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**Pre-insolvency/early intervention, Reorganization measures and
winding up proceedings of banking groups**

National Report

HUNGARY

By

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For the purpose of this questions:

- "reorganization measures" shall mean measures which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

- "winding-up proceedings" shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;

- "pre-insolvency/early intervention" shall mean any intervention except and before reorganization measures and winding-up proceedings

I - Background information

In November 2005, the European Banking Committee identified five areas (liquidity risk management, crisis management, lending of last resort, deposit guarantee schemes and reorganization measures and winding-up proceedings) as part of the supervisory arrangements review to be performed according to Article 156 of Directive 2006/48/EC. Consequently, the Commission initiated the review process of the Directive on the reorganization and winding up of credit institutions (2001/24/EC) in August 2006.

Under Directive 2001/24/EC, where a credit institution with branches in other Member States is wound up or reorganised, the winding up or reorganization measures are initiated and carried out under a single procedure by the authorities of the Member State where the credit institution has been authorised (known as the home Member State). This procedure is governed by the law of the home Member State. This approach is consistent with the principle of home Member State supervision pursuant to the EU Banking Directives.

The Directive does not aim at harmonising national legislation, but at ensuring mutual recognition of Member States' reorganization measures and winding up proceedings as well as the necessary cooperation between authorities.

Due to the mere coordinating nature of the Directive, Member States have different reorganization measures and winding up proceedings. Consequently, insolvency proceedings for credit institutions differ. Some Member States use the same general company and insolvency law for the reorganization measures and winding up of credit institutions as for other businesses, while others have special reorganization measures for credit institutions.

The Directive covers only the insolvency of branches of credit institutions in other Member States, but does not cover subsidiaries of banking groups in other Member States.

Directive 2001/24/EC is limited to procedural aspects concerning each legal entity within a cross border banking group. This limited scope does not allow to take into account synergies within such a group, which may benefit all creditors in case of reorganization measures. This lack of group-wide approach to winding up and reorganization measures could lead to the failure of subsidiaries or even the group, which could otherwise have been reorganised and remained solvent in whole or part.

The October 2007 ECOFIN strategic roadmap for strengthening EU arrangements for financial stability requests the Commission

For this purpose, the Commission carried out a public consultation (see also point 6 of the technical specifications). This consultation seeks clarification on:

- whether Directive 2001/24/EC on the reorganization and winding up of credit institutions leaves gaps and ambiguities which need to be removed, and
- issues related to the treatment of cross-border banking groups (i.e. parent credit institutions with subsidiaries in other Member States) in a crisis situation or under reorganization measures.

The purpose of the public consultation was to take stock of legal frameworks in the different Member States relating to the reorganization and winding up of banking groups. The consultation also aimed at identifying problems preventing a smooth crisis management and a smooth resolution process.

The focus of Commission's work is on possible reorganization of banking groups in contrast to ring fencing legal entities (and apply national resolution tools).

II - National regulation

Please provide a presentation of your national regulation (law, cases,...) and attach it as Annex A the relevant legal texts and cases summarized in English.

The main focus of the work is how to find solutions in a cross border case of a banking group for both pre-insolvency/early intervention systems and formal

insolvency (reorganization and winding up measures). Please formulate your answers in light of it.

Differences between pre-insolvency/early intervention measures and reorganization/winding-up proceedings

1.1 Please provide precise information about the key moments during or preceding a banking crisis:

- Moment/event at which competent authorities trigger the requirement on a credit institution to take the necessary steps to redress the situation in order to meet minimum requirements in the Directive and to implement the measures referred to in Article 136(1) CRD.

There are three levels of intervention when the Commission as competent authority examines whether or not measures should be applied.

1. The Commission recognizes that the bank or its officers do not comply with the provisions setting forth the prudent operations of a credit institution or they obviously do not do their tasks with the expected care (so called minor violation of laws).
2. The Commission recognizes major violation of provisions setting forth the prudent operations of a credit institution.
3. The Commission recognizes grievous violation of provisions setting forth the prudent operations of a credit institution.

At level 1. the Commission must take into consideration applying of certain measures.

At level 2. the Commission has to apply the necessary measures, having taken into account all the available information and data.

At level 3. the Commission has to apply the necessary measures and extraordinary measures.

There are no sharp edges between level 1., 2. and 3. Still, rather occasions at level 1. belong to category when the measures do not yet qualify as early intervention measures. These events are the following:

- a) their decision-making system and rules of procedure do not comply with regulations, or they fail to observe them during their operation,
- b) their accounting, recording and auditing system fails to meet the requirements of legal provisions in effect,
- c) they fail to comply with their obligation to disclose data, to report or to provide information to the Commission, the NBH, the shareholders or the Fund by the prescribed deadline,
- d) the activity of their auditors is not in compliance with legal regulations, or they inform the board of directors, the supervisory board or the Commission delayed and inaccurately about violations of law, deficiencies and their other problems - endangering their prudent operation - found at the financial institution,
- e) their own funds fail to reach the capital requirements specified in Subsections (1)-(2) of Section 76,
- f) they violate any of the regulations on exposures, on the determination, analysis, evaluation and definition of exposures, on the management of exposures, on the management and reduction of risks,
- g) they fail to inform the general meeting about the measures of the Commission, and if a credit institution
- h) fails to comply with regulations on ensuring liquidity and approximation of maturities of assets and liabilities,

- i) fails to fulfil its obligation to create reserves,
- j) the financial institution does not fulfil the obligations stipulated in the Act on the Prevention of Money Laundering.

- Moment at which Member States trigger early intervention measures

Early intervention measures are applied at level 2. and partly level 3. Obviously, the sphere of measures is much stricter and more stringent when level 3. is discovered by the Commission. The first steps should be taken in the following cases: The Bank

- a) performs any activities prohibited by law or for which it is not authorized,
- b) is unable to continuously satisfy the requirements for authorization described in this Act during its operation,
- c) has own funds that is less than seventy-five per cent of the capital requirements specified in Subsections (1)-(2) of Section 76,
- d) wishes to pay or pays dividends in a situation when its own funds is below the capital requirements specified in Subsections (1)-(2) of Section 76, or has failed to set aside general reserves during the year,
- e) does not have sufficient provisions and the valuation of its assets is inadequate, as a consequence of which its solvency margin must be reduced by the amount of unaccounted accumulation of provisions and adjustments,
- f) regularly or severely violates regulations on exposures (such as to undertake any exposure without due care and diligence),
- g) employs an auditor whose activities are not in compliance with statutory provisions and who fails to inform the board of directors and the supervisory board of the credit institution and the Commission about any violation of law, deficiencies and other problems found at the credit institution endangering the prudent operation of the credit institution,
- h) is unable to fulfil or - repeatedly - fails to fulfil by the deadline its obligation to disclose data, to report or to provide information to the Commission, the NBH, its shareholders or the Fund,
- i) hinders the Commission or the auditor in performing their tasks,
- j) operates without the stipulated and necessary regulations, records, information technology and controlling systems,
- k) fails to comply with supervisory measures taken in respect of its non-compliance with the regulations,
- l) repeatedly infringes the regulations specified in Subsection (1) within two years of the operative date of the measure taken by the Commission or the resolution imposing a penalty,
- m) can only comply with the relevant capital adequacy requirement in such a way that it cannot repay a junior subordinated loan on time.

- Moment at which insolvency is declared.

Pursuant to Hungarian law winding up proceedings are ordered by the court. However, insolvency is not necessarily declared in such an order. The term "insolvency" is used with different meaning in case of credit institutions and other companies. For the purposes of banks a credit institutions is considered insolvent if:

The credit institution fails to pay any of its undisputed debts within five days of the date on which they are due or no longer possesses sufficient own funds (assets) for satisfying the known claims of creditors

Otherwise, a company is declared insolvent by the court if:

The court shall declare the debtor insolvent

- a) upon the debtor's failure to settle or contest his previously undisputed and acknowledged contractual debts within fifteen days of the due date, and failure to satisfy such debt upon receipt of the creditor's written payment notice, or
- b) upon the debtor's failure to settle his debt within the deadline specified in a final court decision, or
- c) if the enforcement procedure against the debtor was unsuccessful, or
- d) if the debtor did not fulfil his payment obligation as stipulated in the composition agreement.

- Moment at which the Deposit Guarantee Scheme (DGS) is triggered.

1.2. Are the following criteria used in order to determine the moments you have described:

- The credit institution possesses adequate **resources** for it to be able to continue activities.
- The credit institution maintains adequate **suitability** for it to be able to continue activities
- The credit institution does not comply anymore with the solvency ratio
- The credit institution is facing **liquidity** difficulties

All the above criteria are taken into account when deciding on intervention by the Commission or applying certain measures and/or extraordinary measures.

Pre-insolvency and early intervention system

2.1 Pre-insolvency/early intervention systems tailored for banks

Are there, in your national legislation, special pre-insolvency/early intervention systems that are tailored for banks?

Yes

No

2.2 Pre-insolvency/early intervention systems that can be applied to banks

If it is not the case, is there in your legislation, any pre-insolvency/early intervention system that can be applied to banks

- Yes
- No

2.3 Conditions and features

Please explain briefly the systems currently available in your Member states.

