions (hereinafter "contributions") of stock brokerage firms, branches of foreign stock brokerage firms, asset management companies, and branches of foreign asset management companies to provide compensation for inaccessible client assets received by a stock brokerage firms, foreign stock brokerage firms, asset management companies, and foreign asset management companies providing an investment service, and shall use the funds raised in accordance with this Act.

(2) The Fund is a legal person registered in the Commercial Register. Detailed provision on the activities of the Fund and its organisation shall be laid down by the statutes of the Fund in accordance with this Act. The activities and tasks performed by the Fund under this Act shall not be deemed business activities.<sup>61a)</sup>

(3) The Fund is not a state fund as defined by a separate law.<sup>61)</sup>

#### ARTICLE 81

(1) For the purposes of this Act, client assets means funds and financial instruments of a client entrusted to a security dealer or to a foreign securities dealer in relation to performing an investment service or ancillary services pursuant to Article 6 (2) (a), including the financial instruments and funds obtained for these values, if the client is:

- a) a natural person, including a natural person-entrepreneur;
- b) a foundation,<sup>62)</sup> non-investment fund,<sup>63)</sup> non-profit organisation providing generally beneficial services,<sup>64)</sup> civil association,<sup>65)</sup> or an association of owners of residential and non-residential premises,<sup>66)</sup>
- c) a legal person other than those mentioned in letter (b), except for:
  1. a bank, insurance company, supplementary pension insurance company, asset management company including investment fund assets, pension fund management company including pension fund assets,<sup>66a)</sup> stock brokerage firm other than a bank, central depository, stock exchange, commodity exchange,<sup>67)</sup> post office,<sup>68)</sup> legal person operating lotteries or other games,<sup>69)</sup> the Export-Import bank of the Slovak Republic,<sup>70)</sup>
  2. a Slovak legal person not mentioned in subparagraph (1), or a foreign legal person with at least a partly similar line of business as any of the legal persons listed in subparagraph (1);
  3. a legal person not mentioned in subparagraphs (1) and (2) which is required under a separate law<sup>71)</sup> to have its financial statements audited;
  4. the state, a state budget-funded organisation, state budget-supported organisation, state fund, town, higher territorial unit, and public administration authorities;
  5. a legal person established by law not covered by subparagraphs (1) to (4);
  6. a legal person controlling a stock brokerage firm or a foreign stock brokerage firm or controlled in the meaning of Article 138 by a stock brokerage firm or a foreign stock brokerage firm in which, or in the branch of which, the client assets are maintained.

- (2) Client assets pursuant to paragraph (1) are also deemed to include:
- a) joint client assets which, according to records made by a stock brokerage firm or foreign stock brokerage firm before the client assets become inaccessible pursuant to Article 82(1), were kept for several clients, with information on individual clients having at least the extent specified in paragraph (5)(a);
  - b) assets in notarial custody with a stock brokerage firm or foreign stock brokerage firm, where the eligible beneficiary of financial instruments or funds in custody is or should be an entity whose assets are protected under this Act, if before the date the client assets become inaccessible pursuant to Article 82(1), a notary administering the notarial custody delivers a written notice to the stock brokerage firm or foreign stock brokerage firm concerned containing information on eligible beneficiaries at least in the extent specified in paragraph 4(a).

(3) Client assets as defined in paragraphs (1) and (2) shall be protected in the extent and under terms and conditions specified in this Act.

(4) A client's funds accepted by a stock brokerage firm or a branch of a foreign stock brokerage firm and kept in accounts covered by protection under a separate law <sup>71)</sup> shall not constitute client assets.

- (5) For the purposes of this Act, the following are not client assets:
- a) client assets which, according to records made by a stock brokerage firm or foreign stock brokerage firm before the client assets become inaccessible pursuant to Article 82(1), were not kept for the client with at least the following minimum extent of client information:
    - 1. name, birth registration number or date of birth, and permanent residence of the client, if a natural person;
    - 2. name, identification number, if assigned, and registered office of the client, if a legal person, whose client assets are protected under this Act, as well as the name, and permanent residence of a person or persons constituting or participating in the statutory body of the legal person;
  - b) joint client assets in the case of which the conditions defined in paragraph 2(a), are not met;
  - c) notarial custody in the case of which the conditions defined in paragraph 2(b), are not met.

## **ARTICLE 82**

- (1) Inaccessible client assets are client assets accepted by:
- a) a stock brokerage firm or foreign stock brokerage firm which has been declared incapable of meeting its liabilities towards clients pursuant to Article 86(3);
  - b) a stock brokerage firm or foreign stock brokerage firm whose use of client assets has been suspended by a court order, provided that such an order became executable before a declaration pursuant to Article 86(3).

(2) Securities and other financial instruments accepted by a stock brokerage firm pursuant to paragraph (1) which the stock brokerage firm or foreign stock brokerage firm is able to return to the client without damaging the claims of other clients, are not inaccessible client assets.

## **ARTICLE 83**

### **Participation in client protection**

(1) A stock brokerage firm licensed by the National Bank of Slovakia to provide investment services is obliged to participate in client protection in the meaning of this Act and to pay contributions for this purpose to the Fund.

(2) Foreign stock brokerage firms are obliged to participate in client protection and pay contributions under this Act to the full extent if the client assets accepted by their branches:

- a) are neither protected nor insured in the country in which the foreign stock brokerage firm has its registered office; or
- b) are protected or insured in the country in which the foreign stock brokerage firm has its registered office to a lesser extent than stipulated in this Act.

(3) A foreign stock brokerage firm is not obliged to participate in client protection in the meaning of this Act if the client assets accepted by a branch of the foreign stock brokerage firm are protected at least in the extent stipulated in this Act in the country where the foreign stock brokerage firm has its registered office, and if reciprocity is guaranteed.

(4) The obligation to participate in client protection does not apply to stock brokerage firms with its registered office in the Slovak Republic in the extent of client assets accepted by its branch located in a country whose law requires that client assets be protected or insured, irrespective of the client protection scheme applied in the Slovak Republic.

(5) Compensation for inaccessible client assets in a branch of a foreign stock brokerage firm which participates in client assets protection or insurance in the country in which the founding foreign stock brokerage firm has its registered office may not be higher than compensation provided under this Act.

(6) The obligation of a stock brokerage firm and a foreign stock brokerage firm to participate in client protection under this Act arises on the date a decision to grant it a licence to provide investment services comes into force, unless otherwise provided in this Act.

(7) The level and extent of client protection under this Act may not be used for economic competition or advertising purposes.<sup>73)</sup> This is without prejudice to the provisions of Article 98.

(8) The provisions of this Act which apply to stock brokerage firms shall apply equally to foreign stock brokerage firms pursuant to paragraph (2), unless individual provisions of this part contain separate provisions concerning foreign stock brokerage firms; the provisions of this part shall apply equally to asset management companies and foreign asset management companies where an obligation to participate in client protection is imposed upon them by a separate law.<sup>73a)</sup>

## **ARTICLE 83a**

(1) A stock brokerage firms which participates in a client protection scheme in the meaning of this Act and which, owing to a merger or consolidation with a foreign stock brokerage firm or the sale of an undertaking or a part of an undertaking of the stock brokerage

firm to a foreign stock brokerage firm or another reason, should terminate or substantially restrict its participation in the client protection scheme referred to in this Act, while the stock brokerage firm itself, or its legal successor, will continue to provide investment services in the territory of the Slovak Republic and to participate in the client protection scheme in another country pursuant to Article 83(2) and (3), shall in the interests of client of client protection ensure that this changeover is effected without reducing the scope of protection for the client assets that the stock brokerage firm has already accepted.

(2) A stock brokerage firm shall prior to effecting the change mentioned in paragraph (1) ensure that the following detailed and comprehensible information is displayed prominently and in the Slovak language at all its business premises:

- a) information about the preparations and planned timeframe for the change in the stock brokerage firm's participation in the client protection scheme and about the implications of this change for clients; this information shall be published in the business premises of the stock brokerage firm or its legal successor and shall be regularly updated until at least 12 months after this change has taken place;
- b) information about the client protection scheme which, following the change in the stockbrokerage firm's participation in the scheme of client protection, shall ensure the protection of client assets that the stock brokerage firm has accepted, and this information shall include in particular the precise designation of this client protection scheme, the rules on protecting client assets in this scheme and the rules on the payment of compensation for inaccessible assets in this scheme, including the places and times for the claiming and payment of compensation; this information shall be displayed at all the business premises of the stock brokerage firm or its legal successor and shall be continuously updated for so long as it provides investment services in the territory of the Slovak Republic.

(3) The stock brokerage firm mentioned in paragraph (1) shall prior to changing its participation in the client protection scheme under paragraph (1):

- a) give the Fund and the National Bank of Slovakia written notification of exact date of the change in its participation in the client protection scheme and demonstrate to them that this change will be made without reducing the scope of protection for client assets in comparison with the protection of client assets laid down by this Act;
- b) conclude in writing with each client whose assets are subject to the change in the client protection scheme a separate agreement governing the consequences that this change of the client protection scheme will have on the client and his assets; if the client decided to withdraw his assets or transfer them elsewhere, the stock brokerage firm shall allow him to do so without imposing any sanctions whatsoever;
- c) pay the Fund in a verifiable way any outstanding annual contributions or the unpaid part of the annual contribution for the calendar year during which the stock brokerage firm changes its participation in the deposit protection scheme pursuant to paragraph (1);
- d) pay the Fund in a verifiable way any extraordinary contribution in an amount equal to -
  1. the upper limit of the range of the extraordinary contribution rate, if as of the date of the change in the stock brokerage firm's participation in the deposit protection scheme mentioned in paragraph (1), a shortage of funds precludes the repayment of a loan provided to the Fund to secure the payment of compensation for inaccessible client assets; or
  2. the mid-range of the extraordinary contribution rate, if as of the date of the change in the stock brokerage firm's participation in the deposit protection scheme mentioned in paragraph (1), the provision of subparagraph (1) does not apply to the stock brokerage

firm and, owing to a shortage of funds, the Fund does not have enough money to secure the payment of compensation in the amount of at least 1.5% of the value of all client assets protected in accordance with this Act.

(4) Fulfilment of the obligations of a stock brokerage firm as set out in paragraphs (1) to (3) represents a condition precedent for the change of a stock brokerage firm's participation in the client protection scheme pursuant to this Act.

(5) Members of the Fund's bodies who represent a stock brokerage firm shall cease to be members of the Fund's bodies as of the day when the stock brokerage firm terminates its participation in the client protection scheme pursuant to this Act.

(6) Foreign stock brokerage firms providing investment services in the territory of the Slovak Republic in accordance with Article 65 or Article 66 shall also display the information for clients mentioned in paragraph 2(b) at all their business premises in the Slovak Republic, while not having participated nor participating in the protection of client assets pursuant to this Act.

#### **ARTICLE 84**

##### **Contributions of stock brokerage firms to the Fund**

(1) Stock brokerage firms shall be obliged to pay into the Fund the following contributions:

- a) initial contribution,
- b) annual contribution,
- c) extraordinary contribution.

(2) The initial contribution is a one-time contribution of a stock brokerage firm.

(3) The annual contribution is a regular contribution of a stock brokerage firm designed to raise the Fund's resources.

(4) An extraordinary contribution is a contribution of a stock brokerage firm intended to replenish the Fund's resources set aside to provide compensation for inaccessible client assets, should the need arise for replenishment of the Fund resources for expenditures as a result of payments of compensation for inaccessible client assets or repayment of a loan taken to ensure the payment of compensation for inaccessible client assets.

(5) The initial contribution is:

- a) SKK 5,000 for a securities dealer pursuant to Article 54(13) and a similar foreign securities dealer,
- b) SKK 12,000 for a securities dealer pursuant to Article 54(12) and a similar foreign securities dealer,
- c) SKK 70,000 for other stock brokerage firms and foreign stock brokerage firms.

(6) The yearly contribution for the relevant year is set by the fund in advance for the whole year at the latest on 20 December of the previous year as follows:

- a) to a securities dealer pursuant to § 54 Section 13 and a similar foreign securities dealer ranging from 0.1 % to 1 % of the yearly amount of fees charged to clients for investment services and ancillary services rendered pursuant to § 6 Section 2 a), however, minimum SKK 2,500,
- b) to the securities dealer pursuant to § 54 Section 12 and a similar foreign securities dealer ranging from 0.5 % to 2 % of the yearly amount of fees charged to clients for investment services and ancillary services rendered pursuant to § 6 Section 2 a) or ranging from 0.01 % to 2 % of the value of client assets calculated as an arithmetic mean of the values of these assets shown in the business documentation of a securities dealer as at the end of the last day of each month, however, minimum SKK 12,000,
- c) to other securities dealers and foreign securities dealers ranging from 1 % to 3 % of the yearly amount of fees charged to clients for investment services and ancillary services rendered pursuant to § 6 Section 2 a) or ranging from 0.01% to 2% of the value of client assets calculated as an arithmetic mean of the values of these assets shown in the business documentation of a securities dealer as at the end of the last day of each month, however, minimum SKK 70,000.

(7) The Fund shall set the annual contribution under equal conditions for all stock brokerage firms within the categories defined in paragraph (6). When setting the annual contribution, the Fund must not favour any of the categories of stock brokerage firms defined in paragraph (6).

(8) The annual contribution in years, when the Fund repays a loan drawn to ensure the payment of compensation for inaccessible client assets, shall be set at the top of the eligible range; the annual contribution in years, when the Fund falls short of funds needed to pay compensation of at least 1.5% of the total client assets protected by law, shall be set by the Fund in the top half of the eligible range. The annual contribution for years when the Fund does not repay a loan drawn to secure compensation payments made in respect of inaccessible client assets may be set by the Fund, with the prior approval of the National Bank of Slovakia, in the lower half of the range even if the Fund has not generated funds in the amount mentioned in the first sentence.

(9) The value of the extraordinary contribution shall be set by the National Bank of Slovakia equally for all stock brokerage firms. The amount of the extraordinary contribution may, in the calendar year, exceed 3% of the annual amount of fees charged to clients for investment services and ancillary services pursuant to Article 6 (2) (a) rendered to them in the calendar year preceding the date when the extraordinary contribution is due, only following its discussion by the Council of the Fund.

## **ARTICLE 85**

(1) A stock brokerage firm is obliged to pay the initial contribution within 30 days after the registration of its licensed activities in the Commercial Register. Payment of the initial contribution shall be a precondition for the commencement of the licensed activities.

(2) A stock brokerage firm is obliged to pay the annual contribution in regular quarterly instalments no later than on the 20<sup>th</sup> day of the first month of a calendar quarter, except for the first instalment, which the securities dealer shall pay no later than 20 February of the respective year. In the year when a stock brokerage firm is granted the licence to provide investment

services, the stock brokerage firm shall only pay a pro rata portion of the annual contribution, unless this Act provides for an earlier due date for the annual contribution or a part thereof.

(3) Stock brokerage firms shall pay extraordinary contributions within deadlines set by a decision of the Fund.

(4) Stock brokerage firms shall pay their contributions in the Slovak currency. In the case of client protection for liabilities of stock brokerage firms towards them payable in foreign currencies, the exchange rate published by the National Bank of Slovakia shall be used for the conversion calculation for the date on which the stock brokerage firms report the amount of liabilities for purposes of determining the average balance of liabilities for the preceding quarter pursuant to Article 84(6).

(5) A stock brokerage firm whose client assets become inaccessible pursuant to Article 82(1), shall not be required to pay contributions to the Fund which fall due after the date when the client assets became inaccessible.

(6) A stock brokerage firm which fails to pay a contribution to the Fund when and as due shall pay the Fund a default interest on the overdue payment at a rate determined according to a separate law.<sup>74</sup>

(7) A stock brokerage firm that did not pay a contribution to the Fund within the deadlines set in paragraphs (1) to (3) may not, effective from the first day of default, conclude any new contracts to provide investment services. The National Bank of Slovakia shall set a new deadline for this stock brokerage firm to settle the contribution to the Fund, which may not be longer than 90 days. If the stock brokerage firm does not settle the contribution in this grace period, the National Bank of Slovakia shall proceed in accordance with Article 156(1)(f).

## **ARTICLE 86**

(1) If a stock brokerage firm, despite using all of its liquid means, is unable to meet its liabilities towards clients for a period of 48 hours, it is obliged to notify the fact to the National Bank of Slovakia and the Fund on the next working day at the latest; a stock brokerage firm which is a bank, and a branch of a foreign stock brokerage firm which is a foreign bank, shall notify the fact to the Fund, the National Bank of Slovakia, and the Deposit Protection Fund.

(2) If a stock brokerage firm is placed under compulsory administration and the situation specified in paragraph (1) occurs, the notification pursuant to paragraph (1) shall be made by the stock brokerage firm's administrator (hereinafter "administrator").

(3) The National Bank of Slovakia shall declare a stock brokerage firm unable to meet its liabilities towards clients within three working days from the delivery of a notification pursuant to paragraph (1), if a persistent liquidity shortage of the stock brokerage firm is determined or if it proves impossible to overcome the temporary liquidity shortage. The National Bank of Slovakia may also declare a stock brokerage firm unable to meet its liabilities at its own initiative if it determines that a situation specified in this paragraph has occurred, even though no notification pursuant to paragraphs (1) and (2) was given.

(4) With respect to declaring a stock brokerage firm which is a bank, or a branch of a foreign stock brokerage firm, which is a foreign bank, unable to meet its liabilities towards clients, the provisions of paragraphs (2) and (3) shall not apply. In declaring a stock brokerage firm which is a bank, or a branch of a foreign stock brokerage firm, which is a foreign bank, unable to meet its liabilities towards clients, a separate law<sup>75)</sup> shall be applied. A declaration of a stock brokerage firm which is a bank, or a branch of a foreign stock brokerage firm, which is a foreign bank, as being unable to meet its liabilities pursuant to a separate law<sup>75)</sup> shall also operate as a declaration as being unable to meet its obligations under this Act; such a declaration pursuant to a separate law<sup>75)</sup> shall also be delivered to the Fund.

(5) The general legislation on administrative proceedings;<sup>76)</sup> it is impossible to lodge an application for remedial measure against this decision and this decision shall be excluded from judicial review.<sup>76a)</sup> The decision-making referred to in paragraph (3) shall be a competence of the Bank Board of the National Bank of Slovakia.

(6) The National Bank of Slovakia shall deliver the decision on the declaration made pursuant to paragraph (3) to the stock brokerage firm and the Fund.

(7) Effective from the date client assets become inaccessible pursuant to Article 82(1) until the payment of compensation pursuant to Article 88(1) and (2), is completed, the right to use financial instruments and funds constituting inaccessible client assets, to assign claims under inaccessible client assets against the stock brokerage firm, and to set off claims between the stock brokerage firm and other persons, shall be suspended and prohibited. The stock brokerage firm shall further be barred from providing investment services or concluding other transactions increasing the assets or liabilities of the stock brokerage firm towards other persons.

(8) A client of a stock brokerage firm, whose client assets become inaccessible pursuant to Article 82 (1) may reclaim its security or any other financial instrument pursuant to Article 82(2), and the stock brokerage firm shall comply with the request.

## **ARTICLE 87**

### **Compensation for inaccessible client assets**

(1) For inaccessible client assets, a client shall be entitled to compensation in the Slovak currency from the Fund, and the Fund shall compensate for such inaccessible client assets in the extent and under terms specified in this Act. Instead of a client, another person may only be entitled to compensation if stipulated in this Act.

(2) The Fund shall compensate for up to 90% of protected client assets; provided that total compensation paid under this Act to a single client or, as appropriate, another entitled person, shall not be higher than the equivalent of EUR 20,000 in Slovak koruna, calculated at an exchange rate published by the National Bank of Slovakia which is applicable on the date the client assets held by a stock brokerage firm become inaccessible pursuant to Article 82(1). This paragraph is without prejudice to Article 169.

(3) To determine the amount of compensation for protected client assets, the inaccessible client assets of the same client with a stock brokerage firm shall be added up, including its share in any joint client assets protected by law, as at the date client assets become inaccessible

pursuant to Article 82(1). For each jointly owned client asset item a rule applies that, unless credible documents are presented to prove otherwise, each of the co-owners shall have an equal share. Interests and other property benefits associated with inaccessible client assets shall, for the purposes of determination of compensation, be calculated as at the date when the client assets become inaccessible pursuant to Article 82(1), and shall be added to the respective inaccessible client assets of the client. For the purposes of compensation, the amount of inaccessible client assets determined in the manner described above shall be lowered by any precluded financial instruments<sup>77)</sup> and deposits,<sup>78)</sup> and any liabilities of the client towards the stock brokerage firm as at the date the client assets become inaccessible pursuant to Article 82(1). Later changes in this situation shall not be taken into account. The calculated amount of compensation shall be rounded up to the nearest whole koruna.

(4) The determination of the value of client assets shall be based on values which, as at the date client assets become inaccessible pursuant to Article 82(1), are applicable under a contract with the stock brokerage firm or under separate legislation<sup>79)</sup> concerning valuation of assets. The value of securities admitted to trading on a stock exchange market for listed securities<sup>80)</sup> shall be based on the last price of the securities concerned quoted by the stock exchange on the date client assets become inaccessible pursuant to Article 82(1).

(5) Unless a different value of a clients assets or liabilities towards a stock brokerage firm can be reliably documented, the values recorded in the books of the stock brokerage firm shall be decisive, unless a separate law provides otherwise.<sup>81)</sup>

(6) A client is entitled to compensation pursuant to paragraphs (1) and (2) even if its financial instrument is not payable within the period set for the payment of compensation, which shall be determined according to Article 88(1) and (2). This does not apply in the case there is a ban on using or paying the financial instruments pursuant to separate regulations.<sup>82)</sup> After the ban is lifted, compensation can be provided depending on the nature of the matter to the client or another person given title to the client's financial instrument or any part thereof by virtue of a decision of a competent authority.

(7) No compensation is provided for precluded financial instruments<sup>77)</sup> and deposits<sup>78)</sup> and for client assets of clients who have had a special relationship to a stock brokerage firm at any time within one year before the date the client assets become inaccessible. The Fund may, in accordance with Article 90(1), request a stock brokerage firm to supply a list of such persons covering the period concerned.

(8) For the purposes of this Act, the following persons are deemed to have a special relationship to a stock brokerage firm:

- a) members of the statutory body of the stock brokerage firm, executive officers of the stock brokerage firm, other employees of the stock brokerage firm specified in the articles of association of the stock brokerage firm, and the proxy of the stock brokerage firm;
- b) members of the Supervisory Board of the stock brokerage firm;
- c) legal persons or natural persons who control the stock brokerage firm, members of the statutory body of these legal persons and executive officers of these legal persons;
- d) persons close<sup>83)</sup> to members of the Board of Directors of the stock brokerage firm, members of the Supervisory Board of the stock brokerage firm, executive officers of the stock brokerage firm, or natural persons who control the stock brokerage firm;

- e) legal persons, in which any of the persons specified in paragraphs (a), (b), (c) or (d) have a qualified interest;
- f) shareholders with a significant influence over a stock brokerage firm and any legal person that is under their control or that has control over them;
- g) legal persons controlled by the stock brokerage firm;
- h) an auditor or a natural person that carried out an audit on behalf of the auditing company;
- i) a member of the statutory body of another stock brokerage firm and the manager of a branch of a foreign stock brokerage firm;
- j) the manager of a branch of a foreign stock brokerage firm and his deputy.

(9) No compensation shall be provided to clients who:

- a) by their criminal activities for which they were lawfully sentenced, partly or fully caused the inability of the stock brokerage firm to meet its liabilities towards clients,
- b) acquired financial instruments and funds in connection with legalisation of income from criminal activity for which they were lawfully sentenced.

(10) The Fund shall suspend compensation payments to clients against whom there is a criminal proceeding underway in connection with their criminal activity which may have an impact on the inability of a stock brokerage firm to meet its liabilities towards clients.

(11) For client assets of their clients pursuant to paragraphs (7) and (9), stock brokerage firms are obliged to contribute to the Fund in accordance with this Act.

(12) A court of law shall decide on any disputes related to compensation and their payment under this Act.

## **ARTICLE 88**

### **Payment of compensation**

(1) No later than within five working days from the date client assets held by a stock brokerage firm become inaccessible pursuant to Article 82(1), the Fund shall set the beginning, duration, procedure, and place of the payment of compensation. This announcement shall be delivered to the stock brokerage firm without undue delay.

(2) The payment of compensation must be completed no later than within three months of the announcement pursuant to Article 86(3), or from the delivery of an executable court order pursuant to Article 82(1)(b). The Fund may, subject to prior approval of the National Bank of Slovakia, in extraordinary and justified instances, extend this period by three months at most. However, the payment of compensation must be completed not later than within one year of the announcement pursuant to Article 86(3) or from the delivery of an executable court verdict pursuant to Article 82(1)(b).

(3) A stock brokerage firm is obliged to publish information pursuant to paragraph (1) together with the announcement pursuant to Article 86(3), or a decision on an executable court verdict pursuant to Article 82(1)(b), in a national newspaper and in publicly accessible premises of the stock brokerage firm on the next working day following the delivery of the announcement pursuant to paragraph (1).

(4) The Fund shall pay compensation for inaccessible client assets through a bank it commissions with this task. For this purpose, it may give necessary instructions to the bank. These instructions shall be binding upon the bank.

(5) A person who has and exercises the right to compensation must prove, depending on the type of client assets, its right to payment of compensation for the client assets concerned; this right shall be demonstrated in particular by a document establishing the title to the investment instrument or funds, or by a decision of a competent authority. A natural person exercising its right to compensation shall also evidence its identity; a legal person exercising its right to compensation shall present a statement from an official register or official records, where it is inscribed, issued no more than one month prior to the exercise of the compensation claim. A representative of a client must also document his identity and present a document, or an officially certified copy thereof, showing its authorisation to represent the client; in the case of a legal person, whose right to compensation is not exercised by its statutory body, such a document must contain an officially certified signature of its statutory body. If a client or his legal representative are acting through an agent, the agent must also document its identity and present a power of attorney with an officially certified signature of the principal; where the principal is a legal person, the power of attorney must contain an officially certified signature of its statutory body. The identity of a client, its representative, of their agent shall be documented by:

- a) a valid identity card,<sup>84)</sup> or
- b) a valid passport,<sup>85)</sup> diplomatic passport, service passport and, if a foreigner, a foreigner's permit to reside<sup>86)</sup> in the territory of the Slovak Republic.

(6) The announcement of the Fund made pursuant to paragraph (1) may specify the conditions under which the compensation will be paid by a bank transfer.

(7) If a client has client assets at a stock brokerage firm the aggregate value of which exceeds the amount of compensation pursuant to Article 87(2), the compensation shall be paid for financial instruments gradually in the time order as they were entrusted to the stock brokerage firm, up to the amount set in Article 87(2), unless the Fund and the client agree otherwise. Compensation is usually paid in a single payment.

(8) The amount of compensation for client assets consisting of financial instrument and funds denominated in a foreign currency shall be calculated using the exchange rate published by the National Bank of Slovakia on the date when the financial instruments or funds become inaccessible pursuant to Article 82(1).

(9) If a client or another person pursuant to Article 87(6) were unable to exercise their right to compensation within a deadline pursuant to paragraphs (1) and (2) for documented serious health reasons or other serious reasons,<sup>87)</sup> the Fund may provide compensation based on a written application even after the deadline expires, but no later than within one year after the client assets become inaccessible pursuant to Article 82(1).

(10) Any person or their representative who exercises the right to compensation for inaccessible client assets shall, in order to demonstrate the fulfilment of the requirements and conditions laid down in paragraphs (5) and (9) and Article 87(3), provide the following information and allow it to be obtained by photocopying, scanning or other means of recording:

- a) if a natural person, personal identification information <sup>87a)</sup> from an identity document that includes a visual likeness, title, name, maiden name, birth registration number, date of birth, place and district of birth, address of permanent residence, address of temporary residence, record of any restriction of legal capacity, type and number of the identity document, the issuing authority, date of issue and expiry date of the identity document;
- b) if a legal person, identification information to the extent set out in Article 81(5)(a)(2);
- c) any contact telephone number, fax number and electronic mail address;
- d) documents and information on client assets and any claims and liabilities towards the stock brokerage firm holding the inaccessible client assets, on the representative's power of attorney, and on the fulfilment of other requirements and conditions necessary for assessing and documenting the justification of the exercised right to compensation and to the provision of compensation for the inaccessible client assets protected by law.

(11) Compensation for inaccessible deposits may not be provided and paid where the person or their representative who exercises the right to compensation for inaccessible assets has not met all the requirements and conditions pursuant to this Act and to the general terms and conditions for the payment of compensation (Article 90(3)), which are necessary for assessing and documenting the justification of the exercised right to compensation and to the provision of compensation for legally protected inaccessible client assets.

## **ARTICLE 89**

### **Inception and expiry of some rights**

(1) On the date compensation is paid, the Fund acquires a claim to and becomes the creditor of a stock brokerage firm or a branch of a foreign stock brokerage firm in the extent of compensation paid to its client by the Fund. On that date, the client's claim on the stock brokerage firm or the branch of a foreign stock brokerage firm is discharged in the extent of compensation paid pursuant to Article 87.

(2) The Fund may also claim from the stock brokerage firm or the branch of a foreign stock brokerage firm reimbursement of actual costs incurred in connection with the payment of compensation.

(3) Unless otherwise provided in this Act, the legal relationships between the Fund and the stock brokerage firm, for whose inaccessible client assets the Fund paid compensation, shall be governed by the provisions of the Civil Code on guarantees.

(4) The payment of compensation for inaccessible client assets, the amount of interest and other property benefits determined pursuant to Article 87(4), and the outstanding liability for which compensation was not provided shall be recorded in the books of the stock brokerage firm and in documents on relations to an financial instrument, in which the amount of a liability is specified.

(5) The provision of compensation from the Fund is without prejudice to the right of the client or other authorised person to claim from the stock brokerage firm holding its inaccessible assets the payment of that part of the client assets for which compensation was not provided from the Fund.

(6) In order to ensure the activities of the Fund, the centralisation of contributions made by stock brokerage firms to the Fund, the payment of compensation for legally protected inaccessible client assets under this Act, and the protection and claiming of the Fund's rights towards clients, stock brokerage firms and other persons, and in order to carry out and document the activities and tasks of the Fund in accordance with the Act or separate regulations,<sup>87b)</sup> the Fund may, even without the consent of and informing the persons concerned,<sup>58d)</sup> establish, obtain, record, store, use and otherwise process,<sup>58e)</sup> personal information of clients of stock brokerage firms, persons subject to Article 87(7), persons or their representatives who exercise the right to compensation for inaccessible client assets; the Fund may, by automated or non-automated means, make copies of identity documents and process the birth registration numbers and other documents referred to in Article 81, 87, 88 and 90.

(7) For the purposes mentioned in paragraph (6), and even without the consent of and informing the persons concerned, stock brokerage firms shall make available and provide to the Fund, for processing purposes, the personal information and documents defined in paragraph (6) and shall do so in the cases stipulated by this Act and a separate regulation.<sup>58e)</sup> The personal information and documents defined in paragraph (6) may, even without the consent of and informing the persons concerned, be made available and provided to the Fund, in order to be processed for the purposes mentioned in paragraph (6), also by persons subject to Article 90(8) or Article 97(1).

(8) The Fund may, even without the consent of and informing the persons concerned, make available and provide from its information system the personal information and documents defined in paragraph (6) to other persons subject to Article 90(8) or Article 97(1) and for the purposes mentioned in paragraph (6). The Fund may make available and provide such personal information and documents abroad, but only to institutions of deposit protection schemes and investment protection schemes in Member States.

## **ARTICLE 90**

### **Rights and obligations of the Fund and obligations of stock brokerage firms**

(1) The Fund may demand from a stock brokerage firm information needed to perform its duties directly associated with its activities before clients assets held by a stock brokerage firm become inaccessible. The Fund may not request data that a stock brokerage firm is obliged to keep secret. If a stock brokerage firm becomes unable to pay its liabilities towards clients on client assets, it is obliged to supply to the Fund without undue delay, at its written request, information and documents on financial instruments and liabilities of the stock brokerage firm.

(2) With the approval of the National Bank of Slovakia, the Fund may also obtain information pursuant to paragraph (1) by conducting on-site inspections at the stock brokerage firm. If, before client assets become inaccessible, the Fund has reasonable doubts about the veracity or completeness of information provided by a stock brokerage firm related to transactions that a stock brokerage firm is obliged to keep secret, it may ask the National Bank of Slovakia to check it.

(3) The Fund shall issue general terms for payment of compensation, and changes thereto, subject to prior approval by the National Bank of Slovakia, which must set out the

details of procedures in the exercise of the right to compensation and the method of documenting the right to compensation.

(4) The Fund may carry out a control of due implementation of the provisions of this Act, of the general compensation payment terms and related Fund instructions at a stock brokerage firm that was declared unable to meet its liabilities towards its clients under client assets, and at a bank performing the payment of compensation for the Fund.

(5) All documents on paid compensation for inaccessible financial instruments deposited, administered, managed or held by a stock brokerage firm shall be stored by the Fund or a person it commissions in accordance with separate regulations.<sup>88)</sup>

(6) Stock brokerage firms shall be obliged to:

- a) pay contributions to the Fund within the deadlines and at the rates set for that purpose;
- b) provide the Fund with information pursuant to paragraph (1) within deadlines set by the Fund;
- c) publish in their business premises information in Slovak about the client protection scheme under this Act, including the general conditions for payment of compensation issued pursuant to paragraph (3);
- d) submit without delay to the Fund and the National Bank of Slovakia an executable decision of a court of law pursuant to Article 82(1)(b);
- e) keep separate files in their information systems on client assets covered by the client protection scheme.

(7) Stock brokerage firms may not publish information about the client protection scheme under this Act in any manner other than as provided in paragraph (6)(c).

(8) The Fund may, to the extent necessary to meet its tasks under this Act, cooperate and exchange information with the National Bank of Slovakia, with entities by means of which the Fund ensures the payment of compensation, and with institutions of deposit protection schemes and investment protection schemes in other countries. The personal information may be made available only under the conditions laid down in a separate provision.<sup>58f)</sup> and under the conditions laid down in this Act.

## **ARTICLE 91**

### **Finances of the Fund and their use**

(1) The finances of the Fund shall consist of:

- a) contributions paid pursuant to Article 84;
- b) income derived from the use of finances pursuant to paragraph (4), including proceeds from the sale of government securities purchased under paragraph (4)(a);
- c) loans pursuant to paragraph (2);
- d) finances raised by the exercise of rights acquired by the Fund pursuant to Article 89;
- e) other income in accordance with a separate regulation.

(2) The Fund's financial resources may be in the form of repayable financial assistance and government subsidies to the extent stipulated by separate provisions<sup>88a)</sup> and by the State Budget Act.

(3) The Fund may request a loan from the Deposit Protection Fund, the National Bank of Slovakia<sup>88b)</sup>, a bank, or a branch of a foreign bank/

(4) The finances of the Fund shall be kept in separate accounts with the National Bank of Slovakia.

(5) Using its own financial resources, the Fund may create a special fund to provide compensations for inaccessible customer assets. In addition to payment of compensation for financial instruments pursuant to Article 87, the finances of the Fund may also be used to:

- a) purchase government securities with maturity of up to one year from the date of purchase;
- b) repay loans pursuant to paragraph (2);
- c) to repay the financial assistance referred to in paragraph (2);
- d) extend a loan to the Deposit Protection Fund, up to 10% of the Fund's resources;
- e) pay expenses necessary to ensure proper operation of the Fund.

(6) Detailed provisions on the use of finances of the Fund shall be laid down by its statute, in accordance with this Act.

(7) The Fund shall keep its accounts and prepare annual financial statements pursuant to a separate law.<sup>59)</sup>

(8) The financial statements of the Fund shall be audited.

## **ARTICLE 92**

### **Bodies of the Fund**

The Fund's bodies comprise:

- a) Council of the Fund,
- b) Presidium,
- c) Supervisory Board of the Fund.

## **ARTICLE 93**

### **Council of the Fund**

(1) The Council of the Fund is the supreme body of the Fund.

(2) The Council of the Fund consists of nine members. Their term of office is four years.

(3) Two of the members of the Council of the Fund shall be representatives of the Ministry, appointed and dismissed from among the employees of the Ministry by the Minister of Finance. Three of the members of the Council of the Fund shall be representatives of the National Bank of Slovakia, appointed and dismissed by the Governor of the National Bank of Slovakia. The remaining four members of the Council of the Fund shall be appointed and dismissed by representatives of stock brokerage firms subject to the obligation pursuant to Article 83 at a meeting of stock brokerage firms. The representatives of individual stock brokerage firms shall be appointed by their statutory body and, at the meeting of representatives

of stock brokerage firms, they shall have votes in proportion to the share of respective contributions the stock brokerage firms have paid to the Fund pursuant to Article 84(6). The proceedings of the meeting of representatives of stock brokerage firms and the outcome of the election of members to the Council of the Fund shall be recorded in a notarial deed.

(4) The members of the Council of the Fund shall be entitled to a reimbursement of costs they incur in performing their duties.

(5) The Council of the Fund shall:

- a) appoint and dismiss members of the Presidium of the Fund;
- b) appoint and dismiss members of the Supervisory Board of the Fund, except as provided in Article 95(2);
- c) appoint and dismiss the chairman and the deputy chairman of the Council of the Fund;
- d) approve the rules of procedure of the Council of the Fund and the Presidium of the Fund;
- e) approve the statutes of the Fund;
- f) approve the budget of the Fund, including the budget of expenses of the Fund pursuant to Article 91(5)(e);
- g) approve the annual financial statements of the Fund;
- h) approve the annual report of the Fund for the previous year, to be submitted to the National Bank of Slovakia;
- i) decide on payment of compensation from the Fund in accordance with this Act and determine the method of payment of compensation;
- j) approve the use of the Fund's finances;
- k) determine the amount of annual contributions by stock brokerage firms and a deadline for payment of extraordinary contributions;
- l) approve the rules of procedure for the Fund, including the procedure of its bodies and the procedure of other entities in regard to ensuring the payment of compensation for legally protected and inaccessible client assets;
- m) approve the rules for remuneration to employees of the Fund and the remuneration of the members of the fund's bodies;
- n) approve the general terms and conditions for the payment of compensation for inaccessible client assets held by stock brokerage firms;
- o) decides on other issues in the sphere of action of the fund, which are not in the sphere of action of other fund's bodies.

(6) All decisions of the Council of the Fund shall be signed by at least two members of the Council of the Fund, at least one of which must be the chairman or the deputy chairman of the Council of the Fund.

#### **ARTICLE 94** **Presidium of the Fund**

(1) The Presidium of the Fund shall consist of the chairman of the Presidium of the Fund and two other members appointed and dismissed by the Council of the Fund.

(2) The chairman of the Presidium of the Fund and the other members of the Presidium of the Fund are employees of the Fund.

(3) The Presidium of the Fund is the statutory body of the Fund. The Presidium of the Fund shall act on behalf of the Fund in the extent defined by its statutes. If the Presidium acts on behalf of the Fund, for a written instrument to be valid, it must be signed by at least two members of the Presidium of the Fund. The statutes shall specify when and to what extent the member of the Presidium of the Fund shall act on behalf of the Fund and grant the authorisation to act on behalf of the Fund.

## **ARTICLE 95**

### **Supervisory Board**

(1) The Supervisory Board of the Fund shall have seven members, their term of office is four years.

(2) Three members of the Supervisory Board of the Fund shall be appointed and dismissed by the Council of the Fund on a proposal of stock brokerage firms passed by a meeting of representatives of the stock brokerage firms. Two member's of the Fund's Supervisory Board shall be appointed and dismissed from among the employees of the Ministry by the Minister of Finance. Two members of the Fund's Supervisory Board shall be representatives of the National Bank of Slovakia, appointed and dismissed by the Governor of the National Bank of Slovakia.

(3) The Supervisory Board of the Fund shall elect from among its members its chairman and deputy chairman.

(4) No members of the Council of the Fund nor any employees of the Fund may be members of the Supervisory Board of the Fund.

(5) The Supervisory Board of the Fund shall oversee the activities and financial management of the Fund, the Council of the Fund, and whether their activities and financial management are in line with this Act, generally applicable legislation, general conditions for the payment of compensation for inaccessible client assets, and the statutes of the Fund.

(6) Members of the Supervisory Board of the Fund may inspect any documents relevant to the activities of the Fund and to obtain information about the use of its finances.

(7) The Supervisory Board of the Fund shall submit to the Council of the Fund and to the National Bank of Slovakia a report on its findings once per quarter and, in the case of any breach of this Act, general terms, or the statutes, no later than within three days of its detection.

(8) The members of the Supervisory Board of the Fund shall be entitled to a reimbursement of costs they incur in performing their duties.

## **ARTICLE 96**

### **Office of the Fund**

Tasks associated with professional, organisational, administrative, and technical support of activities and regular operations of the Fund and its bodies shall be performed by the office of the Fund. It shall be made up of employees of the Fund and managed by the chairman of the

Presidium. Further details regarding the position and activities of the office of the Fund shall be laid down in the statutes of the Fund.

#### **ARTICLE 97** **Confidentiality obligation**

(1) The members of the Council of the Fund, members of the Supervisory Board of the Fund, employees of the Fund, employees of the bank through which the Fund pays compensation, as well as other persons involved in operations of the Fund shall be obliged keep confidential any matters concerning stock brokerage firms and their clients, they learn while performing the duties of the Fund or in direct connection therewith; this obligation shall also apply after the termination of their office in the Council of the Fund, the Supervisory Board of the Fund, or their employment or a similar work contract.

(2) The Council of the Fund may exempt from the confidentiality obligation members of the Council of the Fund, members of the Supervisory Board of the Fund, or members of the Presidium of the Fund; other persons mentioned in paragraph (1) may be exempted from the obligation by the Presidium of the Fund.

#### **ARTICLE 98** **Contractual insurance of stock brokerage firms**

Stock brokerage firms may insure financial instruments, beyond the extent of client protection in the meaning of this Act, on terms agreed upon in a contract with a legal person which was granted a special licence for this activity by the National Bank of Slovakia.<sup>23)</sup>

## PART SIX

### CENTRAL DEPOSITORY

#### ARTICLE 99

(1) The central depository is a joint stock company having its registered office in the territory of the Slovak Republic, governed by relevant provisions of the Commercial Code, unless otherwise provided in this Act. Any transformation of the central depository is prohibited.

(2) The central depository shall have a minimum share capital of SKK 250,000,000.