Description

At level 2. and 3. the following extraordinary measures can be applied by the Commission beyond the ordinary measures:

- a) it may stipulate
 - 1) to sell the credit institution's assets used for purposes other than banking operations,
 - 2) for the financial institution to settle its capital structure within the deadline and in compliance with the requirements prescribed by the Commission,
 - 3) compliance with the capital requirement above the limit specified in the Act, which may not be higher than the capital requirement specified in Subsection (1) of Section 76, in respect of the financial services performed by the financial institution and the exposures of the financial institution;
 - b) it may limit or prohibit the credit institution
 - 1) to conclude transactions between the owners and the credit institution,
 - 2) to effect payment of deposits and other repayable resources,
 - 3) to undertake commitments;
 - c) it may determine the highest rate of interest that may be charged by the credit institution;
 - d) it may compel the board of directors to convene the general meeting, and furthermore, it may advise these bodies to discuss specific items on the agenda and to the necessity of making specific decisions; as well as
 - e) it may delegate a supervisory commissioner to the credit institution.
- (2) In addition to the exceptional measures the Commission may simultaneously call upon the owner of the financial institution, or the founders of the financial enterprise operating as a foundation:
- a) entered into the register of shareholders - in the case of financial institutions operating as cooperatives, into the register of members - having a direct ownership interest reaching or exceeding five percent,
 - b) having a qualifying holding, to take the necessary measures.
- (4) Simultaneously with the notice described in Subsection (2), the Commission shall notify the financial institution's board of directors, supervisory board and auditor and shall call upon the board of directors to immediately take the measures listed in Paragraph b) of Subsection (2) of Section 153.

(5) The extraordinary measures described in Paragraphs b), c) and e) of Subsection (1) - with the exception of Point 2 of Paragraph b) - may be taken by the Commission for a specific period of time but not more than one year. The Commission may extend this time limit on one occasion for a maximum period of six months.

Can it be commenced on a voluntary basis and/or does it have to be ordered by the authorities?

Voluntary basis

Ordered by the authorities

Description

The Commission is obliged to control regularly the operations of banks. Nevertheless, in proper activities can be discovered not only under own generated investigation but also based on a complaint or report by third parties including clients, borrowers or other entities such as authorities. Of course, if irregularities occur, first of all the management of the bank should take the appropriate measures to avoid situation jeopardising with insolvency or commencement of winding up proceedings. Once such instruments are not voluntarily used by the bank's management, the Commission is authorized and obliged to intervene.

What are the legal and economic conditions that must be met for these regimes to be prompted and applied?

Early intervention systems are applied at level 2. and 3. as specified in above Section 1.1.

At level 2.:

In the event that the provisions of the Bank Act, the legal regulations pertaining to prudent operation, the NBH Act; the legal regulations on financial transactions are violated, the Commission shall weigh the available data and information and take the necessary measures if a financial institution

- a) performs any activities prohibited by law or for which it is not authorized,
- b) is unable to continuously satisfy the requirements for authorization described in this Act during its operation,
- c) has own funds that is less than seventy-five per cent of the capital requirements specified in the Act,
- d) wishes to pay or pays dividends in a situation when its own funds is below the capital requirements specified in the Act, or has failed to set aside general reserves during the year,
- e) does not have sufficient provisions and the valuation of its assets is inadequate, as a consequence of which its solvency margin must be reduced by the amount of unaccounted accumulation of provisions and adjustments,
- f) regularly or severely violates regulations on exposures (such as to undertake any exposure without due care and diligence),

- g) employs an auditor whose activities are not in compliance with statutory provisions and who fails to inform the board of directors and the supervisory board of the credit institution and the Commission about any violation of law, deficiencies and other problems found at the credit institution endangering the prudent operation of the credit institution,
- h) is unable to fulfil or - repeatedly - fails to fulfil by the deadline its obligation to disclose data, to report or to provide information to the Commission, the NBH, its shareholders or the Fund,
- i) hinders the Commission or the auditor in performing their tasks,
- j) operates without the stipulated and necessary regulations, records, information technology and controlling systems,
- k) fails to comply with supervisory measures taken in respect of its non-compliance with the regulations,
- l) repeatedly infringes the regulations specified in Subsection (1) within two years of the operative date of the measure taken by the Commission or the resolution imposing a penalty,
- m) can only comply with the relevant capital adequacy requirement in such a way that it cannot repay a junior subordinated loan on time.

At level 3.:

In the event of any serious infringement of the provisions of the Bank Act, legal regulations pertaining to prudent operation, the NBH Act, legal regulations on financial transactions and foreign exchange, the Commission shall take the major sanctions and exceptional measures necessary , if a financial institution

- a) has own funds that is less than fifty per cent of the capital requirements specified in the Act,
- b) wishes to pay or pays dividends in a situation where its own funds is below fifty per cent of the capital requirements specified in the Act,
- c) fails to meet its obligation to create provisions or the obligation of value adjustment, has insufficient provisions and inadequate value adjustments, meaning that the evaluation of off-balance sheet items and assets was incorrect, as a consequence of which its solvency ratio falls below four per cent because the solvency margin were reduced by the amount of unaccounted accumulation of provisions and value adjustments,
- d) by non-observance of the regulations for ensuring liquidity and the approximation of maturities of assets and liabilities, severely endangers the maintenance of the liquidity of the credit institution,
- e) regularly or substantially violates the regulations on exposures and thus severely endangers the credit institution's liquidity, solvency or ability to produce income,
- f) regularly performs activities prohibited by law or for which it is not authorized,
- g) is unable to satisfy the requirements for authorization described in this Act during its operation,
- h) operates without the necessary accounting, management information or internal control system, or these systems are inefficient to indicate the credit institution's actual financial position,
- i) in the course of its resource collecting activities, determines an interest value significantly differing from the market value representing increased risks for the credit institution or the deposit-holders,
- j) enters into illicit or bogus contracts in order to gain pecuniary benefits or to alter its balance-sheet result capital requirement,
- k) employs an auditor who fails to inform the Commission, the board of directors and the supervisory board of the financial institution about any severe infringement, deficiencies and other problems found at the financial

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| | institution and endangering the prudent operation of the financial institution, |
| l) | repeatedly infringes the regulations specified in Subsection (1) within five years of the operative date of the measure taken by the Commission under Subsection (2) or the resolution imposing a penalty, |
| m) | fails to fulfil the provisions of the supervisory measures taken for any severe violation of regulations. |

Is a judicial decision which states that the legal and economic conditions are met necessary?

The measures ordered by the Commission may be challenged by the bank at the court.
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2.4 Powers and responsibilities of the intervening authorities

For the execution of these measures, what are the powers of (i.e appointment of a negotiator in charge of finding solutions to the difficulties faced; organization of the negotiations with the main creditors of the bank; shares freeze; capital increase in derogatory conditions; forced transfer of the subsidiary; transfer of assets enabling the isolation of the risky activities; stay of actions (full or partial) of payment actions; rescheduling of the main debts due for payment)

- the nominated administrator
- Description of the powers

In the event if any violation of regulations or deficiencies are established - if these do not severely endanger the prudent operation of the financial institution - , the Commission may delegate some of its officers to call upon the financial institution, to conduct negotiations with an executive officer of the bank to take the necessary steps
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| <ol style="list-style-type: none"> 1) in order to eliminate the revealed deficiencies to comply with the regulations of this Act and the provisions of legal regulations on prudent operation, 2) to maintain or improve its financial position. However, such delegated officers do not qualify as nominated administrators. |
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At a later stage certain on-spot inspectors may also be appointed. These inspectors can also be called administrators. They have the following powers:
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| <ol style="list-style-type: none"> a) to perform any supervisory activity; b) to participate and make comments as an observer at the meetings of the management, the board of directors, the supervisory board or at the general meeting; c) to consult with the financial institution's auditor. |
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- the national bank

Description of the powers

In the event of taking measures and extraordinary measures and imposing fines upon financial institutions the Commission shall notify the MNB simultaneously with adopting the resolution therefor.

The NBH may extend an emergency loan - subject to the prohibition of monetary financing - to a credit institution whose operation jeopardizes the stability of the financial system in consequence of specific circumstances. The NBH may render such a loan subject to the actions of the State Financial Institutions Commission (hereinafter referred to as the 'Commission') or performance of actions by the credit institution as initiated by the Commission.

the banking supervisors

Description of the powers

Beyond on-spot inspectors (administrators) at last stage of pre-insolvency proceedings, i.e at level 3, banking supervisors can be appointed which belongs to the category of extraordinary measures. Appointment of supervisors qualifies as one of the means of crisis management, substituting bankruptcy proceedings that are applicable ordinary companies other than banks.

the courts

Description of the powers

The courts have very limited powers during pre-insolvency situation. Practically they have only responsibilities once some measures or extraordinary measures taken by the Commission are challenged by banks.

The courts for registration, upon the notification of the Commission, are also authorized to render decision whether or not the general assembly meeting of the bank should be convened.

Ministry of Finance

Description of powers

The Ministry of Finance does not have direct powers in connection with pre-insolvency measures. It just exercises general controlling function, collecting information on overall trends of the Hungarian economy and, if necessary, elaborates bills for the Parliament and adopts and issues ministerial orders.

Others (including DGS)

Description of powers

No other entities have powers in this respect.

For the execution of these measures (or the lack of decision to set these measures), what are the responsibilities of:

- the nominated practitioner
- the nominated administrator
- the national bank
- the banking supervisors
- the courts

Description of the responsibilities

The delegated negotiators try to find out solutions together with the management.

The nominated administrator:

- a) to perform any supervisory activity;
- b) to participate and make comments as an observer at the meetings of the management, the board of directors, the supervisory board or at the general meeting;
- c) to consult with the financial institution's auditor.

During the period of the banking supervisor's appointment, members of the executive board may not perform their tasks and exercise their signatory rights as described in the statutory provisions governing business associations and cooperatives, and the charter. For the period of appointment, the supervisor shall exercise the rights of board members described by law and the charter.

The supervisor shall be held liable for damages caused in his such capacity according to Section 348 of the Civil Code if he is employed by the Commission, and according to Section 350 of the Civil Code if he is appointed thereby.

The courts have to pass judgments in legal disputed when the resolutions ordering measures or extraordinary measures by the Commission are challenged. The courts for registration must decide within 8 (eight) days, upon the notification of the Commission to this end, if the preconditions of convening a general assembly meeting are given.

2.5 Confidentiality

Which measures are confidential and which measures must be made public?

As regards the confidential or public nature of measures the Hungarian legislation first of all adheres to 2006/48/EC Directive. In this sense any business or bank secrets must be kept confidential without any time limitation. By virtue of the obligation of secrecy, no facts, information, know-how or data within the sphere of business and bank secrets may be disclosed to third parties beyond the scope of the Bank Act without the consent of the customer or the financial institution, or used beyond the scope of official responsibilities. The person acquiring any business or bank secrets may not utilize such for his own benefit or for the benefit of a third person, whether directly or indirectly, or to cause any disadvantage to the financial institution or its customers.

On the other hand, any information that is declared by specific other legislation to be information of public interest or public information and as such is rendered subject to disclosure may not be withheld on the grounds of being treated as a business secret.

Credit institutions, and the subsidiary credit institutions of parent credit institutions in a Member State or parent financial holding companies in a Member State that are subject to supervision on a consolidated basis and the subsidiary credit institutions of EU parent credit institutions and EU parent financial holding companies that are subject to supervision on a consolidated basis shall disclose information specified in specific other legislation on an individual and consolidated basis. The obligation of credit institutions prescribed in specific other legislation to disclose information shall not include:

- a) information deemed immaterial, and
- b) proprietary and confidential information.

An information shall be regarded as material in disclosures if its omission or misstatement could change or influence the assessment or decision of a user relying on that information for the purpose of making economic decisions. An information shall be regarded as proprietary to a credit institution if sharing that information with the public would undermine its competitive position. It may include information on products or systems which, if shared with competitors, would render a credit institution's investments therein less valuable. Last, but not least, information shall be regarded as confidential if there are obligations to customers or other counterparty relationships binding a credit institution to confidentiality.

From the aspects of the Commission, it has to publish, among others, the following on its official website:

- a) any petition for remedy filed against its resolution or ruling if the said resolution or ruling was published in accordance with Section 32;
- b) the final decisions adopted in proceedings for remedy against any resolution or ruling of the Authority, if the said resolution or ruling was published in accordance with Section 32;

Section 32 sets forth that the Commission may publish its resolutions and rulings - in part or in whole - on its official website or in any other manner deemed appropriate. The Commission shall carry out the aforesaid publication in due observation of the legal regulations on bank secrets, securities secrets, fund secrets, insurance secrets, occupational retirement pension secrets and trade secrets.

2.6 Powers and responsibilities of the intervening authorities

Can the intervening authorities reduce the rights of the stakeholders (creditors, shareholders, deposit holders)?

Is there in your legislation a judicial control of those measures? Please explain.

How are handled the rights of the following stakeholders in the execution of this kind of measures?

-Shareholders

- Creditors
- Employees
- Deposit holders

Description

Yes, if the provisions of the Bank Act, the legal regulations pertaining to prudent operation, the NBH Act; the legal regulations on financial transactions are seriously or grievously violated, i.e. preconditions of levels 2 and 3 fulfilled, the Commission as intervening authority may reduce the rights of not only the bank's officers but also its stakeholders, creditors and clients.

In this context, the Commission, at level 2. may prohibit, limit or make subject to conditions

- 1) payment of dividends,
- 2) payment of remuneration of executive officers,
- 3) raising of loans by the owners of financial institutions, or rendering services to them by credit institutions which involve any exposure,
- 4) extension of loans by financial institutions to enterprises belonging to the sphere of interests of the owners or executive officers,
- 5) extension (prolongation) of deadlines specified in loan or credit agreements,
- 6) performing certain financial service activities or activities auxiliary to financial services,
- 7) opening new branches, starting new financial services as well as starting up new activities (business lines) within a financial service.

At level 3, the Commission may limit or prohibit the credit institution

- 1) to conclude transactions between the owners and the credit institution,
- 2) to effect payment of deposits and other repayable resources (**for the purposes of this paragraph deposits means the deposits of the deposit holders who cannot dispose of their deposits in this situation**),
- 3) to undertake commitments;

The Commission may also determine the highest rate of interest that may be charged by the credit institution;

In addition to the foregoing exceptional measures the Commission may simultaneously call upon the owner of the financial institution, or the founders of the financial enterprise operating as a foundation:

- a) entered into the register of shareholders - in the case of financial institutions operating as cooperatives, into the register of members - having a direct ownership interest reaching or exceeding five percent,
- b) having a qualifying holding, to take the necessary measures.

At the same time, the Commission shall notify the financial institution's board of directors, supervisory board and auditor and shall call upon the board of directors to immediately take the mandatory measures set forth by law.

Upon receiving such notification the credit institution's board of directors shall take an immediate action to ensure that

- a) the deposits and other receivables of the owners due from the credit institution are blocked,

- b) the lending to companies in their sphere of interests of the owners is suspended,
- c) no financial services involving exposures to the owners are rendered.

Once the above measures have been implemented by the board of directors, the owners may not claim set-offs from the credit institution. The owners shall be exempted from these legal consequences only if they announced to the Commission the sale of their shares in writing at least sixty days prior to receiving the notification.

The board of directors of the credit institution shall keep the restrictions in effect until the owners terminate the cause for taking the measures or the winding-up of the credit institution is ordered by the court.

Furthermore, the Commission may suspend the voting rights of the owners of the financial institutions belonging into its sphere of authority for a specific period of time, but not more than for a period of one year if the owner's activity or influence exercised on the financial institution, based on the available facts, endangers the financial institution's reliable and prudent operation; in such cases, when determining the quorum, the votes effected by such restriction must be ignored.

Customer accounts and other repayable funds may - pursuant to the agreement between the transferring and receiving credit institutions - be transferred with the permission of the Commission. While transferring the holdings, the provisions of the Civil Code on the substitution of debt must be applied with the exception that the consent of the contracting parties is not necessary to transfer the holdings.

For the purposes of this paragraph the terms "owners" covers the shareholders.

Can intervention decisions override shareholder's rights in the scope of these measures?

- Yes**
- No

Description

Those concerned are free to turn to court against unfavourable decisions and measures adopted by the Commission but do not have power to disregard them or set them aside.

2.7 Relation with the formal insolvency proceedings

What is the relation of pre-insolvency/early intervention systems with formal insolvency legislation? How do they interact?

The banks and the Commission through its appointed officers, including the nominated negotiator, administrator or the banking supervisor must do their utmost to maintain the prudential operations of the bank. To this end the whole range of pre-insolvency measures and reorganization measures should be used. If all these measures become unsuccessful the Commission may introduce a legal action for winding up of the bank. This situation occurs when the financial institution's authorization is revoked because the financial institution failed to pay any of its undisputed debts within five days of the date on which they are due or no longer possesses sufficient own funds (assets) for satisfying the known claims of creditors,

I wish to add that the authorization must also be revoked by the Commission if the winding up of the financial institution was ordered by the court under the application of an entity other than the Commission.

If the Commission appoints a supervisor before the request for winding up proceedings is submitted, the appointment shall remain in effect until the court appoints the liquidator in its decision to order liquidation. The Commission may order a full ban of payments from submission of the application for winding up until the decision on winding up is published in the Companies Gazette.

Is there in your legislation any special effect of the pre-insolvency/early intervention measures on special contracts (set off, netting for example)?

In certain cases the Commission may directly instruct the financial institution to do specific steps.

Upon receiving an instruction from the Commission, the credit institution's board of directors shall take an immediate action to ensure that

- a) the deposits and other receivables of the owners due from the credit institution are blocked,
- b) the lending to companies in their sphere of interests of the owners is suspended,
- c) no financial services involving exposures to the owners are rendered.

If the measures listed above have been implemented, the owners may not claim set-offs from the credit institution.

Is there in your legislation any specific financing system for banks under pre-insolvency/early intervention?

There is no specific financing system for banks under pre-insolvency/early intervention. Nevertheless, certain measures can be applied through which the

prudential operation and solvency ratio of the bank can be improved. Within this framework the Commission may oblige the financial institution to reduce operating costs, to accumulate sufficient reserves, to draw up and implement a restoration plan.

Can the deposit guarantee scheme be used to finance the pre-insolvency measures?

NO.

2.8 Group aspect and Cross-border situations

In a national context (when both the parent company and the subsidiaries are located in your Member state), do the pre-insolvency measures apply to the subsidiaries?

Due to the fact that the Hungarian legislation admits the close connection between a parent company and a subsidiary if they both belong to a banking group or financial conglomerate, pre-insolvency measures may apply also to subsidiaries.

Do the systems you have described above apply to cross-border situations (on which legal basis, i.e. territoriality or universal principles)? How would a cross border case be managed in the following cases:

- When the ailing bank in your Member state is the subsidiary of a parent company located in another Member state?