(3) The central depository shall:

- a) record book-entry securities and immobilized securities in issuers' registers;
- b) register owners of book-entry securities in owner's accounts, and information on securities in client accounts of its members, in the extent defined in this Act;
- c) register changes in owner's accounts in the extent defined in this Act and clients accounts of its members;
- d) register data concerning book-entry securities and immobilised securities in the extent defined in this Act;
- e) assign, change and cancel ISIN numbers;
- f) provide services to members of the central depository, securities issuers, the stock exchange, and foreign stock exchanges, related to activities referred to in letters (a) to (e) and paragraph 4;
- g) provide for and organise a system for technical data processing involved in the keeping of records referred to in letters (a) to (d), and Article 104(2)(a) to c);
- h) ensure the clearing and settlement of stock exchange transactions in financial instruments, and the clearing and settlement of transactions in financial instruments on the client's request; ensuring clearing and settlement of such transactions means organising and operating a system of clearing and settlement for transactions in financial instrument (hereinafter referred to as the "settlement system") for at least three part participants in the settlement system;
- i) keep lists of shareholders<sup>89)</sup> for registered paper shares;
- j) zriaďuje a vedie držiteľské účty pre členov;
- k) record changes in holder's accounts;
- l) register other information, as required in this Act or in a separate law.

(4) The central depository may, in addition to activities described in paragraph (3):

- a) provide the payment of nominal value of securities and payment of income on securities after their maturity, as well as other related activities on the issuer's request;
- b) carry out safekeeping and administration of financial instruments for the account of clients, including custodianship and related services, such as cash/collateral management;
- c) rent safe boxes;
- d) grant credits or loans to a client to allow him to carry out a transaction in financial instruments, without prejudice to the provisions of a separate law;<sup>15)</sup>
- e) open an account with a foreign legal person whose business is equivalent to that of a central depository, with a foreign bank or with a foreign securities dealer and provide related services; the applicable law for this account shall be that under which was founded the foreign legal person, foreign bank or foreign securities dealer that opened the account

for the central depository, and the applicable law for the keeping of data on the owner of the security shall be that of the Slovak Republic;

- f) open and maintain a technical account for the purposes of securing liabilities and claims arising from the clearing and settlement of transactions in financial instruments;
- g) open and maintain an owner's account for a central depository and ensure the related services;
- h) open and maintain a holder's account for a central depository and ensure the related services;
- i) keep record of financial instruments other than securities in the owners' accounts and information on such financial instruments in the customer's accounts of the members
- j) perform other operations related to the business of the central depository under this Act.

(5) The central depository may carry out activities specified in paragraph 4 if they are specified in its licence to establish and operate the central depository. The licence to perform activities pursuant to paragraph 3(e) may be granted to only one central depository. The stipulation of paragraph 3(e) shall not apply to the central depository whose licence to establish and operate the central depository does not specify the activities performed under paragraph 3(e).

(6) A central depository may carry out for another depository activities other than those mentioned in paragraphs (3) and (4) only if they are related to the scope of its activities as defined in paragraphs (3) and (4) and they do not undermine the performance of those activities. Such other activities shall require the approval of National Bank of Slovakia and are not to be entered in the Commercial Register.

(7) A natural person or a legal person, which is not the central depository as defined in this Act, may not provide services specified in paragraph (3), unless this Act provides otherwise, except for the activities mentioned in paragraph (3) (h), which the central depository may perform in cooperation with a stock exchange.

(8) The central depository shall perform the activities specified in its licence to establish and operate the central depository for a fee, unless otherwise provided in this Act.

(9) The central depository has the right to be given all documentation necessary to perform its activities, otherwise it may decline to provide a service. A failure to provide this documentation, a late or incomplete delivery, or delivery in a form other than requested, shall be at the expense of the person required to provide the documentation.

(10) The business name of the central depository must contain the designation "central depository of securities". No other natural or legal person may use the designation "central depository of securities" in its business name.

(11) Unless this Act or a separate law provides otherwise, the central depository may only be founded by the Ministry, the National Property fund of the Slovak Republic, the National Bank of Slovakia, a bank, stock brokerage firm, insurance company, asset management company, a different central depository, a stock exchange, or a legal person with its registered office in another country with a similar line of business.

(12) The central depository is obliged to issue book-entry registered shares; no change of their type or form is allowed. The central depository may not issue preferred or employee shares.<sup>90)</sup>

(13) Shares in the central depository may only be held by a legal person which is an eligible founder of the central depository.

(14) The organisation and management, and the rules of conduct in relation to clients, of the central depository are subject to the provisions of Articles 71 and 73(9) and (10).

(15) The central depository shall, in all transactions with a consideration of at least EUR 15,000, ascertain ownership of funds used by the client to accomplish the transaction; this does not apply to registration orders of book-entry securities pursuant to Articles 24 and 25, and instructions of members and of the stock exchange toward clearing and settlement of transactions performed with other financial instruments. For the purposes of this provision, ownership of funds shall be ascertained by a binding written declaration of the client wherein the client is obliged to show, whether such funds represent his property and whether the transaction is being performed on his own account. Should such funds represent the property of a different person, or should the transaction be performed on account of a different person, the client shall show in the declaration the name, personal identification number or date of birth, and permanent address of the natural person, or the business name, domicile and identification number of the legal person (when allocated) who is the owner of such funds and for whose account the transaction is being performed; in such case the client shall provide the central depository with written consent of such different person to use his funds in the performed transaction and to perform the transaction on his account. Unless the client has complied with his obligations specified in this paragraph, the central depository shall be obliged to refuse performance of the required transaction.

(16) Participants in the settlement system mentioned in paragraph 3(h) shall be the central depository, its members, and other legal persons stipulated by the operating rules.

(17) The National Bank of Slovakia shall provide regional courts and the Supreme Court of the Slovak Republic with a list of central depositories and other participants in settlement systems. The National Bank of Slovakia shall inform the Commission of the central depositories and other settlement system participants to the extent laid down by legally binding acts of the European Communities and the European Union governing payment systems and securities settlement systems.

## **ARTICLE 100**

### **Licence to establish and operate the central depository**

(1) A licence shall be required to establish and operate the central depository. The licence shall be granted on the basis of an application by the founders of the central depository, unless otherwise provided in this Act.

(2) For a licence pursuant to paragraph (1) to be granted, the fulfilment of the following conditions must be documented:

- a) paid up share capital of at least SKK 250,000,000;
- b) transparent and trustworthy source of share capital and other financial resources of the

- c) suitability of persons who would be shareholders with a qualified interest in the central depository and transparency of their relations with other persons, in particular transparency of interests in share capital and voting rights;
- d) material, personnel, and organisational provisions for providing services of the central depository;
- e) professional competence and trustworthiness of persons who are proposed as members of the Board of Directors, Supervisory Board, proxy, and persons responsible for internal control;
- f) transparency of a group with close links of which a shareholder with qualified interest in the central depository is a member;
- g) close links pursuant to paragraph (f) do not prevent effective supervision;
- h) proof of the ability of shareholders founding the central depository to overcome possible financial difficulties of the central depository;
- i) technical and organisational preparedness to perform licensed activities.

(3) An application for a licence pursuant to paragraph (1) shall contain:

- a) business name and registered office of the future central depository, and identification number if it was already assigned;
- b) business name, registered office, and identification number of legal persons holding an interest in the share capital of the central depository, and their interest in the share capital of the central depository;
- c) share capital of the future central depository;
- d) proposed scope of activities of the central depository;
- e) material, personnel, and organisational provisions for the operation of the central depository;
- f) name, permanent residence and birth registration number of proposed members of the Board of Directors, members of the Supervisory Board, proxies, and persons responsible for internal control, and information about their professional qualifications and trustworthiness;
- g) a representation by the applicants that the supplied information is complete and true.

(4) An application pursuant to paragraph (1) shall have the following supplements:

- a) a founder's deed or founder's contract;
- b) a draft of the statutes of the central depository;
- c) a draft of operating rules of the central depository (hereinafter referred to as "operating rules");
- d) proposed organisational structure of the central depository;
- e) a career resume, document of completed education and professional experience of persons proposed as members of the Board of Directors, the Supervisory Board, proxies, and persons responsible for internal control, and statements of their criminal records not older than three months, a statement of honour that they meet the criteria defined in this Act;
- f) a written affirmation by the founders that no bankruptcy was declared on their property, or a compulsory settlement approved;<sup>52)</sup>
- g) proof that the share capital was paid up.

(5) The National Bank of Slovakia shall decide on an application pursuant to paragraph (1) within a deadline specified in a separate law<sup>53)</sup> based on an assessment of the application and its supplements, with respect to the proposed scope of operations of the central depository.

(6) The National Bank of Slovakia shall reject an application pursuant to paragraph (1) if the applicant does not comply with any of the conditions specified in paragraph (2). A reason for rejection of an application pursuant to paragraph (1) may not be economic needs of the market.

(7) The conditions specified in paragraph (2) must be met throughout the validity of the licence to establish and operate the central depository.

(8) The licence pursuant to paragraph (1) shall be granted for an indefinite period. It may not be transferred to a third party and does not pass on to a legal successor.

(9) For the purposes of this Act, a person is deemed suitable if it can credibly document compliance with the conditions laid down in paragraph 2(b), and it is evident that, under any circumstances, it would ensure proper and safe operations of the central depository.

(10) A person is deemed professionally qualified to be a member of the Board of Directors of the central depository if he has a university degree, and has performed professional activities in the field of capital market or banking for at least three years.

(11) A person is deemed professionally qualified to be a proxy of the central depository if he has a university degree.

(12) A person is deemed professionally qualified to be a member of the Supervisory Board of the central depository, or a person responsible for internal control in the central depository, if he has a university degree, and has performed professional activities in the field of finance for at least three years.

(13) Further details on conditions specified in paragraph (2) and the method of evidencing the fulfilment of these conditions shall be laid down by a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws.

(14) On the request of the central depository, the licence pursuant to paragraph (1) may be modified. The provisions of paragraphs (1) to (13) shall apply, as appropriate, to the examination of applications for a modification of the licence.

(15) The central depository is obliged to notify the National Bank of Slovakia without undue delay of any changes in the facts mentioned in paragraph 3(a) and (b).

(16) The central depository is also obliged to notify any changes in the facts mentioned in paragraph 3(d), which may affect its ability to carry on its operations in the permitted scope.

## **ARTICLE 101**

(1) The central depository may not consolidate with another entity or split. The central depository may not be sold, nor may a part thereof.<sup>33)</sup> The central depository may not merge with an entity other than the central depository or a legal person having its registered office abroad and performing similar activities. Such merger shall in all cases require prior consent of the National Bank of Slovakia pursuant to Article 102.

(2) A general meeting of a joint stock company which was granted a licence to establish and operate the central depository may only decide to wind up the company with the prior approval of the National Bank of Slovakia pursuant to Article 102. A joint stock company given

prior approval of the National Bank of Slovakia for winding up shall return its licence to establish and operate the central depository.

## **ARTICLE 102**

### **Prior approval**

(1) Prior approval of the National Bank of Slovakia shall be required to:

- a) acquire or exceed any interest in the share capital of the central depository in one or several operations directly, or by action in concert;
- b) for the central depository to acquire an equity interest in a legal person exceeding 33% of the share capital of the legal person;
- c) appoint persons proposed as members of the Board of Directors and the Supervisory Board, and a proxy of the central depository;
- d) dissolve a company which was granted a licence to establish and operate the central depository;
- e) reduce the share capital of the central depository, if this is not a reduction resulting from a settlement of loss;
- f) merge the central depository with another depository or with a legal person having its registered office abroad and performing similar activities.

(2) The conditions specified in Article 100(2)(c), (f), (g) and (h) apply equally to the granting of prior approval pursuant to paragraph (1)(a), along with the condition to prove a transparent and credible source, sufficient amount and proper settlement of finances needed to perform the action that the prior approval is sought for. The conditions specified in Article 100(2)(f) and (g) apply equally to the granting of prior approval pursuant to paragraph (1)(b), along with the condition to document a transparent and credible source, sufficient amount and proper settlement of finances needed to perform the action that the prior approval is sought for. The conditions specified in Article 100(2)(e) apply equally to the granting of prior approval pursuant to paragraph (1)(c). The granting prior approval pursuant to paragraph (1)(d) is conditional on demonstrating that the register specified in Article 99(3) shall be taken over and the activities of the central depository under this Act shall be performed by another central depository not later than as at the date of the dissolution of the applicant. The conditions specified in Article 100(2) apply equally to the granting of prior approval pursuant to paragraph 1(f).

(3) The provisions of paragraph (1)(a), (b), (e) and (f) are without prejudice to the provisions of a separate law.<sup>56)</sup>

(4) An application for prior approval under paragraph (1)(a) shall be submitted by legal persons seeking to acquire an interest in the share capital of the central depository. An application for prior approval under paragraph (1)(b) and (d) to (f) shall be submitted by the central depository. An application for prior approval under paragraph (1)(c) shall be submitted by the central depository or a shareholder of the central depository.

(5) The particulars of an application for prior approval pursuant to paragraph (1) shall be laid down by a generally binding legal regulation to be issued by the National Bank of Slovakia.

(6) Legal persons and natural persons are obliged to provide, at the written request of the National Bank of Slovakia and within a deadline set by it, the requested information with the purpose of determining whether an action had been taken that requires prior approval pursuant to paragraph (1), in particular information about persons holding interests in the share capital of shareholders of the central depository and information about agreements on the exercise of voting rights.

(7) A person intending to dispose of its interest in the share capital or voting rights of the central depository is obliged to notify the National Bank of Slovakia in advance in writing of its intention, as well as of the fact that the central depository shall cease to be its subsidiary.

(8) The central depository is obliged to:

- a) give the National Bank of Slovakia, upon request, written information on its shareholders and other persons exercising voting rights at a general meeting of the central depository;
- b) give the National Bank of Slovakia written notification of facts specified in paragraph 1(a), and paragraph (7), without undue delay after becoming aware of the same;
- c) give the National Bank of Slovakia written notification of facts suggesting that a member has violated this Act or separate legal regulations relevant to the operation of the central depository.

(9) The National Bank of Slovakia shall decide on an application made pursuant to paragraph (1)(c), within 15 days from its delivery.

### **ARTICLE 103** **Operating rules**

(1) The operating rules of the central depository shall lay down the procedures and methods for the performance of activities specified in Article 99 (3) and (4), and contain a list of services specified in the central depository's licence to establish and operate the central depository.

(2) The operating rules shall contain in particular:

- a) rules for creating and cancelling issuer registers, method and procedures for issuing, changing the particulars and cancelling securities, methods and procedures for converting securities, methods and procedures for giving orders to suspend the right of use pursuant to Article 28, method and procedure for registration of liens on securities, and method and procedure for providing data from the lien register;
- b) rules for creating and cancelling owner's accounts kept by the central depository, and client accounts of its members;
- c) method and procedure for giving orders to transfer or transmit securities;
- d) method and procedure for giving orders to register a suspension of the right of use;
- e) method and procedure for registration of a lien on securities (Article 53);
- f) rules for the assessment of professional competence of persons through which a member performs its activities;
- g) rules for handling complaints of persons to whom the central depository provides its services;
- h) rules for granting, suspending, and revoking membership of a Member, and rules for imposing sanctions on a Member for a breach of the operating rules;
- i) method and procedure for assigning, changing and cancelling ISIN numbers;

- j) method and procedure for correcting and completing records specified in Article 108, paragraphs (1) to (3);
- k) method for clearing and settling transactions in financial instruments;
- l) rules of procedure to be followed by members when clearing and settling stock exchange transactions in securities;
- m) specification of deadlines for settling liabilities arising under stock exchange transactions in securities;
- n) specification of a time schedule for the clearing and settlement of stock exchange transactions in securities, including the specification of the moment when settlement commences, this being the moment from which the transfer registration order received by the settlement system may not be revoked or terminated by a participant in the settlement system or by any third party, and the execution of this order may not be otherwise impeded;
- o) rules for cancelling settlements of stock exchange transactions in securities;
- p) rules of opening and closing the holder's account;
- r) method and procedure of handling foreign book-entered securities, if the central depository provides services related with an account established under Article 99(4)(e).
- s) method and procedure for other activities of the central depository specified in its licence to establish and operate the central depository.

(3) The Board of Directors of the central depository is obliged to submit to the National Bank of Slovakia for approval a draft of operating rules and any amendments thereto.

(4) The operating rules and any amendments thereto shall become effective no earlier than on the date of their approval by the National Bank of Slovakia. If the National Bank of Slovakia does not decide within 30 days of the delivery of the draft operating rules or amendments, they shall be deemed approved.

(5) The central depository is obliged to make its operating rules, including any amendments thereto, available in writing to the public at the registered offices of the central depository and members, and publish an announcement to that effect in a national newspaper covering stock exchange news.

(6) The operating rules are binding upon the central depository, members, securities dealers who keep records in accordance with 71h(2), securities dealers for whom a central depository has opened a holder's account in accordance with Article 105a, legal and natural persons for whom a central depository has opened an owner's account in accordance with Article 105 and 164, issuers whose securities are registered at the central depository, legal persons and natural persons issuing orders to register the inception, change and expiry of the right of lien, legal persons and natural persons requesting registration of the lien in the book-entry security, issuers whose list of stockholders is maintained by the central depository, the stock exchange, legal persons and natural persons issuing orders to register the inception, change and expiry of the right of lien, legal persons and natural persons requesting registration of the lien in the book-entry security, and upon legal persons and natural persons requesting an extract from the lien register.

## **ARTICLE 104**

### **Member**

(1) Any of the following may be a member:

- a) a stock brokerage firm authorised to provide investment services in accordance with Article 6(2)(a)(b) or (d), and, in so doing, to use the client's funds or financial instruments;
- b) a foreign stock brokerage firm, licensed in accordance with Article 54, which is authorised to provide investment services in the territory of the Slovak Republic to the extent laid down in Article 6(2)(a), (b), or (d), and, in so doing, to use the client's funds or financial instruments;
- c) a foreign stock brokerage firm which has its registered office in a Member State under the same conditions as a securities dealer which has its registered office in the Slovak Republic;
- d) the National Bank of Slovakia;
- e) another central depository;
- f) a foreign legal person whose business is equivalent to that of a central depository.

(2) A member shall perform the following activities:

- a) register owners of book-entry securities and changes thereof, as well as other information relating to such owners;
- b) keep records of information pursuant Article 99(3)(d), in owner's accounts;
- c) give orders to the central depository for accounting entries to debit or credit owner's accounts or holder's account of a member;
- d) give orders to the central depository and to another member for registration of transfers in accordance with Articles 22 and 23;
- e) give other orders to the central depository, except for orders specified under paragraphs (c) and (d) for clearing and settlement of transactions in financial instruments;
- f) perform the activities mentioned in Article 99 (4) (a).

(3) A member shall perform the activities specified in paragraph (2) within a system for technical data processing operated by the central depository subject to conditions stipulated in this Act and in accordance with the operating rules.

(4) A member may give orders to transfer a book-entry security, and to clear and settle transactions in financial instruments only through a natural person with due integrity who knows how to give the orders, understands the operating rules, and was found competent for giving orders by the central depository in the manner laid down in the operating rules.

(5) The central depository may request a member to supply information necessary for the fulfilment of the obligations of the central depository in accordance with this Act. If so requested by the central depository, a member shall supply the information without undue delay. The central depository shall not execute entries in the owner's account kept by the member; this does not apply to the registration of a suspension of the right of use applying to an entire issue in accordance with Article 28(5), nor to entries in owners' accounts maintained by the member in regard to:

- a) the issuing of book-entry securities pursuant to Article 13;
- b) the conversion of securities pursuant to Article 16(3) and Article 17(2);
- c) a change in the particulars of book-entry securities pursuant to Article 12;
- d) the termination of securities pursuant to Article 14(4);
- e) the correcting or supplementing of a member's records on the basis of an objection made by an issuer under Article 108 (1).

(6) Members may request the central depository to supply information necessary for the fulfilment of the obligations of a member in accordance with this Act. If so requested by a member, the central depository shall supply the information without undue delay.

(7) If the National Bank of Slovakia revokes a member's licence to provide investment services, the person concerned ceases to be a member after the National Bank of Slovakia notifies the fact to the central depository.

(8) The central depository shall grant membership on the basis of an application. The grant of membership by the central depository shall be conditional on the grant of prior approval by the National Bank of Slovakia in accordance with Article 70 (1)(g) and on demonstrating that the operating rules pursuant to Article 103 (2)(f) and (h) have been met. The grant of prior approval by the National Bank of Slovakia in accordance with Article 70 (1)(g) shall not be required for the entities mentioned in letter 1(d) to (f).

(9) If a member fails to observe the operating rules, the central depository may suspend or revoke its membership. The central depository may suspend membership of a member in the central depository for no longer than one year. The central depository shall notify any revocation or suspension of membership to the National Bank of Slovakia without undue delay.

(10) Central depository may process statistic data also from the register of securities kept by members.

## **ARTICLE 105**

### **Owner's account**

(1) An owner's account shall contain:

- a) the number of the owner's account, and the date when it was opened;
- b) the following information of the account owner -
  1. business name or name, identification number and registered office, if a legal person,
  2. name, birth registration number and permanent residence, if a natural person;
- c) information on individual securities, in particular -
  1. class of security, its description as to its fungibility, ISIN number, and other particulars of the security;
  2. number of units of securities of a relevant issue, and their share in the issue;
  3. business name or names, and identification numbers, in the case of legal persons, or names and birth registration numbers, in the case of natural persons, of any co-owners of the security and the size of their interest;
  4. note on the registration, if any, of a suspension or restriction of the right of use;
  5. business name and registered office of a stock brokerage firm administering the security pursuant to Article 41, or managing the security pursuant to Article 43;
  6. note on whether the security is subject to a lien and, if so, identification of the lienor;
- d) identification data pursuant to letter (b) on persons authorised to use securities registered in the owner's account and the extent of their authorisation;
- e) identification data pursuant to letter (b) on persons authorised to request information about these securities and the extent of their authorisation;
- f) date and time of each accounting entry in the owner's account.

(2) The central depository shall open an owner's account for each member without undue delay after its admission as a member. The central depository shall, on request, also open an owner's account for another central depository, public authority acting on behalf of the Slovak Republic and the National Property Fund of the Slovak Republic.

(3) A member or the central depository may open an owner's account for legal persons other than those specified in paragraph (2) or for natural persons, on the request of such persons. A member or the central depository shall open an owner's account for a legal or natural person also on the request of a stock brokerage firm, a branch of a foreign stock brokerage firm, a foreign stock brokerage firm, an issuer, or a stock exchange.

(4) The central depository or a member shall disclose the number of an owner's account only to the entity for whom it opened the account and without delay after opening the account.

(5) Legal relationships between a member for whom an owner's account was opened and the central depository, and legal relationships between a member and the holder of such an account shall be governed by this Act and by the Commercial Code.

(6) A member shall record, in a register that it maintains, the information mentioned in paragraph (1)(c)(4) upon the order of the central depository, if the central depository was given an order pursuant to Article 28(5), applying to an entire issue of securities.

(7) The central depository or a member shall provide a statement of an owner's account to the account owner without delay after making an accounting entry to the debit or credit of the account, unless otherwise agreed or unless requested by the account owner. The central depository shall not be required to provide a statement of this account to the account owner after it has been debited, if such an entry is made because of the termination of the issuer's register on grounds of a legal matter other than the contract with the issuer, and the issuer has been deleted from the Commercial Register without a legal successor. The central depository shall disclose such a matter in a daily newspaper which has nationwide circulation and publishes stock exchange news.

(8) A statement of owner's account pursuant to paragraph (1) given upon an accounting entry crediting or debiting the account shall contain information on securities concerned by the change before and after the accounting entry, indicating the number of units of securities broken down by type, issuers, and issues, including their share in the relevant issue. A statement of owner's account pursuant to paragraph (1) given on the request of an account owner shall specify the number of units of securities broken down by type, issuers, and issues, including their share in the relevant issue.

(9) If a security is co-owned by several owners, the central depository or a member shall register the security concerned in an owner's account:

- a) according to a relevant contract; in such case the method and procedure of registration shall be established by the rules of operation;
- b) according to a valid inheritance decision;
- c) based on a valid decision by another state authority; or
- d) based on other legal facts.

(10) A member is not allowed to keep an owner's account for itself.

### **ARTICLE 105a** **Holder's account**

(1) A holder's account is an account belonging to a person mentioned in paragraph (3) in which a central depository records information on securities whose owners are registered with the person mentioned in paragraph (3). A holder's account is not an account in the meaning of Article 105 or 106. Information on the owner of a security shall be kept in the records of a securities dealer under Article 71h(2), or in equivalent records in accordance with the same legal system under which was founded the foreign securities dealers, or in records established under the same legal system as was founded the foreign legal person for whom the holder's account was opened.

(2) A holder's account shall include:

- a) the number of the holder's account, and the date when it was opened;
- b) the business name or name, identification number, and registered office of the person mentioned in paragraph (3) for whom the holder's account was established;
- c) information on individual securities, in particular:
  1. the class of the security, further details pertaining to its fungibility, ISIN number, and other particulars of the security;
  2. the number of units of securities in the respective issue, and their share in that issue;
  3. other information about the security, information on the registration of the right of use under Article 28(3)(e) and (f);
- d) the date and time of the respective accounting entry in the holder's account.

(3) A central depository may open a holder's account for another central depository, a foreign legal person with an equivalent scope of business, a securities dealer, bank or foreign bank authorized to perform the ancillary service of custodianship. A central depository may open more than one holder's account for a single person.

(4) A central depository shall open a holder's account on the basis of a written application made by the person mentioned in paragraph (3) in accordance with the operational rules.

(5) After opening a holder's account, the central depository shall notify the person mentioned in paragraph (3) of the number of this account without undue delay.

(6) Legal relations between the persons mentioned in paragraph (3) on whose application the holder's account was opened and the central depository shall be governed by this Act and the Commercial Code.

(7) A statement of a holder's account shall be delivered by the central depository to the person mentioned in paragraph (3) following every credit or debit entry recorded in the account, unless otherwise agreed, or at the request of the person mentioned in paragraph (3).

(8) A statement of a holder's account issued after the recording of a credit or debit entry in the holder's account shall include information on the securities that the change concerns, both before and after the change was recorded, indicating the number of units of securities broken down by class, issuer, and issue, including their share in the relevant issue. A holder's account statement issued at the request of the person mentioned in paragraph (3) shall state the number of units of securities broken down by class, issuer and issue, including their share in the relevant issue.

(9) For operations requiring a statement of information on the owner of a security registered under this Act, information on the owner of a security recorded in a holder's account shall be replaced with information on the person mentioned in paragraph (3) for whom the holder's account was opened, and this fact shall be stated.

(10) Where information on securities is recorded in a holder's account, and a disclosure obligation is imposed on the central depository by law, information on the owner of the securities shall be replaced with information on the person mentioned in paragraph (3) for whom the holders account was opened, and this fact shall be stated.

### **Article 105b** **Technical account**

(1) The technical account of a central depository shall be the account in which the central depository records details of securities that are subject to liabilities and claims arising from the clearing and settlement of transactions in financial instruments. The technical account shall not be an account in the meaning of Articles 105, 105a and 106.

(2) A technical account shall include:

- a) the number of the technical account, and the date when it was opened;
- b) the business name or title, identification number, and registered office of the central depository;
- c) information on individual securities, in particular:
  1. the class of the security, further details pertaining to its fungibility, ISIN number, and other particulars of the security;
  2. the number of units of the security in the respective issue, and their share in that issue;
  3. other information about the security, in particular, information on the registration of any suspension of the right of use under Article 28(3)(e) and (f);
- d) the date and time of the respective accounting entry in the technical account.

(3) A statement of the technical account shall state the number of units of the securities according to class, issuers and issues, including their proportion of the relevant issue.

(4) For operations requiring a statement of information on the owner of a security that is entered in a register in accordance with this Act, information on the owner of a security recorded in a technical account shall be replaced with information on the central depository which opened that technical account, and this fact shall be stated.

(5) Where information on securities is recorded in a technical account, and a disclosure obligation is imposed on the central depository by law, information on the owner of the securities shall be replaced with information on the depository which opened that technical account, and this fact shall be stated.

## **ARTICLE 106**

### **Member's client account**

(1) A member's client account is an account used by the central depository to register information on securities whose owners are included in the register. A member's client account is not an account as specified in Article 105.

(2) A member's client account shall contain:

- a) the number of the member's client account and the date when it was opened;
- b) business name or name, identification number and registered office of the member;
- c) information on individual securities, in particular -
  - 1. class of security, its description as to its fungibility, ISIN number, and other particulars of the security,
  - 2. number of units of securities of a relevant issue, and their share in the issue,
  - 3. other information on a security, in particular a note on registration, if any, of a suspension of the right of use;
- d) date and time of each accounting entry made in the member's client account.

(3) The central depository shall open a member's client account for a member at its request.

(4) The central depository shall notify the number of a member's client account to the member without undue delay after opening the account.

(5) Legal relationships between a member, at whose request a member's client account was opened, and the central depository shall be governed by this Act and by the Commercial Code.

(6) The central depository shall deliver to a member a statement of the member's client account without undue delay after making an accounting entry crediting or debiting the member's client account, unless they agree otherwise, or at the member's request.

(7) A statement of a member's client account given upon an accounting entry crediting or debiting the member's client account shall contain information on securities concerned by the change before and after the accounting entry, indicating the number of units of securities broken down by class, issuers, and issues, including their share in the relevant issue. A statement of a member's client account given on the request of a member shall specify the number of units of securities broken down by class, issuers, and issues, including their share in the relevant issue.

## **ARTICLE 107**

### **Issuer's register**

(1) On the request of an issuer, the central depository shall establish an issuer's register.

(2) The central depository shall keep only one issuer's register for an issuer.

(3) Legal relations between an issuer and the central depository in connection with the keeping of the register shall be governed by this Act and the Commercial Code.

(4) An issuer's register shall contain:

- a) the number of the issuer's register and the date it was established;
- b) the following information on the issuer:
  - 1. business name or name, identification number, and registered office, if a legal person,
  - 2. name, birth registration number and permanent residence, if a natural person;
- c) information on individual securities in the scope defined in points one and two of Article 105 (1) (c);
- d) date and time of each entry in the issuer's register.

(5) The central depository is obliged to deliver to an issuer a statement of its issuer's register:

- a) every time an issue of a security is issued, changed, or cancelled;
- b) every time when the type of a security is changed;
- c) on the request of an issuer;
- d) repealed as of 1 August 2005.

(6) For the purposes of keeping a list of shareholders,<sup>89)</sup> an issuer, in the cases stipulated in paragraph (5)(c), may commission the central depository to identify the business name or name, identification number or birth registration number, and registered office or permanent residence of the owner of securities issued by the issuer, and obtain information on the nominal value and number of units of registered securities issued by the issuer recorded in owner's accounts in the case of owner's accounts kept by a member.

(7) An issuer of registered book-entry shares may ask the central depository to keep a list of shareholders.<sup>89)</sup>

(8) The central depository keeping a list of shareholders<sup>89)</sup> of registered paper shares shall, on the instruction of the issuer, make an entry for any change of shareholder on the list of shareholders. In maintaining a list of shareholders of registered paper shares, the central depository shall not enter the numerical designation of the shares in the list.

(9) The central depository shall, at the issuer's request, deliver the list of shareholders<sup>89)</sup> to the issuer and, at a shareholder's request, provide the shareholder with an extract of the part of the list of shareholders concerning the shareholder.

(10) The central depository shall perform activities associated with the keeping of a list of shareholders<sup>89)</sup> under a contract with an issuer of registered shares. An issuer of registered paper shares shall conclude a contract with the central depository on the keeping of a list of shareholders without undue delay after issuing registered paper shares.

(11) The central depository shall deliver to the issuer, upon request, the list of the owners of the securities issued by the respective issuer and any lienors thereof. This list shall not be

regarded as an extract from the issuer's register. The list mentioned in the first sentence shall contain the information stipulated in paragraph (6). Where the central depository keeps the respective securities in the owner's account pursuant to Article 164 and simultaneously keeps securities in the owner's account pursuant to Article 105, the central depository may deliver to the issuer a list for the owner's account pursuant to Article 164 and another list for the owner's account established in accordance with Article 105.

(12) A central depository may provide an applicant, on request, with a list of the owners of the securities pertaining to an issue of securities admitted to a regulated market, who hold 5% or more of that issue. Where a natural person is included in that list of owners, his birth registration number shall not be stated.

### **ARTICLE 107a** **Irrevocability of a transfer registration order**

(1) From the moment that a transfer registration order has been accepted, neither a participant in the settlement system, nor any third party, may validly revoke or cancel the transfer registration order accepted by the settlement system, and nor may the settlement of this order be otherwise impeded.

(2) A declaration of bankruptcy on the property of a participant in the settlement system shall not affect the right to use funds and securities on the account of the participant in the settlement system maintained in this settlement system for the fulfilment of obligations arising from his participation in the settlement system on the date of the declarations of bankruptcy.

(3) A declaration of bankruptcy on the property of a participant in the settlement system shall not affect the obligation of the settlement system to process and settle the transfer registration orders of that participant, nor the validity and enforceability of such orders against third parties if these transfer registration orders were accepted by the settlement system in accordance with the operating rules -

- a) prior to the moment of a declaration of bankruptcy;
- b) at the moment of the declaration of bankruptcy, and following that moment if the transfer registration orders were given on the date of the declaration of bankruptcy, and provided that the central depository was not aware of the declaration of bankruptcy and the participants in the settlement system whose orders are concerned demonstrate that they were unaware of the declaration of bankruptcy, whether from the notifications referred to in paragraphs (7) and (8) or otherwise.

(4) A reverse calculation of mutual receivables and obligations of participants in the settlement system shall be prohibited.

(5) A declaration of bankruptcy on the property of a participant in the settlement system shall not affect the rights to the collateral provided by this participant in the settlement system to another participant in the settlement system or to an entity in connection with its participation in this settlement system; the rights to the enforcement and exercise of claims arising from the provided collateral shall also remain unaffected.

(6) The collateral which a participant in the settlement system has provided to another participant in the settlement system or to another entity in connection with its participation in the settlement system shall not be subject to a decision exercised in accordance with separate regulations and shall be excluded therefrom. This is without prejudice to the provision of Article 159(2).

(7) Where the central depository has been notified by a court of the declaration of bankruptcy over property or the rejection of a petition for a declaration of bankruptcy owing to the lack of property of the participant in the system operated under this Act, the central depository shall notify this fact to all other participants in the settlement system without undue delay.

(8) The obligation referred to in paragraph (7) attaches to the central depository also where it receives from the authorities of a Member State, appointed for this purpose in accordance with the laws of that state, the notification of the declaration of bankruptcy over property or the rejection of a petition for a declaration of bankruptcy owing to the lack of property of the participant in the system operated under this Act.

(9) Where the central depository receives delivery of a notification of a declaration of bankruptcy over property or the rejection of a petition for a declaration of bankruptcy owing to the lack of property of the participant in the system operated under the laws of another Member State, and provided that this participant in the settlement system has its registered office or an organisational unit in the territory of the Slovak Republic, the central depository shall, without undue delay, notify this fact to the authorities of individual Member States in accordance with the law of the country.

## **ARTICLE 108**

### **Changes in the records of the central depository and a member**

(1) The central depository is obliged, based on a protest of a holder of an owner's account, a member, a stock exchange, or an issuer, which it recognises as justified, as well as based on a valid court judgement, to correct or complete its records. On the basis of an issuer's objection which it recognizes as justified, the central depository shall also correct or complete the records of a member and shall inform the member of this fact without delay. A correction shall be made as of the date when the incorrect entry was made, and an addition as of the date when the incomplete entry was made.

(2) A member is obliged, based on a protest of a holder of an owner's account, the stock exchange or the central depository which it recognises as justified, as well as based on a valid court judgement, to make a correction or complete its records. A correction shall be made as of the date when the incorrect entry was made, and completion as of the date when the incomplete entry was made.

(3) The central depository or a member have the right to proceed according to paragraph (1) also at their own initiative, if they discover an error or omission in their records. The central depository and a member shall be obliged to keep records of found errors and omissions.

(4) The central depository shall send to all persons in whose owner's account, member's client account, holder's account or issuer's register it carried out any correction or addition, a

statement of owner's account or register with an explanation, without undue delay after the correction or addition was made. This is without prejudice to the provision of Article 105 (7).

(5) A member shall send to all persons in whose owner's account it made any corrections or additions a statement on that owner's account with an explanation, without undue delay after the correction or addition is made.

(6) The liability for any damage caused as a result of incorrectly or incompletely or belatedly given orders lies with the person who gave the order.

(7) The central depository or a member shall be liable for any damage incurred to persons whose accounts they keep as a result of incorrect or late registration of a given order.

(8) The central depository shall be liable for any damage incurred to issuers whose registers it keeps as a result of incorrect or late registration of a given order.

## **ARTICLE 109**

### **Confidential information**

(1) The information recorded by a central depository in accordance with Article 99(3)(a) to (d), a member in accordance with Article 104(2)(a) to (c) or a securities dealer in accordance with Article 71h(2) shall be kept confidential by that central depository, member or securities dealer unless otherwise provided in this Act.

(2) Except for information disclosed to meet the reporting obligation pursuant to Articles 105, 107 and 108, the central depository, securities dealer or a member shall disclose information only if required by this Act or by a separate regulation, or only to persons who can document to the central depository, securities dealer or a member that the person to whom the information pertains commissioned them to acquire this information.

## **ARTICLE 110**

(1) The central depository, member or securities dealer shall disclose confidential information as defined in Article 109(1) to the following:

- a) a court of law for the purposes of civil court proceedings;<sup>91)</sup>
- b) law enforcement authorities for the purposes of criminal prosecution;<sup>92)</sup>
- c) the National Bank of Slovakia for the purposes of the supervision, transaction execution, and fulfilment of its other tasks in accordance with separate legal provisions;<sup>93)</sup>
- d) the criminal police service and the financial police service of the Police Force for the purposes of performing their duties established by a separate law;<sup>94)</sup>
- e) tax authorities for the purposes of tax proceedings,<sup>95)</sup> or customs authorities for the purposes of customs proceedings involving a client of the central depository or of a member;
- f) the Ministry in the implementation of control under a separate regulation;<sup>96)</sup>
- g) a state administration authority for the purposes of executing a decision under a separate law;<sup>97)</sup>
- h) the assignee where a claim is transferred under Article 110a;

- (i) National Security Authority, Police Force, Slovak Intelligence Service, Military Intelligence for the purpose of performance of security vetting procedures within their fields of the competence under the separate legal provision.<sup>97a)</sup>
- (j) Slovak Intelligence Service and Military Intelligence for the purpose of fulfilment of their tasks under the separate legal provisions<sup>97b)</sup> in fighting the organized crime and terrorism<sup>1)</sup>

(2) For the purposes mentioned in paragraph (1) and in Article 107(6), a central depository may obtain necessary information from a member's records held in an owner's account. Where details of securities are recorded in a holder's account opened in accordance with Article 105a or in the records kept by a securities dealer in accordance with Article 71h(2), the information required for the purposes mentioned in paragraph (1) shall be provided by the member for whom the holder's account was opened or by the securities dealer which records information in accordance with Article 71h(2)..

(3) The central depository or a member or a securities dealer shall provide a report pursuant to paragraph (1) only on the basis of a written request by an authorised person, which contains details allowing the identification of the requested information. Authorised persons may use supplied information only for the purposes indicated in their requests.

(4) For providing information pursuant to paragraph (1)(a), the central depository or a member are entitled to a reimbursement of expenses.

(5) The provisions of paragraph (1) shall not operate to invalidate the obligation to prevent or notify the perpetration of a criminal offence under a different law.

#### **ARTICLE 110a**

(1) Where the client of the central depository has been in arrears in the payment of any part of his financial liability towards the central depository for a continuous period of more than 90 calendar days, the central depository may, even without the client's consent, assign the claim corresponding to this financial liability to another person (hereinafter the "assignee") on the basis of a written contract. The central depository may not apply this right if, prior to the assignment of the claim, the client pays the central depository the full liability, including interest and fees. When assigning a claim, the central depository shall also submit to the assignee the documentation on the contractual relationship on which basis the claim arose.

(2) For the purposes set out in paragraph (1), the central depository may provide the assignee with information on other contractual relation between the central depository and the client and may do so only under the conditions laid down by this Act.

(3) Where the client of a central depository has for a continuous period of longer than 14 days been in arrears in the payment of any part of its monetary liability to the central depository, the central depository may refuse to provide its services to the client for so long as the client does not meet its monetary liability or any outstanding part thereof, provided that the liability arises from a contract concluded between the central depository and the client.

#### **ARTICLE 111**

### **Disclosure obligation of the central depository**

(1) The central depository is obliged to publish without undue delay in a national newspaper covering stock exchange news:

- a) information on issued, changed, or cancelled issues of securities admitted to a stock exchange, broken down into -
  - 1. business name, registered office and identification number of issuer, if the issuer is a legal person, or name and birth registration number, if the issuer is a natural person;
  - 2. class of security;
  - 3. ISIN number;
  - 4. date of issue, change, or cancellation of the issue;
  - 5. type, form, nominal value, and number of shares in an issue;
- b) information on the beginning or end of a suspension of the right of use in an entire issue of securities admitted to stock exchange listing pursuant to Article 28 broken down by:
  - 1. business name, registered office and identification number of issuer, if the issuer is a legal person, or name and birth registration number, if the issuer is a natural person,
  - 2. class of security;
  - 3. ISIN number;
  - 4. date of the beginning or end of a suspension of the right of use in the securities.

(2) The central depository is obliged to provide the information specified in paragraph (1) to the stock exchange, to the National Bank of Slovakia, and to its members not later than before the beginning of the next trading day.

## **PART SEVEN**

### **PROTECTION OF THE FINANCIAL MARKET**

#### **ARTICLE 112**

(1) An issuer may not, while fulfilling its duties under this Act and while promoting an issue of its securities, use untrue or misleading information, or withhold information important for decisions concerning the acquisition securities, above all to offer benefits the fulfilment of which it cannot guarantee, or which are not in line with the law, or to provide incorrect information about its economic situation. An issuer is liable for damage it causes by a breach of these duties. This does not preclude the provisions of the Commercial Code on unfair trading practices.

(2) A member of a statutory body or a supervisory body of an issuer of listed securities admitted to trading on the stock exchange has the obligation, within seven days of the effective date of a decision of a general meeting on its appointment to these bodies, to announce to the National Bank of Slovakia, the stock exchange, and the issuer information about its equity interests and positions on bodies in other companies. A member of a statutory body or a supervisory body of an issuer also has the obligation to notify any change in this information within seven days from its making.