The Commission may also apply such measures that are addressed to the shareholders of the subsidiary, i.e. the parent company, irrespectively of the fact if the parent company is registered in Hungary or in another member state. For instance, in addition to the exceptional measures addressed to the subsidiary itself, the Commission may simultaneously call upon the owner of the financial institution:

- a) having a direct ownership interest reaching or exceeding five percent,
- b) having a qualifying holding, to take the necessary measures.

- When the ailing bank in your Member state is the parent company of one or several subsidiary located in another Member state?

The ailing bank in Hungary as parent company and its subsidiaries located in another member state may qualify as credit institutions subject to supervision on a consolidated basis or supplementary supervision. In this situation the Commission cooperates with supervisory bodies of other member states. In the course of such cooperation the Hungarian Commission may be requested to apply certain measures.

- When the ailing bank in your Member state is the subsidiary of a parent company located in a third country?

There is no significant difference compared to the situation described in the first paragraph.

The Commission may also apply such measures that are addressed to the shareholders of the subsidiary, i.e. the parent company, irrespectively of the fact if the parent company is registered in Hungary or in another member state. For instance, in addition to the exceptional measures addressed to the subsidiary itself, the Commission may simultaneously call upon the owner of the financial institution:

- a) having a direct ownership interest reaching or exceeding five percent,
- b) having a qualifying holding, to take the necessary measures.

- When the ailing bank in your Member state is the parent company of one or several subsidiary located in a third country?

The cooperation of the Hungarian Commission and supervisory bodies of other countries is limited to countries of Member States. Even though some measures may touch the subsidiaries located in third countries and the assets of the subsidiary may be subject to the pre-insolvency measures applied by the Commission.

Is there in your legislation state a specific pre-insolvency/early intervention created for cross border situations (please consider both subsidiaries and branches separately)

There is no specific pre-insolvency/early intervention created for cross border situations.

How does (or would) your national legislation deal with the cross-border aspects (are there situations where the Law of another Member state is applied) in the case of subsidiaries, not branches?

The Hungarian legislation does not describe such a situation when the law is another member state is applied in pre-insolvency/early intervention situation.

How does your court deal with a conflict with another Member states' Law: when there is a divergence between both Laws, can an agreement be concluded under the control of your national judge?

If a court case is introduced for some reasons, under the provisions of international private law, the law of another member state might prevail. The nature of the legal relationship shall define which law is to be applied. If the legal dispute is generated from a contract, first of all the governing law stipulated in this contract shall prevail. In lack of such a stipulation, the provisions of international private law unambiguously specify the applicable law. However, the parties involved in the litigation may agree in the law to be applied unless it would violate the mandatory provisions on public order.

2.9 Efficiency of those proceedings

Do you think the measures you have described above provide for optimal response in order to deal with problems in an ailing cross-border bank (please explain)?

I am afraid the above described measures do not perfectly settle cross-border problems. A regime on multinational level or at least EU level should be achieved in this context. The provisions of 1346/2000/EC do not answer all the questions arisen.

Are there changes recently adopted or being discussed in your legislation?

YES. There are heavy disputes and negotiations in Hungary how to adopt and carry out a system giving more adequate responses to the issues raised by the global financial crunch. Pursuant to the standpoint of the Hungarian government announced and published quite recently, the problems should be settled on global level bearing in mind that the financial crisis has also a global nature.

Formal reorganization measures and winding up rules

3.1 General question

Can you briefly explain what types of insolvency systems currently apply in your Member states (please briefly explain the differences if there are several)?

The Hungarian Act No XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings (Insolvency Act) describes two types of insolvency systems, namely the bankruptcy proceedings and liquidation proceedings. The term "liquidation proceedings" conforms with the term "winding up proceedings" used for the purposes of this National Report.

"Bankruptcy insolvency proceeding" means when the debtor requests relief from its financial obligations in an attempt to seek composition agreement, or attempts to have a composition agreement concluded. The provisions of bankruptcy proceedings contained in this Act, do not apply to financial institutions.

However, the provisions on liquidation proceedings are applicable with certain restrictions and exceptions. For the purposes of the Insolvency Act "liquidation" means the proceeding aimed to provide satisfaction, as laid down in this Act, to the creditors of an insolvent debtor upon its dissolution and termination of its corporate existence.

Perhaps the most significant difference is that bankruptcy proceedings can be commenced solely by the company in bankruptcy. On the other hand, winding up proceedings may be initiated both by the company concerned and the creditors.

3.2 Definition and scope of reorganization measures

What do "reorganization measures" mean in practice in your Member state? (in general and for banks especially)?

In general reorganization measures cover instruments used in the course of bankruptcy proceedings. Through reorganization measures the company aims at reaching a settlement with its creditors enjoying an at least 60 days or at maximum 120 days financial moratorium. The consent of the creditors to such a moratorium is required.

The debtor shall draw up a program to restore or preserve solvency along with a composition proposal. During the period of moratorium the debtor shall arrange a meeting to negotiate a composition to which all known creditors and the temporary administrator shall be invited by delivering a composition proposal and the program aimed to restore (preserve) solvency.

Once the debtor has been unable to perform its payment obligation undertaken in the compromise agreement concluded in the course of bankruptcy proceedings, winding up proceedings might be commenced against it.

As outlined above the general provisions on bankruptcy proceedings do not apply to banks. The reorganization measures are not specified as such in the Bank Act, but they belong to ordinary and extraordinary measures prescribed by the Commission. As a matter of fact, there is no clear line of demarcation between measures that queue up to the class of pre-insolvency measures and reorganization measures. Still, rather those measures are considered

reorganization measures that are used by the Commission at intervention level 3. as outlined in clause 1.1. of this National Report.

What are the conditions for commencing reorganization measures (for banks especially)?

In the event of any serious infringement of the provisions of the Bank Act, legal regulations pertaining to prudent operation, the NBH Act, legal regulations on financial transactions and foreign exchange, the Commission shall take the major sanctions and exceptional measures necessary. Such situation occurs, if a financial institution

- a) has own funds that is less than fifty per cent of the capital requirements specified in the Bank Act,
- b) wishes to pay or pays dividends in a situation where its own funds is below fifty per cent of the capital requirements specified in the Bank Act,
- c) fails to meet its obligation to create provisions or the obligation of value adjustment, has insufficient provisions and inadequate value adjustments, meaning that the evaluation of off-balance sheet items and assets was incorrect, as a consequence of which its solvency ratio falls below four per cent because the solvency margin were reduced by the amount of unaccounted accumulation of provisions and value adjustments,
- d) by non-observance of the regulations for ensuring liquidity and the approximation of maturities of assets and liabilities, severely endangers the maintenance of the liquidity of the credit institution,
- e) regularly or substantially violates the regulations on exposures and thus severely endangers the credit institution's liquidity, solvency or ability to produce income,
- f) regularly performs activities prohibited by law or for which it is not authorized,
- g) is unable to satisfy the requirements for authorization described in this Act during its operation,
- h) operates without the necessary accounting, management information or internal control system, or these systems are inefficient to indicate the credit institution's actual financial position,
- i) in the course of its resource collecting activities, determines an interest value significantly differing from the market value representing increased risks for the credit institution or the deposit-holders,
- j) enters into illicit or bogus contracts in order to gain pecuniary benefits or to alter its balance-sheet result capital requirement,
- k) employs an auditor who fails to inform the Commission, the board of directors and the supervisory board of the financial institution about any severe infringement, deficiencies and other problems found at the financial institution and endangering the prudent operation of the financial institution,
- l) repeatedly infringes the regulations specified above within five years of the operative date of the measure taken by the Commission or the resolution imposing a penalty,
- m) fails to fulfil the provisions of the supervisory measures taken for any severe violation of regulations.

Who can initiate a reorganization measures (in general and for banks especially)?

In general the company being in bankruptcy can initiate reorganization measures. In case of banks both the banks themselves and the Commission may initiate reorganization measures.

Are banks treated specifically in insolvency legislation (are there specific rules for either reorganization measures or winding up proceeding)?

Yes, banks are treated specifically. As described above, no provisions of bankruptcy proceedings are applicable. Instead the measures and extraordinary measures set out by the Commission prevail. As regards winding up proceedings the basic principles of the Insolvency Act have to apply but the Bank Act contains some special rules, too.

3.3 Relations between reorganization measures and winding up

Are the triggering events defined by laws for both reorganization and winding up measures or it is up to the courts to decide? Explain

The triggering events are defined quite precisely by laws, especially in Insolvency Act and, for the purposes of banks, in Bank Act. However, once anybody files a request with the court for winding up of a bank, the court will decide whether or not the preconditions were fulfilled. The same applies when the Commission orders some extraordinary measures for reorganization of the bank and the bank challenges the said resolution by the Commission. ***In this sense first of all the claimant is checked by the court because only the Commission and the bank itself may file such an application. A creditor may submit its application for winding up of a bank only to the Commission. An application filed directly with the court is rejected by the court. The Commission may lodge its claim for winding up of a bank after its authorization has been withdrawn because the bank failed to pay any of its undisputed debts within five days of the date on which they were due or no longer possesses sufficient own funds (assets) for satisfying the known claims of creditors. On the other hand, the Commission shall withdraw a bank's authorization if the court has ordered the liquidation of the bank. This is the case when the bank itself lodged its petition for its winding up. Similarly, the court checks the existence of the preconditions when the Commission orders some extraordinary measures for reorganization of the bank and the bank challenges the said resolution by the Commission.***

3.4 Power and authorities of the authorities intervening

Regarding reorganization and winding up, what are the powers of (for the commencement and the management of this kind of measures):

- the nominated administrator
- the central bank (if it is not the banking supervisor)
- the banking supervisor
- the court
- Ministry of finance
- Others

Description of the powers

During reorganization the Commission may appoint an administrator who is rather called banking supervisor. Therefore the two positions are treated together. Actually, always two supervisors must be delegated.