(3) A member of a statutory body or a supervisory body of an issuer of listed securities admitted to trading on the stock exchange (hereinafter referred to as "listed shares") shall, in addition to information specified in paragraph (2), notify to the National Bank of Slovakia, the stock exchange, and the issuer of any change in its interest in the issuer's share capital within three workdays from its occurrence.

(4) The stock exchange shall, without undue delay, publish the information referred to in paragraph (3).

#### **ARTICLE 113**

**Cancelled with effect from 1 May 2007**

#### **ARTICLE 114**

##### **Takeover bid**

(1) Unless provided otherwise by this Act, 'takeover bid' shall mean a public offer to conclude a contract under a separate regulation<sup>99)</sup> for the purchase of all or part of the shares of the offeree company or the exchange of all or part of these shares for other securities stipulated by a shareholder of that company, which is made either on a mandatory basis under this Act or on voluntary basis and which follows or has as its objective the acquisition of control of the offeree company; for the purpose of a takeover bid, 'shares' shall mean shares, interim certificates and another transferable securities which carry voting rights and are admitted to trading on a regulated market in the Slovak Republic or in another Member State.

(2) 'Offeree company' shall mean a company the shares of which are the subject of a takeover bid. For the purposes of this Act, 'control' shall mean a holding of at least 33% of the voting rights attached to the shares of a single offeree company. For the calculation of control, the procedure shall be the same as that used to calculate the percentage of voting rights attached to the shares of an issuer of securities admitted to trading on a regulated market for the purposes of meeting the reporting obligation.

(3) A legal or natural person which decides or becomes obliged to make a takeover bid (hereinafter the "offeror"), persons acting in concert with the offeror, members of their bodies, if legal persons, the offeree company, members of the offeree company's bodies and shareholders shall, during the preparation and course of the takeover bid, act in relation to the takeover bid so as not to adversely affect the securities market, especially not through market manipulation as defined in Article 131a, and shall adopt measures to prevent the premature dissemination of information, the dissemination of false information, as well as the misuse of inside information in connection with the takeover bid.

(4) An offeror may announce a takeover bid under Article 115(1) only after ensuring that he can meet in full any cash consideration if such is offered; if the offeror intends to offer another type of consideration, he may announce a takeover bid only after taking all measures to ensure the implementation of that consideration.

(5) A takeover bid under this Act may be made only on a regulated market.

(6) For the purposes of this Act, 'persons acting in concert' shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a takeover. Persons controlled by another person under Article 8(h) shall be deemed to be acting in concert with the other person or with each other.

(7) An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by the takeover bid; this is without prejudice to the provision of Article 118g.

## **ARTICLE 115**

### **Announcement of a takeover bid**

(1) Where an offeror has decided or become obliged to make a takeover bid, it shall without delay announce this fact in writing to the board of directors of the offeree company and to the National Bank of Slovakia. In the case of a mandatory bid, the offeror shall state in the announcement the date and reason that the obligation arose, and with the announcement addressed to the National Bank of Slovakia it shall enclose an application for the appointment of an expert or for an expert opinion in accordance with Article 118g(7) and (8). An offeror shall publish the takeover bid announcement in a daily newspaper circulated throughout, or widely circulated in the Slovak Republic and in those Member States on the regulated markets of which the shares of the offeree company were admitted to trading; if the takeover bid announcement is published in more than one periodical, the bid shall be deemed disclosed as at the date of the first publication.

(2) The following shall happen without delay after submission of the announcement under paragraph (1):

- a) the board of directors of the offeree company shall disclose the contents of the announcement to the supervisory board of the offeree company;
- b) the board of directors of the offeree company and the relevant bodies of the offeror, if a legal person, shall disclose the contents of the announcement to the employees' representatives of the offeree company, and in the absence of employees' representatives at the offeree company, directly to the employees.

(3) Members of the board of directors or supervisory board of the offeree company shall keep confidential any information acquired from the offeror in relation to the takeover bid until disclosure of the bid. This confidentiality obligation shall apply also to employees' representatives, employees and shareholders of the offeree company who have acquired information in relation to the takeover bid.

## **ARTICLE 116**

### **Takeover bid document**

(1) Within ten working days after disclosure of the announcement under Article 115(1), the offeror shall submit the written document of the takeover bid to the National Bank of Slovakia together with documentary proof of the bid's disclosure; if it has been necessary to disclose the bid in more than one Member State, the start of the period for submitting the takeover bid document shall be extended to the date of the latest disclosure. In the case of a takeover bid for which the National Bank of Slovakia has appointed an expert, the period of ten working days shall begin from when the expert's opinion is given.

(2) A takeover bid document shall state:

- a) the business name or name, registered office and legal form of the offeror, if a legal person, or the name, address and date of birth of the offeror, if a natural person; where the offeror is acting in his own name but on the account of another person, there shall also be stated this person's business name or name and registered office, if a legal person, or name, address and date of birth, if a natural person;
- b) the business name and registered office of the offeree company;
- c) the business name and registered office of the securities dealer or foreign securities dealer which acquires securities of the offeree company in respect of the takeover bid and which ensures whatever steps are required for its implementation.
- d) the validity period of the takeover bid, which may not be shorter than 30 days and longer than 70 days unless otherwise provided by this Act; this period shall begin from the disclosure date of the takeover bid;
- e) the number, class, type, form nominal value and ISIN number of the shares to which the takeover bid relates;
- f) the number, class, type, form and nominal value of any voting shares of the offeree company included in the assets of the offeror or persons acting in concert with the offeror, including information on the time of their acquisition and the acquisition price and whether shares of the offeree company have been sold by these persons within the past 12 months;

- g) the number of shares which the offeror undertakes to acquire, including whether the offer relates to all of the shares of the offeree company or to only a designated part thereof (hereinafter a "partial takeover bid");
- h) whether the offeror conditions his undertaking to acquire the shares on the acquisition of a minimum number thereof; in that case, the offeror shall state also the period within which he will notify those persons who have accepted the offer that this condition has or has not been met;
- i) the consideration offered for the shares of the offeree company; where an offer is made to purchase the shares of an offeree company, there shall be stated the price offered per share of the same class and type; where an offer is made to exchange the shares of the offeree company for other securities, there shall be stated the number, class, type, form and nominal value of these securities and their ratio of exchange to the shares of the offeree company; the price or exchange ratio of fungible securities shall be set equally for all persons to whom the takeover bid is addressed;
- j) the method used to set the purchase price or exchange ratio under subparagraph (i), including a statement on whether the method takes into account the revenues of the offeree company and the value of its business assets, including intangible property, and whether the value of these assets and revenues of the offeree company have been calculated proportionally for each share of the offeree company according to its relative percentage of the capital of the offeree company;
- k) information on the sources and means used by the offeror to finance obligations arising from the takeover bid and whether the offeror expects to incur any debt in regard to the fulfilment of these obligations;
- l) the way in which the takeover bid may be accepted, including the procedure and method for concluding a purchase contract for the shares or a contract to exchange the shares for securities, and the method, terms and procedure regarding the payment of the purchase price or implementation of the exchange of securities;
- m) the rules for withdrawing acceptance of a takeover bid or for withdrawing from a purchase contract for the shares or from a contract to exchange the shares for other securities, concluded following acceptance of the bid in accordance with Article 118c;
- n) the aims and objectives of the offeror in regard to the offeree company; there shall in all cases be stated those aims and objectives concerning the future use of its assets, the continuation of its business activities, restructuring of the offeree company and companies under its control, changes in its statutory body and supervisory board, amendments to its articles of association, and any changes in the number of employees, conditions of employment and participation of employees in the profits and management;
- o) compensation offered for the removal of rights under Article 118h where the offeree company is subject to a regime involving the removal of rights, including the method used to set the amount of the compensation and the method, conditions and procedure of its payment;
- p) the name and address of natural persons acting in concert with the offeror or with the offeree company and the business name or name, registered office and legal form of legal persons acting in concert therewith; in the case of legal persons, there shall also be stated their relationship with the offeror or with the offeree company;
- q) which country's law will apply to the purchase contract for shares or a contract on the exchange of shares for securities concluded in respect of the takeover bid between the offeror and shareholders of the offeree company, and which courts will be competent to decide on any disputes arising under the bid;

r) other data and facts which could affect how shareholders of the offeree company decide on the takeover bid.

(3) A partial takeover bid may be made only if the offeror simultaneously undertakes that, where acceptances of the bid represent more than a certain number of the shares of the offeree company, it will pay, proportionally and in accordance with Article 118b(3), all persons who accepted the bid; in this case, the takeover bid document shall also state how and by when the offeror will notify such persons of the proportional payment and the amount thereof.

(4) The terms and conditions of the takeover bid shall be the same for all holders of fungible shares in the offeree company.

(5) Information stated in the takeover bid document shall be complete, true and drawn up with professional care, shall not be of a deceptive or misleading nature, and shall, in sufficiently good time, provide shareholders of the offeree company with the full facts on which to base their decision on the takeover bid. Liability for the correctness of the information contained in the takeover bid document shall attach to the offeror.

(6) Prior to approval of a takeover bid document by the National Bank of Slovakia, the offeror shall not disclose the contents thereof.

#### **ARTICLE 117** **Processing a takeover bid document**

(1) The National Bank of Slovakia shall reject a takeover bid document which is contrary to this Act within ten working days after receiving it. Within five working days after delivery of a takeover bid document, the National Bank of Slovakia may require the offeror to supplement or correct the information contained therein. The National Bank of Slovakia may also require the offeror to prove certain facts related to the takeover bid document, in particular the source and adequacy of funds allocated for the fulfilment of obligations arising from the bid, and where consideration is offered as an exchange of securities for the acquired shares, the offeror's authorization to use the securities offered as consideration. Where the National Bank of Slovakia requires an offeror to supplement or correct information or to prove certain facts, it shall set the offeror a deadline for resubmitting the takeover bid document which shall not be longer than 15 working days. Following the resubmission of a takeover bid document, the National Bank of Slovakia shall decide on it within a new period of five working days.

(2) A takeover bid document shall be rejected by the National Bank of Slovakia if it is not supplemented or corrected in accordance with paragraph (1) or it is resubmitted after the deadline for resubmission.

(3) A takeover bid document which complies with this act shall be approved by the National Bank of Slovakia within the period stipulated in paragraph (1).

(4) No appeal may be made against a decision of the National Bank of Slovakia under paragraph (1) that requires an offeror to supplement or correct information or to prove certain facts, or against a decision of the National Bank of Slovakia under paragraph (2).

(5) The processing of a takeover bid document may be discontinued in accordance with a separate law.<sup>20)</sup>

(6) The rejection of a takeover bid document shall not terminate the obligation mentioned in Article 118g and Article 119 in regard to Article 170(3), where the offeree company has not decided to revoke the decision from which this obligation arose.

## **ARTICLE 118**

(1) A takeover bid approved by the National Bank of Slovakia shall be delivered without delay to the offeree company and disclosed in accordance with Article 115(1). A takeover bid approved by the National Bank of Slovakia shall take effect upon its disclosure.

(2) Following the disclosure of an approved takeover bid, the board of directors of the offeree company and the competent body of the offeror, if a legal person, shall communicate the contents of the bid to the employees' representatives of the offeree company or, in the absence of such representatives, directly to the employees.

(3) Following the disclosure of a takeover bid, the offeror shall disclose at least once a week his percentage of the voting rights in the offeree company and information on the progress of the takeover bid, in particular the number and the nominal value of shares the acquisition of which has been accepted under the takeover bid.

(4) When the validity period of the takeover bid has passed, the offeror shall disclose the outcome of the bid.

## **ARTICLE 118a**

### **Withdrawal or revision of a takeover bid**

(1) Unless otherwise provided by this Act, a takeover bid may be withdrawn only if this is expressly provided for in the bid document, the conditions laid down by this Act are met, and the grounds for withdrawal arose independent of the will of the offeror or persons acting in concert with him. A takeover bid may not be withdrawn if it has been accepted by any person in the manner stipulated in the bid document.

(2) A takeover bid may be revised, even repeatedly, only if this is expressly provided for in the bid document, the conditions laid down by this Act are met, and the grounds for revision arose independent of the will of the offeror or persons acting in concert with him; this shall not apply to changes that involve increasing the price or exchange ratio, or improving other conditions of the takeover bid. A revision of the takeover bid shall not diminish the conditions under which the bid was originally made. A revision of the takeover bid may not be carried out later than five working days prior to the end of the bid's validity period.

Following the disclosure that a takeover bid has been revised, the validity period of the bid must run for at least five trading days of the regulated market's organizer.

(3) The withdrawal or revision of a takeover bid shall be subject to the approval of the National Bank of Slovakia. The process of withdrawing or revising a takeover bid shall be subject, as appropriate, to Article 117. The National Bank of Slovakia may also prohibit the withdrawal or revision of a takeover bid where the bid could adversely affect the offeree company's activities, burden the offeree company for an unreasonably long time, or adversely affect the securities market.

(4) The withdrawal or revision of a takeover bid, including information concerning the approval thereof, shall be disclosed by the offeror without delay in accordance with Article 115(1). The withdrawal or revision of a takeover bid shall take effect upon its disclosure.

(5) The revision of a takeover bid which improves the bid's original conditions shall apply also to those shareholders of the offeree company who accepted the bid prior to the disclosure of the revision; they may, however, until the end of the bid's validity period extended under paragraph (2), retract their acceptance of the original takeover bid and withdraw from the contract concluded on the basis of that acceptance.

(6) If between the disclosure of a takeover and the end of its validity period, the offeror or a person acting in concert with an offeror acquires any shares of the offeree company for a consideration greater than that offered under the approved bid, the offeror shall raise the offered consideration so that it is not lower than the highest consideration provided for the acquisition of the offeree company's shares.

(7) The period during which consideration is offered under a takeover bid may not be longer than the period usual on the regulated market on which the bid is made, but not more than 60 days from when the contract entered into force.

#### **ARTICLE 118b** **Outcome of a takeover bid**

(1) If, in a partial takeover bid, the stipulated number of shares has been exceeded, the concluded contract shall be deemed to be amended to take account of the number of shares concerned. Persons who accepted the bid shall be paid a proportionate amount according to the total number of shares to which the accepted bid applies. The offeror shall notify such persons of the proportionate payment and the amount thereof. The offeror shall fulfil this disclosure obligation in cooperation with the organizer of the regulated market.

(2) If a takeover bid is conditioned on the acquisition of a stipulated minimum number of shares, the offeror shall inform the persons who have accepted the bid of whether this condition has or has not been met.

(3) Notification of the amount of the proportionate payment under paragraph (1) and of the fulfilment or non-fulfilment of the condition under paragraph (2) shall be given by the offeror in the manner and within the period stipulated in the takeover bid, but not later than

one month after the bid's validity period, or else the concluding of the contract shall be deemed disclosed or the condition fulfilled.

(4) If the offeror under a partial takeover bid fails to notify the persons who accepted it of the amount of the proportional payment within the period laid down in paragraph (3), the contract shall be deemed concluded in the full extent of the acceptances of the bid; the limit on the number of shares which the offeror set himself shall not be taken into account.

(5) An offeror may not disclose before the end of the validity period of the takeover bid that a contract has been concluded.

(6) After the disclosure obligation towards persons who accepted the takeover bid has been met or after the period under paragraph (3) has elapsed, the offeror shall without delay issue a summary notice on the outcome of takeover bid and shall forward it to the offeree company.

#### **ARTICLE 118c** **Withdrawal from the contract**

(1) A person who has accepted a takeover bid may withdraw from the contract concluded on the basis of that acceptance only until the end of the validity period of the takeover, unless otherwise stipulated by the organizer of the regulated market. A withdrawal from the contract shall be presented in writing.

(2) A person who has accepted a partial takeover bid may withdraw from the contract concluded on the basis of that acceptance within ten days after delivery of the notification of the proportional payment and the amount thereof.

#### **ARTICLE 118d** **Obligations of an offeree company's bodies**

(1) Members of an offeree company's board of directors, supervisory board or executive bodies may not, between the disclosure of the takeover bid under Article 115 and the disclosure of its outcome, adopt any measures or perform any acts, except to discuss more favourable conditions or call for competing bids, which could prevent shareholders of the offeree company from making an informed and free decision on the takeover bid; this shall not apply where such measures or acts are approved during the validity period of the takeover bid by the general meeting of shareholders of the offeree company. The resolution of the general meeting of shareholders shall be adopted and executed in accordance with a separate regulation.<sup>100)</sup>

(2) The procedure under paragraph (1) shall be applied also for measures and acts decided on prior to the start of the period mentioned in paragraph (1) which have not yet been implemented; it shall not apply where they are part of the going concern of the offeree company and their implementation cannot hinder the takeover bid.

(3) Bodies of the offeree company or persons mentioned in paragraph (1) which have decision-making authority may not in particular:

- a) decide to increase the share capital;
- b) decide to issue bonds carrying a prior right to subscribe shares of the offeree company, or bonds which may be exchanged for shares of the offeree company;
- c) decide to purchase own shares;
- d) commit the company to a performance without reasonable consideration;
- e) perform legal acts which result in a substantial change in the property relations of the offeree company.

(4) Within five working days after receiving a takeover bid, members of the board of directors of the offeree company in cooperation with members of its supervisory board, except for those making a competing bid, shall issue a joint response to the takeover bid in which they shall give their opinion on:

- a) whether the takeover bid is in the interests of shareholders, employees and creditors of the offeree company, along with the reasons on which this standpoint is based;
- b) the impact of a takeover bid on the interests of the company and the interests of its shareholders, creditors and, in particular, employees;
- c) the strategic plans of the offeror for the offeree company and their expected impact on employment in the company and on placing the output of its business activities.

(5) The response shall also include:

- a) any differences of opinion among its drafters;
- b) notice of any legal or factual flaws in the takeover bid;
- c) information about any conflict of interest between the drafters of the response and the interests of the offeree company or its shareholders, including whether any members of the board of directors are shareholders of the offeree company.

(6) The drafters of the response shall disclose its contents to the employees' representatives of the offeree company or, in the absence of employees' representatives, directly to the employees. They shall at the same time stipulate an adequate period for giving an opinion on the response, which shall not be shorter than three working days. If submitted to the drafters of the response within this period, the opinion of the employees of the offeree company on the employment consequences of the takeover bid, expressed either through their representatives or directly, shall be attached to the response to the takeover bid.

(7) Within two days after the response to takeover bid has been drafted, the board of directors shall send it to the offeror and disclose it in accordance with Article 115(1); if the response to the takeover bid is supplemented under paragraph (6), this period shall begin from the date of its supplementation. The board of directors of the offeree company shall also ensure that, until the end of the validity period of the takeover bid, shareholders, employees and employees' representatives of the offeree company will be able to view the response to the bid at the company's registered office. At the request and expense of a shareholder of the offeree company, the board of directors shall have the response to the takeover bid delivered to an address given by this shareholder, unless otherwise provided by the articles of association.

## **ARTICLE 118e**

## **Competing takeover bid**

(1) A competing takeover bid shall mean a takeover bid made during the validity period of another takeover bid for the shares of the same offeree company by another offeror. A competing bid shall be subject as appropriate to the provisions of this Act regarding a takeover bid, unless otherwise provided by this Act.

(2) A person acting in concert with an offeror may not launch a competing bid during the period from the disclosure of the takeover bid to the end of its validity period.

(3) An offeree company shall treat all competing offerors on an equal basis.

(4) After receiving a competing takeover bid, the board of directors of the offeree company shall notify this fact without delay to the offeror of the original takeover bid.

(5) A competing takeover bid shall be disclosed at least five working days before the end of the validity period of the original takeover bid, and its validity period shall be the same length as that of the original takeover bid, but not less than ten working days.

(6) If the validity period of a competing takeover bid would end later than the validity period of the original takeover bid, its validity period shall be extended so that it ends on the same day as that of the original takeover bid, but not by more than 30 days.

(7) The offeror of an original takeover bid may withdraw the bid not later than five working days before the end of its validity period; the offeror shall send notification of this fact, including the reasons for withdrawing the takeover bid, to the National Bank of Slovakia, and shall disclose it. The provision of Article 118a on withdrawing a takeover bid shall not apply to the withdrawal of an original bid. The withdrawal of an original bid shall take effect upon the date that the withdrawal is disclosed. Where an original takeover bid is withdrawn, the offeror shall notify this fact to all persons who, so far as he is aware, accepted the bid prior to its withdrawal and shall at the same time inform them of the possibility of accepting a competing takeover bid. The organizer of the regulated market shall provide the offeror with cooperation.

(8) If the offeror fails to disclose the withdrawal of the takeover within the period mentioned in paragraph (7), the bid shall be deemed to stand.

(9) Shareholders of an offeree company who have accepted the original takeover bid may, until the end of the validity period of the original bid, withdraw their acceptance of the original bid and withdraw from the contract based thereon without incurring any sanctions.

## **ARTICLE 118f**

### **Cooperation within the European Union and the European Economic Area**

(1) The takeover bid document approved in accordance with this Act shall apply in each Member State in which the shares of the offeree company are admitted to trading on a

regulated market. No further approval shall be required from the supervisory authority of that Member State.

(2) An offeror shall submit the takeover bid document in the language required by the law of the respective Member State under paragraph (1) and shall supplement the takeover bid document in accordance with the requirements of the supervisory authority of the respective Member State under paragraph (1).

(3) Where a takeover bid document vis-à-vis an offeree company or a company whose shares are traded on regulated market in the Slovak Republic has been approved by another Member State's supervisory authority, and provided that such approval was required under the law of that Member State, the takeover bid document shall also be valid in the Slovak Republic without requiring the additional approval of the National Bank of Slovakia. Documents and materials related to the takeover bid shall be translated into the state language and, together with that translation, submitted to the National Bank of Slovakia. The National Bank of Slovakia may require supplementation of the takeover bid only if the requested information concerns the formal terms that must be completed in relation to the acceptance of a takeover bid, the offering of consideration in regard to acceptance of the takeover bid within the bid's validity period, and the tax regime applicable to the consideration offered to the shareholders.

#### **ARTICLE 118g** **Mandatory takeover bid**

(1) A natural or legal person who himself or with persons acting in concert with him acquires a percentage of shares of an offeree company that give him control of that company shall be required to make a bid for all the shares of the offeree company (hereinafter a "mandatory takeover bid").

(2) The obligation under paragraph (1) shall not apply to:

- a) a natural or legal person who acquired control of the offeree company as a result of a takeover bid made in accordance with this Act and provided that this bid was not partial or conditioned under Article 116(2)(h);
- b) the legal successor of a shareholder of the offeree company who assumes all the shareholder's rights and obligations, provided that this shareholder has met the obligation under paragraph (1) or that this succession does not increase this shareholder's percentage of the voting rights in the offeree company;
- c) a natural or legal person who acquires shares of the offeree company through the purchase of another enterprise, or part thereof, under the procedure laid down by a separate Act,<sup>21)</sup> provided that in so doing it has not increased its percentage of the voting rights in the offeree company;
- d) a natural or legal person acting in concert with another natural or legal person, provided that its total percentage of the voting rights in the offeree company, together with the persons acting in concert, remains unchanged and the only change is to the internal structure of that share.

(3) Where control of an offeree company has been acquired or exceeded by persons acting in concert and this gives rise to the obligation under (1), all the persons acting in

concert shall be subject to this obligation; the obligation shall be fulfilled when a takeover bid is made by any of them. Under contracts concluded within the takeover bid, the persons acting in concert shall be obligated jointly and severally. Acting in concert under paragraph (1) shall be deemed to mean where persons who are, or by the acquisition of shares become, shareholders of the offeree company act together in accordance with Article 114(6).

(4) The consideration under a mandatory takeover bid may be offered in cash, securities or a combination thereof. If the offeror offers any part of the consideration in securities, he shall offer also a cash consideration as an alternative.

(5) The consideration under a mandatory takeover bid shall be fair in regard to the value of the shares of the offeree company; the fairness of the consideration shall be corroborated by an expert opinion given in accordance with a separate regulation.<sup>101)</sup> Where a mandatory takeover bid precedes the exercise of the right of squeeze-out under Article 118i, the expert shall set the general value of the company as a whole by means of both the asset method<sup>101)</sup> and business method,<sup>101)</sup> where the appropriate consideration set by the expert opinion shall be treated as the higher general value of the company from those determined by the asset method or business method, broken down proportionally into individual shares of the offeree company by their relative share in the share capital.

(6) Consideration shall be deemed fair where it is not lower than the highest consideration which the offeror or a person acting in concert with the offeror has provided for the shares of the offeree company within the period of 12 months before the takeover bid became mandatory, and at the same time it is not lower than the consideration stipulated by the expert opinion, nor lower than the net value per share of the business assets, including the value of intangible assets, of the offeree company, according to the most recent financial statements audited before the takeover bid became mandatory. In the case of listed shares, adequate consideration also cannot be lower than the average price of these shares quoted on the stock exchange over the period of 12 months before the takeover bid became mandatory.

(7) The selection of an expert to determine the amount of consideration shall be made by the National Bank of Slovakia on the basis of a list maintained in accordance with a separate regulation.<sup>102)</sup> The appointed expert may be legal person registered in the expert field of economics and business administration, in the area of corporate valuation and assessment. The expert opinion on the amount of consideration shall determine the general value of the company as a whole, including intangible assets assigned in cash.

(8) For the purposes of setting the amount of consideration, it is permitted to use an expert opinion drafted before the takeover bid became mandatory, provided that the period between its drafting and when the takeover bid became mandatory was not more than six months and that the National Bank of Slovakia has not prohibited the use thereof.

(9) Before the disclosure of a mandatory takeover bid, a person under paragraph (1) may not exercise voting rights in the offeree company in excess of the percentage conferring control thereof.

(10) A mandatory takeover bid shall be subject, as appropriate, to the provisions of this Act on takeover bids, unless otherwise provided by this Act.

(11) A person who fulfils the obligation under paragraph (1) may not make a partial takeover bid or a conditioned takeover bid under Article 116(2)(h).

(12) The document of a mandatory takeover bid shall state in addition to the particulars mentioned in Article 116(2), the date when the takeover bid became mandatory, the reasons for making this offer, and a description of the methods use to set the amount of consideration. Along with the mandatory bid document, the offeror shall submit to the National Bank of Slovakia documents proving the amount of consideration which the offeror and persons acting in concert with him offered during the 12 months before it became obligatory to disclose the mandatory takeover bid.

(13) A mandatory takeover bid may not be withdrawn.

### **ARTICLE 118h** **Removal of certain rights**

(1) The general meeting of shareholders of an offeree company may decide that the company will apply paragraphs (4) to (6). This decision may not be revoked from when the announcement is disclosed under Article 116(1) until the end of the validity period of the takeover bid.

(2) A decision of the general meeting of shareholders under paragraph (1) or a revocation of that decision shall be taken and executed in accordance with a separate regulation.<sup>100)</sup>

(3) The decision of the general meeting of shareholders under paragraph (1) shall be disclosed and notified without delay by the board of directors of the offeree company to the National Bank of Slovakia and the supervisory bodies of all the Member States in which the shares of the offeree company are admitted to trading on a regulated market or in which a request has been submitted to have these shares admitted to trading on a regulated market.

(4) On the basis of the decision under paragraph (1), any restrictions on the transfer of securities provided for in the articles of association of an offeree company, or in contractual arrangements between the offeree company and its shareholders or between shareholders of the offeree company, shall not apply vis-à-vis the offeror from when the takeover bid is disclosed until the end of its validity period.

(5) On the basis of a decision under paragraph (1), the setting of the number of voting rights as provided for in the articles of association of the offeree company, or in contractual arrangements between the offeree company and its shareholders or between shareholders of the offeree company, shall not have effect at the general meeting of shareholders which decides on any measures or acts in accordance with Article 118d.

(6) Where, following disclosure of the outcome of a takeover bid or possibly after the disclosure of the proportionate payment under a partial takeover bid, the offeror holds 75% or more of the capital carrying voting rights in the offeree company, none of the following shall, on the basis of a decision under paragraph (1), apply at the general meeting of shareholders

convened by the offeror for the purpose of amending the articles of association or electing or removing members of the company's bodies after disclosure of the outcome of the bid or the end of the statutory period for disclosing the proportionate payment under the partial bid:

- a) restrictions on the transfer of shares under paragraph (4);
- b) restrictions on voting rights under paragraph (5);
- c) extraordinary rights of shareholders concerning the appointment or removal of members of the bodies of the offeree company.

(7) The removal of voting rights under paragraphs (5) and (6) shall not apply where the removal of voting rights is compensated for by pecuniary advantages.

(8) Persons whose rights are removed under paragraphs (1) to (6) shall be entitled to equitable compensation. This compensation shall be determined according to the type of right concerned.

(9) Contracts concluded on the basis of acceptances of a takeover bid shall not be invalidated if the compensation is inequitable. The recipient may, however, sue for payment of the difference between the compensation stated in the takeover bid and equitable compensation. If, in that case, the court upholds the right of the plaintiff to payment of the difference, the ruling shall also apply to the other persons who have accepted the bid.

## **ARTICLE 118i**

### **The right of squeeze-out**

(1) An offeror who has made a takeover bid which was neither partial nor conditioned under Article 116(2)(h) shall have the right to require all the holders of the remaining shares of the offeree company to transfer those shares to him for a fair consideration (hereinafter "right of squeeze-out"), provided that he owns shares whose total nominal value represents not less than 95% of the capital carrying voting rights and not less than 95% of the voting rights in the offeree company.

(2) For calculating the percentage of voting rights under paragraph (1), the procedure shall be the same as that used to calculate, for the purposes of meeting the reporting requirement, the percentage of voting rights attached to the shares of an issuer whose securities are admitted to trading on a regulated stock exchange.

(3) An offeror who has decided to exercise the right of squeeze-out shall without delay disclose this decision, and the circumstance in which the right arose, to the offeree company, the National Bank of Slovakia and all remaining shareholders of the offeree company. To this end, the central depository shall provide the offeror upon request a list of the shareholders of the respective issuer and their lienors; the provision of Article 107(13) shall apply as appropriate.

(4) A right of squeeze-out vis-à-vis the shareholders concerned shall take effect subject to the approval of the National Bank of Slovakia. The approval of the National Bank of Slovakia shall be granted to the offeror only if the conditions for the exercise of this right are met. The application process for the approval of a right of squeeze-out shall be subject, as appropriate, to the provisions of Article 117. The offeror may exercise the right of squeeze-

out as soon as he has submitted the application for approval. When the offeror then sends shareholders a contract proposal for the purchase of shares or, as appropriate, the exchange of shares for other securities, he shall also send a notice that the exercise of this right is subject to the approval of the National Bank of Slovakia. The National Bank of Slovakia shall not grant approval if the contract proposal does not include reservation of title.

(5) The right under paragraph (1) may be exercised by the offeror not later than three months after the validity period of the takeover bid, or else it shall expire. To exercise the right of squeeze-out, the offeror shall send a contract proposal for the purchase of shares to all remaining shareholders of the offeree company. In the contract proposal, the offeror shall state in particular:

- a) information on the amount of consideration in accordance with Article 116(2)(i), including the reasons for this amount of consideration;
- b) the period for acceptance of the contract proposal;
- c) the period and procedure for the transfer of the securities.

(6) The consideration offered under the right of squeeze-out may be in the form of cash, securities or a combination thereof. If the offeror offers any part of the payment in securities, he must also offer cash consideration as an alternative.

(7) The consideration offered must be fair in regard to the value of the shares of the offeree company. Where a mandatory takeover bid precedes the right of squeeze-out, consideration shall be deemed fair where it is not lower than the consideration in that bid. If the mandatory takeover bid on a voluntary basis is launched before the right of squeeze-out is exercised, the consideration offered in this bid shall be deemed fair where the offeror has, through this bid, acquired shares carrying at least 90% of the voting rights in that part of the offeree company's share capital which was subject to the takeover bid; if, through this bid, the offeror has not acquired shares carrying at least 90% of the voting rights in that part of the offeree company's share capital which was subject to the takeover bid, the amount of consideration shall be determined in accordance with Article 118g(5) to (7), while the expert opinion may not be more than three months older than the disclosure of the announcement under paragraph (3).

(8) A person obliged to accept a contract proposal shall indicate acceptance within the period stated in the proposal, or else within a period of ten working days from when the National Bank of Slovakia issued its approval in accordance with paragraph (4).

(9) If the obliged person fails to accept the proposal within the stipulated period, the offeror may petition a court to issue an order in substitution for acceptance of the proposal.<sup>102aa)</sup> The offeror shall exercise this right against all obliged persons who did not accept the proposal in a single proceeding held within three months after the period mentioned in paragraph (8), or else the right shall expire. The offeror shall provide the obliged person, on request, with the expert opinion.

(10) If, in the proceeding referred to in paragraph (9), the offeror agrees to a consideration higher than that in the contract proposal, the offeror and the obliged person shall conclude a new agreement that takes into account this higher consideration and the offeror shall match that consideration for the remaining shareholders.

(11) In the proceeding mentioned in paragraph (9), an obliged person may object that the consideration offered is inadequate.

(12) If the offeror does not accept the objection of the obliged person and will not offer consideration higher than that stated in the contract proposal, the matter shall be decided according to the general value of the consideration as determined in the court proceedings, possibly with the use of expert evidence, the costs of which shall be paid in advance by the offeror. The court shall stipulate the expert institution that is to produce the expert opinion. When producing the expert opinion, the expert institution shall employ both the asset method and the business method.

(13) The proposed value of the consideration under paragraph (8) shall be changed to the value of the consideration established in accordance with paragraph (12); this shall not apply where the value of consideration established under (12) is lower. The offeror shall at the same time offer the same consideration to the remaining shareholders as it offers to the shareholders who were parties to the proceeding mentioned in paragraph (9).

(14) For the purpose of transferring shares of the offeree company, the board of directors of the company shall provide the offeror with all necessary cooperation.

(15) If, where the right of squeeze-out applies to book-entry shares of the offeree company, the acceptance of the contract proposal by an obliged person has been replaced by a court order, this court order shall also replace the principal's order to register the transfer of the securities held in the register of owners of book-entry securities.

(16) Any lien on the shares transferred from the obliged person to the offeror shall expire as soon as the transfer is made. In the case of shares subject to a lien, the offeror shall provide the consideration to the lienor only insofar as is not otherwise provided for as a result of the agreement between the obliged person and the lienor.

## **ARTICLE 118j**

### **The right of sell-out**

(1) If the circumstances mentioned in Article 118i(1) arise, a holder of remaining shares in the offeree company may require the offeror to acquire his shares from him for a fair consideration.

(2) The right under paragraph (1) may be exercised by the shareholder not later than three months after the validity period of the takeover bid, or else it shall expire. The shareholder shall exercise this right by sending a contract proposal for the purchase of his shares. The contract proposal shall state in particular:

- a) the required fair consideration in cash or securities;
- b) the period for acceptance of the contract proposal;
- c) the period and procedure for the transfer of the securities.

(3) An obliged person under paragraph (1) shall accept the contract proposal within the period stated therein, or else within a period of ten working days from the date of its receipt. If the obliged person fails to accept the proposal within this period, the entitled person

may petition a court to issue an order in substitution for acceptance of the proposal. This right shall be exercised within three months after the period mentioned in the first sentence, or else it shall expire.

(4) An obliged person under paragraph (1) may, without delay after receiving the contract proposal, seek judicial review of whether the consideration offered is fair. This right shall expire if not exercised within one month after receipt of the contract proposal. If the amount of the consideration was not set by an expert opinion, it shall be incumbent on the entitled person to prove that the consideration offered is fair.

(5) The provisions of Article 118i shall apply as appropriate.

### **ARTICLE 118k** **Enabling provision**

By a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws, there may be stipulated further details of the takeover bid document and the conditions under which the takeover bid is made.

### **ARTICLE 118l**

(1) The provisions of this Act concerning takeover bids shall not apply to securities issued by central banks of Member States or to securities issued by foreign open-end investment companies in accordance with a separate regulation.<sup>102a)</sup>

(2) For the purposes of assessing whether investment companies are open-end collective investment undertakings, measures adopted by such companies in order to ensure that the price of their securities does not differ significantly from the value of their net assets shall be deemed equivalent to the redemption of securities from the assets of these entities.

### **ARTICLE 118m** **Applicable law**

(1) Matters concerning the provision of information to the employees of an offeree company and matters concerning company law, especially in regard to setting the percentage of voting rights that gives control of an offeree company, exemptions from the obligation to make a takeover bid, as well as conditions regarding the fulfilment of which the offeree company's bodies take measures that could lead to the frustration of the takeover bid, shall be governed by the law of the Member State in which the offeree company has its registered office. Supervision in these matters shall be exercised by the competent supervisory authority of that Member State.

(2) Other issues concerning a takeover bid, particularly in regard to consideration, the processing of a bid and especially the announcement of the offeror's decision to make a bid, the offeror becoming obliged to make a bid, particulars of a bid, and the disclosure of a bid, shall be governed by the law of the Member State of the competent supervisory authority.

(3) The calculation of the percentage of voting rights that gives control of an offeree company, and the method of such calculation in the case of an issuer whose registered office is in another Member State, shall be subject to legal provisions of the Member State in which the respective issuer has its registered office.

## **ARTICLE 119**

(1) If a general meeting of an issuer of listed shares decides that the shares issued by the issuer shall no longer be listed, the issuer shall be required to publish a mandatory takeover bid to buy all listed shares from those shareholders who, at the general meeting concerned, have not voted for the decision to remove the shares from the listed ones, or have not attended the general meeting. The mandatory takeover bid shall indicate the general meeting's decision to delist the shares as the reason for the publication of the mandatory takeover bid.

(2) The decision of a general meeting to delist the shares issued by the issuer must be recorded in form of a notarial deed. Such notarial deed from the general meeting shall name the shareholders who have voted for the decision to delist the shares of the company.

(3) The obligation pursuant to paragraph (1) shall be deemed fulfilled if the mandatory takeover bid to buy all listed shares from shareholders who did not vote at the general meeting to delist the shares is made for the issuer by a person other than the issuer.

(4) The Board of Directors of the company shall, without undue delay after the decision pursuant to paragraph (1) is taken by the general meeting, notify the decision to the National Bank of Slovakia and to a stock exchange trading the shares concerned. The notification shall be accompanied by a copy of the notarial deed recording the decision of the general meeting pursuant to paragraph (1), and the text of the mandatory takeover bid.

(5) The stock exchange shall cease to trade the shares on the market with listed securities within five days from receiving the issuer's notice that it has discharged its obligations under the mandatory takeover bid.

(6) A mandatory takeover bid made in accordance with paragraph (1) and Article 170(3) may precede the exercise of the right of squeeze-out under Article 118i only if the offeror is a person mentioned in paragraph (3) and if the bid was not a partial takeover bid or a conditioned takeover bid in the meaning of Article 116(2)(h).

## **Offer of securities to the public**

### **ARTICLE 120**

(1) Unless otherwise provided in this Act, an offer of securities may not be made to the public without prior publication of a prospectus for the securities (hereinafter "prospectus").

(2) For the purposes of this Act, 'an offer of securities to the public' means any communication to a wider group of persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. An offer of securities to the public shall also be understood to include the placing of securities through stock brokerage firms or foreign stock brokerage firms, provided that it is made in the manner mentioned in the first sentence.

(3) The obligation to publish a prospectus shall not apply to the following types of offer:

- a) an offer of securities addressed solely to qualified investors;
- b) an offer of securities addressed to fewer than 100 natural persons or legal persons per Member State, other than qualified investors;
- c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 50,000 per investor;
- d) an offer of securities having a denomination per unit of at least EUR 50,000; or
- e) an offer of securities with a total consideration of less than EUR 100,000, which limit shall be calculated over a period of 12 months.

(4) Any resale of securities which were previously the subject of one or more of the offers mentioned in paragraph (3) shall be regarded as a separate offer, without prejudice to the provision of paragraph (3).

(5) The provision of paragraph (1) shall not apply to offers of securities to the public of the following types of securities:

- a) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issuer's share capital;
- b) securities offered in exchange for other securities mentioned in Article 114(7)(h), provided that a document is available containing information which the National Bank of Slovakia considers equivalent to that in the prospectus;
- c) securities offered in connection with a merger or consolidation, provided that a document is available containing information which the National Bank of Slovakia considers equivalent to that in the prospectus;
- d) shares offered free of charge to existing shareholders and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is available containing information on the number and class of the shares and the reasons for and details of the offer;
- e) securities offered to existing or former members of statutory bodies, supervisory bodies, management bodies, or employees by their employer which has securities already admitted to trading on a regulated market or by an affiliated undertaking,<sup>102c)</sup> provided that a document is available containing information on the number and class of the securities and the reasons for and details of the offer.

(6) For the purposes of this Act, a 'qualified investor' means:

- a) a stock brokerage firm, financial institution or legal entity whose corporate purpose is to invest in financial instruments;
- b) the national, regional or municipal government, the national, regional or municipal government of another state, the National Bank of Slovakia, the central bank of another state, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;

- c) a company or cooperative which is not a small and medium-sized enterprise as defined by paragraph (7);
- d) a natural person resident in the Slovak Republic whom, and at whose request, the National Bank of Slovakia has decided to recognise as a qualified investor; a natural person resident in another Member State shall be considered to be a qualified investor if this person meets the criteria laid down in a legal regulation of that Member State;
- e) a small and medium-sized enterprise having its registered office in the Slovak Republic, which, and at whose request, the National Bank of Slovakia has decided to recognise as a qualified investor, provided that it meets at least two of the criteria laid down in paragraph (7); a small and medium-sized enterprise having its registered office in another Member State shall be considered to be a qualified investor if this enterprise meets the criteria laid down in a legal regulation of that Member State.

(7) For the purposes of this Act, a 'small and medium-sized enterprise' means a company or cooperative which, according to its last annual or consolidated accounts, meets at least two of the following criteria:

- a) an average number of employees during the financial year of less than 250,
- b) a total balance sheet not exceeding EUR 43,000,000,
- c) annual net turnover not exceeding EUR 50,000,000.

(8) The National Bank of Slovakia shall recognise a natural person to be a qualified investor if this person meets at least two of the following conditions:

- a) the investor has carried out transactions of a significant size on securities markets at an average frequency of at least ten per quarter over the previous four quarters; for the purposes of this Act, a 'transaction of significant size' means a transaction in securities amounting to more than EUR 6,000;
- b) the size of the investor's securities portfolio exceeds EUR 500,000;
- c) the investor works or has worked for at least one year in the financial sector in a position which requires knowledge of securities investment.