During the period of the supervisors' appointment, members of the executive board may not perform their tasks and exercise their signatory rights as described in the statutory provisions governing business associations and cooperatives, and the charter.

The central bank may extend an emergency loan - subject to the prohibition of monetary financing - to a credit institution whose operation jeopardizes the stability of the financial system in consequence of specific circumstances. The central bank may render such a loan subject to the actions of the Commission or performance of actions by the credit institution as initiated by the Commission.

Once the winding up of the bank is ordered by the court, the Commission shall revoke the bank's license. Such revocation requires the consent of the chairman of the central bank.

The court renders judgments in cases when the measures by the Commission or the banking supervisor are challenged by the bank. Moreover, the court passes resolution whether or not the preconditions of ordering the winding up are fulfilled.

Once the winding up of the bank is ordered by the court, the Commission shall revoke the bank's license. Such revocation requires the consent of the chairman of the Ministry of finance.

For the execution of these measures (or the lack of decision to set these measures), what are the responsibilities of:

- the nominated administrator
- the national bank (if it is not the banking supervisor)
- the banking supervisor
- the court

Description of the responsibilities

For the period of appointment, the supervisors shall exercise any and all rights of board members described by law and the charter. In other words, the supervisors act for and on behalf of the bank in any and all respects.

The supervisors shall be held liable for damages caused in his such capacity according to Section 348 of the Civil Code if he is employed by the Commission, and according to Section 350 of the Civil Code if he is appointed thereby.

The chairman of the central bank and the Ministry of Finance should decide if they give their consent to revocation of the bank's license by the Commission.

The court shall process a request for winding up within eight days of the submission thereof. The decision ordering the winding up shall be executable irrespective of any appeal.

The Hungarian State may bring about a share capital increase by subscribing new shares, where the failure of a credit institution would seriously endanger the economic interests of the country or some of the larger regions or threaten the prudent functioning of the banking system and insolvency and/or liquidation can only be averted by Government intervention.

3.5 Group treatment

The purpose of this paragraph is to determine if group of companies are treated in your Member state at an entity level or in a coordinated way (by the legislation or case law, in internal or cross border situations, for banks specifically or other companies).

For the purpose of this paragraph, please consider that a group is constituted by a parent company and subsidiaries, not branches.

-Is there any legislation or court practise that specifically apply to a group?

The Company Act admits the categories of recognized group of companies and de facto group of companies.

Where any member of a company (hereinafter referred to as "controlled company") acquires a qualifying holding in that company subsequent to its foundation, the person acquiring such holding (hereinafter referred to as "owner of a qualifying holding") shall notify the competent court of registry within fifteen days after the holding is in fact acquired. In the application of this rule "qualifying holding" shall mean when the owner of a qualifying holding holds, directly or indirectly, seventy-five per cent or more of the voting rights in the controlled company. As to whether indirect control applies shall be determined according to Subsection (3) of Section 685/B of the Civil Code.

Any business association that is required to draw up consolidated annual reports according to the Accounting Act (dominant member) and any public or private limited company, or private limited-liability company over which the dominant member effectively exercises a dominant influence according to the Accounting Act (controlled company) may decide to enter into a control contract to join forces in pursuing their common business interests and continue operating in the form of a recognized group.

The provisions of recognized group of companies may be applied in the absence of a control contract and registration as a recognized group, if the business associations belonging to the group are engaged in operations under a common

business strategy for at least three consecutive years based on collaboration between the dominant member and the controlled company (companies), and they demonstrate the kind of conduct to ensure the predictability and balanced allocation of the advantages and disadvantages stemming from operating in the form of a group.

-Is there any special legislation or court practise that specifically apply to a banking group?

Yes, special provisions apply to a banking group both in respect of their legal definition, as well as their statutory supervision. There are two types of joint supervision of banking groups.

(1) Every credit institution

- a) that has at least one credit institution, financial institution or investment company as a subsidiary or that holds a participation in such an institution or
- b) whose parent company is a financial holding company shall be subject to supervision on a consolidated basis.

Supervision on a consolidated basis shall apply to any credit institution that is subject to supervision on a consolidated basis and:

- a) to any credit institution, financial enterprise, investment firm, investment fund manager and ancillary services company specified in which the aforementioned credit institution has a dominant influence or participation;
- b) to any financial holding company specified and to any credit institution, financial enterprise, investment firm, investment fund manager and ancillary services company in which it has a dominant influence or participation.

(2) Supplementary supervision shall apply to every credit institution that is at the head of a financial conglomerate:

- a) if it exercises dominant influence or holds a participating share in any of the regulated entities, at least one of which is an insurance company; or
- b) the parent company of which is a mixed financial holding company which has its head office in the European Union; or
- c) if it exercises dominant influence in an entity of the insurance services sector.

Supplementary supervision shall include:

- a) every entity in the financial conglomerate;
- b) every credit institution in the financial conglomerate, the parent company of which is a regulated entity that has its head office in a third country;
- c) every credit institution in the financial conglomerate, the parent company of which is a mixed financial holding company that has its head office in a third country.

The objective of supplementary supervision is to exercise prudential supervision of entities at the level of the financial conglomerate. Accordingly, the Commission, in exercising supplementary supervision, shall oversee the exposures, intra-group transactions, solvency position, internal control mechanisms and risk management processes of financial conglomerates at the group level.

What is the definition of the "group" that can be treated in a coordinated or joint way?

For the purposes of Bank Act "Group" means a group of companies which consists of a parent company, its subsidiaries and the entities in which the parent company or its subsidiaries exercise dominant influence or hold a participating share.

A financial conglomerate is a group that meets the following conditions:

a) at the head of the group:

1. is a credit institution; or
2. is a non-regulated entity, and the group's activities mainly occur in the financial sector; and

b) at least one of the entities in the group is within the insurance sector and at least one is within the banking or investment services sector; and

c) the consolidated and/or aggregated activities of the entities in the group within the insurance sector and the consolidated and/or aggregated activities of the entities within the banking and investment services sector are both significant.

The Commission, in its capacity as the appointed coordinator, may - in agreement with the competent authorities concerned - regard a group as a financial conglomerate, if:

a) the size of its smallest financial sector exceeds five per cent:

1. relative to the average ratio calculated under Subsection (4); or
2. relative to the ratio of the balance sheet total of that sector to the balance sheet total of the financial sector as a whole; or
3. relative to the ratio of solvency requirements of that sector to the total solvency requirements of the financial sector as a whole; or

b) the market share exceeds five per cent in Hungary, measured in terms of the balance sheet total in the banking or investment services sectors and in terms of gross premiums written in the insurance services sector.

Is it possible to include solvent subsidiaries in the formal insolvency proceedings?

NO.

Could you explain if the following measures are available in your Member state (please consider both purely internal situations and if a close notion exists in your Member state, please explain):

- joint application
- joint administrator
- joint or coordinated proceedings
- cooperation of insolvency administrators
- joint reorganization plan

- consolidation or pooling of assets
- extension of liability
- contribution orders
- full/partial liability of majority owner/mother
- Other practises that are in favour of group treatment

Bearing in mind that any and all members of a banking group are regarded separate legal entities for the purposes of Hungarian Insolvency Act no joint application can be submitted and consequently, no joint administrator can be appointed or joint or coordinated proceedings can go on.

Nevertheless, the liquidator appointed in an insolvency proceeding opened in another Member State of the European Union under Council Regulation 1346/2000/EC on insolvency proceedings may request a court order that key elements of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in the Company Gazette. If a main proceeding has been opened under Council Regulation 1346/2000/EC on insolvency proceedings in another Member State of the European Union and the debtor has any immovable or other assets in Hungary according to the land register, the trade register and any other public register, the liquidator of the main proceeding must request that the judgment opening the insolvency proceeding is registered in the land register or any other public register as appropriate. The liquidator shall be held liable for damages resulting from his failure to do so.

Within the framework of extraordinary measures ordered by the Commission in the scope of reorganization the Commission may limit or prohibit the credit institution

- 1) to conclude transactions between the owners and the credit institution,
- 2) to effect payment of deposits and other repayable resources,
- 3) to undertake commitments

Credit institutions subject to supervision on a consolidated basis and financial holding companies shall be responsible for ensuring the prudent operation of the companies they control, including compliance with the risk exposure and capital adequacy regulations. The boards of directors of credit institutions or financial holding companies that are subject to supervision on a consolidated basis may instruct the boards of directors of credit institutions, financial institutions, investment companies and associated companies in which they have a dominant influence to observe and enforce the regulations pertaining to supervision on a consolidated basis, and the boards of directors must follow these instructions

Credit institutions subject to supplementary supervision and mixed financial holding companies shall be responsible for ensuring the prudent operation of the entities they control, including compliance with the provisions on exposures and capital requirements. Credit institutions subject to supplementary supervision and mixed financial holding companies may instruct the entities in the financial sector in which they have a dominant influence to observe and enforce the regulations pertaining to supplementary supervision, and they must follow these instructions. The board of directors of a credit institution that is subject to supplementary

supervision shall indicate the name of its member appointed to oversee the prudential operation of the entities in the financial sector in which it has a dominant influence.

Consequently, extension of liability exists in Hungarian law. Moreover, the majority owner is fully liable for the activities of its subsidiary.