(9) The National Bank of Slovakia shall maintain a register of those natural persons resident in the Slovak Republic and those small and medium-sized enterprises having their registered office in the Slovak Republic which it has recognised as qualified investors; the National Bank of Slovakia is required to make data from this register available to issuers on the basis of their written request.

(10) The National Bank of Slovakia shall without undue delay delete the following from the register mentioned in paragraph (9):

- a) a natural person resident in the Slovak Republic if this person has ceased to meet the criteria laid down in paragraph (8), or a small and medium sized enterprise having its registered office in the Slovak Republic if this enterprise has ceased to meet the criteria laid down in paragraph (7);
- b) a natural person resident in the Slovak Republic or a small and medium-sized enterprise having its registered office in the Slovak Republic if this person or enterprise requests to be deleted from the register.

## **ARTICLE 121**

### **The prospectus**

(1) Without prejudice to the provision of Article 122(2), the prospectus shall contain all information which is, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any person guaranteeing the redemption of the securities or the yields thereon, and of the risks related to these elements. The information shall be presented in an easily analysable and comprehensible form.

(2) The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. It shall also include a summary of the prospectus (hereinafter the "summary") which shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, the securities, and any person guaranteeing the redemption of the securities or the yields thereon, and of the risks related to these elements. The summary shall also contain a warning that:

- a) it should be read as an introduction to the prospectus;
- b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;
- c) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might have to bear the costs of translating the prospectus before the legal proceedings are initiated in the respective Member State, if the prospectus has not been translated into the official language of this Member State;
- d) civil liability attaches to the persons mentioned in paragraph (13) if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

(3) Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 50,000, there shall be no requirement to provide a summary except if the summary is provided on the basis of Article 125f(5).

(4) Subject to the provision of paragraph (5), the prospectus may be drawn up as a single document or as separate documents. A prospectus composed of separate documents shall be divided into a registration document, a securities note, and a summary note. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market. The summary note shall state the information which is otherwise contained in the summary.

(5) For the following types of securities, the prospectus can consist of a base prospectus:

- a) non-equity securities, including warrants in any form, issued under an offering programme;
- b) non-equity securities issued in a continuous or repeated manner by banks or foreign banks,
  1. where the sums deriving from their issue are placed in assets which provide sufficient coverage for the liability arising from the securities,
  2. where, in the event of the insolvency of the respective bank or foreign bank, the said sums are intended, as priority, to repay the capital and interest falling due.

(6) Information may be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the National Bank of Slovakia or filed with the National Bank of Slovakia pursuant to this Act or to a separate law<sup>103</sup> or with the relevant supervisory authority of a Member State. The information so incorporated shall be the latest available to the issuer. The summary shall not incorporate information by reference.

(7) When information is incorporated by reference, a cross-reference list must be provided in the prospectus.

(8) A 'base prospectus' means a prospectus containing all relevant information concerning the issuer and the securities to be offered to the public or admitted to trading on a regulated market, and which is drawn up in accordance with a separate regulation.<sup>103a)</sup>

(9) If the information stated in the base prospectus is materially changed during the offer programme or during the issue of securities in a continuous or repeated manner, the information shall be supplemented in accordance with Article 125c.

(10) If the final terms of the offer of securities to the public are not included in either the base prospectus or a supplement, the final terms shall be provided to investors and filed with the National Bank of Slovakia, and this shall be done not later than the beginning of the offer. In this case, the information mentioned in Article 122(1) shall be stated in the prospectus.

(11) The prospectus shall be drawn up in accordance with a separate regulation.<sup>103a)</sup>

(12) Responsibility for the information given in a prospectus bears the issuer or its statutory, management or supervisory bodies, the natural person or legal person which offers securities to the public (hereinafter the "offeror of securities"), the person asking for admission to trading on a regulated market, the person guaranteeing the redemption of the securities or the yields thereon, or the person who has drawn up the prospectus. The persons responsible shall be clearly identified in the prospectus by, in the case of natural persons, their names and functions or, in the case of legal persons, their names and registered officers. The prospectus shall also include declarations by such persons that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import for an informed assessment of the issuer or of the securities to be offered to the public or to be admitted to trading on a regulated market.

(13) Whosoever is responsible for the information presented in the prospectus shall be liable for any damage caused in the event that this information is inaccurate or false. Civil liability shall attach to the person responsible for the summary or its translation if the summary contains information that is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

## **ARTICLE 122**

(1) Where the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus, the criteria or conditions in accordance with

which these elements will be determined or, in the case of price, the maximum price, shall be disclosed in the prospectus, or investors shall be allowed to withdraw acceptances of the purchase or subscriptions of the securities that will be offered to the public within at least two working days after the final offer price and amount of the securities have been made public. The final offer price and amount of the securities are to be communicated to the National Bank of Slovakia and published in accordance with Article 125a(2).

(2) The National Bank of Slovakia may authorise the omission from the prospectus of certain information pursuant to this Act or a separate regulation,<sup>103a)</sup> if the disclosure of such information would:

- a) be contrary to public interest;
- b) be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, the offeror of securities, or any person guaranteeing the redemption of the securities or the yields thereon, and of the rights attached to the securities to which the prospectus relates; or
- c) be of minor importance to a specific offer or admission to trading on a regulated market and the information is not such as will influence the assessment of the financial position and prospects of the issuer, the offeror of securities, or any person guaranteeing the redemption of the securities or the yields thereon.

(3) Where certain information that should be included in the prospectus in accordance with a separate regulation<sup>103a)</sup> is inappropriate to the issuer's sphere of activity or to its legal form or the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information where such information exists. This is without prejudice to the provision of Article 121(1).

### **ARTICLE 123**

#### **Validity of a prospectus**

(1) A prospectus shall be valid for a period of 12 months after its first publication, provided that the prospectus is updated with supplements as required pursuant to Article 125c.

(2) In the case of an offering programme, the base prospectus shall be valid for a period of 12 months after its publication.

(3) In the case of non-equity securities referred to in Article 121(5)(b), the prospectus shall be valid until no more of the securities concerned are issued in a continuous or repeated manner.

(4) A registration document referred to in Article 121(4) shall be valid for a period of 12 months after its publication, provided that it is updated with supplements to the prospectus as required pursuant to Article 125c. The registration document accompanied by the approved and published securities note and the summary shall constitute a valid prospectus.

### **ARTICLE 124**

(1) An issuer which already has an approved registration document shall be required to draw up only the securities note and the summary note when securities are offered to the public or admitted to trading on a regulated market.

(2) In the case referred to in paragraph (1), the securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development which could affect investors' investments since the latest updated registration document or since a supplement pursuant to Article 125c was approved. The securities and summary note shall be subject to a separate approval.

## **ARTICLE 125**

### **Title repealed as of 1 August 2005**

(1) No prospectus shall be published until it has been approved.

(2) The approval of a prospectus shall be given by the National Bank of Slovakia unless otherwise provided in this Act.

(3) If the Slovak Republic is the issuer's home Member State in accordance with Article 125d, the issuer, the offeror of securities, or the person asking for admission to trading on a regulated market shall submit an application for approval of the prospectus to the National Bank of Slovakia. The National Bank of Slovakia shall decide on the approval of the prospectus and notify its decision to the applicant within ten working days of the submission of the draft prospectus.

(4) The time limit referred to in paragraph (3) shall be extended to 20 working days if the public offer involves securities issued by an issuer which does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public.

(5) If the National Bank of Slovakia finds that the draft prospectus is incomplete or that supplementary information is needed in accordance with a separate regulation,<sup>103a)</sup> it is required to notify the applicant of this fact within 10 working days of the submission of the application. The National Bank of Slovakia may request the issuer, the offeror of securities, or the person asking for admission to trading on a regulated market to supplement the prospectus with information essential for investor protection. The time limits referred to in paragraph (3) and (4) shall apply only from the date on which the applicant provides such information.

(6) If the National Bank of Slovakia fails to comply with the time limit referred to in paragraph (3) or (4), this shall not be deemed to constitute approval of the prospectus. The National Bank of Slovakia is required to inform the applicant without undue delay about non-compliance with the time limit and about the reason for the non-compliance.

(7) When deciding on the approval of a prospectus, the National Bank of Slovakia shall consider in particular the completeness of the prospectus, the mutual consistency of the submitted information, and its comprehensibility.

(8) The National Bank of Slovakia may transfer the approval of a prospectus to the competent supervisory authority of another Member State subject to the agreement of that

authority. The National Bank of Slovakia may also deal with a prospectus approval which would otherwise be dealt with by the competent supervisory authority of a Member State, where so agreed with this competent authority. The transfer of the authorisation to approve the prospectus shall be notified to the applicant within three working days after the date of the decision by the National Bank of Slovakia on transferring the authorisation to the respective authority of the Member State. The time limit referred to in paragraph (3) and (4) shall apply from that date.

(9) After approving a prospectus, the National Bank of Slovakia shall deposit the prospectus at the National Bank of Slovakia.

(10) The provisions of paragraphs (1) to (9) shall apply, as appropriate, to the approval of a prospectus consisting of separate documents.

### **ARTICLE 125a** **Publication of the prospectus**

(1) The prospectus shall be made available to the public by the issuer, the offeror of securities, or the person asking for admission to trading on a regulated market at a reasonable time in advance of, and at least at the beginning of, the offer to the public or the admission to trading of the securities involved. In the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer, without prejudice to the provision of Article 120(1).

(2) The prospectus shall be deemed available to the public when published either:

- a) by insertion in one or more newspapers circulated throughout, or widely circulated in, the Member States in which the offer to the public is made or the admission to trading is sought; or
- b) in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents; or
- c) in an electronic form on the issuer's website and on the website of the financial intermediaries placing or selling the securities, including paying agents; or
- d) in an electronic form on the website of the regulated market where the admission to trading is being sought; or
- e) in electronic form on the website of the National Bank of Slovakia, if the National Bank of Slovakia has decided to offer this service.

(3) An issuer which publishes a prospectus in accordance with paragraph (2)(a) or (b) shall be required also to publish the prospectus in the way referred to in paragraph (2)(c) if the securities offered to the public have a total consideration of more than EUR 20 million.

(4) In the case pursuant to paragraph 2(b) to (e), the issuer, the offeror of securities, or the person asking for admission to trading on a regulated market shall insert an announcement in one or more newspapers circulated throughout, or widely circulated in, the Member States in which the offer to the public is made or the admission to trading is sought stating how the prospectus has been made available and where it can be obtained.

(5) The National Bank of Slovakia shall publish on its website over a period of 12 months the list of prospectuses approved in accordance with Article 125, including a hyperlink to the prospectus published on the website of the issuer or on the website of the regulated market if the prospectus has been published thereon.

(6) In the case of a prospectus comprising separate documents or incorporating information by reference, the documents and information making up the prospectus may be published and circulated separately provided that the said documents are made available in accordance with paragraph (2). Each document shall indicate where the other constituent documents of the full prospectus may be obtained.

(7) The text and format of the prospectus and the supplements to the prospectus published or made available to the public, shall be identical to the original version of the prospectus approved by the National Bank of Slovakia.

(8) Where the prospectus is made available by publication in electronic form, a paper copy shall be delivered to the investor, upon his request and free of charge, by the issuer, the offeror of securities, the person asking for admission to trading or the financial intermediaries placing or selling the securities.

(9) The provisions of paragraphs (1) to (6) are without prejudice to the provisions of a separate regulation.<sup>103a)</sup>

## **ARTICLE 125b**

(1) Any notices, advertisements, posters, or other documents concerning an offer to the public of securities or an admission to trading on a regulated market shall state that a prospectus has been or will be published and indicate where it can be obtained, except if a prospectus is not required in accordance with this Act.

(2) The purpose of an announcement, advertisement, poster, or other document referred to in paragraph (1) must be clearly recognisable. The information contained therein shall not be inaccurate or misleading and it shall not be inconsistent with the information contained in the prospectus, if already published, or with the information required to be in the prospectus, if the prospectus is to be published afterwards.

(3) Information concerning the offer to the public of securities or the admission to trading on a regulated market disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with that contained in the prospectus.

(4) When according to this Act no prospectus is required, material information provided by the issuer or the offeror of securities and addressed to qualified investors or special categories of investors pursuant to Article 120(3) and (5), including information disclosed in the context of meetings relating to offers of securities, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed. Where a prospectus is required to be published, such information shall be included in the prospectus or in a supplement to the prospectus in accordance with Article 125c.

(5) The National Bank of Slovakia shall have the power to ban or suspend for 10 working days the publication of an announcement, advertisement, poster or other document referred to in paragraph (1) if it finds that such publication or further publication would be contrary to provisions laid down in this Act or in a separate law.<sup>103a)</sup>

(6) The provisions of paragraphs (1) to (4) are without prejudice to a separate regulation.<sup>103a)</sup>

### **ARTICLE 125c** **Supplements to the prospectus**

(1) Every significant new factor, material mistake, or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus.

(2) The approval of a supplement to the prospectus shall be subject, as appropriate, to Article 125. The National Bank of Slovakia has a maximum of seven working days in which to approve the supplement.

(3) A supplement to the prospectus shall be published with the same arrangements as were applied when the original prospectus was published.

(4) The summary, and any translations thereof, shall take into account the new information included in the supplement.

(5) Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances.

## **Cooperation and free movement within the European Economic Area**

### **ARTICLE 125d**

(1) Without prejudice to the provision of Article 135b, where an offer to the public of securities or an admission to trading on a regulated market is provided for in another Member State or only in another Member State, the prospectus approved by the National Bank of Slovakia and any supplements thereto shall be valid for the public offer or the admission to trading in the issuer's host Member States, provided that the competent supervisory authority of each host Member State is notified in accordance with Article 125e.

(2) An offer to the public of securities or admission to trading on a regulated market may be provided for in the Slovak Republic also on the basis of a prospectus, and any supplements thereto, approved by the competent supervisory authority of the issuer's home Member State, provided that the National Bank of Slovakia has been informed in accordance with Article 125e; in that case, the prospectus shall not be subject to approval by the National Bank of Slovakia.

(3) If the National Bank of Slovakia finds significant new factors, material mistakes or inaccuracies as referred to in Article 125c, or if its attention is drawn to any such fact by the competent supervisory authority of the issuer's host Member State, the National Bank of Slovakia shall require the publication of a supplement to the prospectus approved in accordance with Article 125.

(4) If the National Bank of Slovakia finds significant new factors, material mistakes, or inaccuracies as referred to in Article 125c concerning a prospectus used in the Slovak Republic which has been approved by the competent supervisory authority of another Member State, the National Bank of Slovakia may draw the attention of the competent authority of the issuer's home Member State to the need to supplement the prospectus with any new information.

(5) For the purposes of this Act, 'home Member State' means:

- a) for issuers of securities incorporated in a Member State which are not mentioned in letter (b), the Member State where the issuer has its registered office;
- b) for issues of non-equity securities
  - 1. whose denomination per unit amounts to at least EUR 1,000, and
  - 2. for issues of non-equity securities giving the right to acquire transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer,the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public;
- c) for issuers of securities incorporated in a country that is not a Member State, which are not mentioned in letter (b), the Member State where the securities are intended to be offered to the public for the first time after 31 December 2003 or where the first application for admission to trading on a regulated market is made, subject to the right of the issuer to determine the home Member State.

(6) For the purposes of this Act, 'host Member State' means the State where securities are offered to the public or admission to trading on a regulated market is sought, when different from the issuer's home Member State.

## **ARTICLE 125e**

(1) The National Bank of Slovakia shall, on the request of the issuer or the person responsible for drawing up the prospectus, provide the competent supervisory authority of the host Member State with both a certificate of approval attesting that the prospectus has been drawn up in accordance with a separate regulation, and a copy of the said prospectus, and it shall do so within three working days following the submission of the request or, if the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus.

(2) Where there is a summary, the certificate referred to in paragraph (1) shall be accompanied by any translation of the summary produced under the responsibility of the

issuer or person responsible for drawing up the prospectus. This shall also apply to any supplement to the prospectus.

(3) The non-publication of information as referred to in Article 122(2) and (3) shall be stated in the certificate of approval, as well as its justification.

## **ARTICLE 125f**

(1) Where securities are offered to the public or admission to trading on a regulated market is sought only in the Slovak Republic, the prospectus shall be drawn up in the Slovak language.

(2) Where securities are offered to the public or admission to trading on a regulated market is sought only in another Member State, the prospectus shall be drawn up either in a language accepted by the competent supervisory authority of that Member State or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror of securities, or the person asking for admission to a regulated market. The issuer, offeror or person asking for admission shall translate the summary into the official language or official languages of the issuer's host Member State if requested to do so by the competent authority of that Member State.

(3) For the purpose of approval of the prospectus referred to in paragraph (2), the issuer, the offeror of securities, or the person asking for admission to trading on a regulated market may draw up the prospectus either in the Slovak language or in a language customary in the sphere of international finance.

(4) Where securities are offered to the public or admission to trading on a regulated market is sought in more than one Member State, including the Slovak Republic, the prospectus shall be drawn up in the Slovak language and shall also be made available in a language accepted by the competent supervisory authorities of each host Member State or in a language customary in the sphere of international finance. The issuer, the offeror of securities or the person asking for admission to trading on a regulated market shall translate the summary pursuant to Article 121 into the official language or official languages of the issuer's host Member State, if requested to do so by the competent supervisory authority of that Member State. The National Bank of Slovakia may require that the issuer from another Member State, the offeror of securities from another Member State or the person from another Member State asking for admission to trading on a regulated market furnish a translation into the Slovak language of the summary pursuant to Article 121, if securities are being offered to the public or admission to trading on a regulated market is being sought in both Slovakia and another Member State.

(5) Where admission to trading on a regulated market of non-equity securities whose denomination per unit amounts to at least EUR 50,000 is sought in one or more Member States, the prospectus shall be drawn up in the Slovak language and either in a language accepted by the competent supervisory authorities of the issuer's host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror of securities, or the person asking for admission to trading on a regulated market. The summary shall be translated into the Slovak language.

**ARTICLE 125g**  
**Issuers incorporated in third countries**

(1) For issuers having their registered office in a country which is not a Member State, the National Bank of Slovakia may approve a prospectus for a public offer of securities or for admissions to trading on a regulated market, drawn up in accordance with the regulations of that country, provided that:

- a) the prospectus has been drawn up in accordance with international standards set by international securities commissions organisations, including rules concerning the disclosure of information to the public; and that
- b) the information requirements, including information of a financial nature, are equivalent to the requirements under this Act.

(2) In the case of a public offer of securities or admission to trading on a regulated market of securities, issued by an issuer incorporated in a country that is not a Member State, in a Member State other than the home Member State, the requirements set out in Articles 125d to 125f shall apply.

**ARTICLE 125h**

(1) Unless otherwise provided by this Act, the provisions of Articles 120 to 125f shall not apply to:

- a) shares in open-end investment funds and securities of foreign collective investment undertakings of the open-end type;
- b) non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank, or by the central banks of Member States;
- c) shares in the capital of central banks of the Member States;
- d) securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities;
- e) securities issued by foundations, non-investment funds or non-profit-making bodies in accordance with the law of a Member State with a view to their obtaining the means necessary to achieve their non-profit-making objectives;
- f) non-equity securities issued in a continuous or repeated manner by banks or foreign banks, provided that these securities:
  - 1. are not subordinated or exchangeable,
  - 2. do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument,
  - 3. materialise reception of repayable deposits accepted by a bank or the branch of a foreign bank,
  - 4. are protected in accordance with a separate law,<sup>72)</sup>
- g) non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment or other form of immovable property or a part thereof, and where the shares cannot be sold on without this right being given up;
- h) non-equity securities issued in a continuous or repeated manner by banks or foreign banks where the total consideration of the offer is less than EUR 50,000,000, which limit shall be calculated over a period of 12 months, provided that these securities:
  - 1. are not subordinated or exchangeable;

2. do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument;
- i) securities included in a public offer where the total consideration of the offer is less than EUR 2,500,000 over a period of 12 months, which limit shall be calculated over a period of 12 months;
- j) securities which are not convertible under a separate law;<sup>103b)</sup>
- k) securities which are money market instruments (Article 8).

(2) Notwithstanding paragraph (1), an issuer, an offeror of securities, or a person asking for admission to trading on a regulated market shall be entitled to draw up a prospectus in accordance with paragraph (1)(b), (d), (h) and (i) when securities are offered to the public or admitted to trading on a regulated market.

(3) In the case of securities referred to paragraph (1)(i) where the total consideration of the offer is more than EUR 100,000 and less than EUR 2,500,000, which limit shall be calculated over a period of 12 months, the provisions of Articles 120 to 125c shall apply thereto.

(4) The National Bank of Slovakia may permit a prospectus of the securities referred to in paragraph (3) to be abridged by the removal of information which, in regard to the scope of the public offer and to the nature of the securities and their issuer, has minimal importance for making an informed assessment the assets and liabilities, financial position, profit and losses, and which is immaterial to disclose in the prospectus, especially in the case of a public offer restricted to the Slovak Republic, and provided that the non-disclosure of such information will not mislead investors.

### **Public offer of assets**

#### **ARTICLE 126**

(1) Money may be raised from the public on the basis of a public offer of assets with the objective of carrying on a business or other profitable activity only in the manner laid down in this Act. For the purposes of this Act, 'public offer of assets' means any announcement, recommendation, or other text published, or any action taken, in order to raise money, by any person who, personally or through third parties, for its own benefit or for the benefit of third parties, by whatever distribution channels approaches a non-specific range of persons, not determined beforehand, with the objective to announce a possibility, or inspire interest, to acquire the assets offer in a public offer of assets. For the purposes of this Act, assets mean any property rights and assets other than securities.

(2) Assets may be offered publicly only if an investment prospectus has been published.

(3) Distribution channels may not be used to publish any public offer of assets involving an explicit or implied requirement for the investor to recruit other investors.

(4) The provisions of paragraphs (1) to (3) shall not apply to activities carried out by a bank, branch of a foreign bank, insurance company, branch of a foreign insurance company, supplementary pension insurance company, and asset administration company within its regular scope of business laid down by a separate law, or to foundations,<sup>62)</sup> non-investment funds,<sup>63)</sup>

non-profit organisation providing generally beneficial services,<sup>64)</sup> and entities incorporated outside the Slovak Republic with a similar line of business.

(5) Money raised from the public under this Act may not be used by any person to grant credits or loans; the raising of funds from the public in the meaning of this Act is without prejudice to restrictions imposed by a separate law.<sup>106)</sup>

(6) A natural person or legal person who has raised money from the public under a public offer of assets is a relevant person pursuant to a separate law.<sup>107)</sup>

## **ARTICLE 127**

(1) Until an investment prospectus is approved by the National Bank of Slovakia, the investment prospectus, or any other notices, advertisements, posters or other documents containing or announcing a public offer of assets may not be published.

(2) The National Bank of Slovakia shall approve an investment prospectus on the request of a legal or natural person conducting a public offer of assets pursuant to Article 126 (hereinafter the "person making a public offer of assets").

(3) An application for approval of an investment prospectus shall include:

- a) information that a public offer of assets is to be published,
- b) the investment prospectus itself with the particulars specified in Article 128.

(4) The procedure of the National Bank of Slovakia in approving an investment prospectus and the manner of publication of an investment prospectus shall be as provided in Article 122(4) to (9).

## **ARTICLE 128**

### **Investment prospectus**

(1) An investment prospectus must contain:

- a) basic information about the legal person or natural person making a public offer of assets, and about its business:
  1. business name and registered office, if a legal person, or name and permanent residence, if a natural person;
  2. identification number, if one was assigned to the person making a public offer of assets;
  3. date of establishment and legal status;
  4. line of business;
  5. name, date of birth and permanent residence of members of its statutory body, supervisory body, and executive officers;
  6. name and permanent residence of natural persons, and business name and registered office of legal persons controlling the issuer, if they may be known to the person making a public offer of assets;
  7. business name and registered office of legal persons having equity links with the person making a public offer of assets;<sup>104)</sup>

8. share capital, number and type of securities or shares that the share capital is divided into, and unpaid share capital;
  9. list of patents and licences owned by the person making a public offer of assets and their description;
  10. list of contracts ensuring the sale of products or services of the person making a public offer of assets;
  11. share of products or services of the person making a public offer of assets in the domestic and foreign markets.
- b) information about the offered assets and method of their offering, and information about assets to be acquired with funds raised under the public offer;
  - c) information about the financial situation of the person making a public offer of assets pursuant to Article 77(2)(b);
  - d) main business strategies and objectives of the person making a public offer of assets for at least one year;
  - e) a representation by the statutory body of the person making a public offer of assets that the financial statements referred to for information specified in letter (c) have been audited, and the auditor's opinion based on the examination of the financial statements; name and permanent residence, or business name and registered office of auditors auditing the financial statements of the person making a public offer of assets for the last two accounting periods;
  - f) name and permanent residence of employees of the person making the public offer of assets responsible for information provided in the investment prospectus;
  - g) investment prospectus date and the period of validity of the public offer of assets;
  - h) a representation by a statutory representative of the person making the public offer of assets that the information presented in the investment prospectus is true and complete;
  - i) the signature of the statutory body of the person making the public offer of assets.

(2) An investment prospectus published by a person making a public offer of assets, which was established less than 24 months prior to the application filing date, shall provide information for the period since its establishment.

(3) The National Bank of Slovakia may, on the request of a person making a public offer of assets, allow the non-disclosure of certain information in a prospectus if the publication of such information would be at odds with public interest or seriously damaging to the person making a public offer of assets; the National Bank of Slovakia shall turn down the request if the non-disclosure of such information would significantly affect the decision-making of the public.

## **ARTICLE 129**

(1) Any notice, advertisement, poster and other document containing a public offer of assets, which is to be published or widely distributed by a person making of a public offer of assets, must contain:

- a) information that a prospectus has, and where it has, been published,
- b) an advice implying that the investment involves a certain risk and that no past or advertised profits are a guarantee of actual future profits, and may not withhold any information which is significant for public decision-making, in particular information on future profits which may not be reasonably expected.

(2) The notices, advertisements, posters or other documents referred to in paragraph (1) shall be delivered to the National Bank of Slovakia prior to publication, and they may only be published if, within 15 days after the date of their delivery, the National Bank of Slovakia has not prohibited their publications. The publication of advertisements, posters or other documents referred to in paragraph (1) shall be prohibited by the National Bank of Slovakia where they do not meet the conditions laid down in paragraph (1), or if they contain information inconsistent with the contents of the prospectus or contain information or a set of data which could be misleading in the absence of other information.

### **ARTICLE 130**

(1) A person offering assets to the public shall, no later than two months after the end of the first six months of the accounting period, publish a semi-annual financial report in the same manner as an issuer of securities admitted to a regulated market, and shall, no later than four months after the end of the accounting period, publish an annual financial report in the same manner as an issuer of securities admitted to a regulated market; it shall submit these reports, together with evidence of their publication, to the National Bank of Slovakia. The contents of the annual financial report and semi-annual financial report shall be subject, as appropriate, to Article 77(2) to (4), and the information stated therein shall be complete, truthful and materially correct.

(2) A person offering assets to the public shall notify the National Bank of Slovakia without delay of any change in its financial situation or any other fact that could impair its ability to meet liabilities to clients.

### **ARTICLE 131**

(1) If an annual or mid-year report is to be published in the Slovak Republic and in another Member State, the National Bank of Slovakia shall co-ordinate its activity with a competent authority of that Member State so as to enable an issuer of listed shares to publish, as far as possible, a uniform text of its annual or mid-year report in the Slovak Republic and the country concerned.

(2) The National Bank of Slovakia shall coordinate its activity with a competent authority of the relevant Member State in order to enable an issuer of listed shares to publish a uniform text of its annual or mid-year report as required by the law of a country where its shares have been first admitted for trading on a market with listed securities.

### **ARTICLE 131a** **Market manipulation**

- (1) 'Market manipulation' means:
- a) transactions or orders to trade, including their combination, which give or are likely to give, false, alarming or misleading signals as to the supply of, demand for, or price of financial instruments, or which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level; it is not

market manipulation if the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned;

- b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;
- c) dissemination of information through distribution channels, <sup>103)</sup> or by any other means, which gives or is likely to give false or misleading signals as to the supply of, demand for, or price of financial instrument, including the dissemination of false, misleading or alarming news; it is not market manipulation where:
  - 1. false or misleading news is disseminated by a person who could not have known that this news is false or misleading;
  - 2. such information is disseminated by a journalist acting in his professional capacity, provided that the journalist acts in accordance with the rules governing his profession and that the journalist does not derive, directly or indirectly, an advantage or profit from dissemination of the information.

(2) In accordance with paragraph (1), market manipulation shall be deemed to include especially:

- a) conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of, or demand for, a financial instrument which has the effect of fixing, directly or indirectly, the prices of the financial instruments or creating unfair trading conditions for other market participants;
- b) the buying or selling of financial instruments at the close of the regulated market with the effect of misleading investors acting on the basis of closing prices;
- c) taking advantage of occasional or regular access to distribution channels by voicing an opinion about a financial instrument or its issuer while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument without having disclosed that conflict of interest to the public.

(3) When examining which activities, apart from those mentioned in paragraph (2), may be deemed to constitute market manipulation, account shall be taken of the following in particular:

- a) the extent to which orders to trade given or transactions undertaken represent a proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, in particular when these activities lead to a significant change in the price of the financial instrument;
- b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument may lead to significant changes in the price of the financial instrument or related derivative or underlying asset admitted to trading on a regulated market;
- c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument admitted to trading on a regulated market;
- d) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, and might be associated with significant changes in the price of a financial instrument admitted to trading on a regulated market;

- e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
- f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument or the representation of the order book available to market participants, and are removed before they are executed;
- g) the extent to which orders to trade are given or transactions are undertaken at a time when reference prices, settlement prices and valuations of financial instruments are calculated and lead to price changes which have an effect on such prices and valuations;
- h) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;
- i) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest.

(4) Market manipulation shall not be allowed.

(5) Further details on what is deemed to constitute market manipulation and on the criteria for examining whether certain actions can be deemed to constitute market manipulation may be set out by a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws.

## **ARTICLE 132**

### **Prohibition on using inside information**

(1) For the purposes of this Act, 'inside information' means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

(2) For the purposes of this Act, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.

(3) In relation to derivatives on commodities, 'inside information' shall, for the purposes of this Act, mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives, or instruments based on such derivatives, are traded would expect to receive in accordance with accepted market practices on such markets.

(4) For persons charged with the execution of orders concerning financial instruments, 'inside information' shall, for the purposes of this Act, mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly

or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments.

(5) For the purposes of this Act, 'information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or on the price of related derivative financial instruments' means information a reasonable investor would be likely to use as part of the basis of his investment decisions; for the purposes of this Act, 'reasonable investors' are investors who base their investment decisions on information already available to them prior to taking an investment decision.

(6) For the purposes of this Act, 'accepted market practices' mean the practices ordinarily applied in the relevant financial markets and which are set out by the National Bank of Slovakia in a guidance issued under paragraph (7). The criteria for examining market practices shall be laid down by decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws.

(7) The National Bank of Slovakia shall issue a guidance on accepted market practices together with justifications for their inclusion in the guidance, and it shall communicate them to the Committee of European Securities Regulators. Before an accepted market practice is included in the guidance and before any change is made to this guidance, the National Bank of Slovakia shall request an opinion from the interest association representing issuers, investment service providers and investors operating in the relevant market, the organisers of this market, and the competent supervisory authority; if supervision is being performed on an entity which should be consulted, the National Bank of Slovakia may defer the consultation until the supervision has been completed or until sanctions have been imposed. The justification for including an accepted market practice into the guidance must include an explanation of the factors that were decisive for its recognition. In the case of a change to the inclusion of an accepted market practice, the National Bank of Slovakia shall request an opinion from those entities which it consulted over the inclusion of the accepted market practice in the guideline in accordance with the first sentence. The National Bank of Slovakia shall on a regular basis examine the inclusion of market practices in the guidance pursuant to the first sentence and keep the guidance updated.

(8) For the purposes of this Act, an 'insider' means a legal person or a natural person who has obtained inside information:

- a) by virtue of his membership of the statutory, management or supervisory bodies of the issuer;
- b) by virtue of his holding in the issuer's share capital;
- c) by virtue of his having access to the information through the exercise of his employment, profession or duties;
- d) by virtue of his criminal activities.

(9) An insider:

- a) must not use the inside information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates; this provision shall not apply if the insider is required to buy, sell or use such a financial instrument in order to fulfil an agreement concluded before this person possessed the inside information;

- b) must not disclose the inside information, or make it available, to another legal person or natural person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;
- c) must not recommend or induce another person, on the basis of the inside information, to acquire, sell or otherwise use financial instruments to which that information relates.

(10) Where the insider is a legal person, the prohibition on taking advantage of inside information laid down in paragraph (9) shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

(11) The prohibition laid down in paragraph (9) shall also apply to any legal or natural person not mentioned in paragraphs (8) and (10) who possesses inside information while that person knows, or ought to have known, that it is inside information.

### **ARTICLE 132a**

(1) Where a person who is party to a transaction in financial instruments, whether through his employment, profession or duties or in connection with the fulfilment of his obligations, has reasonable grounds for suspecting that the transaction involves insider dealing or market manipulation as defined in this Act, such person shall notify this fact without delay to the National Bank of Slovakia. This notification may be made by mail, electronic mail, telecopy, or telephone. In the case of notification by telephone, the National Bank of Slovakia may require the submission to be confirmed by one of the other forms mentioned. If the person does not comply with the request of National Bank of Slovakia for confirmation of the submission within the stipulated period, the obligation referred to in the first sentence shall be deemed to be unfulfilled.

(2) The notification referred to in paragraph (1) shall include:

- a) a description of the transactions, including the type of order (such as limit order or market order) and whether it is an anonymous transaction;
- b) the reasons for suspicion that the transaction or transactions might constitute insider dealing or market manipulation;
- c) the names and domicile or the business name and registered office of the persons on behalf of whom the transactions have been carried out, and of other persons involved in the relevant transactions;
- d) information on whether the person who submitted the notification did so for his own account or on behalf of another party;
- e) any other information which may have significance in reviewing the suspicious transactions.

(3) Where the information referred to in paragraph (2) is not available to the notifying person at the time of notification, the notification shall include at least the reasons why the notifying person suspects that the transactions might constitute insider dealing or market manipulation. The notifying person referred to in paragraph (1) shall provide any remaining information to the National Bank of Slovakia as soon as he has obtained it. The notification made under paragraph (1) in good faith shall not attach any liability to the notifying person, and nor shall it constitute a breach of any restriction on disclosure of information imposed by a contract or any generally binding legal regulation.

(4) The person who made the notification pursuant to paragraph (1) shall disclose neither this fact nor the contents of the notification to the person on whose behalf or for whose account the transactions mentioned in paragraph (1) were carried out, or to any other persons; this does not apply where the information is disclosed to persons authorised under separate regulations.

(5) The National Bank of Slovakia shall not disclose the identity of the person who made the notification referred to in paragraph (1) if to do so might harm this person. This restriction is without prejudice to the requirements of the investigation and sanctioning regimes under this Act in regard to the misuse of insider information and market manipulation.

(6) Without prejudice to paragraph (5), if the information mentioned in paragraph (2) concerns a regulated market in another Member State, the National Bank of Slovakia shall, without delay after receiving the notification, disclose the information to the authority of that Member State which is responsible for the supervision of this regulated market.

(7) If a stock brokerage firm or bank conducting activities in another Member State has reasonable grounds for suspecting that a transaction involves insider dealing or market manipulation as defined by a legal provision of that Member State, it shall without delay disclose this fact in accordance with the law of this Member State to the relevant supervisory authority of this Member State.

## **ARTICLE 132b**

(1) The issuer of a financial instrument shall, without undue delay, disclose and communicate to the National Bank of Slovakia any inside information which directly concerns the issuer, in accordance with the procedure in the same way as the annual financial reports under a separate regulation; <sup>103)</sup> when making this disclosure, the issuer shall ensure that the information made available is complete, true and materially correct. This obligation also applies to any significant change made to inside information already published. In the case that inside information has been disclosed without including all the formal requirements, the issuer will still be construed to have met the disclosure obligation provided that the formal requirements do not affect the substance and truthfulness of the information.

(2) If the issuer has issued financial instruments which are admitted to the regulated market of another Member State or has requested their admission to the regulated market of another Member State, the issuer when disclosing inside information shall proceed so as to ensure, as far as possible, that investors in these Member States have the same access to the inside information as do investors in the Slovak Republic; the disclosure shall be made in the official language of the relevant Member State or, with the consent of the competent supervisory authority of the Member State, in another language employed on the financial market of the Member State.

(3) The issuer of a financial instrument shall, without undue delay, post on his internet site all inside information referred to in paragraphs (1) and (2), for an appropriate period that shall not be less than one year from the date the relevant inside information was disclosed, and including information on its up-to-date status and authenticity of the information and the date of its first publication.

(4) An issuer may delay the disclosure of inside information, as referred to in paragraphs (1) and (2), such as not to prejudice his legitimate interests provided that such omission would not mislead the public and provided that the issuer is able to ensure the confidentiality of that information. The decision to delay this disclosure and the reasons for the delay shall be notified by the issuer without undue delay to the National Bank of Slovakia. For the purposes of delaying public disclosure of inside information, legitimate interests may, in particular, relate to:

- a) negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure of the inside information, in particular, where the financial liability of the issuer is in grave and imminent danger and where such disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer; in that case, the public disclosure of the inside information may be delayed until after the negotiations have been concluded;
- b) decisions taken or contracts made by the issuer's statutory body which need the approval of another body of the issuer, if required by the articles of association or a similar document, provided that public disclosure of the information before the approval of such a decision or contract together with the announcement that this approval is still pending would jeopardise the correct assessment of the information by the public.

(5) Where an issuer has delayed public disclosure in accordance with paragraph (4), he shall ensure the confidentiality of this information, in particular by adopting:

- a) effective measures to deny access to such information to persons other than those who require it in order to meet their obligations within the issuer;
- b) necessary measures to ensure that any person with access to such information acknowledges the obligations entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information;
- c) measures allowing immediate public disclosure of inside information in the case the issuer was not able to ensure the confidentiality of the information concerned; this is without prejudice to the issuer's obligation under the third sentence of paragraph (6).

(6) If an issuer, or a person acting on his behalf or for his account, makes any inside information available to another party in the course of his employment, profession or duties, or in fulfilling his obligations, the issuer shall simultaneously make a public disclosure of this information in accordance with the procedure laid down in paragraphs (1) and (2). If the inside information was made available to another person unintentionally, the issuer shall publicly disclose the information in accordance with the procedure laid down in paragraphs (1) and (2) without undue delay after the information was made available. The issuer is not required to make a public disclosure of the inside information if the person to whom the information was made available owes a duty of confidentiality under separate provisions, articles of association or a contract.

(7) An issuer shall not link the public disclosure of inside information under this Act with the promotion of their activities.

**ARTICLE 132c**  
**Lists of persons with access to inside information**

(1) Issuers, or persons acting on their behalf or for their account, shall draw up and maintain a list of those persons working for them under a contract of employment or otherwise, who have access to inside information. Issuers and persons acting on their behalf or for their account shall keep this list updated. The persons maintaining the list mentioned in the first sentence shall, upon request and without undue delay, deliver the list and updated versions thereof to the National Bank of Slovakia.

(2) The list mentioned in paragraph (1) shall state:

- a) the identity of any person having access to inside information;
- b) the position of any such person;
- c) the reason why any such person is on the list;
- d) the reason why any person is excluded from the list;
- e) the date at which the list of insiders was created and last updated.

(3) Issuers, or persons acting on their behalf or for their account, shall update the list mentioned in paragraph (1) whenever:

- a) there is a change in the identity or position of any person already on the list;
- b) there is a change in the reason why any person is already on the list;
- c) any new person has to be added to the list;
- d) any person already on the list no longer has access to inside information.

(4) The list mentioned in paragraph (1) shall be kept by the issuer for at least five years so that all records and updates may be identified over this period.

(5) The persons who draw up and maintain the lists of persons pursuant to paragraph (1) shall ensure that any person on such a list that has access to inside information is familiarised with the generally binding legal regulations and internal legal regulations which apply to the handling of confidential information, with their obligations when handling confidential information, and with the criminal sanctions, sanctions laid down by this Act, or disciplinary sanctions which attach to the misuse or improper circulation of such information.

## **ARTICLE 132d**

(1) A person discharging managerial responsibilities within an issuer or a person closely associated with him shall notify both the National Bank of Slovakia and the issuer about any transaction which such person conducts on his own account involving shares in the issuer or financial instruments related to such shares, and this person shall do so without undue delay within five working days from when the transaction was executed. The National Bank of Slovakia shall publish this information in its bulletin. A 'person discharging managerial responsibilities within an issuer and a person closely associated with him' means:

- a) a member of the statutory, management or supervisory bodies of the issuer;
- b) an executive officer, who is not a member of the bodies mentioned in letter (a), having access to inside information relating to the issuer and the power to make decisions affecting the future developments and business prospects of this issuer;
- c) a spouse or partner of the person mentioned in letter (a) or (b);
- d) other relatives of the person mentioned in letter (a) or (b), who have shared the same household as that person for at least 12 months on the date of the transaction concerned;
- e) any legal person whose managerial responsibilities are discharged by a person mentioned in letters (a) to (d), or which is controlled by such a person, or that is set up for the benefit

of such a person, or a person whose economic interests are substantially equivalent to those of such person.

(2) The notification made under paragraph (1) shall contain the following information:

- a) name or business name of the person mentioned in paragraph (1),
- b) reason for responsibility to notify,
- c) business name or name of the relevant issuer,
- d) type of the financial instrument,
- e) whether the transaction involved the acquisition or disposal of the financial instrument,
- f) date and place of the transaction,
- g) price and volume of the transaction.

(3) A notification pursuant to paragraph (1) shall not be made if the total volume of the transactions referred to in paragraph (1) does not exceed EUR 5,000 per calendar year. The total volume of transactions shall be computed by summing up the transactions conducted on the own account of persons mentioned in paragraph (1)(a) and (b) with the transactions conducted on the own account of persons mentioned in paragraph (1)(c) to (e).

(4) For transactions involving shares in issuers having their registered office in another Member State or involving financial instruments related to these shares, the persons mentioned in paragraph (1) shall make the notification in accordance with the law of this Member State to the competent supervisory authority of the Member State. If the issuer does not have its registered office in a Member State, the notification shall be delivered to the competent supervisory authority of the Member State in which the issuer is required to file information in relation to the shares.

## **Rules for producing and disseminating investment recommendations**

### **ARTICLE 132e**

(1) An 'investment recommendation' means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels<sup>103</sup> or for the public.

(2) For the purposes of this Act, 'research or other information recommending or suggesting investment strategy' means:

- a) information produced by an independent analyst, a stock brokerage firm, a foreign stock brokerage firm, a bank, a foreign bank, any other person whose main business is to produce recommendations, or a natural person working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment recommendation in respect of a financial instrument or an issuer of financial instruments;
- b) information produced by persons other than the persons referred to in letter (a) which directly recommends a particular investment decision in respect of a financial instrument.

(3) For the purposes of this Act, an independent analyst means a natural person whose business activity involves producing recommendations while such person is not an employee of a stock brokerage firm or a bank.

(4) For the purposes of this Act, a 'relevant person' means a person producing or disseminating recommendations pursuant to paragraph (2) in the exercise of his profession or the conduct of his business. .

(5) Public institutions disseminating statistics liable to have a significant effect on financial markets shall disseminate them in a fair and transparent way; for the purposes of this Act, such a public institution means the Statistical Office of the Slovak Republic, Slovak Radio, Slovak Television, health insurance companies and the Social Insurance Agency.

#### **ARTICLE 132f**

(1) An investment recommendation must disclose the name or business name of the person responsible for its production and, in the case of a legal person, also the name and job title of the person who prepared the recommendation. If the person mentioned in the first sentence is a stock brokerage firm or a bank, there shall also be stated the identity of the relevant authority which performs supervision of its activities. If the person mentioned in the first sentence is neither a stock brokerage firm nor a bank, but is subject to self-regulatory standards or codes of conduct, it shall be stated in the recommendation.

(2) In the case of investment recommendations which are in non-written form, the obligation under paragraph (1) shall be deemed to be met if there is a reference to the place where this information may be directly and easily accessed by the public, such as an internet site of the person mentioned in paragraph (1).

#### **ARTICLE 132g**

(1) Relevant persons shall proceed so as to ensure that:

- a) facts given in investment recommendations are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;
- b) sources used in producing the recommendations are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated;
- c) all projections, forecasts and price targets are clearly labelled as such and that the material assumptions made in producing them are indicated.

(2) In the case of investment recommendations which are in non-written form, the obligation under paragraph (1) shall be deemed to be met if there is a reference to the place where this information may be directly and easily accessed by the public, where it was published, or a link to an internet site containing the relevant information.

(3) Upon the request of the National Bank of Slovakia, relevant persons are required to ensure that any investment recommendations can be substantiated.

#### **ARTICLE 132h**

(1) Unless otherwise provided in this Act, a relevant person under Article 132e(2)(a) shall in any investment recommendation:

- a) indicate important sources of information used as the basis of the recommendation;
- b) indicate the business name or name of the issuer whose financial instruments the investment recommendation concerns, and whether the recommendation has been disclosed to that issuer and amended following this disclosure;
- c) summarise any basis of valuation or methodology used to evaluate a financial instrument or an issuer, or to set a price target for a financial instrument;
- d) explain the meaning of any recommendation made to buy, sell or hold financial instruments in regard to the time horizon of the investment to which the recommendation relates, and to state any appropriate risk warning and factors affecting the assumptions of the recommendation;
- e) indicate the frequency and manner of updates of the recommendation, whether there are plans to update the recommendation, and information on any changes in such facts;
- f) indicate the date at which the recommendation was first made public, and especially the date and time for any financial instrument price mentioned;
- g) where a recommendation differs from a recommendation concerning the same financial instrument or issuer, issued during the 12-month period immediately preceding its release, indicate the change and its substance in a precise and comprehensible manner and the date of the original recommendation.

(2) Where the full information required under paragraph (1)(a) to (d) would be disproportionate in relation to the length of the recommendation, it shall suffice to make a precise and comprehensible reference to the place where the required information can be directly accessed by the public, such as a direct internet link to that information on an internet site of the relevant person, provided that there has been no change in the methodology or bases of the recommendation. In the case of investment recommendations which are in non-written form, the obligation under paragraph (1) shall be deemed to be met if there is a reference to the place where this information may be directly and easily accessed by the public, or an internet link to an internet site containing the relevant information.

## **ARTICLE 132i**

(1) When producing or disseminating investment recommendation, relevant persons shall disclose any relationships and circumstances that could impair the objectivity of the recommendation to the extent laid down in this Act. Relationships and circumstances that could impair the objectivity of the recommendation shall mean, in particular, where relevant persons have a financial interest in one or more of the financial instruments which are the subject of the recommendation, or a conflict of interest with respect to an issuer to which the recommendation relates. Where the relevant person is a legal person, that requirement shall apply also to any person working for it under a contract of employment or otherwise, who was involved in preparing the recommendation.

(2) Where the relevant person is a legal person, the investment recommendation shall include any interests or conflicts of interest of this legal person or any persons related to it on an equity or personal basis that are known or reasonably expected to be known to the persons involved in the preparation of the recommendation, as well as to persons working for the relevant person who, although not involved in the preparation of the recommendation, had or could reasonably be expected to have access to the recommendation prior to its dissemination to customers or the public.

(3) Where the full information required under paragraphs (1) and (2) would be disproportionate in relation to the length of the investment recommendation, it shall suffice to make a precise and comprehensible reference to the place where the required information can be directly accessed by the public, such as a direct internet link to that information on an internet site of the relevant person. In the case of investment recommendations which are in non-written form, the obligation under paragraphs (1) and (2) shall be deemed to be met if there is a reference to the place where this information may be directly and easily accessed by the public, or an internet link to an internet site containing the relevant information.

## ARTICLE 132j

(1) Where the relevant person is a person referred to in Article 132e(2)(a), the investment recommendation must also contain:

- a) information on any shareholdings in the issuer to whom the investment recommendation relates, held by the relevant person or a legal person related to him on an equity<sup>107a)</sup> or personal basis, provided that this shareholding exceeds 5% of the share capital;
- b) information on any shareholdings in the relevant person, or a legal person related to him on an equity or personal basis, held by the issuer to whom the investment recommendation relates, provided that this shareholding exceeds 5% of the share capital;
- c) information on other significant financial interests held by the relevant person, or a legal person related to him on an equity or personal basis, in the issuer to whom the investment recommendation relates;
- d) a statement on whether the relevant person, or a legal person related to him on an equity or personal basis, is a market maker or a liquidity provider in the financial instruments of the issuer to whom the investment recommendation relates;
- e) a statement on whether the relevant person, or a legal person related to him on an equity or personal basis, has conducted activities over the past 12 months in connection with any publicly disclosed offer of financial instruments of the issuer;
- f) a statement on whether the relevant person, or a legal person related to him on an equity or personal basis, is party to an agreement with issuer to whom the investment recommendation relates, concerning the provisions of investment services or banking services other than those covered by letters (d) and (e), provided that this agreement has been in effect over the previous 12 months or has given rise during the same period to the payment of a compensation or to a right to have compensation paid; the information shall not be stated if this would lead to a business secret being divulged;
- g) a statement on whether the relevant person, or a legal person related to him on an equity or personal basis, is party to an agreement concerning the production of the investment recommendation with the issuer to whom the recommendation relates.

(2) Where the relevant person is a stock brokerage firm or a bank, the investment recommendation shall state, in general terms, the effective organisational and administrative arrangements set up within the stock brokerage firm or bank for the prevention and avoidance of conflicts of interest with respect to investment recommendations, including information barriers established within the organisational structure in regard to the production and dissemination of investment recommendations.

(3) For natural or legal persons working for a stock brokerage firm or bank under a contract of employment or otherwise, and who were involved in preparing the investment recommendation, the recommendation shall also state whether the remuneration of such

persons is tied to investment services or banking transactions performed by the stock brokerage firm or bank or another relevant person. If these persons acquire shares of the issuer to whom the recommendation relates prior to a public offering of such shares, the price at which the shares were acquired and the date of acquisition shall also be disclosed.

(4) Stock brokerage firms or banks shall disclose in any investment recommendation the proportion of all recommendations for the past quarter that are 'buy', 'hold', 'sell' or equivalent terms, and the proportion of issuers corresponding to each of these categories, and the proportion of issuers to which the stock brokerage firm or bank has supplied investment or banking services over the previous 12 months.

(5) Where the full information required under paragraphs (1) to (4) would be disproportionate in relation to the length of the investment recommendation, it shall suffice to make a precise and comprehensible reference to the place where the required information can be directly accessed by the public, such as a direct internet link to that information on an internet site of the relevant person. In the case of investment recommendations which are in non-written form, the obligation under paragraphs (1) to (4) shall be deemed to be met if there is a reference to the place where this information may be directly and easily accessed by the public, or an internet link to an internet site containing the relevant information.

#### **ARTICLE 132k**

(1) Where a relevant person disseminates an investment recommendation produced by a third party, the recommendation shall also state the business name or name of that relevant person.

(2) Where a relevant person disseminating an investment recommendation produced by a third party alters the substance of the recommendation, the relevant person shall indicate this fact on the recommendation. If this substantial alteration involves changing the type of recommendation, from a 'buy' recommendation into a 'hold' or 'sell' recommendation or vice versa, the relevant person shall meet the requirements laid down in Article 132g to 132j, to the extent of the substantial alteration.

(3) Where a relevant person disseminates a substantially altered investment recommendation produced by a third party, the relevant person shall have a formal written policy so that the persons receiving the information may be directed to where they can have access to the identity of the producer of the recommendation, to the recommendation itself, and to information about the producer's conflicts of interest, provided that this information on conflicts of interest is publicly available.

(4) Where a relevant person disseminates a summary of an investment recommendation produced by a third party, the relevant person shall ensure that the summary is precise and comprehensible, mentioning the source document and a reference to the place where disclosures related to the source document can be directly and easily accessed by the public provided that this information is publicly available.

#### **ARTICLE 132l**

Where a relevant person is a stock brokerage firm, bank or a natural person working for such persons under a contract of employment or otherwise, and disseminates investment recommendations produced by a third party, the relevant person shall:

- a) state in the investment recommendation the name of the competent authority which performs supervision of its activities;
- b) meet the requirements laid down in Articles 132i and 132j, if the disseminated investment recommendations have not yet been published;
- c) meet the requirements laid down in Articles 132f to 132j, where the investment recommendation produced by a third party has been substantially altered.

### **ARTICLE 132m**

(1) The provisions of Articles 131a to 132l shall apply to:

- a) financial instruments admitted to trading on a regulated market in the Slovak Republic or at least in one other Member State, or for which a request for admission to trading on a regulated market in the Slovak Republic or in one other Member State has been made, irrespective of whether or not the financial instruments are actually traded on that market;
- b) actions carried out in the Slovak Republic or abroad concerning financial instruments that are admitted to trading on a regulated market or for which a request for admission to trading on a regulated market situated in the Slovak Republic has been made;
- c) actions carried out in the Slovak Republic concerning financial instruments that are admitted to trading on a regulated market in another Member State or for which a request for admission to trading on such market has been made.

(2) The provision of Article 132 shall also apply to any financial instrument not admitted to trading on a regulated market in the Slovak Republic, or in another Member State, the value of which depends on a financial instrument as referred to in paragraph (1)(a).

(3) The provisions of Articles 132b and 132c shall not apply to issuers who have not requested or approved admission of their financial instruments to trading on a regulated market in the Slovak Republic or in another Member State.

(4) The provisions of Articles 131a to 132l shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy, to trading in own shares in 'buy-back' programmes, or to the price stabilisation of a financial instrument under conditions in accordance with a provision of the European Union,<sup>107b)</sup> by the Slovak Republic, by another Member State, by the National Bank of Slovakia, by the central bank of another Member State, by the European System of Central Banks, by the Agency for Debt and Liquidity Management, by another institution designated by a Member State, or by any person acting on their behalf.

(5) The provisions of Articles 132e to 132f shall not apply to foreign stock brokerage firms, foreign banks or other foreign entities within the scope of their activities in the Slovak Republic.

(6) The provisions of Articles 132f, 132g and 132i shall not apply to journalists who in the course of their activities proceed in accordance with a separate regulation,<sup>107c)</sup> or with a legal regulation of a Member State, or with a self regulation, provided that such regulation

includes provisions to ensure that the requirements laid down by Articles 132f, 132g a 132i are met.

### **ARTICLE 132n**

If the issuer or another person does not, within the stipulated time limit, publicly disclose information or data that it is required to disclose in accordance with this Act, the National Bank of Slovakia may publish the relevant information or data provided that such facts are at its disposal. This is without prejudice to the power of the National Bank of Slovakia to impose a sanction under Article 144, nor does it divest the issuer or another person of their responsibility to disclose the relevant information.

### **ARTICLE 133** **Conflict of interests**

(1) An employee of the central depository may not, at the same time, be an employee of, or have a similar work relationship with, a stock brokerage firm, bank, stock exchange, asset management company, insurance company, an issuer of securities, or another central depository.

(2) A member of the Government of the Slovak Republic, head of a central state administration authority other than a member of the Government of the Slovak Republic, a deputy of the National Council of the Slovak Republic, an employee of a central state administration authority of the Slovak Republic, the National Bank of Slovakia of the President of the Slovak Republic, National Bank of Slovakia of the National Council of the Slovak Republic, the Supreme Audit Office of the Slovak Republic, the Constitutional Court of the Slovak Republic, the Supreme Court of the Slovak Republic, the Office of the Attorney General of the Slovak Republic, the Slovak Information Service, or the Centre of Coupon Privatisation of the Slovak Republic, may not be a member of the Board of Directors, the Supervisory Board, or an employee of a stock brokerage firm or the central depository. The foregoing does not apply if an employee of a central state administration authority is delegated to these bodies by its employer.

(3) Employees of the central depository may not be members of the Supervisory Board of the central depository. A member of a statutory body of the central depository, a leading employee of the central depository and an employee of the central depository executing specialised activities pursuant to Article 99(3) and (4) may not simultaneously be in employment or in other labour relationship with an issuer of securities,

### **ARTICLE 134** **Confidentiality obligation**

(1) Members of the statutory and supervisory bodies, employees, proxies, liquidators, receivers, and other persons involved in the activities of a stock brokerage firm, foreign stock brokerage firm, central depository, or a stock exchange, are obliged to keep confidential any facts they learn due to their position or in the discharge of their duties, which is material for the development of the financial market or concerns the interests of its individual participants.

(2) The confidentiality obligation pursuant to paragraph (1) shall survive the termination of employment or a similar work relationship.

(3) The confidentiality obligation pursuant to paragraph (1) shall not be deemed violated, if information is disclosed to:

- a) persons authorised to exercise supervision for the purposes supervision;<sup>20)</sup>
- b) a court of law for the purposes of civil court proceedings;<sup>91)</sup>
- c) law enforcement authorities for the purposes of criminal prosecution;<sup>92)</sup>
- d) the National Bank of Slovakia for the purposes of the bank supervision which it exercises;<sup>93)</sup>
- e) the criminal police service and the financial police service of the Police Forces for the purposes of performing their duties established by a separate law;<sup>94)</sup>
- f) tax authorities for the purposes of tax proceedings;<sup>95)</sup>
- g) the Office for Personal Data protection;<sup>107d)</sup>
- h) the Slovak Intelligence Service in regard to the performance of its duties under separate regulations.<sup>107e)</sup>

(4) The provisions of paragraphs (1) to (3) shall not operate to invalidate the obligation to prevent or notify the perpetration of a criminal offence under a different law.

## **PART EIGHT**

### **SUPERVISION**

#### **ARTICLE 135**

##### **Scope of supervision**

(1) Supervision in the meaning of this Act shall be exercised over the activities of issuers of securities, central depositories, a person discharging managerial responsibilities within an issuer and any person closely associated with him, stock brokerage firms and foreign stock brokerage firms insofar as they operate in the Slovak Republic, the Fund, investment brokers, take-over bidders, offerors of securities, persons asking for admission to trading on a regulated market, and offerors of assets to the public. Other activities subject to supervision pursuant to this Act are those performed by other persons in relation to the operation or management of stock brokerage firms, branches of foreign stock brokerage firms, central depositories, offerors of securities, or persons asking for admission to trading on a regulated market. Supervision shall also be exercised over consolidated groups and sub-consolidated groups (Article 138) including stock brokerage firms or central depositories, over financial conglomerates pursuant to Article 143j, over entities subject to obligations and prohibitions concerning inside information, market manipulation or the production and dissemination of investment recommendations, over mixed financial holding companies, and over financial holding companies which are subject to obligations laid down in this Act. This provision shall not apply to activities performed by the National Bank of Slovakia pursuant to a separate regulation.<sup>108)</sup>

(2) Supervision pursuant to paragraph (1) shall cover:

- a) compliance with conditions specified in licences granted in accordance with this Act;
- b) compliance with this Act and separate legislation in the extent defined in this Act, and with generally binding legal regulations issued for their implementation;
- c) compliance with legally binding acts of the European Communities and European Union.

(3) Supervision pursuant to paragraph (1) shall be exercised by the National Bank of Slovakia.

(4) Stock brokerage firms, foreign stock brokerage firms, and central depositories shall allow persons authorised to exercise supervision to attend general meetings of the stock brokerage firm or the central depository, meetings of the Supervisory Board of the stock brokerage firm or the central depository, meetings of the Board of Directors of the stock brokerage firm or central depository, and meetings of the management of a branch of a foreign stock brokerage firm.

(5) The supplementary supervision of financial conglomerates (hereinafter "supplementary supervision") shall not replace supervision on a consolidated basis, supervision of individual entities within a consolidated group or sub-consolidated group, or supervision of individual entities within a financial conglomerate, and nor shall it replace the supervision of individual stock brokerage firms and branches of foreign stock brokerage firms pursuant to this Act, nor supervision in accordance with separate regulations.<sup>15)</sup>

(6) Supervision on a consolidated basis and supplementary supervision do not require the National Bank of Slovakia to exercise supervision over individual entities within a consolidated

group, sub-consolidated group or financial conglomerate which are not subject to supervision by the National Bank of Slovakia.

(7) In exercising supervision over a securities dealer, the National Bank of Slovakia shall in particular examine and evaluate its management organization, division of responsibilities, adopted strategy, systems and procedures introduced within the performance of licensed activities, information flows, and the risks to which the securities dealer is or could be exposed; in doing so, it shall verify the adequacy of the security dealer's own funds of financing (hereinafter "own funds"). The National Bank of Slovakia shall at least once a year carry out an examination and evaluation appropriate to the nature and scope of the activities performed. On the basis of exercised supervision, the National Bank of Slovakia shall assess whether the management organization of the securities dealer, the adopted strategy, the systems and procedures introduced within the performance of licensed activities, and the own funds correspond to the prudential management of the securities dealer, and it shall also assess the adequacy of risk coverage with own funds.

(8) In exercising supervision over individual securities dealers and branches of foreign securities dealers and supervision on a consolidated basis, the National Bank of Slovakia shall cooperate with other Member States' authorities responsible for supervision of securities dealers or for supervision of financial institutions and insurance companies, with the Slovak Chamber of Auditors and with auditors, and it may exchange information with them and notify them of shortcomings found during the exercise of supervision. The provision of information under this paragraph shall not be subject to the duty of confidentiality laid down by this Act and separate regulations. In cooperating with other Member States' supervisory authorities, the National Bank of Slovakia shall mainly exchange information on the management and ownership structures of supervised entities such that supports the proper exercise of supervision and evaluation of compliance with licensing conditions, as well as any information that could assist in the monitoring of supervised entities, especially of their liquidity, capital adequacy, investor protection, large exposure limits, administrative and accounting procedures, and internal control mechanisms. Where the National Bank of Slovakia has received confidential information from another Member State's supervisory authority, it may not disclose this information without the approval of that authority. Unless otherwise provided by this Act, the National Bank of Slovakia may use confidential information received from other Member States' supervisory authorities only in the performance of its obligations and for the purposes of:

- a) the supervision of supervised entities through the oversight and monitoring of compliance with conditions concerning the taking up and pursuit of the business of the supervised entities on a non-consolidated or consolidated basis, especially in regard to the monitoring of their liquidity, capital adequacy, large exposures, administrative and accounting procedures, and internal control mechanisms;
- b) imposing sanctions under this Act or separate regulations;<sup>6)</sup>
- c) appeal proceedings against decisions of the National Bank of Slovakia;
- d) judicial review of decisions of the National Bank of Slovakia or other judicial proceedings related to supervised entities or to the supervision of supervised entities.

(9) Any information provided under paragraph (8) may be used only for the purposes of supervision, audit, and oversight of auditors. The bodies and persons referred to in paragraph (8) shall ensure that such information is not disclosed and shall maintain its confidentiality in accordance with this Act and separate regulations; the bodies and persons

mentioned in paragraph (12) may provide such information to each other subject to the prior approval of the National Bank of Slovakia.

#### **ARTICLE 135a**

(1) The National Bank of Slovakia is required to cooperate with Member States' competent authorities responsible for the supervision of the financial market, to exchange information with them for the purpose of exercising supervision, and to cooperate with them in regard to investigations into insider dealing or market manipulation and for the purposes of exercising supervision over securities dealers and the market in financial instruments in accordance with a separate regulation.<sup>60b)</sup>

(2) Where the competent authority of a Member State requests the National Bank of Slovakia to provide information for the purposes mentioned in paragraph (1), the National Bank of Slovakia shall meet such request without undue delay. If the National Bank of Slovakia is not able to supply the required information, it shall notify the requesting authority of this fact without undue delay.

(3) The National Bank of Slovakia may refuse to provide the information pursuant to paragraph (1) where:

- a) providing the required information might adversely affect the sovereignty, security or public policy of the Slovak Republic;
- b) judicial proceedings have already been initiated in the Slovak Republic in respect of the same actions and against the same entities to which the request for information relates; or
- c) where, in the Slovak Republic, a final judgement has already been delivered in relation to such entities for the same actions to which the request for information relates.

In any such case, the National Bank of Slovakia shall notify the requesting competent authority accordingly, providing it with information on the proceedings or judgement mentioned in letter (b) or (c), provided that it has such information at its disposal and is able to supply the information in accordance with a separate law.<sup>108a)</sup>

(4) Where the National Bank of Slovakia has been advised by the competent authority of a Member State that acts are being, or have been, carried out in the territory of the Slovak Republic which are contrary to the provisions of this Act, laws of the European Union governing the operation of securities dealers and the market in financial instruments or a legal provision of the European Union on insider dealing and market manipulation, or that acts are affecting financial instruments traded on a regulated market situated in another Member State, the National Bank of Slovakia shall exercise supervision in this regard. The National Bank of Slovakia shall notify the competent authority by which it was advised of the significant interim measures that the National Bank of Slovakia has taken in regard to verifying the advice and of the outcome of the proceedings.

(5) Where the competent authority of a Member State requests the National Bank of Slovakia to carry out an on-site inspection in the territory of the Slovak Republic, the National Bank of Slovakia shall comply with this request. Members of the competent authority's personnel may participate in the inspection, provided that the competent authority has requested such participation. The National Bank of Slovakia may refuse such requests on the grounds mentioned in paragraph (3). In that case, the National Bank of Slovakia shall notify

the requesting competent authority accordingly, providing it with information on the proceedings or judgement mentioned in letter (b) or (c).

(6) The National Bank of Slovakia may request that the competent authority of a Member State provide it with information for the purposes mentioned in paragraph (1).

(7) Where the National Bank of Slovakia has reason to suspect that acts are being, or have been, carried out in the territory of another Member State which are contrary to the provisions of a legal provision of the European Union governing securities dealers and the market in financial instruments, on insider dealing and market manipulation, or that acts are affecting financial instruments traded on a regulated market situated in the Slovak Republic, the National Bank of Slovakia shall give notice of this fact to the competent authority of the Member State.

(8) The National Bank of Slovakia may request that the competent authority of a Member State carry out an on-site inspection in the territory of the Member State and that members of the National Bank of Slovakia's personnel be allowed to participate in this inspection.

(9) The National Bank of Slovak may use information received from the competent authority of another Member State only for the exercise of supervision, without prejudice to the obligations to which the National Bank of Slovakia is subject in proceedings under a separate regulation.<sup>92)</sup> Where the competent authority of the Member State consents thereto, the National Bank of Slovakia may use this information for other purposes or forward it to the competent authorities of other Member States.

(10) The information that the National Bank of Slovakia has received from the competent authority of a Member State shall be subject to the same duty of confidentiality as laid down in a separate law.<sup>20)</sup>

(11) If the competent authority of a Member State rejects a request of the National Bank of Slovakia made pursuant to paragraphs (6) to (8), without stating a reason or for a reason not in line with the provisions of the Directive of the European Union on insider dealing and market manipulation, or if it does not comply with such request of the National Bank of Slovakia within a reasonable period, the National Bank of Slovak may bring that non-compliance to the attention of the Committee of European Securities Regulators.

(12) Where a regulated market from the Slovak Republic has established arrangements in a Member State or a regulated market from a Member State has established arrangements in the Slovak Republic, and the operation of such regulated market has become of substantial importance for the function of the securities markets and the protection of investors in, respectively, the Slovak Republic or that Member State, the National Bank of Slovakia shall establish appropriate cooperation arrangements with the competent authority of that Member State in regard to the exercise of supervision.

(13) Where the National Bank of Slovakia, in the course of exercising supervision over a regulated market, directly addresses a foreign securities dealer whose registered office is in a Member State and which is a remote member of that market, it shall inform the competent authority of the home Member State accordingly.

(14) The National Bank of Slovakia may use its powers for the purpose of cooperation even in cases where the conduct under investigation does not constitute an infringement of any generally binding legal regulation in the Slovak Republic.

#### **ARTICLE 135b**

(1) The National Bank of Slovakia shall cooperate with Member States' competent supervisory authorities and shall, for the purposes of exercising supervision over the public offering of securities, exchange with them information concerning regulated markets and types of securities traded on Member States' markets, in particular if the issuer is subject to supervision by several supervisory authorities of Member States or if the approval of the prospectus has been transferred in accordance with Article 125(8). The National Bank of Slovakia shall cooperate with the competent supervisory authorities of Member States in requests for the suspension or prohibition of trading in securities on a regulated market simultaneously in the Slovak Republic and in other Member States.

(2) If the National Bank of Slovakia finds that the person responsible for a public offering of securities has breached generally binding legal regulation or has not complied with the obligations arising to it from the admission to trading on a regulated market, the National Bank of Slovakia shall communicate its findings to the competent supervisory authority of the issuer's home Member State.

(3) If, despite the measures adopted by the competent supervisory authority of the issuer's home Member State, the offeror of securities continues to breach generally binding legal regulations or other terms and conditions of such activity, or if these measures have been shown to be insufficient, the National Bank of Slovakia may, after informing the competent supervisory authority of the issuer's home Member State, adopt any measures required for the protection of investors. Without undue delay after adopting such measures, the National Bank of Slovakia shall notify the Commission thereof.

(4) If the competent supervisory authority of the issuer's host Member State informs the National Bank of Slovakia that the offeror of securities in the territory of the host Member State is in breach of legal regulations or the terms and conditions of such activity, the National Bank of Slovakia shall adopt the measures required to bring this illegal state of affairs to an end. Without undue delay after adopting such measures, the National Bank of Slovakia shall notify the competent supervisory authority of the issuer's host Member State thereof.

(5) If, in the course of activities in the territory of the issuer's host Member State, the offeror of securities breaches legal regulations of that Member State or the terms and conditions of such activities, the offeror of securities shall carry out or countenance any measures adopted by the competent supervisory authority of the issuer's host Member State in accordance with the legal regulations of this Member State.

#### **ARTICLE 135c**

(1) The National Bank of Slovakia shall cooperate with Member States' competent supervisory authorities and exchange with them information for the purposes of exercising

supervision over takeover bids made for offeree companies whose shares are admitted to trading on a regulated market in the Slovak Republic or in another Member State.

(2) The National Bank of Slovakia shall exercise supervision over a takeover bid for an offeree company whose registered office is in the Slovak Republic provided that the shares of this offeree company are admitted to trading on a regulated market in the Slovakia Republic, unless otherwise provided by this Act.

(3) If the shares of an offeree company whose registered office is in the Slovak Republic are not admitted to trading on a regulated market in the Slovak Republic, supervision of the takeover bid shall be exercised by the competent supervisory authority of that Member State on a regulated market of which the shares of the offeree company are admitted to trading.

(4) If the shares of an offeree company whose registered office is in the Slovak Republic are the subject of a takeover bid and are admitted to trading on a regulated market in the Slovak Republic and in another Member State, supervision of the takeover bid shall be exercised by:

- a) The National Bank of Slovakia, if the shares of the offeree company were first admitted to trading on a regulated market in the Slovak Republic; or
- b) another Member State's competent supervisory, if the shares of the offeree company were first admitted to trading on a regulated market in that Member State.

(5) If the shares of an offeree company whose registered office is in the Slovak Republic are the subject of a takeover bid and were simultaneously admitted to trading on a regulated market in the Slovak Republic and in another Member State, the offeree company shall decide which from the supervisory authorities of the respective Member States will exercise supervision over the takeover bid. The offeree company shall notify its decision in writing to the respective supervisory authority not later than the first trading day and shall disclose it.

(6) The National Bank of Slovakia shall also exercise supervision over a takeover bid where the shares of the offeree company whose registered office is in another Member State are admitted to trading:

- a) only on a regulated market in the Slovak Republic, and are not admitted to trading on a regulated market in another Member State;
- b) simultaneously on a regulated market in the Slovak Republic and in another Member State in which its registered office is not situated, and these shares were first admitted to trading on a regulated market in the Slovak Republic;
- c) simultaneously on a regulated market in the Slovak Republic and in another Member State in which its registered office is not situated, and the offeree company has, in accordance with paragraph (5), decided that the National Bank of Slovakia will be authorized to exercise supervision.

(7) The National Bank of Slovakia shall notify the Commission of its competence to exercise supervision over takeover bids and of the sanctions which it is authorized to impose for non-compliance with the provisions of this Act and amendments thereto, in the Slovak Republic.

## **ARTICLE 136**

(1) The scope of supervision does not cover dispute resolutions arising under contracts between stock brokerage firms or branches of foreign stock brokerage firms and their clients, which shall be heard and settled by competent courts or other authorities pursuant to separate regulations.<sup>109</sup>

(2) Based on an agreement concluded between the National Bank of Slovakia and the supervisory authority of another country, the supervisory authority of the other country may exercise supervision in the territory of the Slovak Republic over the operations of a branch of a foreign stock brokerage firm, or the subsidiary of a foreign stock brokerage firm which is a stock brokerage firm. The National Bank of Slovakia may conclude such an agreement only on a reciprocal basis. The supervisory authority of a Member State may exercise supervision in the territory of the Slovak Republic without the agreement mentioned in the first sentence, provided that it is so authorised under legal regulations of the European Union governing the provision of financial services.

(3) Unless otherwise provided by this Act, the National Bank of Slovakia may exercise supervision over branches of a stock brokerage firm operating in the territory of another country, and over the subsidiary of a stock brokerage firm, which is a stock brokerage firm operating in another country, provided that this is allowed by the law of the country concerned and that an agreement is concluded between the National Bank of Slovakia and the supervisory authority of that country.

## **ARTICLE 137**

(1) If supervision pursuant to Article 135(1) is exercised through an on-site inspection, the relations between the National Bank of Slovakia and the entities supervised shall be governed by the provisions of a separate law.<sup>20)</sup>

(2) Entities subject to supervision pursuant to Article 135(1), to supervision on a consolidated basis or to supplementary supervision over financial conglomerates shall, within a time limit set by the National Bank of Slovakia, submit to the National Bank of Slovakia the requested information including recordings of telephone conversations and records of information handling, and the information required for the proper exercise of supervision.

(3) The National Bank of Slovakia may make public the information mentioned in Article 137(2) provided that a person has not already done so on the basis of a legal requirement.

### **Supervision on a consolidated basis**

## **ARTICLE 138**

(1) Supervision on a consolidated basis shall mean the supervision of a consolidated group for the purpose of monitoring and limiting the risks to which a securities dealer is exposed by virtue of its inclusion in the consolidated group.

(2) A consolidated group shall comprise:

- a) a parent securities dealer or EU parent securities dealer, and at least one securities dealer or financial institution over which the parent securities dealer or EU parent securities dealer exercises control or in which it has a participation;
- b) a parent financial holding company or EU parent financial holding company, and at least one securities dealer over which the financial holding company or EU financial holding company exercises control or in which it has a participation; or
- c) a mixed-activity holding company and at least one securities dealer over which the mixed-activity holding company exercises control or in which it has a participation.

(3) The National Bank of Slovakia shall exercise supervision over a consolidated group under paragraph (2)(c) to the extent of monitoring the intragroup transactions referred to in Article 143i(2) between the mixed-activity holding company and the securities dealer which is included in the consolidated group under paragraph (2)(c), and to the extent of providing information in accordance with Article 1439 (5).

(4) The National Bank of Slovakia shall maintain a list of financial holding companies under paragraph (2)(b), and it shall forward this list to Member States' competent supervisory authorities and to the Commission.

(5) The supervision of securities dealers on a consolidated basis shall, unless otherwise provided by this Act, be subject, as appropriate, to the provisions of a separate regulation concerning the supervision of banks on a consolidated basis,<sup>109a)</sup> wherein each reference to a parent bank in a Member State shall be construed as a reference to a parent securities dealer in a Member State, and each reference to an EU parent bank shall be construed as a reference to an EU parent securities dealer.

(6) Where a credit institution has as a parent undertaking a securities dealer, only that parent securities dealer shall be subject to requirements on a consolidated basis.

(7) Where a securities dealer has as a parent undertaking a bank in a Member State, only that parent credit institution shall be subject to requirements on a consolidated basis in accordance with a separate regulation.<sup>109a)</sup>

(8) Where a financial holding company has as a subsidiary both a credit institution and a securities dealer, requirements on the basis of the consolidated financial situation of the financial holding company shall apply to the credit institution.

(9) The requirements under a separate regulation shall also apply to the recognition of internal models<sup>109b)</sup> where the application is submitted by an EU parent credit institution and its subsidiaries or an EU parent securities dealer and its subsidiaries, or jointly by the subsidiaries of the EU parent financial holding company.

(10) For the purposes of this Act:

- (a) 'financial holding company' shall mean a financial holding company which is not a mixed financial holding company and the subsidiaries of which are mainly securities dealers or financial institutions, at least one of which is a securities dealer;
- (b) 'mixed-activity holding company' shall mean a parent undertaking other than a financial holding company, securities dealer or mixed financial holding company, at least one subsidiary of which is a securities dealer;
- (c) 'mixed financial holding company' shall mean a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity having its registered office in a Member State, and together with other controlled entities, constitutes a financial conglomerate;
- (d) 'parent securities dealer' shall mean a securities dealer a subsidiary of which is, or has a participation in, a securities dealer or financial institution and is not a subsidiary of another securities dealer authorized by the National Bank of Slovakia or of a financial holding company set up in the Slovak Republic;
- (e) 'EU parent securities dealer' shall mean a parent securities dealer which is not a subsidiary of a securities dealer authorized in a Member State or of a financial holding company set up in a Member State;
- (f) 'parent financial holding company' shall mean a financial holding company which is not a subsidiary of a securities dealer authorized by the National Bank of Slovakia or of a financial holding company set up in the Slovak Republic
- (g) 'EU parent financial holding company' shall mean a parent financial holding company which is not a subsidiary of a securities dealer authorized in a Member State or of another financial holding company set up in a Member State.

## **ARTICLE 139**

(1) A parent securities dealer shall ensure that the consolidated group in which it is included complies with the provisions of Articles 71, 74(4) and (5), 74a, 74c(1) and a separate regulation.<sup>109c)</sup>

(2) A securities dealer included in a consolidated group under Article 138(2)(b) shall ensure that this consolidated group complies with the provisions of Articles 71, 74(4) and (5), 74a, 74c(1) and a separate regulation.<sup>109c)</sup>

(3) Where a consolidated group under Article 138(2)(b) includes more than one securities dealer, paragraph (2) shall apply only to that securities dealer over which supervision is exercised on a consolidated basis.

(4) Where a securities dealer also controls a financial institution whose registered office is in a non-Member State, or has a participation in such an entity, this securities dealer shall ensure that the consolidated group in which it is included complies with the provisions of Articles 71, 74(4) and (5), 74a, 74c(1) and a separate regulation;<sup>109c)</sup> the same obligation shall fall to a securities dealer where the said control or participation is exercised or held by its parent financial holding company.

(5) An entity included in a consolidated group under Article 138(2)(a) or (b) shall produce and submit to the National Bank of Slovakia, either directly or through a parent securities dealer or parent financial holding company, or through a securities dealer designated by the National Bank of Slovakia, all statements, reports and other disclosures

required for the exercise of supervision on a consolidated basis in the stipulated manner and at the stipulated times, and a parent securities dealer or parent financial holding company shall produce and submit to the National Bank of Slovakia all statements, reports and other disclosures required for the exercise of supervision on a consolidated basis in the stipulated manner and at the stipulated times. The structure, scope, content, form and layout, and the times, method, procedure and place of submission of these statements, reports and disclosures, including the methodology for their production, shall be stipulated by a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws. Data and other information contained in these statements reports and other disclosures shall be comprehensible, easily analysable and conclusive, shall give a true picture of the reported facts and shall be submitted in good time. If the submitted statements, reports or disclosures do not comply with the stipulated methodology, or if there are reasons to doubt their accuracy or completeness, the securities dealer, financial holding company or other entity which produced and submitted them shall, at the request of the National Bank of Slovakia, submit documents and give an explanation within a time limit set by the National Bank of Slovakia.

(6) The auditor of an entity which is included in a consolidated group under Article 138(2)(a) or (b) shall, for the purposes of supervision on a consolidated basis, provide information to the National Bank of Slovakia and to the auditors of the parent securities dealer or parent financial holding company.

(7) A parent securities dealer or parent financial holding company under Article 138(2)(a) or (b) shall notify the National Bank of Slovakia of the auditors who will perform the audit of entities included in the consolidated group under Article 138(2)(a) or (b) not later than the end of the calendar year for which the audit is to be carried out.

(8) Paragraphs (5) and (6) shall likewise apply to a mixed-activity holding company under Article 138(2) (c) , to an entity included in a consolidated group under Article 138(2) (c) and to the auditors of such entities.

(9) By a decree <sup>23)</sup> to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws, there shall be stipulated.

- a) the extent and manner of compliance with the obligation of a parent securities dealer on a consolidated basis, as well as methods of consolidating data for these purposes;
- b) the extent and manner of compliance with the obligations of a securities dealer included in a consolidated group under Article 138(2)(a) or (b).

## **ARTICLE 140**

(1) An entity included in a consolidated group under Article 138(2) shall put in place control mechanisms to ensure that the information provided for the purposes of supervision on a consolidated basis is correct, and it shall also ensure that the consolidated group complies with the provision of Article 71 so that the control mechanisms within the internal control system are sufficiently harmonized and all the information required for supervision on a consolidated basis is accessible and sound. For the purposes of supervision on a consolidated basis, entities included in the consolidated group shall provide each other with the information required to meet the obligations arising from their inclusion in the consolidated group.

(2) The National Bank of Slovakia may conduct on-site inspections, or request that another Member State's competent supervisory authority conduct on-site inspections, of entities included in a consolidated group under Article 138(2), for the purposes of supervision thereof; the National Bank of Slovakia shall conduct an on-site inspection if so requested by another Member State's competent supervisory authority.

(3) For the purposes of supervision on a consolidated basis, a parent securities dealer or financial holding company under Article 138(2)(a) or (b) shall ensure the auditing of entities included in a consolidated group under Article 138(2). At the request of the parent securities dealer or parent financial holding company, these entities shall conclude an audit contract.

#### **ARTICLE 141**

Cancelled with effect from 1 May 2007.

#### **ARTICLE 142**

cancelled with effect from 1 January 2007.

#### **ARTICLE 143**

cancelled with effect from 1 January 2007.

### **Supplementary supervision**

#### **ARTICLE 143a**

'Supplementary supervision' means the monitoring and regulation of risks in financial conglomerates that include any stock brokerage firms, credit institutions, <sup>15)</sup> insurance companies, reinsurance companies, or asset management companies, for the purpose of limiting the risks to which a stock brokerage firm or other regulated entity is exposed because of its inclusion in the financial conglomerate.

#### **ARTICLE 143b**

For the purposes of this Act:

- a) 'financial conglomerate' means:
1. a group which meets the following conditions -
    - 1a. it is controlled by a regulated entity;
    - 1b. the regulated entity under (1a) is either a parent company of an entity in the financial sector, or it is an entity which holds a participation pursuant to Article 8 (l) in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship of control within the meaning of Article 143b (d)(3);
    - 1c. at least one of the entities in the group is within the insurance sector and at least one is within the banking sector or investment services sector; and
    - 1d. the consolidated or aggregated activities of the entities in the group within the insurance sector and the consolidated or aggregated activities of the entities

- within the banking and investment services sectors are significant within the meaning of Article 143e (2) and (4);
2. a group which meets the following conditions -
    - 2a. at least one of the entities in the group is a regulated entity;
    - 2b. it is not controlled by a regulated entity and the group's activity is centred on the financial sector pursuant to Article 143e (1);
    - 2c. at least one of the entities in the group is within the insurance sector and at least one is within the banking sector or investment services sector; and
    - 2d. the consolidated or aggregated activities of the entities in the group within the insurance sector and the consolidated or aggregated activities of the entities within the banking and investment services sector are significant within the meaning of Article 143e (2) and (4);
  3. a subgroup of another financial conglomerate which fulfils the conditions laid down in subparagraphs (1) or (2);
- b) 'financial sector' means a sector composed of one or more of the following legal persons:
1. a credit institution, a legal person other than a bank whose business includes principally or substantially any of the activities listed in a separate law <sup>110a)</sup> or whose main business is to acquire holdings in accordance with a separate law, <sup>110b)</sup> any entity carrying on similar activities which has its registered office abroad, or an auxiliary banking services undertaking – these entities constitute the banking sector;
  2. an insurance company, reinsurance company or legal person controlling a consolidated financial group in the meaning of a separate law <sup>23)</sup> – these entities constitute the insurance sector;
  3. a stock brokerage firm or other legal person mentioned in subparagraph (1) – these entities constitute the investment services sector;
  4. a mixed financial holding company;
- c) 'group' means a group of entities linked to each other by a relationship of control within the meaning of letter d).
- d) 'control' shall mean, for the purposes of supplementary supervision, a relationship within a group of entities where:
1. one entity controls another entity;
  2. one entity has a participation in another entity; or
  3. entities are interlinked in a relationship involving influence over the management comparable with the influence that would attach to a participation, or by the fact that two or more of the entities have as members of their statutory body or supervisory board a majority of the same persons."
- e) 'regulated entity' shall mean a securities dealer, bank, electronic money institution, insurance company, asset management company or an equivalent foreign entity.