3.6 Cross border situations

In a national context (when both the parent company and the subsidiaries are located in your Member state), do the reorganization and winding up proceedings apply to the subsidiaries?

In a national context the reorganization may directly or indirectly apply to the subsidiaries through the measures or extraordinary measures ordered by the Commission. However, winding up proceedings may be conducted separately against the parent company or the subsidiary or both.

Do the systems you have described above apply to cross-border situations (on which legal basis, i.e. territoriality or universal principles)? How would a cross border case be managed in the following cases:

- When the ailing bank in your Member state is the subsidiary of a parent company located in another Member state?

Some of the extraordinary measures in the course of reorganization may be addressed to the parent company.

The Commission may simultaneously call upon the owner of the financial institution:

- a) entered into the register of shareholders having a direct ownership interest reaching or exceeding five percent,
- b) having a qualifying holding, to take the necessary measures.

Upon taking certain extraordinary measures, the Commission shall forthwith notify the supervisory authorities of the Member States in which the credit institution affected by the measure operates any branch offices or provides cross-border services.

- When the ailing bank in your Member state is the parent company of one or several subsidiary located in another Member state?

In the course of reorganization the Commission or the management of the bank has to take into consideration also the potential manoeuvres and deals covering the assets of the subsidiary to the extent the same do not jeopardize the prudential operations of the subsidiary. In this context the provisions on

consolidated supervision and supplementary supervision must also be taken into account.

- When the ailing bank in your Member state is the subsidiary of a parent company located in a third country?

Some of the extraordinary measures in the course of reorganization may be addressed to the parent company.

The Commission may simultaneously call upon the owner of the financial institution:

- a) entered into the register of shareholders having a direct ownership interest reaching or exceeding five percent,
- b) having a qualifying holding, to take the necessary measures.

Upon taking certain extraordinary measures, the Commission shall forthwith notify the supervisory authorities of the Member States in which the credit institution affected by the measure operates any branch offices or provides cross-border services.

- When the ailing bank in your Member state is the parent company of one or several subsidiary located in a third country?

In the course of reorganization the Commission or the management of the bank has to take into consideration also the potential manoeuvres and deals covering the assets of the subsidiary to the extent the same do not jeopardize the prudential operations of the subsidiary. In this context the provisions on consolidated supervision and supplementary supervision can be taken into account only if special arrangements with the supervisory bodies of the third countries had been concluded.

Are there in your legislation specific reorganization/winding up proceedings created for cross border situations (please consider both subsidiaries and branches separately)

The Hungarian legislation adopted the Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001. In line with this Directive, some special provisions apply to winding up of banks in cross border situations and banks operating branch offices in another member states. However, no specific rules govern subsidiaries. Pursuant to Bank Act a subsidiary means any company over which a parent company effectively exercises a dominant influence. However, if a subsidiary bank of a foreign parent bank is duly registered in Hungary then it is qualified

a separate legal entity. Consequently, the special provisions on the winding up of credit institutions shall apply

a) to the credit institutions that operate branch offices in other Member States of the European Union or provide cross-border services,

b) to the branch offices of third-country credit institutions with respect to Section 185/H if the credit institution has branch offices in at least two Member States of the European Union.

With respect to any reorganization or winding up proceedings and the ramifications of these proceedings, the Commission shall inform the supervisory authorities of the Member States of the European Union where the credit institution under reorganization or winding up proceedings operates any branch offices or provides cross-border services. Following publication of the court ruling ordering winding up in the Companies Gazette (hereinafter referred to as "court ruling"), the Commission shall forthwith publish the contents of the ruling in the Official Journal of the European Communities and also in two national daily newspapers in the country where the branch office is operated or where cross-border services are provided. Any creditor whose permanent residence or corporate domicile is located in another Member State of the European Union shall file its claim within 60 days following the publication in the Official Journal of the European Communities. The effect of the court ruling shall apply to the entire territory of the European Union.

The appointed liquidator shall have powers to exercise the rights conferred by the Hungarian Bank Act and the Insolvency Act in all Member States in due observation of the laws of the respective Member State. In order to carry out their duties more effectively, receivers and liquidators shall have powers to delegate representatives in the territory of the Member States affected to provide assistance to local creditors. The liquidator shall be required to inform the known creditors whose head office, domicile or normal place of residence is located in another Member State of the European Union immediately upon receiving the court ruling concerning the contents of such ruling and the legal consequences attached to specific deadlines. At the request of the supervisory authorities of other Member States of the European Union, the Commission shall be required to provide information concerning the status of the winding up procedure.

How does (or would) your national legislation deal with the cross-border aspects (are there situations where the Law of another Member state is applied) in the case of subsidiaries, not branches?

Again, there are no specific provisions on subsidiaries. As regards the legal ramifications of any winding up proceeding, a credit institution with headquarters in another Member State of the European Union, the laws of the country in which the credit institution is established shall apply. The decisions adopted in such proceedings shall be recognized without any further proceeding. **The Hungarian branch office of a credit institution established in another Member State of the European Union shall not be wound up under Hungary law.**

How does your court deal with a conflict with another Member states' Law: when there is a divergence between both Laws, can an agreement be concluded under the control of your national judge?

Pursuant to Hungarian Bank Act the Budapest Metropolitan Court has exclusive jurisdiction in conducting proceedings in connection with the compulsory winding up of financial institutions. The court shall promptly notify the Commission of the commencement of any winding up proceedings that were not initiated by the Commission. Consequently, the Hungarian procedural rules will be applied. As regards substantive law, the legal aspects of any contract pertaining to real estate involved in winding up proceedings, the laws of the country in which the property is located shall apply. The rights attached to securities that are to be registered or kept in an account as a prerequisite for transfer shall be subject to the laws of the Member State in which the register or account is kept.

I can hardly imagine any room for an agreement on applicable law because in the course of winding up proceedings the procedural rules on litigation have only minor role.

Is there any legal basis for cross border cooperation in reorganization measures or winding up proceedings at group level? Could you explain precisely which authorities actually cooperate under this legal basis and how?

At group level cross-border cooperation can be established between the supervisory bodies of the countries where the parent company and the subsidiaries are located. Within this framework in the course of any reorganization or winding up proceedings and the ramifications of these proceedings, the Commission shall inform the supervisory authorities of the Member States of the European Union where the credit institution under reorganization or winding up proceedings operates any branch offices or provides cross-border services. Following publication of the court ruling ordering winding up in the Companies Gazette, the Commission shall forthwith publish the contents of the ruling in the Official Journal of the European Communities and also in two national daily newspapers in the country where the branch office is operated or where cross-border services are provided. Any creditor whose permanent residence or corporate domicile is located in another Member State of the European Union shall file its claim within 60 days following the publication in the Official Journal of the European Communities. The effect of the court ruling shall apply to the entire territory of the European Union.

Could you explain if the following measures are available in your Member state (please consider only cross-border situations, and if a close notion exists in your Member state, please explain):

- joint application
- joint administrator
- joint or coordinated proceedings
- cooperation of insolvency administrators

- joint reorganization plan
- consolidation or pooling of assets
- extension of liability
- contribution orders
- full/partial liability of majority owner/mother
- Other practises that are in favour of group treatment:

The Hungarian legislation does not specify unique rules to this situation. ***Even if pursuant to its Article 1.2. the Council Regulation 1346/2000/EC on insolvency proceedings does not apply to credit institutions, in my view the lessons drawn from court practice connected to this Regulation and established in case of "ordinary companies" might show the trend to be applied also to credit institutions, especially if no special provisions are available. Nevertheless, the relevant judgements might not be automatically applicable to credit institutions. As a matter of fact, the overall European practice is not coherent in this respect.*** Although the European Court passed its famous judgement in Eurofood case (C-341/04) the judgement rendered by the French courts in EMTEC case is also well-known. Moreover, a recent case occurred in Germany, resulted in the same outcome as the case in France. The court in Cologne, in PPD GmbH, AG case, so ruled that it had competence to accept joint application and conducted joint proceedings. Therefore, the future of such proceedings can hardly be foreseen at this stage.

Within the framework of extraordinary measures ordered by the Commission in the scope of reorganization the Commission may limit or prohibit the credit institution

- 1) to conclude transactions between the owners and the credit institution,
- 2) to effect payment of deposits and other repayable resources,
- 3) to undertake commitments

Credit institutions subject to supervision on a consolidated basis and financial holding companies shall be responsible for ensuring the prudent operation of the companies they control, including compliance with the risk exposure and capital adequacy regulations. The boards of directors of credit institutions or financial holding companies that are subject to supervision on a consolidated basis may instruct the boards of directors of credit institutions, financial institutions, investment companies and associated companies in which they have a dominant influence to observe and enforce the regulations pertaining to supervision on a consolidated basis, and the boards of directors must follow these instructions

Credit institutions subject to supplementary supervision and mixed financial holding companies shall be responsible for ensuring the prudent operation of the entities they control, including compliance with the provisions on exposures and capital requirements. Credit institutions subject to supplementary supervision and mixed financial holding companies may instruct the entities in the financial sector in which they have a dominant influence to observe and enforce the regulations pertaining to supplementary supervision, and they must follow these instructions. The board of directors of a credit institution that is subject to supplementary supervision shall indicate the name of its member appointed to oversee the

prudential operation of the entities in the financial sector in which it has a dominant influence.

Consequently, extension of liability exists in Hungarian law. Moreover, the majority owner is fully liable for the activities of its subsidiary.