### **ARTICLE 143c**

- (1) The National Bank of Slovakia shall exercise supplementary supervision where:
- a) a financial conglomerate is controlled by a stock brokerage firm;
  - b) a financial conglomerate is controlled by a mixed financial holding company which is the parent company of a stock brokerage firm, and the financial conglomerate does not include another regulated entity;
  - c) the parent company of a stock brokerage firm is a mixed financial holding company, while the financial conglomerate includes other regulated entities with a registered office

in a Member State, and the principal financial sector of the financial conglomerate is the investment services sector;

- d) a financial conglomerate is controlled by more than one mixed financial holding company with its registered office s in different Member States, and the regulated entity has a registered office in each of these Member States, and where the regulated entity holding the largest balance sheet total in the financial conglomerate is a stock brokerage firm, or if the principle financial sector of the financial conglomerate is the investment services sector; if the financial sector includes a foreign stock brokerage firm having its registered office in a Member State, the supplementary supervision shall be exercised on the basis of an agreement between the National Bank of Slovakia and the competent supervisory authority of that Member State;
- e) a financial conglomerate is controlled by a mixed financial holding company which has its registered office in the Slovak Republic and which is the parent company of more than one regulated entity whose registered office is in a Member State and none of these regulated entities has not been granted authorisation in the Slovak Republic, provided that the principal financial sector of the financial conglomerate is the investment services sector;
- f) a financial conglomerate is not controlled by a parent company or it is controlled in a way not mentioned in letters (a) to (e), provided that the principal financial sector of the financial conglomerate is the investment services sector and the regulated entity holding the largest balance sheet total in the financial conglomerate is a stock brokerage firm.

(2) Based on an agreement with Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, and following a statement by the entity controlling the respective financial conglomerate, the National Bank of Slovakia may assume the exercise of supplementary supervision also in the cases not mentioned in paragraph (1), provided that this is appropriate with respect to the objectives of supplementary supervision.

(3) Based on an agreement with Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, and following a statement by the entity controlling the respective financial conglomerate, the National Bank of Slovakia may relinquish the exercise of supplementary supervision in the cases mentioned in paragraph (1) to the competent supervisory authority of a Member State, provided that this is appropriate with respect to the objectives of supplementary supervision.

#### **ARTICLE 143d**

(1) In cooperation with Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, the National Bank of Slovakia shall, on the basis of criteria laid down in Article 143e, determine which financial conglomerates shall be subject to supplementary supervision.

(2) Each subsequent proposal for including a financial conglomerate within supplementary supervision shall be communicated by the National Bank of Slovakia to Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate.

(3) The National Bank of Slovakia shall notify the fact that a financial conglomerate will be subject to supplementary supervision to the legal entity controlling the financial conglomerate pursuant to Article 143c(1), or to the stock brokerage firm holding the largest balance sheet total, provided that the principal financial sector of the financial conglomerate is the investment services sector. The National Bank of Slovakia shall also communicate this information to the competent authorities in the Member State where the mixed financial holding has its registered office, and to the Commission.

(4) The National Bank of Slovakia shall communicate to the Financial Conglomerates Commission at the Commission the principles which it applies in regard to supplementary supervision of risk concentration in the meaning of Article 143h and of intra-group transactions in the meaning of Article 143i.

### **ARTICLE 143e**

(1) The activities of a group shall be deemed to occur mainly in the financial sector if the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole exceeds 40%.

(2) The activities in different financial sectors are significant if the average of the ratios for each financial sector exceeds 10%, where the average is calculated from the following ratios:

- a) the ratio of the balance sheet total for one financial sector to the balance sheet total of the financial sector entities in the group, and
- b) the ratio of solvency requirements of one financial sector to the total solvency requirements of the financial sector entities in the group.

(3) The smallest financial sector in a financial conglomerate is the sector with the lowest average as defined in paragraph (2); the most important financial sector in a financial conglomerate is the sector with the highest average as defined in paragraph (2). For the purpose of calculating the average under paragraph (2) and for measuring the smallest and most important financial sectors, the banking sector and investment services sector shall be considered together.

(4) If the group does not reach the average referred to in paragraph (2) from the ratios defined therein, but the balance sheet total of the smallest financial sector in the group exceeds EUR 6 billion, the National Bank of Slovakia may decide, upon agreement with Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, not to regard the group as a financial conglomerate or not to apply the provisions of Article 143g and 143h, provided that the exercise of supplementary supervision is inappropriate or unnecessary with respect to the objectives of supplementary supervision, and especially if:

- a) the average of the ratios referred to in paragraph (2) does not exceed 5%;
- b) one of the ratios referred to in paragraph (2) does not exceed 5%;
- c) the market share of the smallest financial sector does not exceed 5% in any Member State, measured in terms of the balance sheet total in the banking sector or in the investment services sector and in terms of the gross premiums written in the insurance sector.

(5) Decisions taken by the National Bank of Slovakia in accordance with paragraph (4) shall be notified by the National Bank of Slovakia to Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate.

(6) When calculating the ratios referred to in paragraphs (1) to (3), the National Bank of Slovakia may, with the agreement of Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, exclude an entity in the following cases:

- a) if the entity has its registered office in a country that is not a Member State where there are legal impediments to the transfer of information for the purpose of exercising supplementary supervision;
- b) if the entity is of negligible interest for the purposes of supplementary supervision.
- c) if the inclusion of the entity would be inappropriate with respect to the objectives of supplementary supervision.

(7) The National Bank of Slovakia may, upon the opinion of Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, take into account the ratios referred to in paragraphs (1) and (2) for three consecutive years so as to avoid sudden shifts in the regime of supplementary supervision and may disregard the ratios referred to in paragraphs (1) and (2) if there are significant changes in the group's structure.

(8) For the calculation of ratios pursuant to paragraphs (1) and (2), the National Bank of Slovakia may, in exceptional and justified cases and upon the opinion of Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, replace the criterion based on balance sheet total with one or both of the following parameters or add one or both of these parameters, if these parameters are of particular relevance for the purposes of supplementary supervision: income structure and off-balance-sheet activities.

(9) If the ratios referred to in paragraphs (1) and (2) fall below 40% and 10% respectively for financial conglomerates already subject to supplementary supervision, a lower ratio of 35% and 8% respectively shall apply for the following three years.

(10) For groups already subject to supplementary supervision, if the balance sheet total of the smallest financial sector in the group falls below EUR 6 billion, a figure of EUR 5 billion shall be used for the next three years when making the calculation pursuant to paragraph (4).

(11) During the periods stipulated in paragraphs (7) to (10), the National Bank of Slovakia may, with the agreement of Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, decide that the lower ratios or lower amount referred to in paragraphs (7) to (10) shall cease to apply for financial conglomerates subject to supplementary supervision.

(12) The calculations concerning balance sheet totals shall be made on the basis of the aggregated balance sheet totals of the entities of the group, according to their annual accounts. For the purposes of this calculation, undertakings in which a participation is held shall be taken into account as regards the share held in the undertaking. Where consolidated accounts are available, they shall be used instead of aggregated accounts.

(13) For the purposes of supplementary supervision, the minimum amount of own funds of stock brokerage firms shall be understood to represent such an amount of own funds that correspond to the capital adequacy requirements as defined in Article 74(1), where the value of risk-weighted assets is not changed.

(14) The solvency requirements for regulated entities, other than stock brokerage firms, which are included in the calculations pursuant to paragraphs (2) to (6) shall be set in accordance with separate regulations<sup>110c)</sup> which apply to the calculation of capital adequacy, the amount of own funds, and the solvency of the respective regulated entity.

## **ARTICLE 143f**

(1) A stock brokerage firm in a financial conglomerate shall comply with the conditions laid down in Articles 143g to 143j, if

- a) it controls the financial conglomerate;
- b) its parent company is a mixed financial holding company which has its registered office in a Member State;
- c) it is linked with a legal person in another financial sector by a relationship of control within the meaning of Article 143b(d)(3); or
- d) its parent company is a regulated entity or a mixed financial holding company which has its registered office in a country that is not a Member State, provided that the supervision exercised over financial conglomerates in this country is equivalent to supplementary supervision.

(2) Where a financial conglomerate is a subgroup of another financial conglomerate which includes a stock brokerage firm meeting some of the requirements laid down in paragraph (1), the conditions mentioned in Article 143g to 143j shall apply to a stock brokerage in the financial conglomerate that includes the subgroup.

(3) Where a stock brokerage firm has a parent company that is a regulated entity or a mixed financial holding company the registered office of which is in a country that is not a Member State, and where the supervision of financial conglomerates in this country is not equivalent to supplementary supervision, the stock brokerage firm shall comply with the conditions laid down in Articles 143g to 143j. If compliance with the conditions laid down in Articles 143g to 143j is not possible owing to the fact that the supplementary supervision exercised by the third country is not equivalent supplementary supervision, the National bank of Slovakia may decide that the stock brokerage firm in the financial conglomerate will submit to the National Bank of Slovakia special statements, reports and other disclosures concerning its participation in this financial conglomerate, and may also impose a restriction or ban on the stock brokerage firm in regard to intra-group transactions that could affect the observance of capital adequacy requirements at the level of the financial conglomerate.

(4) The National Bank of Slovakia shall verify whether the supplementary supervision exercised over the financial conglomerate mentioned in paragraph (3) is equivalent to supplementary supervision, provided that it has consulted with the supervisory authorities of the Member State in which the regulated institutions in the financial conglomerate have a registered office; it shall carry out the verification either on the request of the parent company referred to in paragraph (3), on the request of a regulated entity, or on its own

initiative. Before issuing a decision in accordance with paragraph (3) and notifying it to the Commission, the National Bank of Slovakia shall consult the Financial Conglomerates Committee at the Commission.

(5) Where legal persons hold equity in one or more regulated entities or exercise significant influence over such entities without holding a participation other than the influence referred to in paragraphs (1) to (3), the National Bank of Slovakia shall, in cooperation with Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, determine whether and to what extent supplementary supervision of the regulated entities is to be carried out, as if they constituted a financial conglomerate subject to supplementary supervision. In order to apply such supplementary supervision, at least one of the entities referred to in the first sentence must be a stock brokerage firm and the conditions set out in Article 143b(a)(1c) and (1d) must be met, where this is necessary in order to fulfil the objectives of supplementary supervision.

### **ARTICLE 143g**

(1) Stock brokerage firms in a financial conglomerate shall ensure that sufficient own funds are available at the level of the financial conglomerate and that adequate capital adequacy policies are in place at the level of the financial conglomerate. The own funds of a financial conglomerate are sufficient if the difference between the own funds at the level of the financial conglomerate and the total solvency requirements for the financial conglomerate comes to zero or a positive figure.

(2) Stock brokerage firms in a financial conglomerate shall calculate whether own funds are sufficient by following one of the methods stipulated in a generally binding legal regulation to be issued by the National Bank of Slovakia in accordance with paragraph (9).

(3) The National Bank of Slovakia may, upon the opinion of Member States' competent authorities responsible for the supervision of regulated entities in a financial conglomerate, decide, on its own initiative or on the request of the regulated entity or mixed financial holding company referred to in paragraph (4), to inform the regulated person or mixed financial holding company of which method is used to calculate capital adequacy requirements from the methods set out in the generally binding legal regulation mentioned in paragraph (9).

(4) Stock brokerage firms shall, on a half-yearly basis and also on the request of the National Bank of Slovak, submit to the National Bank of Slovak information on the amount of own funds and on the amount of own funds at the level of the financial conglomerate which is necessary to meet the capital adequacy requirements at the level of the financial conglomerate subject to supplementary supervision. If the financial conglomerate is not controlled by the stock brokerage firm, the information mentioned in the first sentence shall be submitted to the National Bank of Slovakia by a mixed financial holding company or a regulated entity designated by the National Bank of Slovakia upon the prior opinion of the regulated entities or mixed financial holding companies in the financial conglomerate.

(5) The calculation of capital adequacy requirements at the level of the financial conglomerate shall include only the requirements for legal persons mentioned in Article 143b(b).

(6) The National Bank of Slovakia may decide in the following cases not to include an entity in the scope when calculating the capital adequacy requirements at the level of the financial conglomerate subject to supplementary supervision:

- a) if the entity has its registered office in a country that is not a Member State where there are legal impediments to the transfer of the information necessary for the exercise of supplementary supervision;
- b) if the entity is of negligible interest with respect to the objectives of the supplementary supervision of regulated entities in a financial conglomerate – except if several entities would be excluded from the calculation yet collectively they are significant in the meaning of Article 145e(2) and (4);
- c) if the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision.

(7) In the case of the non-inclusion of a legal person pursuant to paragraph 6(c), the National Bank of Slovakia shall consult other countries' competent authorities responsible for supplementary supervision in the respective Member State.

(8) The provision of paragraph (4) is without prejudice to the obligation of the entities concerned to provide information for the purposes of supplementary supervision, and to the authorisation of supervisory bodies to provide information on such persons for the purposes of supplementary supervision or the supervision of financial conglomerates in another Member State.

(9) For the purposes of calculating capital adequacy requirements at the level of the financial conglomerate, a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws shall stipulate:

- a) what constitutes own funds at the level of the financial conglomerate and the method of their calculation, including the own funds of a mixed financial holding company;
- b) what is meant by the solvency requirements of entities in a group and the method of their calculation;
- c) the methods for calculating capital adequacy requirements at the level of the financial conglomerate.

#### **ARTICLE 143h**

(1) Stock brokerage firms controlling a financial conglomerate shall, on a half-yearly basis and also on the request of the National Bank of Slovakia, submit to the National Bank of Slovakia information on the risk concentration of the financial conglomerate. If the financial conglomerate is not controlled by the stock brokerage firm, the information mentioned in the first sentence shall be submitted to the National Bank of Slovakia by a mixed financial holding company or a regulated entity designated by the National Bank of Slovakia upon the prior opinion of the regulated entities or mixed financial holding companies in the financial conglomerate.

(2) For the purposes of supplementary supervision, 'risk concentration of a financial conglomerate' means all exposures with a loss potential borne by entities within a financial conglomerate, which could threaten the solvency or the financial position of the financial

conglomerate; such exposures could be caused by credit risk, investment risk, insurance risk, market risk, liquidity risk, operational risk, other risks, or a combination of these risks.

(3) Where a financial conglomerate is controlled by a stock brokerage firm, the provisions of Article 74 shall apply equally to the risk concentration of the financial conglomerate. Where the financial conglomerate is controlled by another regulated entity, the risk concentration of the financial conglomerate shall be subject, as appropriate, to the provisions of a separate regulation.<sup>110c)</sup>

(4) Where a financial conglomerate is controlled by a mixed financial holding company and where the most important sector in the financial conglomerate is the investment services sector, the provisions of Article 74 shall apply, as appropriate, to the risk concentration of the investment services sector and the mixed financial holding company.

(5) For the purposes of establishing the risk concentration, a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws shall stipulate details about:

- a) the equity exposure of the financial conglomerate and its calculation;
- b) the equity exposure of the investment services sector and its calculation;
- c) the equity exposure of the mixed financial holding company and its calculation;
- d) the risk concentration of the financial conglomerate and its calculation.

#### **ARTICLE 143i**

(1) Stock brokerage firms controlling a financial conglomerate shall, on a half-yearly basis and also on the request of the National Bank of Slovakia, submit to the National Bank of Slovakia information on all significant intra-group transactions of the financial conglomerate. If the financial conglomerate is not controlled by the stock brokerage firm, the information mentioned in the first sentence shall be submitted to the National Bank of Slovakia by a mixed financial holding company or a regulated entity designated by the National Bank of Slovakia upon the prior opinion of the regulated entities or mixed financial holding companies in the financial conglomerate.

(2) For the purposes of this Act, 'intra-group transactions' means transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other undertakings within the same group or upon any natural or legal person which they control, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment.

(3) For the purposes of supplementary supervision, 'significant intra-group transaction' means an intra-group transaction the amount of which is not less than 5% of the established amount of own funds at the level of the financial conglomerate pursuant to Article 143g(9)(a).

(4) In the case of significant intra-group transactions with entities linked by a special relationship, a separate law shall apply.<sup>110d)</sup>

(5) Where a financial conglomerate is controlled by a mixed financial holding company and where the most important financial sector in the financial conglomerate is the

investment services sector, Article 138(4) shall apply to the intra-group transactions of the investment services sector and the mixed financial holding company.

#### **ARTICLE 143j**

(1) For the purposes of monitoring and complying with the provisions of this Act at the level of the financial conglomerate, stock brokerage firms in a financial conglomerate shall have in place risk management processes and internal control mechanisms, including administrative and accounting procedures.

(2) For the purposes of supplementary supervision, risk management processes shall include:

- a) sound governance and management ensuring at the level of the financial conglomerate the approval and periodical review of the corporate strategy with respect to the risks arising under the activities of the financial conglomerate;
- b) procedures for ensuring capital adequacy, which anticipate the potential impact of their business strategy on risk profile and on the own funds of the stock brokerage firm;
- c) procedures for monitoring risk management and measures to ensure that risks are monitored and controlled at the level of the financial conglomerate.

(3) For the purposes of supplementary supervision, the internal control mechanisms shall include the evaluation of procedures:

- a) to identify and measure risks affecting the fulfilment of provisions on capital adequacy at the level of the financial conglomerate, and the evaluation of their functionality and effectiveness;
- b) for accounting and reporting, which are used to identify, measure and control the intra-group transactions and the risk concentration.

#### **ARTICLE 143k**

(1) In regard to the exercise of supplementary supervision, the National Bank of Slovakia shall:

- a) ensure coordination of the gathering and dissemination of information necessary for monitoring the activities of a financial conglomerate, including the dissemination of information which is important for the exercise of supplementary supervision in given financial sectors by other states' competent supervisory authorities responsible for the supervision of entities in a financial conglomerate;
- b) gather information necessary for assessing the financial position of a financial conglomerate for the purposes of supervisory supervision;
- c) monitor compliance with the rules on capital adequacy, risk concentration, and intra-group transactions;
- d) monitor the structure of the financial conglomerate, and the organisation and functionality of internal control mechanisms in the meaning of Article 143j;
- e) plan and coordinate the exercise of supplementary supervision in any situation, in cooperation with other states' competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate;
- f) fulfil other tasks necessary for the exercise of supplementary supervision.

(2) In cooperation with other states' competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate, the National Bank of Slovakia shall coordinate the exercise of supplementary supervision and arrange coordination procedures in regard to applying the provisions of Article 143d, Article 143e, Article 143f(3) and (5), Article 143g, Article 143l(2) and Article 145a.

(3) The National Bank of Slovakia shall request from another country's competent supervisory authority responsible for the supervision of regulated entities in a financial conglomerate any information already provided to this supervisory authority which is necessary for the exercise of supplementary supervision. If the National Bank of Slovakia has not obtained this information by the procedure mentioned in the first sentence, it may request the information directly from the entities in the financial conglomerate which are mentioned in Article 143g(2).

### **ARTICLE 143I**

(1) In exercising supplementary supervision, the National Bank of Slovakia shall cooperate with Member States' competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate also where the competent supervisory authority of a Member State exercises supplementary supervision and at least to the extent laid down in paragraph (3).

(2) On the request of Member States' competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate, the National Bank of Slovakia shall provide them with any information necessary for the supervision of regulated entities in a financial conglomerate or for supplementary supervision, at least to the extent laid down in paragraph (3). The National Bank of Slovakia shall provide this information also on its own initiative where it establishes that the said information is important for the supervision of financial conglomerates. The National Bank of Slovakia may request from Member States' competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate any information necessary for the exercise of supplementary supervision, at least to the extent laid down in paragraph (3), and it may exchange information necessary for supplementary supervision also with foreign central banks, the European System of Central Banks and the European Central Bank.

(3) The cooperation and exchange of information referred to in paragraphs (1) and (2) shall concern mainly:

- a) the structure of the financial conglomerate and the Member States' competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate;
- b) the strategies and specifications of the financial conglomerate;
- c) the financial situation of the financial conglomerate, in particular on capital adequacy, intra-group transactions, risk concentration and profitability;
- d) major shareholders in the entities in the financial conglomerate and members of the statutory bodies of the entities in the financial conglomerate;
- e) organisation, risk management, and internal control systems at the financial conglomerate level;
- f) procedures for the collection of information from the entities in the financial conglomerate, and the verification of that information;

- g) adverse developments in regulated entities or in other entities of the financial conglomerate, which could seriously affect the stock brokerage firm;
- h) major sanctions and exceptional measures taken by the National Bank of Slovakia and by the Member States' competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate.

(4) The National Bank of Slovakia shall consult with regard to the following items the Member States' competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate:

- a) decisions on prior consent pursuant to Article 70(1)(a), (c) and (e), where changes in the shareholder structure or bodies of the stock brokerage firm would affect the exercise of supplementary supervision;
- b) sanctions imposed or measures taken against regulated entities in a financial conglomerate where such sanctions or measures could also affect regulated entities subject to supplementary supervision exercised by the Member State's competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate.

(5) The National Bank of Slovakia is not required to consult over the items mentioned in paragraph (4) where to do so may jeopardise the adoption of decisions in the respective period or where the imposition of sanctions or taking of measures may not be postponed. In this case, the National Bank of Slovakia shall, without undue delay, inform the Member States' competent supervisory authorities responsible for the supervision of regulated entities in a financial conglomerate.

(6) In exercising supplementary supervision, the National Bank of Slovakia may invite the competent authority responsible for the supervision of regulated entities in a financial conglomerate in that Member State in which a parent company has its registered office to ask the parent company for any information which the National Bank of Slovakia would need for the exercise of its tasks as laid down in Article 143k, and to transmit that information to it.

(7) The provisions of paragraphs (1) to (6) shall also apply to cooperation between the National Bank of Slovakia and the supervisory authorities of countries with which the European Union has signed an agreement on cooperation in supplementary supervision.

(8) The provision of paragraph (7) is without prejudice to the authorisation to conclude an agreement with the competent supervisory authority of a country that is not a Member State on the conditions under which the supervision of financial conglomerates may be exercised and on the mutual exchange of information, provided that such agreement is not contrary to rules on the exercise of supplementary supervision.

#### **ARTICLE 143m**

(1) On the request of a Member State's competent supervisory authority responsible for the supervision of regulated entities in a financial conglomerate, the National Bank of Slovakia shall verify the information necessary for the exercise supplementary supervision which concerns an entity in a financial conglomerate that has its registered office in the territory of the Slovak Republic, or it shall verify this information through authorised persons. Persons authorised by the competent supervisory authority of the Member State may

participate in the verification carried out by the National Bank of Slovakia or may, with the consent of the National Bank of Slovakia, verify this information independently.

(2) The National Bank of Slovakia may request that a Member State's competent authority responsible for the supervision of regulated entities in a financial conglomerate verify information necessary for the exercise of supplementary supervision or allow persons authorised by the National Bank of Slovakia to verify this information.

#### **ARTICLE 143n**

Entities within a financial conglomerate shall provide each other with the information necessary for the fulfilment of the obligations laid down in Articles 143g to 143j and for the purposes of supplementary supervision.

#### **ARTICLE 143o**

(1) In accordance with Article 143c, mixed financial holding companies shall produce and submit to the National Bank of Slovakia all statements, reports and other disclosures necessary for the exercise of supplementary supervision pursuant to Article 143g(2), Article 143h(1) and Article 143i(1) in the stipulated manner and at the stipulated times. The structure, scope, content, form and layout, and the times, method, procedure and place of submission of these statements, reports and disclosures, including the methodology for their production shall be governed by a decree to be issued by the National Bank of Slovakia and promulgated in the Collection of Laws.

(2) Data and other information contained in the statements, reports, and other disclosures shall be comprehensible, easily analysable and conclusive, they shall give a true picture of the reported facts, and they shall be submitted in good time. If the submitted statements, reports or disclosures do not comply with the stipulated methodology, or if there are reasons to doubt their accuracy or completeness, the mixed financial holding company shall, on the request of the National Bank of Slovakia, submit documents and give an explanation within a time limit set by the National Bank of Slovakia.

#### **Sanctions**

#### **ARTICLE 144**

(1) If the National Bank of Slovakia finds any shortcomings in the operation of a stock brokerage firm or a branch of a foreign stock brokerage firm consisting of non-compliance with the conditions specified in a licence pursuant to Article 55 or 56 or in a decision on prior approval, non-compliance with conditions and obligations under other decisions of the National Bank of Slovakia imposed on the stock brokerage firm or a branch of a foreign stock brokerage firm, non-compliance with conditions specified in Article 55(2) and (7), Article 56(2) and (9), or non-compliance with or evasion of other provisions of this Act, of separate laws and other generally binding legal regulations governing the activities of a stock brokerage firm<sup>110e</sup>, the National Bank of Slovakia may take the following steps, according to on the gravity, extent, duration, consequences, and nature of the shortcomings:

- a) impose measures on the stock brokerage firm or foreign stock brokerage firm designed to eliminate the shortcomings;
- b) require the stock brokerage firm or foreign stock brokerage firm to adopt remedial measures;
- c) require the stock brokerage firm or foreign stock brokerage firm to supply special statements, reports and information;
- d) require the stock brokerage firm or foreign stock brokerage firm to discontinue an unauthorised activity;
- e) charge the stock brokerage firm or foreign stock brokerage firm a fine of between SKK 10,000 and SKK 20,000,000;
- f) restrict or suspend some of the licensed activities of the stock brokerage firm or foreign stock brokerage firm;
- g) revoke the stock brokerage firm's or foreign stock brokerage firm's licence for a certain investment service;
- h) order a reconciliation of accounts or other records according to the findings of the National Bank of Slovakia or an auditor;
- i) order the publication of a correction of incomplete, incorrect or untrue information published by the stock brokerage firm or foreign stock brokerage firm under an obligation imposed by law;
- j) require that business losses be covered by equity, following settlement of losses with retained profits, profit-generated funds and capital funds;
- k) impose compulsory administration on the stock brokerage firm for reasons specified in Article 147;
- l) revoke its licence to provide investment services for reasons specified in Article 156.
- m) require a securities dealer to maintain own funds in an amount exceeding the minimum capital requirements stipulated by this Act;
- n) require a securities dealer, for the purpose of meeting capital requirements, to apply special procedures taking into account the impairment of its assets and expected losses on its off-balance sheet items, where the value of assets or expected losses on off-balance sheet items calculated by the securities dealer does not correspond to the objective facts;
- o) require the securities dealer or branch of a foreign securities dealer to reduce significant risks undertaken during the course of its activities.

(2) If the National Bank of Slovakia finds any shortcomings in the operation of the central depository consisting of non-compliance with the conditions set out in the licence pursuant to Article 100 or in a decision on prior approval under Article 102, non-compliance with conditions or obligations under another decision of the National Bank of Slovakia imposed on the central depository, non-compliance with the conditions laid down in Article 100(2) and (7), or non-compliance with or evasion of any other provisions of this Act, separate laws or other generally binding legal regulations governing the activities of the central depository<sup>10e)</sup>, the National Bank of Slovakia may take the following steps according to the gravity and nature of the shortcomings and the degree of culpability:

- a) impose sanctions on the central depository in accordance with paragraph (1)(a), (c) to (j);
- b) revoke its licence to provide investment services on grounds defined in Article 156.

(3) If the National Bank of Slovakia finds any shortcomings in the operation of an investment broker, consisting of a non-compliance with the conditions defined in a licence pursuant to Article 61, non-compliance with conditions and obligations under other decisions of the National Bank of Slovakia imposed on the investment broker, non-compliance with the conditions specified in Article 61(4) and (5), or non-compliance with or the evasion of other

provisions of this Act, separate laws or other generally binding legal regulations governing the activities of an investment broker, the National Bank of Slovakia may take the following steps according to the gravity and nature of shortcomings and the degree of culpability:

- a) impose sanctions on the investment broker in accordance with paragraph (1),(a),(d) and (e),
- b) revoke its licence to provide investment services.

(4) If the National Bank of Slovakia finds any shortcomings in the operation of an issuer of securities, an offeror of securities, a person asking for admission to trading on a regulated market, a person discharging managerial responsibilities within an issuer and any person closely associated with him, or a person making a public offer of assets, consisting of non-compliance with the obligations laid down in this Act or the evasion of other provisions of this Act or separate laws defining the obligations of supervised entities,<sup>111</sup> the National Bank of Slovakia may take the following steps according to the gravity and nature of the shortcomings and the degree of culpability:

- a) impose sanctions on the issuer, the offeror of securities, the person asking for admission to trading on a regulated market, the person discharging managerial responsibilities within an issuer and any person closely associated with him, or the person making a public offer of assets, in accordance with paragraph (1),(a), (e) and (i);
- b) suspend the offeror of securities or the person making a public offer of assets from issuing securities, for a period of up to ten working days, or from selling assets, for up to one year;
- c) ban the issuer, the offeror of securities, or the person making a public offer of assets from issuing securities or selling assets.

(5) Where the National Bank of Slovakia finds any shortcoming in the activities of a person making a takeover bid, competing takeover bid or mandatory takeover bid, or a person exercising the right of squeeze-out, which involves a breach of the obligations laid down by this Act or the circumvention of other provisions of this Act or separate laws governing their obligations,<sup>111)</sup> the National Bank of Slovakia may, depending on the gravity and nature of the shortcoming and the degree of culpability:

- a) impose sanctions under paragraph 1(a), (e) and (i);
- b) suspend the takeover bid, competing takeover bid, mandatory takeover bid, or the right of squeeze-out;
- c) prohibit the launch of a takeover bid, competing takeover bid or mandatory takeover bid, or prohibit the exercise of the right of squeeze out;
- d) impose sanctions on members of the offeree company's statutory bodies in accordance with paragraph (7).

(6) If the National Bank of Slovakia finds any breach of this Act on the part of the Fund, it may propose to dismiss the members of the Fund's bodies accountable for the breach or to impose sanctions in accordance with paragraph 1(a), (c), (h) and (i). The body of the Fund concerned or the person who appointed the members is required to execute the proposed dismissals without undue delay.

(7) For the breach of obligations arising to them under this Act or under other generally binding legal regulations related to the provision of investment services on an individual basis, a consolidated basis, or within a financial conglomerate, or under the articles of association of a stock brokerage firm or the central depository, or for non-compliance with the conditions and obligations imposed by a decision issued by the National Bank of Slovakia, the National Bank of Slovakia may, according to the gravity and nature of the breach, impose on a statutory body

member or Supervisory Board member of a stock brokerage firm or the central depository, the manager of a branch of a foreign stock brokerage firm or his deputy, a receiver of a stock brokerage firm, a deputy receiver of a stock brokerage firm, a proxy, an employee responsible for internal control or an executive officer<sup>51</sup> of a stock brokerage firm or the central depository, or a statutory body member, Supervisory Board member or executive officer of a financial holding company pursuant to Article 138(3) or a mixed financial holding company pursuant to Article 143c(1)(b) to (e), a fine of up to twelve times the monthly average of his total income from the stock brokerage firm or the branch of a foreign stock brokerage firm or the central depository or the consolidated group or the financial conglomerate members to which belong the stock brokerage firm or the branch of the foreign stock brokerage firm or the central depository; an executive officer<sup>51</sup> may be fined up to 50% of the sum equal to twelve times the monthly average of his total income from the stock brokerage firm or branch of the stock brokerage firm or the central depository or the consolidated group of the stock brokerage firm or of the branch of the foreign stock brokerage firm or the central depository. A person who, as a result of the legitimate application of fine, ceases to be a trustworthy person as defined in Article 8(b), shall be dismissed from his office without undue delay by the stock brokerage firm, foreign stock brokerage firm, financial holding company pursuant to Article 138(3), mixed financial holding company pursuant to Article 143c (1)(b) to (e), or central depository concerned.

(8) To take measures for the recovery of a stock brokerage firm means to:

- a) submit a recovery scheme containing:
  1. a plan for meeting capital requirements;
  2. a plan of current projections and forecasts of the economic performance of the stock brokerage firm, at least in the extent of information contained in a balance sheet, income statement, budget, strategic business plan, an analysis of return on the achievement of the objectives of the scheme;
  3. other information the National Bank of Slovakia may deem necessary;
- b) restrict or suspend the payment of dividends,<sup>112</sup> royalties<sup>113</sup> and any other shares in the profit, remuneration and compensation in kind to shareholders, members of the Board of Directors, members of the Supervisory Board and to employees;
- c) restrict or suspend the growth of salaries paid to members of the statutory body, members of the Supervisory Board, and all employees of the stock brokerage firm;
- d) introduce daily monitoring of the financial situation of the stock brokerage firm;
- e) restrict or suspend new business of the stock brokerage firm; these transactions may be provided by the stock brokerage firm only with prior approval of the National Bank of Slovakia.

(9) The National Bank of Slovakia shall be required to ask a stock brokerage firm to take recovery measures if the stock brokerage firm's capital adequacy does not meet the requirements under Article 74.

(10) The Board of Directors of a stock brokerage firm whose capital adequacy falls below 8% shall be required to submit to the National Bank of Slovakia a recovery scheme within 30 days of becoming aware of the fact. The recovery scheme must be approved by the Board of Directors and the Supervisory Board of the stock brokerage firm. The National Bank of Slovakia shall approve or reject the recovery scheme within ten days from its delivery. If the National Bank of Slovakia does not reject the recovery scheme in this time, the recovery scheme shall be deemed approved.

(11) If the circumstances leading to a restriction or suspension of any of the licensed activities of a stock brokerage firm, foreign stock brokerage firm or central depository have elapsed, the National Bank of Slovakia shall notify this fact in writing to the stock brokerage firm, foreign stock brokerage firm or central depository.

(12) The National Bank of Slovakia may also impose a fine pursuant to paragraph (1)(e) on persons who have breached any provisions of Article 54(8), Article 70, Article 99(10), or Article 102. It shall also impose measures to eliminate and remedy such breach. If the National Bank of Slovakia finds that a natural or legal person is carrying on without a licence an activity for which a licence is required in accordance with this Act, it may impose on this natural or legal person the sanctions mentioned in paragraph 1(d) and (e), according to the gravity and the degree of culpability, and shall notify this fact to an authority active in criminal proceedings. If the National Bank of Slovakia finds market manipulation in the meaning of Article 131a or insider dealing in the meaning of Article 132 committed by a natural person or a legal person other than a stock brokerage firm or financial institution, it may, according to the gravity and degree of culpability, impose on this natural or legal person a fine up to SKK 20 million, or it may order the payment of compensation equivalent in value to the material gain to be made to the person at whose expense the material gain was acquired, and it shall notify this fact to an authority active in criminal proceedings.

(13) Sanctions imposed pursuant to paragraphs (1) to (7), or paragraph 12, are without prejudice to liability under other laws.<sup>114)</sup>

(14) Sanctions set out in paragraphs (1) to (6) may be imposed concurrently and repeatedly. A fine imposed under paragraphs (1) to (5), (7) or (12), shall be payable within 30 days from the effective date of the decision on the fine. Fines shall constitute a state budget revenue.

(15) Remedial measures and fines may be imposed within two years from the detection of shortcomings, but no later than within 10 years from their origination. A fine pursuant to paragraph (7) may be imposed within one year from the detection of shortcomings, but no later than within (3) years from their origination.

(16) The National Bank of Slovakia may, even outside sanction proceedings, discuss the shortcomings in the operation of a stock brokerage firm, foreign stock brokerage firm or central depository with members of the Board of Directors of the stock brokerage firm or central depository, the manager of a branch of a foreign bank, with members of the Supervisory Board of a stock brokerage firm or central depository, with executive officers<sup>51)</sup>, or employees in charge of internal control, who shall be required to afford the National Bank of Slovakia the request assistance.

(17) The National Bank of Slovakia shall notify, without undue delay, any sanction imposed pursuant to paragraph (1) on a branch of a foreign stock brokerage firm to a competent supervisory authority of the country of incorporation of the foreign stock brokerage firm concerned.

(18) Sanctions in accordance with this Act may also be imposed for breaches of legally binding acts of the European Communities and European Union governing the activities of supervised entities.

## **ARTICLE 145**

(1) The National Bank of Slovakia may impose on a legal person within a consolidated group or sub-consolidated group, which is subject to consolidated supervision, a fine of between SKK 10,000 and SKK 20 million according to the gravity, extent, duration, consequences and nature of the established shortcomings, if such legal person:

- a) does not allow an on-site inspection to be made;
- b) does not provide requested statements, reports or other disclosures for the purposes of consolidated supervision;
- c) provides incorrect, untrue, or incomplete statements, reports or other disclosures, or fails to meet the deadlines for their delivery;
- d) fails to meet the obligation defined in Article 141(1).

(2) The provisions of Article 144(12) to (14), shall apply to fines pursuant to paragraph (1).

## **ARTICLE 145a**

(1) Entities forming part of a financial conglomerate over which the National Bank of Slovakia exercises supplementary supervision may be fined by the National Bank of Slovakia, according to the gravity, extent, duration, consequences, and nature of the established shortcomings, between SKK 10,000 and SKK 20 million if this entity:

- a) does not allow an on-site inspection to be made;
- b) does not provide requested statements, reports or other disclosures for the purposes of consolidated supervision;
- c) provides incorrect, untrue, or incomplete statements, reports or other disclosures, or fails to meet the deadlines for their delivery;
- d) fails to meet the obligation defined in Article 143(g) to 143j.

(2) Where a financial conglomerate subject to supplementary supervision faces a threat to its solvency or to its compliance with capital adequacy requirements, the National Bank of Slovakia may:

- a) impose recovery measures for a financial conglomerate in accordance with Article 144(8);
- b) restrict or suspend the performance of certain intra-group transactions.

(3) Where the entity over which the National Bank of Slovakia exercises supervision under Article 135(1) is part of a financial conglomerate in the meaning of Article 135(1), the National Bank of Slovakia may impose on this entity a sanction mentioned in Article 144 also on the basis of a notification from the competent supervisory authority of the Member State responsible for the supervision of this financial conglomerate.

(4) Where the National Bank of Slovakia has imposed a sanction on an entity mentioned in Article 135(1) which forms part of a financial conglomerate subject to supplementary supervision by a competent supervisory authority of a Member State, and where this sanction is relevant to the exercise of the supplementary supervision, this fact shall be notified to the competent authority of that Member State.

## ARTICLE 146

(1) The National Bank of Slovakia may suspend the right to attend and vote at a general meeting of a stock brokerage firm or the central depository, and the right to request to summon an extraordinary general meeting of a stock brokerage firm or a central depository, held by a natural person or legal person which takes any action resulting in a breach of Article 70(1)(a), Article 102(1)(a), or which obtained prior approval pursuant to Article 70(1)(a) and Article 102(1)(a), on the basis of false information. The National Bank of Slovakia may also suspend the exercise of these rights for a person whose actions in connection with a stock brokerage firm or the central depository are detrimental to the proper and prudent operation of the stock brokerage firm or central depository.

(2) A stock brokerage firm or the central depository is obliged, five working days before their general meeting, to issue an order to register a suspension of the rights of use in all book-entry shares it has issued.

(3) A stock brokerage firm or the central depository is obliged to submit to the National Bank of Slovakia a statement of its issuer's register and of its list of shareholders made as at the date an order was executed of the stock brokerage firm or central depository to register a suspension of the right of use in all book-entry securities issued by the stock brokerage firm or central depository. The statement may not be made before the registration is made. The stock brokerage firm or central depository is obliged to deliver the statement to the National Bank of Slovakia on the date of its being made. The National Bank of Slovakia shall, without undue delay, mark on the statement the person whose exercise of rights was suspended pursuant to paragraph (1) and deliver it to the stock brokerage firm or central depository no later than on the day preceding the general meeting of the stock brokerage firm or central depository.

(4) Proceedings to suspend the exercise of rights specified in paragraph (1) are deemed open when the National Bank of Slovakia, on a statement made pursuant to paragraph (1), marks in writing the person for which it repeatedly found a reason to suspend the exercise of its rights pursuant to paragraph (1).

(5) A preliminary measure <sup>115)</sup> in the case of a suspension of the exercise of rights specified in paragraph (1) shall be delivered by the National Bank of Slovakia to the person concerned and to the stock brokerage firm or central depository no later than on the day the general meeting is held. This preliminary measure <sup>115)</sup> shall be binding upon the stock brokerage firm or central depository. A preliminary measure <sup>115)</sup> is also deemed delivered if it was given to a proxy authorised to represent the person concerned at the general meeting.

(6) A stock brokerage firm or central depository may not permit the presence at its general meeting of persons marked by the National Bank of Slovakia pursuant to paragraph (3), or persons authorised to act on their behalf.

(7) While a suspension of rights pursuant to paragraph (1) is in effect, the shares to which such suspended rights are attached shall not be deemed to carry voting rights. These shares are not taken into account when determining whether a general meeting has a required quorum or in decision-making of a general meeting. The increase in share of voting rights of the remaining

persons listed in the statement submitted by a stock brokerage firm or central depository pursuant to paragraph (3) does not require prior approval of the National Bank of Slovakia pursuant to Article 70, paragraph (1)(a) or Article 102(1)(a).

(8) When the reasons cease for the suspension of the exercise of rights specified in paragraph (1), the National Bank of Slovakia shall lift the suspension without undue delay. Persons asked by the National Bank of Slovakia to publish such a decision shall be required to do so.

(9) The National Bank of Slovakia may file a request in court to declare invalid a decision of a general meeting of a stock brokerage firm or central depository due to breach of laws, other generally binding legal regulations, or the articles of association of a stock brokerage firm or central depository within three months from the date it learned about the decision, but no later than within one year from the date the decision was adopted.

### **Compulsory administration of a stock brokerage firm**

#### **ARTICLE 147**

(1) Compulsory administration is a reorganisation measure under which the existing rights of third parties may be affected. The purpose of compulsory administration of a stock brokerage firm is, in particular:

- a) to eliminate the most serious shortcomings in the management and operation of the stock brokerage firm with the objective of preventing further deterioration of the economic situation of the stock brokerage firm;
- b) to suspend the execution of duties and powers by the bodies of the stock brokerage firm which are liable for its deteriorating economic situation;
- c) to assess the real situation of the stock brokerage firm in all areas of its operation and financial performance;
- d) to protect financial instruments deposited with, administered, managed, or held by the stock brokerage firm, and funds received by the stock brokerage firm with the purpose of providing an investment service, to prevent or contain possible damage;
- e) to implement a recovery scheme if there is a reason to believe that its implementation would ensure the economic recovery of the stock brokerage firm, including reorganisation and other measures, designed to gradually stabilise the stock brokerage firm and restore its liquidity, especially with the assistance of shareholders controlling the stock brokerage firm;
- f) to provide the conditions for the exercise of claims of clients under the client protection scheme;
- g) to take necessary action leading up to the declaration of bankruptcy of the stock brokerage firm or its liquidation, if required by the economic condition of the stock brokerage firm.

(2) The National Bank of Slovakia shall impose compulsory administration on a stock brokerage firm if, after three years from the commencement of its activities based on the licence to provide investment services:

- a) the capital adequacy of the stock brokerage firm fails to meet at least 50% of the minimum capital adequacy requirements;
- b) the stock brokerage firm records a cumulative loss of more than 30% of its share capital, capital funds, and reserve fund.

(3) The National Bank of Slovakia may also impose compulsory administration on a stock brokerage firm if any of the circumstances specified in Article 144(1), occurs.

(4) Compulsory administration may not be imposed on a branch of a foreign stock brokerage firm which has its registered office in a Member State. Nor may compulsory administration under this Act be imposed on a stock brokerage firm or foreign stock brokerage firm which is a bank or a foreign bank operating a branch located in the Slovak Republic.

(5) Compulsory administration of a stock brokerage firm shall be introduced upon the delivery of a decision on compulsory administration of the stock brokerage firm to the stock brokerage firm concerned, and shall have immediate effect on the stock brokerage firm and other legal persons and natural persons. The beginning of proceedings for the implementation of compulsory administration of a stock brokerage firm shall not be published.

(6) The National Bank of Slovakia shall publish its decision to impose compulsory administration on a stock brokerage firm without undue delay in at least one national newspaper covering stock exchange news and in publicly accessible premises of the stock brokerage firm placed under compulsory administration. Persons asked by the National Bank of Slovakia to publish such a decision shall be required to do so.

(7) Where the National Bank of Slovakia has imposed compulsory administration on a stock brokerage firm, it shall without undue delay notify this fact to the competent supervisory authority of any Member States in which this stock brokerage firm has established a branch.

(8) The provisions on compulsory administration shall apply, as appropriate, to the compulsory administration of branches of foreign stock brokerage firms on which compulsory administration may be imposed under this Act.

## **ARTICLE 148**

(1) Compulsory administration of a stock brokerage firm shall be exercised by an administrator of the stock brokerage firm (hereinafter the "administrator") and a deputy administrator. An administrator and at most three deputy administrators shall be appointed and dismissed by the National Bank of Slovakia. The administrator and deputy administrators may be appointed for an indefinite period. A certificate of the appointment of the administrator and deputy administrator for the exercise of compulsory administration and proof of the appointment of persons who, in a foreign stock brokerage firm which has its registered office in another Member State, are implementing foreign reorganisation measures imposed in another Member State whose purpose and effect on the existing rights of third parties is similar to the purpose and effect of compulsory administration, shall be the original letter of appointment or confirmation issued by the National Bank of Slovakia or the competent supervisory authority of another Member State. The translation of this certification into the official language of another Member State does not have to be officially certified or subject to a similar a procedure.

(2) An administrator and deputy administrator may only be a natural person. The provisions of Article 55(11) shall apply, as appropriate, to the professional competence of an administrator and deputy administrator.

- (3) An administrator and deputy administrator may not be a person who:
- a) has been lawfully sentenced for an intentional criminal offence or a criminal offence caused by negligence in a management office;
  - b) over the previous three years, at the stock brokerage company placed under compulsory administration, has been a member of the Supervisory Board, the statutory body, proxy, or executive officer,<sup>51</sup> unless he voluntarily resigned from this office;
  - c) has a special relationship to the stock brokerage firm pursuant to Article 87(8);
  - d) is a debtor or creditor of the stock brokerage firm placed under compulsory administration;
  - e) at any time over the past year, provided auditor services to the stock brokerage firm placed under compulsory administration without expressing reservations as to the activities of this stock brokerage firm;
  - f) is an employee or a member of the statutory body or supervisory body of a legal person who is a debtor or creditor of the stock brokerage firm placed under compulsory administration;
  - g) is a member of the statutory body or supervisory body of another stock brokerage firm, or the manager or deputy manager of the branch of a foreign stock brokerage firm;
  - h) is or was an employee of the National Bank of Slovakia at any time over the past two years.

(4) An administrator shall be entitled to manage a stock brokerage firm and its employees. The powers and responsibilities of the administrator shall be those defined in an administrator's contract concluded pursuant to Article 151(1), and in separate regulations. The administrator shall be bound by restrictions set out defined in the National Bank of Slovakia's decision to impose compulsory administration on a stock brokerage firm, or in an administrator's contract.

(5) A deputy administrator shall be responsible for an area of operation of a stock brokerage firm delegated to him by the administrator and, in the performance of compulsory administration of a stock brokerage firm, reports to the administrator. The powers and responsibilities of a deputy administrator shall be defined in a deputy administrator's contract concluded with the National Bank of Slovakia pursuant to Article 151(1). Subject to prior approval of the National Bank of Slovakia, the administrator may commission one of his deputies to take action in his name, based on a written power of attorney with a signature verified pursuant to separate regulations;<sup>116)</sup> such prior approval may be expressed directly in the administrator's contract.

(6) In connection with performing compulsory administration of a stock brokerage firm, the administrator may invite professional advisors, subject to prior approval of the National Bank of Slovakia, in order to accelerate the resolution of serious problems of the stock brokerage firm; such prior approval may be expressed directly in the administrator's contract.

(7) The provisions of Article 55(9), shall apply, as appropriate, to the expertise of a professional advisor.

(8) The office of an administrator and its deputy administrators shall end upon termination of compulsory administration of a stock brokerage firm, upon expiry of its term of office, or by dismissal. An administrator and deputy administrators may be dismissed for a breach of this Act or other generally applicable legislation, or as provided in the relevant administrator's contract or deputy administrator's contract.

(9) When exercising compulsory administration in the territory of another Member State, an administrator and deputy administrator shall proceed in accordance with the law of the Member State in which they are operating, especially in regard to the realisation of assets and provision of information to employees.

(10) In the case of foreign reorganisation measures in the territory of the Slovak Republic, the person exercising such measures and his deputy shall have the same legal position and same powers that pertain to the exercise of compulsory administration in the territory of the Member State in which the foreign reorganisation measures were imposed; in exercising such powers, they shall proceed in accordance with the law and other generally binding legal regulations of the Slovak Republic, especially in regard to the realisation of assets and provision of information to employees.

#### **ARTICLE 149**

(1) Upon introduction of compulsory administration, the execution of offices shall be suspended for all bodies of the stock brokerage firm and the executive officers of the stock brokerage firm, and the power and responsibilities of the Board of Directors and the Supervisory Board shall pass on to the administrator. The foregoing is without prejudice to the right of the Board of Directors to appeal against the decision to impose compulsory administration on the stock brokerage firm. The Commercial Code shall not apply to the administrator in the exercise of powers and responsibilities of the Board of Directors and Supervisory Board.

(2) An administrator may summon a general meeting of a stock brokerage firm, direct its proceedings, and submit proposals. A general meeting may adopt decisions only subject to prior approval of the National Bank of Slovakia, and only upon the proposal of the administrator.

(3) An administrator may take measures to restore the stability and liquidity of a stock brokerage firm, in particular to dispose of its receivables and other assets, sell a branch of the stock brokerage firm as a part of the stock brokerage firm's undertaking or sell the entire undertaking<sup>33</sup> of the stock brokerage firm at a reasonable price, discontinue the stock brokerage firm's operation, or close a branch of the stock brokerage firm; this stipulation shall not affect the provisions of Article 70(1). No approval of a general meeting shall be required for these actions.

(4) An administrator is obliged, no later than within 30 days of the introduction of compulsory administration of a stock brokerage firm, to submit to the National Bank of Slovakia a recovery scheme for the stock brokerage firm placed under compulsory administration, or another proposal on how to solve the situation of the stock brokerage firm.

(5) If warranted by the situation of a stock brokerage firm, an administrator may, subject to prior approval by the National Bank of Slovakia, partly or fully suspend the use of the client's financial instruments, but for no longer than 30 days.

(6) Subject to prior approval of a general meeting, an administrator may make a proposal for settlement.<sup>117)</sup>

(7) An administrator may, with the prior approval of the National Bank of Slovakia, file a petition for bankruptcy<sup>118)</sup> if the debts of the stock brokerage firm exceed its equity.

(8) An administrator shall, without undue delay, notify the National Bank of Slovakia if it becomes aware of any of the circumstances described in Article 156.

## **ARTICLE 150**

(1) An administrator, deputy administrator, and invited professional advisor shall be obliged to perform their duties with due professional care and shall be liable for any damage caused by their activity. An administrator and a deputy administrator shall report to the National Bank of Slovakia regularly on steps they have taken during compulsory administration of a stock brokerage firm.

(2) An administrator, deputy administrator, and invited professional advisor may not misuse, for their benefit or for the benefit of a third party, any information learnt while exercising compulsory administration of a stock brokerage firm, and may not use the stock brokerage firm's assets for their benefit or for the benefit of close persons.<sup>83)</sup>

(3) An administrator, deputy administrator, and invited professional advisor shall keep confidential all facts associated with the implementation of compulsory administration of a stock brokerage firm from all persons except the National Bank of Slovakia learnt in connection with the performance of its duties under this Act or under a separate regulation;<sup>119)</sup> this confidentiality obligation shall continue to apply after the end of their activities associated with the implementation of compulsory administration. This shall not prejudice the provisions of Article 134(3).

## **ARTICLE 151**

(1) The National Bank of Slovakia shall conclude an administrator's contract with an administrator, which shall define in detail his rights and obligations and establish his liability for damage caused in connection with performing his office. The National Bank of Slovakia shall conclude a deputy administrator's contract with a deputy administrator, which shall define in detail his rights and obligations and establish his liability for damages caused in connection with performing his office.

(2) An administrator inviting professional advisors pursuant to Article 148(6), shall do so on the basis of a contract concluded between the administrator and professional advisors under terms approved by the National Bank of Slovakia.

(3) The remuneration due to an administrator and deputy administrator for performing their office shall be determined by the National Bank of Slovakia.

(4) Expenses associated with the execution of compulsory administration of a stock brokerage firm, including remuneration of an administrator, deputy administrators, and professional advisors, shall be settled by the stock brokerage firm placed under compulsory administration.

## **ARTICLE 152**

(1) Members of the Board of Directors, members of the supervisory body, executive officers<sup>51</sup> and employees responsible for internal control shall be required, on the request of an administrator, to cooperate with the administrator, provide him with all documents and other documentation requested by the administrator in connection with the performance of compulsory administration.

(2) An administrator may immediately terminate employment contracts of, give a dismissal notice to, or transfer to another position, members of Board of Directors, executive officers<sup>51</sup> and employees responsible for internal control.

(3) As a result of the introduction of compulsory administration of a stock brokerage firm, the members of the Board of Directors and the Supervisory Board may not receive any severance pay upon termination of their membership in these bodies of the stock brokerage firm which they might be entitled to under a contract between the stock brokerage firm and a member of the Board of Directors or Supervisory Board, or under internal directives of the stock brokerage firm.

## **ARTICLE 153**

(1) The effects of introducing compulsory administration in a stock brokerage firm which has a branch in another Member State, insofar as they concern:

- a) employment contracts and employment relations, shall be governed by the law of the Member State in which the employment contract is governed;
- b) purchase contracts and rental contracts concerning real estate, shall be governed by the law of the Member State in which the real estate is located;
- c) rights in relation to real estate, a vessel or a aircraft which must be registered in the Land Register or in another public register, shall be governed by the law of the Member State on whose territory the respective public register is maintained; this also applies to legal acts concerning the real estate, vessel or aircraft which are performed after the introduction of the compulsory administration, and to any attached rights which must be entered in the public register or in a similar register maintained in another Member State;
- d) ownership or other rights in financial instruments which must be registered in a public register of securities or in another similar register and which are held or located in another Member State, shall be governed by the law of the Member State on whose territory the respective public register or other similar register is maintained; the same applies to legal acts concerning financial instruments which are performed after the introduction of the compulsory administration, and to any attached rights which must be entered in the public register or in a similar register in another Member State;
- e) contracts on settlement, or other similar agreements the purpose of which is to provide compensation or to convert the total difference between several mutual claims and liabilities of contracting parties into a single aggregate claim and liability, contracts on purchase and repurchase, and contracts on stock exchange transactions, shall be governed by the law applicable to these contracts.

(2) For a period of six months after the introduction of compulsory administration in a stock brokerage firm, claims against this stock brokerage firm may not be assigned and claims between the stock brokerage firm, an insurance company and any other entities may not be set off, except where the law of another Member State in which the creditor is domiciled or has his registered office allows for the assignment and setting-off of claims even during the introduction of a reorganisation measure.

(3) An administrator may challenge a legal act <sup>120)</sup> in the meaning of a separate law.

(4) The introduction of compulsory administration or a foreign reorganising measure in another Member State shall be without prejudice to the material rights of creditors or third parties towards the assets of the stock brokerage firm, or the foreign stock brokerage firm having its registered in another Member State, which are located in another Member State when the compulsory administration or foreign reorganisation measure is introduced.

(5) The introduction of compulsory administration in a stock brokerage firm buying an asset, or the introduction of a foreign reorganisation measure in a foreign stock brokerage firm which is buying an asset and has a registered office in another Member State, shall be without prejudice to the right of the endorser to retain ownership of the asset, provided that this asset was located in the territory of another Member State when the compulsory administration or foreign reorganisation measure was introduced.

(6) The introduction of compulsory administration in a stock brokerage firm selling an asset, or the introduction of a foreign reorganisation measure in a foreign stock brokerage firm which is selling an asset and has a registered office in another Member State, shall not constitute grounds for cancelling or terminating the sale of an asset already delivered and shall not prevent the transferee from acquiring ownership thereof, provided that the sold asset was located in the territory of another Member State when the compulsory administration or foreign reorganisation measure was introduced.

(7) The introduction of compulsory administration or a foreign reorganising measure in another Member State and the provisions of paragraphs (2), (5), and (6) shall not preclude filing a petition with a court to have upheld the invalidity of legal acts or the ineffectiveness of disputable legal acts detrimental to creditors, a petition to have upheld the right to withdraw from legal acts or to have legal acts declared invalid which are detrimental to creditors, or a petition for the issue of an injunction to refrain from legal acts detrimental to creditors of a stock brokerage firm under compulsory administration or creditors of a foreign stock brokerage firm having a registered office in another Member State which is subject to a foreign reorganisation measure. If before the introduction of compulsory administration, court proceeding have commenced in another Member State concerning an asset or right withdrawn from the stock brokerage company, such proceeding shall be governed even after the introduction of the compulsory administration by the law of the Member State in which the proceedings commenced and are being conducted.

## **ARTICLE 154**

(1) The introduction of compulsory administration in a stock brokerage firm, information on an administrator and his deputy, and on the end of compulsory administration of a stock

brokerage firm and related changes shall be entered into the Commercial Register. A proposal to register the introduction of compulsory administration of a stock brokerage firm shall be submitted by the National Bank of Slovakia; provisions of a separate law<sup>121)</sup> shall not apply to the submission of this proposal.

(2) The following information shall be recorded in the Commercial Register: the name, permanent residence, and birth registration number of the administrator and deputy administrator.

(3) The administrator may propose that the compulsory administration be registered in the Commercial Register or a similar public register maintained in a Member State on whose territory the stock brokerage firm under compulsory administration has a branch, provided that such registration is allowed under the law of the respective Member State.

(4) The introduction of a foreign reorganisation measure in a foreign stock brokerage firm having its registered office in another Member State which has a branch in the territory of the Slovak Republic, as well as the termination and any changes to this measure, shall be registered in the Commercial Register on the proposal of the competent supervisory authority of the other Member State or the person exercising the foreign reorganisation. The entry in the Commercial Register shall include the name and residential address of the person exercising the foreign reorganisation.

## **ARTICLE 155**

(1) Compulsory administration of a stock brokerage firm shall be terminated:

- a) by delivering a decision of the National Bank of Slovakia on the termination of compulsory administration of a stock brokerage firm, if the reasons for its introduction have ceased;
- b) upon declaration of bankruptcy of the stock brokerage firm or central depository;
- c) upon expiry of 12 months from the introduction of compulsory administration of the stock brokerage firm;
- d) by revocation or expiry of the licence to establish and operate a stock brokerage firm.

(2) The termination of compulsory administration pursuant to paragraph (1) shall be published by the National Bank of Slovakia without undue delay in at least one national newspaper covering stock exchange news and in publicly accessible premises of the stock brokerage firm placed under compulsory administration. Persons asked by the National Bank of Slovakia to publish this announcement shall be required to do so.

(3) The stock brokerage firm shall, without undue delay after the termination of compulsory administration of the stock brokerage firm, convene an extraordinary general meeting to be held within 30 days from the termination of compulsory administration of the stock brokerage firm. The stock brokerage firm shall include in the agenda of the extraordinary general meeting the dismissal of incumbent and election of new members of the Board of Directors and the Supervisory Board of the stock brokerage firm; the new members of the Board of Directors and the Supervisory Board of the stock brokerage firm must meet the conditions specified in Article 55(2)(d).

## **Revocation of licence**

### **ARTICLE 156**

(1) The National Bank of Slovakia shall revoke a licence to provide investment services if:

- a) the own funds a stock brokerage firm fall below its share capital pursuant to Article 54;
- b) a securities dealer meets less than 25% of its capital requirements;
- c) a stock brokerage firm or a foreign stock brokerage firm does not start performing operations permitted in its licence within 12 months after the licence takes effect, or ceases to carry on such operations for a period of six months;
- d) a stock brokerage firm or a foreign stock brokerage firm acquired a licence based on false data given in the licence application;
- e) in the case of a branch of a foreign stock brokerage firm, the foreign stock brokerage firm lost its licence to provide investment services in the country of its incorporation;
- f) a stock brokerage firm or a foreign stock brokerage firm, within a deadline pursuant to Article 85(7), does not pay its due contribution to the Fund,
- g) a stock brokerage firm is declared incapable of meeting its liabilities towards clients pursuant to Article 86(3).

(2) The National Bank of Slovakia may revoke a licence to provide investment services if any serious shortcomings occur in the operation of a stock brokerage firm or a branch of a foreign stock brokerage firm, or in the case of breaches of requirements relating to the business activities of a stock brokerage firm or a branch of a foreign stock brokerage firm, if:

- a) a stock brokerage firm fails to comply with the conditions specified in Article 55(2), or a foreign stock brokerage firm fails to comply with the conditions specified in Article 56(2);
- b) a stock brokerage firm or a foreign stock brokerage firm fails to meet the obligations specified in Articles 83 to 85,
- c) a stock brokerage firm or a foreign stock brokerage firm fails to observe the rules of conduct of a stock brokerage firm in relation to clients as defined in this Act,
- d) a stock brokerage firm has changed its registered office without prior approval of the National Bank of Slovakia,
- e) a stock brokerage firm records a loss exceeding 50% of its share capital in a single year, or 10% in three consecutive years,
- f) a stock brokerage firm or foreign stock brokerage firm fails to meet the conditions for beginning its operation within the deadline set in its licence to provide investment services;
- g) a stock brokerage firm or foreign stock brokerage firm frustrates the exercise of supervision.

(3) The National Bank of Slovakia shall revoke a licence pursuant to Article 100(1) if:

- a) the central depository obtained its licence based on false information given in its licence application,
- b) the share capital of the central depository falls below the amount set in Article 100(2)(a),
- c) the central depository does not start performing the operations permitted in its licence within six months after the licence takes effect, or ceases to carry on such operations for a period of six months,

### **ARTICLE 157**

(1) From the moment of delivery of a decision revoking, of from the expiry of, a licence to provide investment services, the legal person concerned may no longer provide investment services, except as necessary to settle its receivables and payables.

(2) A legal person whose licence to provide investment services was revoked or expired shall carry on the activities pursuant to paragraph (1) as a stock brokerage firm or a branch of a foreign stock brokerage firm in the meaning of this Act until the discharge of its payables and receivables and shall retain the records mentioned in Article 75 for a period of at least five years. The obligation of a stock brokerage firm or foreign stock brokerage firm to submit accounting statements, and statistical reports, and other reports pursuant to this Act shall no longer apply to such a legal person.

(3) A decision to revoke a licence to provide investment services shall be sent by the National Bank of Slovakia for publication to the Commercial Bulletin within 30 days from its effective date.

(4) A valid decision to revoke a licence to provide investment services of a foreign stock brokerage firm shall be notified by the National Bank of Slovakia to a supervisory authority in the country of incorporation of the foreign stock brokerage firm concerned. If a decision to revoke a licence to provide investment services is delivered to a stock brokerage firm operating a branch abroad, the National Bank of Slovakia shall give notice of the decision to a supervisory authority in the country where the branch of the stock brokerage firm, whose licence to provide investment services has been revoked, is located.

(5) A revocation of a licence to provide investment services shall be recorded in the Commercial Register. Within 15 days from the effective date of the decision to revoke a licence to provide investment services, the National Bank of Slovakia shall send a proposal to make the entry to the court that keeps the Commercial Register; the provisions of a separate law<sup>122)</sup> shall not apply to submitting this proposal.

(6) After a decision to revoke a licence to provide investment services takes effect, the National Bank of Slovakia shall, without undue delay, submit to a competent court a proposal for liquidation of the legal person, whose licence to provide investment services has been revoked, and for the appointment of a receiver. The court may not apply a procedure pursuant to a separate law<sup>120)</sup> before a decision on liquidation.

(7) The proceedings for revocation of a licence to provide investment services shall be stayed by a valid decision to declare bankruptcy pursuant to a separate law.<sup>21)</sup>

## **ARTICLE 158**

### **Liquidation of a stock brokerage firm**

(1) Unless otherwise provided in this Act or in a separate law,<sup>15)</sup> the provisions of the Commercial Code shall apply to liquidation of a stock brokerage firm.

(2) If a stock brokerage firm, other than a bank, is being dissolved by liquidation, a proposal to appoint and dismiss a receiver may only be submitted by the National Bank of

Slovakia. The provisions of a separate regulation <sup>121)</sup> shall not apply when this proposal is submitted.

(3) A receiver may not be a person who has or has had a special relation to the stock brokerage firm, or who is or has been over the past five years an auditor of the stock brokerage firm, or has participated in any way in an audit of the stock brokerage firm without expressing reservations to activities of the stock brokerage firm.

(4) The National Bank of Slovakia shall determine the amount and due date of the receiver's remuneration, taking into account the extent of its activities.

(5) Persons involved in the liquidation of a stock brokerage firm shall be required to keep confidential all facts associated with the liquidation from all persons, except the National Bank of Slovakia in connection with the performance of its tasks pursuant to this Act or pursuant to a separate law; <sup>20)</sup> the foregoing is without prejudice to the provisions of Article 134.

(6) A receiver shall submit to the National Bank of Slovakia without undue delay financial statements and documents prepared during liquidation in accordance with a separate regulation, and other documentation requested by the National Bank of Slovakia to assess the work of the receiver and the progress of liquidation.

(7) The provisions of separate laws <sup>123)</sup> shall apply to liquidation of a stock brokerage firm which is a bank; in this case, the provisions of paragraphs (2) to (6) shall not be applied.

## **PART NINE**

### **COMMON, TEMPORARY, AND FINAL PROVISIONS**

#### **ARTICLE 158a**

This Act transposes legal acts of the European Communities and European Union, a list of which is given in the annex.

#### **ARTICLE 159**

(1) The liability for damages caused by a breach of duties under this Act shall be governed by the provisions on compensation for damages in the Commercial Code, unless otherwise provided in this Act.

(2) The property entrusted by clients to a stock brokerage firm or central depository, items, property rights and other assets related to the operation of the central depository pursuant to Article 99(3) shall not be subject to the execution of a decision pursuant to separate legislation.

(3) Without prior approval pursuant to Articles 70 and 102, any legal action which requires prior approval shall be null and void. Also invalid is any action taken with prior approval obtained on the basis of false information.

#### **ARTICLE 160**

(1) Proceedings conducted pursuant to this Act shall be subject to a separate regulation,<sup>20)</sup> unless otherwise provided by this Act.

(2) Where the specification of identification number or birth registration number is required in this Act, such number shall not be stated in the case of persons, which have not been assigned one.

#### **ARTICLE 161**

The provisions of this Act shall also govern legal relationships arising before this Act comes into force; however, the origination of such legal relationships, as well as any claims arising therefrom prior to the effective date of this Act, shall be treated according to the existing legislation, unless otherwise provided in this Act.

#### **ARTICLE 162**

Unless otherwise provided in this Act, legal persons and natural persons are required to bring their activities in line with the provisions of this Act by 30 June 2002 at the latest.

## ARTICLE 163

(1) The centre which as at 1 January 2002 provided its services pursuant to the existing legislation shall be required to submit to the Financial Market Authority (hereinafter "Authority") an application for a licence to establish and operate the central depository pursuant to Article 100 by 31 December 2002 at the latest.

(2) The application pursuant to paragraph (2) shall contain:

- a) business name and registered office of the central depository;
- b) share capital;
- c) proposed range of services to be provided by the central depository;
- d) name, permanent residence, and birth registration number of members of the Board of Directors, Supervisory Board, and a proxy;
- e) material, personnel, and organisational provisions for the operation of the central depository;
- f) a representation by the statutory body that the information supplied is complete and true.

(3) The application pursuant to paragraph 3 shall be supplemented by:

- a) articles of association;
- b) draft operating rules;
- c) career resume of members of the Board of Directors, the Supervisory Board, and a proxy;
- d) document of completed education and professional experience of members of the Board of Directors, the Supervisory Board, and a proxy;
- e) statement of criminal records of members of the Board of Directors, the Supervisory Board, and a proxy, not older than three months;
- f) a written statement of honour by each member of the Board of Directors, Supervisory Board, and a proxy, that he meets the requirements laid down in this Act;
- g) proof that the share capital was paid up.

(4) The application pursuant to paragraph (1) shall be submitted to the Authority by the statutory body of the centre.

(5) Article 100 shall apply, as appropriate, to a decision on the application pursuant to paragraph (1).

(6) The centre which as at 1 January 2002 provided its services pursuant to the existing legislation shall carry on its operations pursuant to this legislation until the first central depository established under this Act has granted membership to its first member. The centre's operation under the existing legislation shall be subject to supervision by the Authority.

(7) Until the effective date of the first decision to grant a licence to establish and operate the central depository, the method of clearing and settlement of stock exchange transactions laid down in the existing legislation shall apply.

(8) Until the effective date of the first decision to grant a licence to establish and operate the central depository, the existing legislation shall apply to the procedure of registration of the inception, change and expiry of the right of lien relating to securities, and of registration of securities accepted as collateral.

## **ARTICLE 163a**

(1) The centre operating pursuant to Article 163(6) shall continue its operation in accordance with the existing legislation until 60 days after the first central depository established under this Act has granted membership to its first member. The centre's operation under the existing legislation shall be subject to supervision by the National Bank of Slovakia. The first depository established under this Act to grant membership to its first member shall notify this fact without undue delay to the National Bank of Slovakia, and shall publish the date of the granting of membership to the first member within three days thereafter in a national newspaper covering stock exchange news.

(2) Until 60 days after the first central depository established under this Act has granted membership to its first member, the procedure for the clearing and settlement of stock exchange transaction shall be carried out in accordance with the existing legislation. The clearing and settlement of stock exchange transaction concluded up to the end of the period mentioned in the first sentence shall be carried out in accordance with the existing legislation.

(3) Until 60 days after the first central depository established under this Act has granted membership to its first member, the existing legislation shall apply to the procedure for registering the establishment or termination of a lien on a security, or any change thereto, and to register for transfers of securities as collateral.

## **ARTICLE 164**

(1) A endorser which has an owner's account set up according to the existing legislation shall, effective from the date when membership is granted to the first member by the first central depository established pursuant to this Act, give orders for registration of transfers of book-entry securities to such a member.

(2) With effect from 60 days after the first central depository established under this Act has granted member to its first member, the central depository may not make an entry crediting an owner's account opened pursuant to the existing legislation. An owner's account established pursuant to the existing shall be closed down at the moment there is no security left in it. On the request of an owner of such an account given to a member within six months after a decision by the National Bank of Slovakia pursuant to Article 163(1), comes into force, the central depository and a member of the central depository shall transfer free of charge any securities left in the account to an owner's account opened pursuant to Article 105.

(3) An owner's account established under the existing legislation shall be deemed a register in the meaning of Article 99(3). An owner's account established under the existing legislation shall be maintained by the central depository.

## **Article 164a**

(1) Where the transferor has an owner's account opened in accordance with previous regulations, it shall make a registration order for the transfer of a book-entry security to the member or the central depository.

(2) The central depository shall not make a credit entry in an owner's account opened under previous regulations unless the transfer order for the crediting of securities to that account is made in the manner and by the procedure laid down in the operational rules.

(3) An owner's account opened under previous regulations shall be deemed a record in the meaning of Section 99(3), and it shall be kept by the central depository for a fee. An owner's account opened under previous regulations shall be maintained by the central depository. The central depository may change the number of that account provided that it makes public the manner of the renumbering in a daily newspaper which has nationwide circulation and publishes stock exchange news. The central depository may not perform the activity mentioned in the previous sentence unless the manner and procedure of this activity is laid down in the operational rules.

(4) A central depository, in order to make necessary modification in the technical processing system for its data, may open an owner's account under Article 105 for the owner of an account opened under previous regulations and transfer the securities held in the account opened under previous regulations to the owner's account opened in accordance with Article 105, and may do so without request. For performing this activity, the central depository shall not charge a fee. The central depository may not perform this activity unless the manner and procedure of the activity is laid down in the operational rules.

(5) The activity mentioned in paragraph (4) shall not be subject to the provisions of Articles 18 to 27. Once the securities held in the account opened under previous regulations have been transferred to the account opened under Article 105, the owner's account opened under previous regulations shall cease to exist.

(6) Where a central depository proceeds in accordance with paragraph (4), it shall make public, in a daily newspaper which has nationwide circulation and publishes stock exchange news, the manner by which it assigned the number of the owner's account. In that case, the provision of Article 105(4) shall not apply.

## **ARTICLE 165**

(1) Any proceedings on the application of fines and other sanctions opened but still pending valid completion prior to the effective date of this Act shall be completed pursuant to the existing legislation. With effect from the effective date of this Act, any shortcomings detected in the operation of stock brokerage firms and other persons which occurred pursuant to the existing legislation, but were not subject to a proceeding pursuant to the existing legislation, shall be examined and processed pursuant to this Act, provided that they are shortcomings which are also deemed shortcomings under this Act. With effect from the effective date of this Act, however, only the measures designed to eliminate an unlawful situation, corrective actions, fines and other sanctions available under this Act may be applied. The legal effects of actions taken prior to the effective date of this Act shall remain unaffected.

(2) Any periods which have not expired on the effective date of this Act shall be governed by the provisions of the existing legislation. Where the existing legislation specified no deadlines for the delivery of a decision or the taking of any action in proceedings opened, but still pending valid completion, prior to the effective date of this Act, the deadlines specified in this Act shall apply and shall start to run on the effective date of this Act.

## ARTICLE 166

(1) A stock brokerage firm which as at the effective date of this Act operated under the existing legislation shall be required to apply to the Authority for a licence pursuant to Article 55 within nine months from this effective date. If the application is not submitted within that period, the licence of a stock brokerage firm shall expire at the end of the period. Until a decision on a licence application comes into force, the stock brokerage firm may carry on its activities in accordance with its existing licence and with the existing legislation. The operation of a stock brokerage firm under the existing legislation shall be subject to supervision by the Authority.

(2) In an application pursuant to paragraph (1), a stock brokerage firm shall specify:

- a) business name and registered office;
- b) identification number;
- c) share capital;
- d) list of shareholders with qualified interest in the stock brokerage firm; the list shall contain the name, permanent residence and birth registration number for natural persons, or business name, registered office, and identification number for legal persons, and the size of their qualified interests;
- e) proposed range of investment services to be provided by the stock brokerage firm and in relation to which financial instruments; the applicant shall specify at least one of the core investment services;
- f) material, personnel, and organisational provisions for the operation of a stock brokerage firm;
- g) name, permanent residence and birth registration number of members of the Board of Directors, members of the Supervisory Board, proxies, and executive officers<sup>51)</sup> of the stock brokerage firm reporting directly to the Board of Directors, and information about their professional qualifications and trustworthiness;
- h) a representation by the statutory body that the supplied information is complete and true.

(3) The following shall be attached to an application pursuant to paragraph 1:

- a) an extract from the Commercial Register;
- b) articles of association;
- c) organisational structure, draft operating rules, and business strategy of the stock brokerage firm;
- d) brief career resume, a document certifying completed education and professional experience of members of the Board of Directors, statements of their criminal records not older than three months, and a their statements of honour declaring that they meet the requirements laid down in this Act;
- e) a written affirmation by the stock brokerage firm that neither bankruptcy was declared nor a compulsory settlement permitted on their property;
- f) proof that the share capital was paid up.

(4) An application pursuant to paragraph (1) shall be submitted to the National Bank of Slovakia by the statutory body of the stock brokerage firm.

(5) Article 55 shall apply, as appropriate, to decisions on an application pursuant to paragraph (1).

#### **ARTICLE 167**

(1) A foreign stock brokerage firm which as at the effective date of this Act operated under the existing legislation shall be required to apply to the Authority for a licence pursuant to Article 58 within six months from the effective date of this Act. If the application is not submitted within this period, the licence of the foreign stock brokerage firm shall expire at the end of the period. Until a decision on the application for a licence to provide investment services comes into force, the foreign stock brokerage firm may carry on its activities in accordance with its present licence and with the existing legislation. The operation of a operation of stock brokerage firm under the existing legislation shall be subject to supervision by the Authority.

(2) In an application pursuant to paragraph (1), a foreign stock brokerage firm shall give the information specified in Article 56, paragraphs (3) and (4).

(3) Article 56 shall apply, as appropriate, to decisions on an application pursuant to paragraph (1).

#### **ARTICLE 168**

A proficiency examination carried out according to the legislation applicable until 1 January 2002 shall be deemed a proficiency examination carried out in accordance with this Act.

#### **ARTICLE 169**

(1) The Authority shall convene the founding meeting of the Council within 30 days from the effective date of this Act.

(2) Stock brokerage firms required to participate in the investor protection scheme under this Act shall pay their initial contributions to the account of the Fund within 30 days from the effective date of this Act.

(3) Stock brokerage firms shall pay the first instalment of their annual contribution to the account of the Fund within 20 days of receiving a decision of the Council on the amount of annual contribution pursuant Article 84(6).

(4) For legally protected client assets which became inaccessible pursuant to Article 82(1) prior to the day falling three years after the day on which the Slovak Republic became a member of the European Communities and the European Union, a single client shall be entitled to compensation from the Fund as laid down in Article 87(2), though in an amount not exceeding:

- a) EUR 10,000 where the client made the claim for compensation between 1 January 2004 and 31 December;
- b) EUR 13,000 where the client made the claim for compensation between 1 January 2005 and 31 December 2005;
- c) EUR 16,000 where the client made the claim for compensation between 1 January 2006 and the completion of three years from the date when Slovakia became a member of the European Union.

(5) Paragraphs (2) and (3) shall also apply to foreign stock brokerage firms which become required to participate in the client protection scheme under this Act.

## **ARTICLE 170**

(1) Any securities which as at 1 January 2002 were publicly negotiable pursuant to the existing legislation, and which as at the effective date of this Act were not admitted to trading on a listed stock exchange shall be deemed securities issued on the basis of a public offer.

(2) Until 60 days after the first central depository established under this Act has granted membership to its first member, the owner of a security admitted to trading on a listed stock exchange market may not be changed other than through a transaction concluded on the stock exchange, except for securities transactions executed by the National Bank of Slovakia in order to regulate the financial market pursuant to other legislation<sup>49)</sup> and except for free transfer and acceptance of a security.

(3) The issuer of securities pursuant to paragraph (1) and an issuer whose shares have been admitted to trading on a regulated market may decide to suspending trading in the securities on the stock exchange, or decide to convert a book-entry security into paper security, or to adopt a decision the result of which is to suspend trading in the security on the stock exchange, only under the conditions and by the methods laid down Article 119.

## **ARTICLE 171**

A court may, on or without a proposal of the Authority, dissolve a joint stock company which failed to meet the requirement to transform its securities by 31 December 1999 in accordance with the existing legislation. Before adopting a decision to dissolve such a company, the court may give the issuer a reasonable grace period to eliminate the reason for dissolution.

## **ARTICLE 172**

- (1) If the rights attached to:
- a) securities compulsorily deposited pursuant to a Decree of the President of the Republic 95/1945 Coll. on reporting of deposits and other financial assets in financial institutions, as well as life insurance policies and securities;
  - b) domestic securities issued after 1945, expired as at 1 June 1953 pursuant to provisions of Act 41/1953 Coll. on monetary reform, the Ministry shall be authorised in accordance with a separate legislation<sup>124)</sup> to decide how to dispose of certificates which remained in a

compulsory deposit in the territory of the Slovak Republic and which contain records which these expired rights were attached to.

(2) The provisions of paragraph (1) shall apply, as appropriate, to securities and the rights attached to them if they are subject to international agreements concluded by the Slovak Republic prior to the effective date of this Act.

### **ARTICLE 173**

Any securities issued in accordance with existing legislation, or with this Act, with separate regulations, and which is denominated in a currency of a European Union Member State which is due to be abolished and replaced by euro in 2002 shall, effective from 1 January 2002, be deemed securities denominated in euro. The nominal value of any such security shall be translated using the euro exchange rate set by the European Union for the replacement in euro of the outgoing currency in which the security is denominated.

### **ARTICLE 173a**

(1) Until the entry into force of the first decision to approve a change in the operating rules of the central depository, the method and procedure for registering a lien on a security and the method and procedure for registering transfers of securities as collateral, in accordance with Articles 53a to 53d, the existing legislation shall apply to the procedure for registering the establishment or termination of lien on a security, or any change thereto, and the registration of transfers of securities as collateral. By 1 January 2006, the central depository shall submit to the Authority for approval a proposal for an amendment to the operating rules pursuant to paragraph (1). The existing legislation shall apply to liens and collateral transfers established under the existing legislation.

(2) Supplementary supervision shall begin to be exercised while taking into account financial situation and profitability during the course of 2005.

### **ARTICLE 173b**

#### **Transitional provisions for regulations effective from 1 January 2006**

(1) The licences, approvals and prior consents issued by the Authority prior to 1 January 2006 and applicable as at 1 January 2006 shall be deemed licences, approvals and prior consents issued under this Act. The provisions of this Act shall apply to the suspension of activities carried out under such licences, and to the alteration, revocation, or expiry of this licence; that same applies to the termination or expiry of approvals and consents issued by the Financial Market Authority up to 1 January 2006.

(2) Proceedings commenced and not validly concluded prior to 1 January 2006 shall proceed to their conclusion in accordance with this Act and a separate law.<sup>20)</sup> The legal effects of acts which took place within the proceedings prior to 1 January 2006 shall remain upheld.

(3) The issuance of generally binding legal provisions which prior to 1 January 2006 were issued for the implementation of enabling provisions in this Act, shall from 1 January 2006 become a competence of the National Bank of Slovakia to the extent laid down by this Act.

#### **ARTICLE 173c**

Compulsory administration proceedings commenced and not validly concluded prior to 1 July 2005 and the exercise of compulsory administration commenced and not validly concluded prior to 1 July 2005 shall come to their conclusion in accordance with the provisions applicable as at 30 June 2005.

#### **ARTICLE 173d**

Issuers which have a registered office in country other than a Member State, and whose securities have already been admitted to trading on a regulated market, may have until 31 December 2005 to inform the Authority of having chosen the Slovak Republic as their home Member State in accordance with Article 125d(5)(c).

#### **ARTICLE 173e**

Existing regulations shall apply to prospectuses approved, and to prospectuses submitted for approval before this Act came into effect; this is not the case if the public offer of securities is being realised in the territory of a Member State.

#### **ARTICLE 173f**

##### **Transitional provisions for regulations effective from 1 January 2007**

(1) Until 31 December 2010, the provisions of Article 74(1) to (10) shall not apply to a securities dealer providing investment services and investment activities exclusively in relation to options, futures, swaps, other derivative instruments relating to commodities, and financial contracts for differences.

(2) Until 31 December 2011, a securities dealer to which Article 74(12) does not apply, whose total trading book positions do not exceed EUR 50 million, and whose average number of employees during the financial year does not exceed 100, may replace the capital requirement under Article 74(5)(d) with the lower of the following amounts:

- a) the requirement under Article 74(5)(d);
- b) 12/88 of the higher of the following:
  - 1. the sum of capital requirements under Article 74(5)(a) to (c), and
  - 2. the capital requirement under Article 76(6), irrespective of whether the exemption under Article 74(12) is applied.

(3) Where paragraph 2(b) point 2 applies, an incremental increase under Article 74(6) shall be applied on at least an annual basis. Applying the derogation under paragraph (2) shall

not result in a reduction in capital requirements for a securities dealer to below the level calculated in accordance with legal regulations applicable as at 31 December 2006; this shall not apply if such a reduction is justified by a reduction in the scope of the security dealer's activities.

(4) Application of the derogation under paragraph (2) shall be subject to the prior approval of the National Bank of Slovakia.

(5) Until 31 December 2010, a securities dealer which has discretion to exceed the exposure limits set out in Article 74a need not include any excesses of these limits in its calculation of capital requirements under Article 74(5)(b), provided that the following conditions are met:

- a) the securities dealer provides investment services or investment activities related to options, futures, swaps, other derivative instruments relating to commodities, and financial contracts for differences;
- b) the securities dealer does not provide such investment services or activities for, or on behalf of, retail clients;
- c) breaches of the limits under Article 74a arise in connection with exposures resulting from contracts that are financial instruments as listed in subparagraph (a) and relate to commodities or underlyings, such as climatic variables, freight rates, emission allowances, inflation rates, or other official economic statistics calculated in accordance with a separate regulation<sup>15)</sup> or in connection with exposures resulting from contracts concerning the delivery of commodities or emission allowances;
- d) the securities dealer has a documented strategy for managing and, in particular, for controlling and limiting risks arising from the concentration of exposures, and it informs the National Bank of Slovakia of this strategy and all material changes thereto without delay; the securities dealer takes appropriate measures to ensure a continuous monitoring of the creditworthiness of borrowers, according to their impact on concentration risk, and the securities dealer shall, on the basis of these measures, be able to react adequately and sufficiently promptly to any deterioration in that creditworthiness.