3.7 Efficiency of those proceedings

Do you think the measures you have described above provide for optimal response in order to deal with problems in an ailing cross-border bank regarding:

- The interest of the entity concerned?

- The interests of its creditors?

- The interests of the deposit holders?

- The interest of shareholders

- The interest of the employees

In my opinion, the foregoing measures are described provide certain but far not optimal response in order to deal with problems in an ailing cross-border bank regarding the interests of entities concerned, the creditors, the deposit holders, the shareholders and the employees. The recent global financial crunch proves that the already adopted and followed measures do not solve the problems and the interest of all parties must be better protected.

Do you think these measures can efficiently solve financial difficulties faced by a bank?

I am afraid the above measures cannot efficiently solve financial difficulties faced by a bank. Without the solid support of the State or the European Union in a global sense the banks' crisis cannot be overcome.

Are there changes recently adopted or being discussed in your legislation?

Yes, tough negotiations were conducted between the Hungarian government and the banks located in Hungary on adopting a so-called bank saving package. However, although the banks were forced to accept its conditions, they have not applied for the guarantees or possibilities offered by the government. On the other hand, new ministerial orders and acts are being under elaboration in order to strengthen the positions of banks and protect the interests of the population and the clients of the banks for avoiding the unfavourable consequences of potential collapses of Hungarian banks.

Recent cases

4.1 Recent cases - pre-insolvency/early intervention measures

Have you had any recent cases of pre-insolvency/early intervention measures applied to a credit institution (standalone, parent, subsidiary or branch) in your country?

There were no cases in Hungary over the past four years where pre-insolvency/early intervention measures had been applied to a credit institution.

- Please provide examples of institutions which experienced difficulties or failures over the past 4 years in your country that required the implementation of pre-insolvency/early intervention measures?

- Did these credit institutions have branches in other member states?

- Did these credit institutions have subsidiaries in other member states?

- Briefly explain the case(s), the procedures followed, the results, the participating authorities, sources of financing

- Explain how the cross border elements were taken into consideration (cooperation of authorities, administrators etc)

- Explain how and by which organisation decisions were made about the appropriate measures to implement.

- Explain how decisions were made (and by whom) on whether to implement the pre-insolvency/early intervention measures the credit institution.

- Are there things that you would have wanted to do, as part of pre-insolvency/early intervention that you were not able to do under the current legal framework? If so, what?

4.2 Recent cases – Reorganization and winding-up

Have you had any recent cases of winding-up of a credit institution (standalone, parent, subsidiary or branch) in your country?

There were no cases in Hungary over the past four years where winding-up had been ordered to a credit institution.

- Which institutions had difficulties or failures over the past 4 years in your country that required the implementation of reorganization and winding-up?

- Did these credit institutions have branches in other member states?

- Did these credit institutions have subsidiaries in other member states?

- Briefly explain the case(s), the procedures followed, the results, the participating authorities and the sources of financing

- Explain how the cross border elements were taken into consideration (cooperation of authorities, administrators etc)

- Explain how and by which organisation decisions were made about the appropriate measures to implement.

- Explain how decisions were made (and by whom) on whether to reorganise or wind up the credit institution.

4.3 Contact

What are the main actors (banks, liquidators, law firms,...) in your country involved in reorganization measures and/or winding-up proceedings of credit institutions:

- Please send us contact details of people/firms who already have applied the provisions of the Winding-up Directive or who might apply the Directive in the future if a credit institution fails in your country. To the best of my knowledge nobody has already applied the provisions of the Winding up Directive in case of banks. It is almost impossible to estimate people or firms who might apply this directive in the future because in theory everybody in Hungary can be involved in such matters.
- Please also send us contacts details of associations of liquidators (if any) dealing with reorganization measures and/or winding up proceedings in the financial sector. The Ministry of Finance keeps the record of registered liquidators. Currently, there are 114 authorized persons who can be appointed as liquidator. The whole list is available in the Official Gazette, Volume No. 32/2008.

Annex A - The relevant legal texts and cases in English

A/ Act IV of 2006 on Business Associations

Section 52.

- (1) Where any member (shareholder) of a private limited-liability company or a private limited company (hereinafter referred to as "controlled company") acquires a qualifying holding within the meaning of Subsection (2) in that company subsequent to its foundation, the person acquiring such holding (hereinafter referred to as "owner of a qualifying holding") shall notify the competent court of registry within fifteen days after the holding is in fact acquired. In the event of any failure to comply with the obligation of notification in due time the court of registry shall have powers to impose the judicial supervisory sanctions specified in the CRA upon the owner of a qualifying holding or its executive officer.
- (2) In the application of this Title 'qualifying holding' shall mean when the owner of a qualifying holding holds, directly or indirectly, seventy-five per cent or more of the voting rights in the controlled company. As to whether indirect control applies shall be determined according to Subsection (3) of Section 685/B of the Civil Code.

Section 53.

- (1) Within a sixty-day forfeit deadline reckoned from the date of notification of the acquisition of a qualifying holding, any member (shareholder) of the controlled company may request that his shares (securities) be purchased by the owner of a qualifying holding. The owner of a qualifying holding must purchase such shares (securities) at the market value prevailing at the time when the request was submitted, which value may not be lower than the value the shares (securities) represent in the business association's own capital.
- (2) The provisions contained in Subsection (1) shall not apply if the members (shareholders) precluded it in the memorandum of association. Such provision of the memorandum of association may be adopted by unanimous decision of the members (shareholders).

Section 54.

- (1) If the owner of a qualifying holding makes a series of poor business decisions on behalf of the controlled company, hence imposing substantial strain on the controlled company in meeting its liabilities, the competent court of registry may - at the request of any creditor of the controlled company - instruct the owner of a qualifying holding to provide collateral security, or may impose the judicial supervisory sanctions specified in the CRA upon him.
- (2) If the controlled company is going into liquidation, the owner of a qualifying holding shall bear unlimited liability for all liabilities of the company for which the debtor controlled company is lacking sufficient cover in the process of liquidation proceedings, if the court has declared -

in an action filed by the creditors during the liquidation proceedings - the unlimited and full liability of the owner of a qualifying holding responsible due to its history of making unfavorable business decisions in the debtor company.

Section 55.

- (1) Any business association that is required to draw up consolidated annual reports according to the Accounting Act (dominant member) and any public or private limited company, or private limited-liability company over which the dominant member effectively exercises a dominant influence according to the Accounting Act (controlled company) may decide to enter into a control contract to join forces in pursuing their common business interests and continue operating in the form of a recognized group.
- (2) The autonomy of the controlled companies of the recognized group may be restricted in the manner and to the extent specified in this Act and in the control contract, as it may be necessary with a view to the interest of the group as a whole. The control contract shall contain provisions for the protection of the rights of the members (shareholders) of controlled companies, and for the protection of creditors' interests.
- (3) Having a recognized group of companies registered in the register of companies shall not result in creating a separate legal entity from the business associations belonging to the group.

Section 56.

- (1) A decision for the preparation of the formation of a recognized group of companies and for the contents of the draft version of the control contract shall be adopted by simple majority of the votes of the supreme bodies of the business association involved, unless their memorandum of association provides otherwise.
- (2) The dominant member and the controlled companies may install provisions in their memorandum of association to authorize their management to adopt decisions in the issues specified in Subsection (1).
- (3) The control contract shall inter alia contain the following:
 - a) the corporate names, registered offices and registration number of the business associations belonging to the group, indicating the company designated as the dominant member and the ones designated as the controlled companies of the group;
 - b) the type of cooperation proposed for the business associations belonging to the group with a view to their common business strategy, and its essential elements, such as in particular the rights conferred upon the dominant member in adopting decisions at the group level and for the implementation of such decisions, and the related rights and obligations of the supreme body and management of the controlled company (companies);
 - c) provisions to ensure the predictability and balanced allocation of the advantages and disadvantages stemming from operating in the form of a group, which are necessary for the protection of the rights of members (shareholders) of the controlled company (companies) and their creditors, such as the dominant member's commitment to cover any potential losses of a controlled company, to supplement the dividends of members (shareholders) or for the exchange of their shares (securities) or a commitment for the eventuality of insolvency of a controlled company on

- the part of the dominant member to participate in the reorganization of the controlled company;
- d) an indication as to whether the recognized group of companies is established for a limited period of time or for an indeterminate duration;
 - e) the legal consequences for any breach of contract.
- (4) The dominant member may supplement the dividends of members (shareholders) of the controlled company from its own taxed profits, or from the taxed profit supplemented with available profit reserves at the time when paying dividends to the members (shareholders) of the dominant member, provided that the dominant member is able to satisfy the statutory conditions for the payment of dividends.
 - (5) The duration of the control contract shall be determined in consideration of what is contained in Subsection (3). Unless otherwise prescribed in this Act, the control contract shall be governed by the relevant provisions of the Civil Code.

Section 58.

- (1) The draft version of the control contract shall be approved by the supreme bodies of the business associations participating in setting up the recognized group subject to a three-quarters majority of the votes.
- (2) The dominant member of the recognized groups of companies shall send the control contract to the competent court of registry within fifteen days of approval for reasons of registration and publication in the Cégközlöny (Company Gazette). The court of registry shall register the recognized group by way of an entry in the records of the business associations involved, if the control contract and the proceedings for its approval are found to be in compliance with the provisions of this Act. The provisions of this Act pertaining to recognized groups of companies shall apply as of the date of registration in the register of companies. From the same time until the occurrence of the condition specified in Section 63 the provisions contained in Sections 52-54 shall not apply to the group of companies in question.