(6) Where a securities dealer exceeds the internal limits set according to the strategy referred to in paragraph (5)(d), it shall without delay notify the National Bank of Slovakia and the counterparty of the size and nature of the excess.

(7) A securities dealer which calculates a risk-weighted exposure amount using the internal ratings based approach shall during the first, second and third calendar year after 1 January 2007 have own funds equal to or more than the amount mentioned in paragraph (8). A securities dealer which uses the advanced measurement approach to calculate capital requirements for operational risk shall have own funds equal to or greater than the amount mentioned in paragraph (8) during the second and third calendar year after 1 January 2007.

(8) Of the total minimum capital requirements laid down by regulations effective before 1 January 2007, the amount of own funds under paragraph (7) shall represent 95% during the first calendar year, 90% during the second and 80% during the third.

(9) Until 31 December 2007, securities dealers may use instead of the standardized approach for credit risk, the calculation of risk-adjusted assets and off-balance sheet items in accordance with regulations effective before 1 January 2007.

- (10) Where a securities dealer proceeds in accordance with paragraph (9),
- a) credit derivatives shall be included in the list of full-risk items and shall thereby attract a credit weight of 100% under regulations effective as at 31 December 2006;
  - b) the value of credit equivalents for derivative instruments shall be calculated in accordance with regulations effective as at 31 December 2006, irrespective of whether the on-balance and off-balance items arising therefrom and the values of credit equivalents are deemed to be risk-weighted exposure amounts.

(11) Where a securities dealer proceeds in accordance with paragraph (9), then in respect of exposures for which the standardized approach is used the provisions on credit risk mitigation under this Act shall not be applied, but procedures shall be used under regulations effective before 1 January 2007.

(12) Where a securities dealer proceeds in accordance with paragraph (9), the capital requirements for operational risk under Article 74(5)(d) shall be lowered by the percentage representing the ratio of the value of the securities dealer's exposures for which risk-weighted exposure amounts are calculated in accordance with the discretion referred to in paragraph (9) to the total value of its exposures.

(13) Where a securities dealer proceeds in accordance with paragraph (9), its exposures shall be subject to regulations effective before 1 January 2007.

(14) Where a securities dealer proceeds in accordance with paragraph (9), all references to the standardized approach for credit risk shall be construed as references to provisions on the calculation of risk-weighted assets under regulations effective before 1 January 2007.

(15) Where a securities dealer proceeds in accordance with paragraph (9), provisions concerning the system for assessing internal capital adequacy and Article 74c(3) shall not apply before 1 January 2008, and the disclosure obligation of the securities dealer shall be subject to regulations effective before 1 January 2007.

(16) Where a securities dealer proceeds in accordance with paragraph (9), the calculation of trading book risk, foreign exchange risk and commodity risk shall be subject to regulations effective before 1 January 2007.

- (17) The National Bank of Slovakia may:
- a) for securities dealers applying to use the internal ratings based approach before 31 December 2009, approve a reduction in the three-year period prescribed for the use of eligible rating systems to a period no shorter than one year until 31 December 2009;
  - b) for securities dealers applying to use own estimates of loss given defaults or own calculations of conversion factors, approve a reduction in the approved three-year period to a period of two years until 31 December 2008;
  - c) until 31 December 2012, permit securities dealers to continue to apply to participations under a separate regulation acquired prior to the entry into force of this Act the treatment stipulated by a separate regulation;

d) until 31 December 2017, exempt from the application of the internal ratings based approach certain equity claims held by a securities dealer or its subsidiary as at 31 December 2007, under conditions laid down in a separate regulation.

(18) Until 31 December 2010, the exposure-weighted average loss given defaults for all retail exposures secured by residential properties and not benefiting from state guarantees may not be lower than 10%.

(19) Securities dealers not permitted to use own estimates of loss given defaults or own calculations of conversion factors may use relevant data from two years when implementing the internal ratings based approach, but not later than 31 December 2007 in regard to the observation period. Until 31 December 2010, the observation period shall be extended each year by one year.

(20) Where, as at 1 January 2007, the shares of an offeree company which are the subject of a takeover bid are admitted to trading on a regulated market in Slovakia and other Member States, the National Bank of Slovakia shall within four weeks after this date agree with the respective Member States' supervisory authorities on which authority will be competent to exercise supervision of the takeover bid. Otherwise, the offeree company shall decide, not later than the first trading day following this period, on which from these supervisory authorities will be competent to exercise supervision over the takeover bid. The offeree company shall notify its decision in writing to the respective supervisory authority and disclose it.

(21) The National Bank of Slovakia shall also exercise supervision over a takeover bid for an offeree company whose its registered office in another Member State, where the shares that are the subject of the bid are as at 1 January 2007 admitted to trading on a regulated market in the Slovak Republic and in another Member State, and the National Bank of Slovakia has within four weeks after that date agreed with the respective Member States' supervisory authorities that it is authorized to exercise supervision over the bid. This shall also apply if, after the supervisory authorities have failed to conclude an agreement on competences, the offeree company has decided that the National Bank of Slovakia will have competence in this matter.

(22) A takeover bid launched before 1 January 2007 shall be proceed in accordance with existing regulations.

(23) The rights laid down in Articles 118i and 118j shall be applicable only to takeover bids launched after 1 January 2007.

### **Article 173g** **Transitional provisions for regulations effective as of 1 May 2007**

Until 1 November 2007, a central depository shall regulate the way it maintains owners' accounts in accordance with the text of Article 164 that comes into effect as of 1 May 2007.

## **Article 173h**

### **Transitional provisions for regulations effective as of 1 November 2007**

(1) Legal and natural persons shall bring their activities into line with this Act by no later than 1 May 2008 unless otherwise provided in paragraphs (2) to (7).

(2) It shall not be required to amend investment services licences that have already been issued. An investment services licence issued to a bank or the branch of a foreign bank shall be treated as a banking licence for the purposes of Article 79a. This is without prejudice to the obligation of a securities dealer, a foreign securities dealer, a bank or a foreign bank to apply for an amendment to its licence as a precondition to providing new investment services, investment activities or ancillary services, including custodianship.

(3) Where proceedings on the issuance of an investment services licence were commenced before 1 November 2007, they shall be concluded in accordance with regulations effective as of 1 November 2007.

(4) As of 1 November 2007, a securities dealer may operate in the territory of another Member State in accordance with Article 64 or Article 66 only if it meets the conditions laid down in this Act in regard to scope of the investment services provided and to financial instruments.

(5) In the case of a foreign securities dealer issued with its licence before 1 November 2007, where the laws of the Member State in which its registered office is situated do not allow investment services to be provided in the territory of another Member State unless additional conditions are met, that securities dealer shall either suspend the performance of activities under Article 65 or 67 until these conditions are met, or shall apply for a licence under Article 56, or it shall cease its activities in the territory of the Slovak Republic.

(6) Notifications in regard to the freedom to provide services in the European Economic Area given in accordance with previous regulations shall be treated as given in accordance with regulations effective as of 1 November 2007. This shall be without prejudice to the obligation to give notification of any change in the facts notified under Articles 64 to 66.

(7) Where the activities of an investment intermediary as stated in its licence to operate as an investment intermediary are not entered in the Commercial Register as at 1 November 2007, that investment intermediary shall, by no later than 1 December 2007, file a petition for the entry of these activities in the Commercial Register, and shall, within ten days after the court's decision on their entry into the Commercial Register takes effect, submit an extract from the Commercial Register to the National Bank of Slovakia. If an investment intermediary fails to meet the obligation to file the registration petition under the first sentence, its licence to operate as an investment intermediary shall expire.

**Article 173i**  
***Transitional provisions effective as of 1 January 2008***

(1) In preparation for the introduction of the euro in the Slovak Republic and the changeover from the Slovak currency to the euro, issuers of securities denominated in the Slovak currency shall ensure and perform the redenomination, conversion and rounding of the nominal value of the securities which they have issued, including fund units, from the Slovak currency to the euros in accordance with this Act and separate legal provisions on introduction of the euro in the Slovak Republic.<sup>125)</sup>

(2) As of the euro introduction date, securities denominated in the Slovak currency shall be treated as securities denominated in the euros, their nominal value converted and rounded in accordance with the conversion rate and other rules governing the changeover from the Slovak currency to the euros;<sup>125)</sup> this shall also apply to securities denominated in other currency which will cease to exist and will be replaced with the euro, as of the date of replacement of such other currency with the euro and simultaneously in accordance with the fixed conversion rate designed for the conversion of such other currency to the euros and with other rules applicable to the changeover from such other currency to the euros. This presumption shall be without prejudice to the obligation of issuers of securities denominated in the Slovak currency to carry out the redenomination of the nominal value of securities to the euros in accordance with this Act and separate legal provisions.

(3) Contracting parties to pledge agreements concerning lien on securities used to secure a receivable in the Slovak currency shall, one month after the euro introduction date<sup>125)</sup> at the latest, place an order for registration of a change in the lien on securities in the respective register of liens, where such registration shall refer to the amount of secured receivable recorded in the register of liens after its conversion and rounding from the Slovak currency to the euros according to the conversion rate and other rules applicable to the changeover from the Slovak currency to the euro. Should the contracting parties to pledge agreements concerning lien on securities not perform this obligation in timely manner, the central depository shall without delay but not later than within three months after the euro introduction date make conversion and rounding of amount of the individual secured receivables from the Slovak currency to the euros according to the conversion rate and other rules applicable to the changeover from the Slovak currency to the euro, where such receivables shall mean receivables secured by lien on securities which are entered in the register of liens kept with the central depository; should this be the case, the central depository shall within three months after the euro introduction date at the latest provide also for registration of the respective changes of data in its register of liens and in the respective accounts where the data on the respective receivables secured by liens on securities are recorded. The same rules which apply to conversions, rounding and registrations of changes of data on amount of receivables which are secured by lien on securities entered in the register of liens kept with the central depository shall also apply to conversions, rounding and registrations of changes of data on amount of receivables which are secured by lien on securities entered in the central register of short-term securities kept with the National Bank of Slovakia; in making conversions, rounding and registrations of changes of data on amount of secured receivables from the Slovak currency to the euros, the National Bank of Slovakia shall have the same status, rights and obligation as the central depository in its performing

conversions, rounding and registrations of changes of data on amount of secured receivables from the Slovak currency to the euros

#### **ARTICLE 174**

##### **Repealed Provisions**

The following are hereby repealed:

1. Articles 1 to 99f and Article 102 of Act 600/1992 Coll. on securities, as amended by Act of the National Council of the Slovak Republic No. 88/1994 Coll., Act of the National Council of the Slovak Republic No. 246/1994 Coll., Act of the National Council of the Slovak Republic No. 249/1994 Coll., Act of the National Council of the Slovak Republic No. 171/1995 Coll., Act of the National Council of the Slovak Republic No. 304/1995 Coll., Act of the National Council of the Slovak Republic No. 58/1996 Coll., Act of the National Council of the Slovak Republic No. 373/1996 Coll., Act No. 204/1997 Coll., Act No. 144/1998 Coll., Act No. 128/1999, Act No. 247/2000 Coll., and Act No. 331/2000 Coll., and Act No. 483/2001 Coll.,
2. Decree of the Ministry of Finance of the Slovak Republic 64/1993 Coll. on technical specifications of publicly negotiable paper securities.
3. Decree of the Ministry of Finance of the Slovak Republic 108/2001 Coll. on the content and method for the performance of a test and examination of proficiency of a stockbroker, and on determination of fee for the performance of a test and examination of proficiency of a stockbroker.

#### **ARTICLE 174a**

##### **Repeals for regulations effective from 1 January 2007**

The following shall be repealed:

1. Decree of the Ministry of Finance of the Slovak Republic no. 558/2002 Coll., stipulating the extent, manner and deadlines for the submission of statements, reports or overviews from accounting and statistical records and determining the content, form and structure, and the deadlines, method and place of submission of the reports, statements and other disclosures of securities dealers and foreign securities dealers, as amended by Decree no. 34/2003 Coll., Decree no. 166/2005 Coll. and Decree of the National Bank of Slovakia no. 626/2006 Coll.;
2. Decree of the Ministry of Finance of the Slovak Republic no. 559/2002 Coll. on the capital adequacy of securities dealers, as amended by Decree no. 753/2002 Coll., Decree no. 166/2005 Coll. and Decree of the National Bank of Slovakia no. 626/2006 Coll.,
3. Decree of the Ministry of Finance of the Slovak Republic no. 631/2002 Coll., laying down details for the submission of statements, reports and disclosures of legal persons included in the consolidated group of a securities dealer and of the central depository, as amended by Decree no. 166/2005 Coll. and Decree of the National Bank of Slovakia no. 626/2006 Coll."

## SECTION II

This Act shall enter into force on 1 January 2002, except for the provisions of Section I Article 58, Articles 63 to 69, Article 70(6), Article 121(2)(1) and (3), Article 125, Article 130(12) and (13), and Article 131, which shall come into force on 1 May 2004 and except for Section I Article 73(1)(h) which shall enter into force on 30 June 2003.

Act No.291/2002 Coll. entered into force on 1 July 2002.

Act No.510/2002 Coll. entered into force on 1 January 2003, except for the provisions of Section III(1) to (10), (12), (14) and (17) to (22), which entered into force on 1 September 2002, and except for the provisions of Section III(13), Article 99(16), second sentence and paragraph (16), and Article 107a(8), which entered into force on 1 May 2004.

Act No.162/2003 Coll. entered into force on 1 June 2003.

Act No.594/2003 Coll. entered into force on 1 January 2004.

Act No.635/2004 Coll. entered into force on 1 January 2005, except for the provisions of Section I(73) and (94) to (96), which entered into force on 1 December 2004 and except for the provisions of Section I(13), which entered into force on 1 July 2005.

Act No.43/2004 Coll. entered into force on 1 January 2005.

Act No.266/2005 Coll. entered into force on 30 June 2005.

Act No.7/2005 Coll. entered into force on 1 July 2005.

Act No.336/2005 Coll. entered into force on 1 August 2005.

Act No.747/2004 Coll. entered into force on 1 January 2006.

Act No.213/2004 Coll. entered into force on 1 May 2006.

Act No. 644/2006 Coll. came into force on 1 January 2007, with the exception of Article VI, which came into force on the date of promulgation, Article III paragraph (2), which came into force on 30 December 2006, and Article II paragraph (1), which shall come into force on 1 January 2008.

Act No. 209/2007 Coll. entered into force on 1 November 2007, except for Section I points 2, 6, 7, 11 to 14, 16, 18, 23 to 25, 27, 57, 58, 60, 73 to 81, 91, 93 to 96, 100 to 102, 106, 116, 117, 124 to 136, 139, 144 to 151 and 154 to 165, Section II, Section IV points 5 to 8, Section V points 2, 27, 41, 42, 44, 49, 50, 56, 57, 65 and 66, and Section VI points 1, 3, 5 to 8, 10 to 32 and 34 to 39, which came into force on 1 May 2007.

Act No. 659/2007 entered into force on 1 January 2008, except for the provisions of Section II, point 2 [Article 2(1)(a) and (b)], point 6 [Article 3], points 8 and 9 [Article 4(4), Article 6(1)(a)], point 12 [Article 6(2)(e)], points 28 to 30 [Articles 15, 16 and 17(1)], point 32 [Article 17c], point 34 [Article 17h(2)], point 37 [Articles 20 and 21], point 45 [Article 28], point 51 [Article 31(1)] and point 58 [Articles 38 and 39], the provisions of Section III, point 1 [Article 5(6)], the provisions of Section IV, point 2 [Article 93(3)], points 4 and 5 [Article 108(1) and Article 109(1)], point 13 [Article 157(1), fourth sentence], point 14 [Article 162(3)], point 17 [Article 223(3)] and point 21 [Article 369(1)], the provisions of Section V, point 5 [Article 40(10)] and point 7 [Article 42(7)], the provisions of Section VI, point 4 [Article 3 (2)(c), point 1], point 35 [Article 76(2)], point 39

[Article 85(4)], points 41 to 43 [Article 87(2) and (3) and Article 88(8)] and point 63, the provisions of Section VII, point 3 [Article 3(1)(c) point 1], the provisions of Section VIII, point 2 [Section I, Article 48(2)], the provisions of Section X, point 1 [Article 2(2)(c), points 1 and 2, Article 38(1), Article 67(2), Article 87(2)(d)] and points 10 to 12 [Article 84(2) and (3), Article 85a(2) and (4), Article 87(2)(i)], the provisions of Section XI, the provisions of Section XII, point 2 [Article 7(4)] and points 4 to 7 [Article 9(1), Article 9(2)(b), Article 9(3), Article 10(8)], the provisions of Section XIII, point 1 [Article 4(4)(d),], point 3 [Article 8(3)], points 5 and 6 [Article 21a(2)(b), Article 30(2)] and points 10 to 12 [Article 75, Article 77(2) to (5), Article 78a] and point 13, the provisions of Section XIV, the provisions of Section XV, points 1 and 2 [Article 23(11), Article 75(2)], the provisions of Section XVI, point 2 [Article 61], the provisions of Section XVII points 1 to 6 [Article 56(1), Article 64(5), Article 116(8), Article 129(2), Article 138(1)(a), and Article 138(25)], and the provisions of Section XVIII and Sections XXII to XXVI which shall enter into force on the euro introduction date in the Slovak Republic.

Act No. 70/2008 entered into force on 1 April 2008, except for the provisions of Section V that came into force on 2 April 2008.

**SCHEDULE OF TRANSPOSED LEGAL ACTS OF THE EUROPEAN  
COMMUNITIES AND THE EUROPEAN UNION**

1. Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84 of 26 March 1997, OJ Special Edition Chapter 6 Volume 2).
2. Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184 of 6 July 2001, OJ Special Edition Chapter 6 Volume 4), as amended by Directive 2003/6/EC of the European Parliament and of the Council (OJ L 96 of 12 April 2003, OJ Special Edition Chapter 6 Volume 4) and Directive 2003/71/EC of the European Parliament and Council of 4 November 2003 (OJ L 345 of 31 December 2003, OJ Special Edition Chapter 6 Volume 6).
3. Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168 of 27 June 2002, OJ Special Edition Chapter 10 Volume 3).
4. Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35 of 11 February 2003, OJ Special Edition Chapter 6 Volume 4).
5. Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96 of 12 April 2003, OJ Special Edition Chapter 6 Volume 4).
6. Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345 of 31 December 2003, OJ Special Edition Chapter 6 Volume 6).
7. Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (OJ L 339 of 24 December 2003, OJ Special Edition Chapter 6 Volume 6).
8. Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (OJ L 339 of 24 December 2003, OJ Special Edition Chapter 6 Volume 6).
9. Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142 of 30 April 2004, OJ Special Edition Chapter 17 Volume 2).
10. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and

93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145 of 30 April 2004, OJ Special Edition Chapter 6 Volume 7).

11. Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions (OJ L 162 of 30 April 2004, OJ Special Edition Chapter 6 Volume 7).
12. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390 of 31 December 2004).
13. Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees (OJ L 79 of 24 March 2005).
14. Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending Directive 2004/39/EC on markets in financial instruments as regards certain deadlines (OJ L 114 of 27 April 2006).
15. Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177 of 30 June 2006).
16. Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241 of 2 September 2006).

## Footnotes:

---

- 1) For example, Act No. 530/1990 Coll. on bonds, as amended, Articles 155 to 159 of the Commercial Code, as amended, Act No. 191/1950 Coll. on bills of exchange and cheques.
- 2) Articles 155 to 159 of the Commercial Code, as amended.
- 3) Article 176 of the Commercial Code.
- 4) Article 40 of Act No. 594/2003 Coll. on collective investment, with consequential amendments.
- 5) Act No. 530/1990 Coll., as amended.
- 6) Article 786(2) of the Civil Code, as amended by Act No. 509/1991 Coll.
- 7) Articles 781 to 785 of the Civil Code.
- 8) Act No. 191/1950 Coll.
- 9) Article 720 of the Commercial Code.
- 10) For example, Article 612 of the Commercial Code.
- 11) Article 528 of the Commercial Code.
- 12) Act No. 144/1998 Coll. on warehouse receipt and goods receipt, with consequential amendments.
- 13) Act No. 42/1992 Coll. on the reform of property relations and the settlement of property claims in Cooperatives, as amended.
- 14) Article 54(1)(b) of Act of the National Council of the Slovak Republic No. 303/1995 Coll. on budgetary rules.
- 15) Act No. 483/2001 Coll. on banks, with consequential amendments.
- 16) Article 535 to 539 of the Civil Code, as amended by Act No. 509/1991 Coll.
- 16a) Article 39a of Act no. 429/2002 Coll. as amended by Act no. 209/2007 Coll.
- 16b) Article 38 of Commission Regulation (EC) No 1287/2006/EC of 10 August 2006, implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241 of 2 September 2006).
- 17) Articles 38 and 39 of Commission Regulation (EC) No 1287/2006/EC."
- 18) Article 15(1)(b) of Act No. 330/2000 Coll. on the stock exchange.
- 19) Article 8 of Act No. 311/1999 on the criminal register.
- 20) Act No. 747/2004 Coll. on financial market supervision, with consequential amendments.
- 21) Act No. 328/1991 Coll. on bankruptcy and settlement, as amended.
- 21a) Article 85 of Act No. 650/2004 Coll. on supplementary pension savings, as amended.
- 22) Article 3 of Act No. 594/2003 Coll.
- 23) Act of the Slovak National Council No. 24/1991 Coll. on the insurance industry, as amended.
- 24) Act No. 650/2004 Coll., as amended.
- 24a) Act No. 43/2004 Coll. on retirement pension savings, with consequential amendments.

- 24b) Article 31 (2) of Act of the National Council of the Slovak Republic No. 566/1992 Coll., as amended by Act No. 149/2001 Coll.
- 24c) Article 535 of the Civil Code.
- 25) For example, Article 2(6) of Act No. 483/2001 Coll.
- 26) Article 31(6) of Act of the National Council of the Slovak Republic No. 566/1992 Coll. on the National Bank of Slovakia, as amended by Act No. 149/2001 Coll..
- 26a) Article 40(5) of Act No. 594/2003 Coll. on collective investment, with consequential amendments.
- 27) For example, Article 22(1) of Act No. 92/1991 Coll. on conditions for the transfer of state property to other persons, as amended, Article 2(3) of Act No. 144/1998 Coll.
- 28) For example, Article 155(2) of the Commercial Code, as amended.
- 29) Article 6(2) of Act No. 530/1990 Coll., as amended, Article 25(4) and Article 36 of Act No. 594/2003 Coll.
- 30) For example, Article 168(3) of the Commercial Code.
- 31) For example, Article 12(5) of Act No. 530/1990 Coll., as amended by Act No. 361/1999 Coll.
- 32) For example, Article 69 of the Commercial Code, as amended by Act No. 500/2001 Coll.
- 33) Articles 476 to 488 of the Commercial Code, as amended.
- 34) For example, Article 4(4) of Act No. 530/1990 Coll., as amended by Act No. 600/1992 Coll., Article 13 of Act of the National Council of the Slovak Republic No. 202/1995 Coll. as amended by Act No. 45/1998 Coll.
- 35) For example, Article 16 of Act No. 191/1950 Coll., Article 13 of the Act of the National Council of the Slovak Republic No. 202/1995 Coll., as amended by Act No. 45/1998 Coll.
- 36) Article 13(3) of Act No. 530/1990 Coll.
- 37) For example, Articles 12, 18 and 19 of Act No. 191/1950 Coll.
- 38) Article 21(2) of the Commercial Code.
- 39) For example, Article 28(1)(a) of Act No. 483/2001 Coll.
- 40) For example, Article 313 of the Civil Court Order.
- 41) For example, Act No. 385/1999 Coll. as amended by Act No. 329/2000 Coll., Act of the National Council of the Slovak Republic No. 123/1996 Coll. as amended by Act No. 409/2000 Coll.
- 42) Article 131 of act of the National Council of the Slovak Republic No. 233/1995 Coll. on court executors and execution activity (Execution Order), with consequential amendments, as amended by Act No. 280/1999 Coll.
- 43) Articles 261 to 408 of the Commercial Code.
- 44) For example, Article 19 of Act No. 191/1950 Coll.
- 45) For example, Articles 18, 19 and 24 of Act of the National Council of the Slovak Republic No. 566/1992 Coll. as amended.
- 46) For example, Act of the Slovak National Council No. 511/1992 Coll. on the administration of taxes and fees and on changes in the system of territorial financial authorities, as amended.
- 47) For example, Act of the Slovak National Council No. 511/1992, as amended, the Civil Court Order, as amended.

- 47a) Article 2(l) of Decree of the National Bank of Slovakia No. 4/2004 of 16 January 2004 on the capital adequacy of banks' financing (Notification No. 36/2004 Coll.), as amended by Decree of the National Bank of Slovakia No. 16/2004 (Notification No. 676/2004 Coll.).
- 47b) Article 2(1)(b) or (2) of Act No. 483/2001 Coll.
- 47c) For example, Act No. 594/2003 Coll.
- 47d) Act No. 510/2002 Coll. on the payment system, with consequential amendments.
- 47e) Article 39 of Act No. 510/2002 Coll.
- 47f) Article 32(4) of Act No. 510/2002 Coll.
- 47g) Article 151m(1), (2), the last sentence of (3), (7) and (9), and Article 151ma (1) and (2) of the Civil Code.
- 47h) Article 18, 19 and 23 of Act of the National Council of the Slovak Republic No. 566/1992 Coll., as amended.  
Section 18 of the Protocol on the Statute of the European System of Central Banks and the European Central Bank (OJ C 321 E of 29 December 2006)
- 48) For example, Act No. 95/2002 Coll. as amended, Act No. 429/2002 Coll. as amended, Act No. 594/2003 Coll. as amended, Act No. 43/2004 Coll. as amended, and Act No. 650/2004 Coll. as amended.
- 49) Act of the National Council of the Slovak Republic No. 566/1992 Coll., as amended.
- 49a) Act No. 386/2002 Coll. on state debt and state guarantees, amending Act No. 291/2002 Coll. on the State Treasury and with consequential amendments.
- 50) Articles 21 and 28(3) of the Commercial Code, as amended by Act No. 500/2001 Coll.
- 50a) Act No. 340/2005 Coll. on insurance mediation and reinsurance mediation, including consequential amendments to certain laws
- 50b) Article 10 (5) of Act No. 340/2005 Coll.
- 51) Article 27(5) of the Labour Code, as amended.
- 52) Article 30 of Act No. 328/1991 Coll., as amended.
- 52a) Article 18a of Act No. 429/2002 Coll.
- 53) Article 24 of Act No. 329/2000 Coll.
- 54) Article 71/1967 Coll. on administrative proceedings (Administrative Procedure Code).
- 55) Article 66b of the Commercial Code, as amended.
- 56) Act No. 136/2001 Coll. on protection of economic competition, amending Act of the Slovak National Council No. 347/1990 Coll. on the organisation of ministries and other central state administration authorities of the Slovak Republic, as amended.
- 56a) Article 23 of Act No. 483/2001 Coll. as amended.
- 57) Article 2 (10) of Commission Regulation (EC) No. 1287/2006/EC.
- 58) Article 65 of the Commercial Code.
- 58a) Article 3 of Act No. 428/2002 Coll. on protection of personal data.
- 58b) For example, Act No. 530/2003 Coll. on the Commercial Register, with consequential amendments; Articles 3a and 27 to 33 of the Commercial Code; Articles 2(2), 10 and 11 of Act No. 34/2002 Coll. on foundations, amending the Civil Code, as amended; Article 9(1) and (2) and Article 10 of Act No. 147/1997 Coll. on non-investment funds, amending Act of the National Council of the Slovak Republic No. 207/1996 Coll.; Article 9(1) and (2) and Article 11 of Act No. 213/1997 Coll. on non-profit organisations providing generally

- beneficial services, as amended by Act No. 35/2002 Coll.; Articles 6 , 7, 9 and 9a of Act No. 83/1990 Coll. on association of citizens, as amended; Article 6(1) and Article 7 of Act of the National Council of the Slovak Republic No. 182/1993 Coll. on ownership of apartments and non-residential premises, as amended; and Article 5(1) and (2) of Act of the National Council of the Slovak Republic No. 222/1996 Coll. on organisation of local state administration, with consequential amendments.
- 58c) For example, Act No. 367/2000 Coll. on protection against the legalisation of proceeds from crime, with consequential amendments; Act No. 431/2002 on accountancy; Act No. 395/2002 Coll. on archives and registrars, with consequential amendments.
- 58d) Article 4(5) and Article 7(3) of Act No. 428/2002 Coll.
- 58e) Article 4(1)(a), (b) and (c), Article 7(3), the second sentence of (5), the second sentence of (6), Article 8(2) and Article 10(6) of Act No. 428/2002 Coll.
- 58f) Article 7(6) of Act No. 428/2002 Coll.
- 58g) For example, Article 12(1) of Act of the National Council of the Slovak Republic No. 118/1996 Coll.
- 58h) Articles 23 and 55 of Act No. 428/2002 Coll.
- 58ha) Act no. 266/2005 Coll. on consumer protection in distance financial services and amendments to certain laws.
- 58hb) Article 90 of Act no. 594/2003 Coll. as amended.
- 58hc) Article 4 of Act no. 429/2002 Coll. as amended.
- 58hd) Table 1 of annex 1 of Commission Regulation (EC) No 1287/2006/EC.
- 58he) Act no. 483/2001 Coll. as amended.  
Act no. 258/2001 Coll. on consumer loans, including amendments to Act of the Slovak National Council no. 71/1986 Coll. on the Slovak Trade Inspection, as amended by Act no. 264/2006 Coll.
- 58hf) Commission Regulation (EC) No 1287/2006/EC.
- 58hg) Article 22a of Act no. 429/2002 Coll. as amended by Act no. 209/2007 Coll."
- 58i) Act No. 431/2002 Coll. on accountancy, as amended.
- 58j) Articles 31 to 33d of Act No. 483/2001 Coll., as amended.
- 58k) Article 39 of Act No. 483/2001 Coll., as amended.
- 59) Articles 17 to 20 of Act No. 431/2002 Coll. on accountancy, as amended by Act No. 562/2003 Coll.
- 60) Article 28(a) of the Act of the National Council of the Slovak Republic No. 566/1992 Coll.
- 60a) Article 19(1) of Act No. 466/2002 Coll. on auditors and the Slovak Chamber of Auditors.
- 60b) Article 15 of Commission Regulation (EC) No 1287/2006/EC.
- 60c) Article 9 Commission Regulation (EC) No 1287/2006/EC.
- 60d) Article 14 Commission Regulation (EC) No 1287/2006/EC.
- 60e) Article 13 Commission Regulation (EC) No 1287/2006/EC.
- 60f) Article 12 Commission Regulation (EC) No 1287/2006/EC."
- 60g) Article 30 of Commission Regulation (EC) No 1287/2006/EC.
- 60h) Article 22 of Commission Regulation (EC) No 1287/2006/EC.

- 60i) Article 23 of Commission Regulation (EC) No 1287/2006/EC.
- 60j) Article 24 of Commission Regulation (EC) No 1287/2006/EC.
- 60k) Article 33 of Commission Regulation (EC) No 1287/2006/EC.
- 60l) Articles 29 and 32 of Commission Regulation (EC) No 1287/2006/EC.
- 60m) Article 26 of Commission Regulation (EC) No 1287/2006/EC.
- 60n) Article 25 of Commission Regulation (EC) No 1287/2006/EC.
- 60o) Articles 30 and 32 of Commission Regulation (EC) No 1287/2006/EC.
- 60p) Article 27 of Commission Regulation (EC) No 1287/2006/EC."
- 60r) Article 13, 18a, 20, 21(1), 22a, 23 and 39a of Act no. 429/2002 Coll. as amended.
- 60s) Article 11 Act no. 483/2001 Coll. as amended Act no. 214/2006 Coll."
- 61) Act of the National Council of the Slovak Republic No. 303/1995 Coll., as amended.
- 61a) Article 2 of the Commercial Code.
- 62) Act of the National Council of the Slovak Republic No. 207/1996 Coll. on foundations, as amended by Act No. 147/1997 Coll.
- 63) Act No. 147/1997 Coll. on non-investment funds.
- 64) Act No. 213/1997 Coll. on non-profit organisations providing generally beneficial services.
- 65) Act No. 83/1990 Coll. on association of citizens, as amended.
- 66) Act of the National Council of the Slovak Republic No. 182/1993 Coll. on ownership of apartments and non-residential premises, as amended.
- 66a) Act No. 43/2004 Coll. on old-age pension savings, with consequential amendments, as amended by Act No. 186/2004 Coll.
- 67) Act No. 229/1992 Coll. on commodity exchanges, as amended by Act of the National Council of the Slovak Republic No. 249/1994 Coll.
- 68) Act No. 222/1946 Coll. on the post (Postal Act).
- 69) Act of the Slovak National Council No. 194/1990 Coll. on lotteries and other similar games, as amended.
- 70) Act No.80/1997 Coll. on the Export-Import Bank of the Slovak Republic, as amended.
- 71) For example, Article 21 of Act No. 431/2002 Coll.
- 72) Act of the National Council of the Slovak Republic No. 118/1996 Coll. on deposit protection, with consequential amendments, as amended.
- 73) Act No. 147/2001 Coll. on advertising, with consequential amendments.
- 73a) Articles 11 and 75 of Act No. 594/2003 Coll.
- 74) Article 492 and Article 517(2) of the Civil Code, as amended by Act No. 509/1991 Coll. and Article 3 of Regulation of the Government of the Slovak Republic No. 87/1995 Coll. implementing certain provisions of the Civil Code.
- 75) Article 8 of Act of the National Council of the Slovak Republic No. 118/1996 Coll., as amended by Act No. 154/1999 Coll.
- 76) Act No. 71/1967 Coll. on administrative proceedings (Administrative Procedure Code), as amended.  
Act No. 747/2004 Coll. on financial market supervision (including amendments to certain acts), as amended.

- 76a) Article 248(d) of the Civil Proceedings Code
- 77) For example, Article 23 of Act No. 530/1990 Coll..
- 78) Article 5(a) of Act No. 483/2001 Coll.  
Article 397 of the Commercial Code.  
Articles 101 and 785 of the Civil Code, as amended by Act No. 509/1991 Coll.
- 79) For example, Act No. 431/2002 Coll., as amended by Act No. 562/2003 Coll.; Decree of the Ministry of Finance of the Slovak Republic No. 611/2003 Coll. on the valuation method for securities, money market instruments and derivatives in the assets of a investment fund.
- 80) Article 20(1) of Act No. 330/2000 Coll.
- 81) Article 781(2) of the Civil Code, as amended by Act No. 509/1991 Coll.
- 82) For example, Article 76(1)(e), Article 175e(1) and (2), Article 305(b) of the Civil Court Code, as amended.
- 83) Article 116 of the Civil Code.
- 84) Act of the National Council of the Slovak Republic No. 162/1993 Coll. on identity cards, as amended.
- 85) Act No. 381/1997 Coll. on passports.
- 86) Act of the National Council of the Slovak Republic No. 73/1995 Coll. on residence of foreigners in the territory of the Slovak Republic, as amended.
- 87) For example, Article 784 of the Civil code, as amended by Act No. 509/1991 Coll.
- 87a) Article 7(3) and Article 10(1)(d) of Act No. 428/2002 Coll. on protection of personal data.
- 87b) For example, Act No. 431/2002 Coll.
- 88) For example, Act No. 563/1991 Coll., as amended.
- 88a) Article 8(1)(i) and (2) and Article 13 (1)(e) of Act No. 523/2004 Coll. on the budgetary rules for public administration (including amendments to certain acts), as amended. Articles 8 to 13 of Act No. 386/2002 Coll. on the national debt and state guaranties, and amending Act No. 291/2002 Coll. on the State Treasury (including amendments to certain acts).
- 88b) Articles 18, 19, 23 and 27(2) of Act of the National Council of the Slovak Republic No. 566/1992 Coll. as amended.
- 89) Article 156 of the Commercial Code, as amended.
- 90) Articles 158 and 159 of the Commercial Code, as amended by Act No. 500/2001 Coll.
- 91) Civil Court Order, as amended. .
- 92) Criminal Order, as amended.
- 93) Act of the National Council of the Slovak Republic No. 566/1992 Coll., as amended.  
Act No. 747/2004 Coll.  
Act No.483/2001 Coll., as amended.  
Act No. 510/2002 Coll. on the payment system, with consequential amendments, as amended.  
Act of the National Council of the Slovak Republic No. 202/1995 Coll., as amended.  
Sections 17, 18, 21, 23, 24 and 25 of the Protocol on the Statute of the European System of Central Banks and the European Central Bank (OJ C 321 E of 29 December 2006).
- 94) Article 2(1)(d) and Article 4 of Act of the National Council of the Slovak Republic No. 171/1993 Coll. on the Police Force, as amended.

- 95) Act No. of Slovak National Council No. 511/1992 Coll., as amended.
- 96) For example, Act of the National Council of the Slovak Republic No. 123/1996 Coll., as amended by Act No. 409/2000 Coll.; Act of the Slovak National Council No. 310/1992 Coll. on home savings, as amended.
- 97) Articles 71 to 80 of Act No. 71/1967 Coll.
- 97a) Act No. 215/2004 Coll. on protection of classified information (including amendments to certain acts), as amended.
- 97b) Article 2 of Act of the National Council of the Slovak Republic No. 46/1993 Coll. on the Slovak Intelligence Service, as amended by Act No. 256/1999 Coll.  
Article 2 of Act of the National Council of the Slovak Republic No. 198/1994 Coll. on the Military Intelligence.
- 98) Article 159 of the Commercial Code, as amended by Act No. 500/2001 Coll.
- 99) Article 276 to 279 of the Commercial Code.
- 100) Article 187 (2) of the Commercial Code.
- 101) Decree of the Ministry of Justice of the Slovak Republic No. 492/2004 Coll. on determining the general value of assets.
- 102) Act No. 382/2004 Coll. on experts, interpreters and translators (including consequential amendments).
- 102a) Article 4 (6) of Act No. 594/2003 Coll. on collective investment.
- 102aa) Article 161 (3) of the Civil Court Procedures Act.
- 102b) Act No. 382/2004 Coll. on experts, interpreters and translators, with consequential amendments.
- 102c) Article 6(6) of Act No. 523/2003 Coll. on public procurement, amending Act No. 575/2001 Coll. on the organisation of the Government's operation and the organisation of central state administration, as amended.
- 103) Act No. 429/2002 Coll. on the stock exchange, as amended.
- 103a) Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses, as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisement (OJ L 149 of 30.4.2004).
- 103b) Article 5(e) of Act No. 594/2003 Coll.
- 104) Article 23(6)(d) of Act No. 366/1999 Coll. on income taxes.
- 105) Repealed by Act No. 594/2003 Coll.
- 106) Article 3 of Act No. 483/2001 Coll.
- 107) Act No. 367/2000 Coll. on protection against the legalisation of proceeds from crime, with consequential amendments..
- 107a) For example, Article 2(1) of Act No. 107/2004 Coll. on excise duties on beer.
- 107b) Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive No. 2003/6/EC as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2003).
- 107c) For example, Act No. 81/1966 Coll. on periodicals and other mass media, as amended.
- 107d) Article 33 of Act No. 428/2002 Coll.

- 107e) Article 2 of Act of the National Council of the Slovak Republic No. 46/1993 Coll. on the Slovak Intelligence Service as amended by Act No. 256/1999 Coll.  
Article 75 of Act No. 215/2004 Coll.
- 108) Articles 23, 26, 27 and 29(a) and (d) of Act of the National Council of the Slovak Republic No. 566/1992 Coll., as amended by Act No. 149/2001 Coll.
- 108a) Act No. 428/2002 Coll.
- 109) Civil Court Order, as amended.  
Act of the National Council of the Slovak Republic No. 218/1996 Coll. on arbitration proceedings.
- 109a) Articles 44 to 49 of Act No. 483/2001 Coll. as amended.
- 109b) Article 33c of Act No. 483/2001 Coll.
- 109c) Article 29 of Act No. 483/2001 Coll. as amended.
- 110) Article 13 of Act No. 329/2000 Coll.
- 110a) Article 2(2) of Act No. 483/2001 Coll., as amended by Act No. 603/2003 Coll.
- 110b) For example, Act No. 594/2003 Coll.
- 110c) For example, Act No. 483/2001 Coll., as amended; Act No. 95/2002 Coll., as amended.
- 110d) Article 35 of Act No. 483/2001 Coll. as amended by Act No. 603/2003 Coll.
- 110e) For example, Act No. 367/2000 Coll. as amended, Articles 13 to 15 of Act No. 659/2007 Coll. on the introduction of the euro currency in the Slovak Republic (including amendments to certain acts).
- 111) For example, the Commercial Code, as amended; the Civil Code, as amended, Act No. 659/2007 Coll.
- 112) Article 178(1) and (2), and Article 187(e) of the Commercial Code.
- 113) Article 178(3) and Article 187(e) of the Commercial Code.
- 114) For example, the Criminal Code, as amended, the Labour Code, as amended.
- 115) Article 22 of Act No. 329/2000 Coll.
- 116) Act of the Slovak National Council No. 323/1992 Coll. on notaries and notarial activities (the Notarial Code), as amended.  
Act of the National Council of the Slovak Republic No. 15/1993 Coll. on certification of documents and signatures on documents by local administration authorities.
- 117) Articles 46 to 66 of Act No. 328/1991 Coll., as amended.
- 118) Articles 4 to 33 of Act No. 328/1991 Coll., as amended.
- 119) For example, Act No. 530/1990 Coll.
- 120) Articles 42a and 42b of the Civil Code.
- 121) Article 31(4) of the Commercial Code, as amended by Act No. 500/2001 Coll.
- 122) Article 68(7) of the Commercial Code, as amended by Act No. 500/2001 Coll.
- 123) Articles 70 to 75 of the Commercial Code, as amended by Act No. 500/2001 Coll.  
Article 65(7) of Act No. 483/2001 Coll.
- 124) Article 6(3) of Act of the Slovak National Council No. 149/1975 Coll. on archiving, as amended.
- 125) Act No. 659/2007 Coll.