Section 59.

- (1) If the dominant member is the sole member (shareholder) of the controlled company, the provisions of Sections 56-58 shall apply subject to the exceptions set out in Subsection (2) of this Section.
- (2) The requirements set out in Subsection (3) of Section 56 shall be satisfied - in lieu of a control contract - in the memorandum of association of the dominant member and the controlled company, whereas a resolution adopted by the supreme body of the dominant member is required for setting up the recognized group.

Section 60.

- (1) The dominant member of the recognized group, or its management, may instruct the management of the controlled company according to the provisions laid down in the control contract, or in the memorandum of association within the meaning of Section 59 (hereinafter referred to collectively as "control contract"), and may adopt resolutions binding upon

the operation of the controlled company. In this case, the provisions of this Act on the exclusive competence of members' meetings (general meetings) shall not apply concerning the powers and operation of the supreme body of the controlled company, and the dominant member may not be declared liable under Subsection (7) of Section 20 if having acted in accordance with the provisions of the control contract.

- (2) Where so prescribed in the control contract of the recognized group, from the powers conferred upon the business association's supreme body - in addition to what is contained in Subsection (1) - the dominant member of the recognized group shall have powers to exercise the right for the appointment and removal of the executive officers and supervisory board members of the controlled company, and for establishing their remuneration. The control contract may also provide facilities to permit the appointment of an employee of the dominant member as director of the controlled company, in which case the appointment shall be fixed in a resolution adopted by the supreme body of the dominant member.
- (3) An executive officer and/or supervisory board member of the dominant member of a recognized group may also be elected to the same position at a controlled company, whereupon the consent referred to in Subsection (1) of Section 25 shall be considered granted upon the registration of the recognized group in question.
- (4) The executive officer of the controlled company shall conduct - in accordance with the control contract - the management of the business association by giving priority to the interests of the recognized group as a whole. The executive officer shall be exempt from the provisions contained in Section 30 if his conduct is found to be in compliance with the relevant provisions set out in legal regulation and in the control contract.

Section 64.

- (1) The provisions of Section 60 may be applied in the absence of a control contract and registration as a recognized group, if the business associations belonging to the group are engaged in operations under a common business strategy for at least three consecutive years based on collaboration between the dominant member and the controlled company (companies), and they demonstrate the kind of conduct to ensure the predictability and balanced allocation of the advantages and disadvantages stemming from operating in the form of a group.
- (2) In the event of doubt, the burden of proof lies with the dominant member to demonstrate that the criteria set out in Subsection (1) are satisfied as regards the business associations belonging to the group, and that the provisions contained in Subsection (1) are applied legitimately in the collaboration between the dominant member and the controlled company (companies). The dominant member of the group shall be held liable for any unlawful application of the provisions of Subsection (1) according to the regulations governing the making of unfavourable business decisions (Section 54).
- (3) At the request of the dominant member and any other person who is able to verify his lawful interest, the court may declare the genuine collaboration between the dominant member and the controlled company (companies) to be in compliance with the requirements set out in Subsection (1). Such court ruling precludes the establishment of unlimited liability of the dominant member - on the grounds of its history of the making of unfavourable business decisions - for the outstanding debts of the controlled company in the event of the controlled company's

insolvency stemming from reasons that may have occurred during the period to which the said court ruling pertains, or in the course of such period.

- (4) If, within ninety days of the operative date of the court ruling referred to in Subsection (3), the dominant member and the controlled company (companies) enter into a control contract drafted in compliance with the court ruling, the court of registry shall register the recognized group in the register of companies. In this process the provisions of Sections 57-58 shall not apply.

B/ Act CXII of 1996 on Credit Institutions and Financial Enterprises

Section 30.

- (1) The Commission may withdraw the credit institution's authorization, above and beyond the cases described in Section 29, if the credit institution
 - a) has discontinued operations for a period of more than six months,
 - b) can no longer be relied on to fulfil its obligations,
 - c) fails to pay any of its undisputed debts within five days of the date on which they are due or no longer possesses sufficient own funds (assets) for satisfying the known claims of creditors,
 - d) has had its National Deposit Insurance Fund membership involuntarily terminated.
- (2) When it withdraws an operating license, the Commission shall adopt a resolution for winding up the financial institution or initiate liquidation, with the exception of the transformation of a credit institution into a financial enterprise or an investment firm.
- (3) The Authority shall withdraw a credit institution's authorization if the court has ordered the liquidation of the credit institution.
- (4) The consent of the minister in charge of the money, capital and insurance markets and of the President of NBH is required for the Commission to withdraw a credit institution's operating license.

Section 151.

- (1) The Commission must consider the need for measures if a financial institution, a non-financial business association engaged in activities auxiliary to financial services, or an executive officer or owner thereof violates this Act; the legal provisions on effective, reliable and independent ownership and prudent operation; as well as the provisions of the NBH Act, the legal regulations on financial transactions, and obviously conducts its activities without due care; thus, for example,
 - a) their decision-making system and rules of procedure do not comply with regulations, or they fail to observe them during their operation,
 - b) their accounting, recording and auditing system fails to meet the requirements of legal provisions in effect,
 - c) they fail to comply with their obligation to disclose data, to report or to provide information to the Commission, the NBH, the shareholders or the Fund by the prescribed deadline,

- d) the activity of their auditors is not in compliance with legal regulations, or they inform the board of directors, the supervisory board or the Commission delayed and inaccurately about violations of law, deficiencies and their other problems - endangering their prudent operation - found at the financial institution,
 - e) their own funds fail to reach the capital requirements specified in Subsections (1)-(2) of Section 76,
 - f) they violate any of the regulations on exposures, on the determination, analysis, evaluation and definition of exposures, on the management of exposures, on the management and reduction of risks,
 - g) they fail to inform the general meeting about the measures of the Commission, and if a credit institution
 - h) fails to comply with regulations on ensuring liquidity and approximation of maturities of assets and liabilities,
 - i) fails to fulfil its obligation to create reserves,
 - j) the financial institution does not fulfil the obligations stipulated in the Act on the Prevention of Money Laundering.
- (2) In the event that the provisions of this Act, the legal regulations pertaining to prudent operation, the NBH Act; the legal regulations on financial transactions are violated, the Commission shall weigh the available data and information and take the necessary measures - (Sections 153, 155 and 156), if a financial institution
- a) performs any activities prohibited by law or for which it is not authorized,
 - b) is unable to continuously satisfy the requirements for authorization described in this Act during its operation,
 - c) has own funds that is less than seventy-five per cent of the capital requirements specified in Subsections (1)-(2) of Section 76,
 - d) wishes to pay or pays dividends in a situation when its own funds is below the capital requirements specified in Subsections (1)-(2) of Section 76, or has failed to set aside general reserves during the year,
 - e) does not have sufficient provisions and the valuation of its assets is inadequate, as a consequence of which its solvency margin must be reduced by the amount of unaccounted accumulation of provisions and adjustments,
 - f) regularly or severely violates regulations on exposures (such as to undertake any exposure without due care and diligence),
 - g) employs an auditor whose activities are not in compliance with statutory provisions and who fails to inform the board of directors and the supervisory board of the credit institution and the Commission about any violation of law, deficiencies and other problems found at the credit institution endangering the prudent operation of the credit institution,
 - h) is unable to fulfil or - repeatedly - fails to fulfil by the deadline its obligation to disclose data, to report or to provide information to the Commission, the NBH, its shareholders or the Fund,
 - i) hinders the Commission or the auditor in performing their tasks,
 - j) operates without the stipulated and necessary regulations, records, information technology and controlling systems,
 - k) fails to comply with supervisory measures taken in respect of its non-compliance with the regulations,
 - l) repeatedly infringes the regulations specified in Subsection (1) within two years of the operative date of the measure taken by the Commission or the resolution imposing a penalty,
 - m) can only comply with the relevant capital adequacy requirement in such a way that it cannot repay a junior subordinated loan on time.
- (3) In the event of any serious infringement of the provisions of this Act, legal regulations pertaining to prudent operation, the NBH Act, legal regulations on financial transactions and foreign exchange, the Commission shall take

- the major sanctions and exceptional measures necessary (Sections 157-160), if a financial institution
- a) has own funds that is less than fifty per cent of the capital requirements specified in Subsections (1)-(2) of Section 76,
 - b) wishes to pay or pays dividends in a situation where its own funds is below fifty per cent of the capital requirements specified in Subsections (1)-(2) of Section 76,
 - c) fails to meet its obligation to create provisions or the obligation of value adjustment, has insufficient provisions and inadequate value adjustments, meaning that the evaluation of off-balance sheet items and assets was incorrect, as a consequence of which its solvency ratio falls below four per cent because the solvency margin were reduced by the amount of unaccounted accumulation of provisions and value adjustments,
 - d) by non-observance of the regulations for ensuring liquidity and the approximation of maturities of assets and liabilities, severely endangers the maintenance of the liquidity of the credit institution,
 - e) regularly or substantially violates the regulations on exposures and thus severely endangers the credit institution's liquidity, solvency or ability to produce income,
 - f) regularly performs activities prohibited by law or for which it is not authorized,
 - g) is unable to satisfy the requirements for authorization described in this Act during its operation,
 - h) operates without the necessary accounting, management information or internal control system, or these systems are inefficient to indicate the credit institution's actual financial position,
 - i) in the course of its resource collecting activities, determines an interest value significantly differing from the market value representing increased risks for the credit institution or the deposit-holders,
 - j) enters into illicit or bogus contracts in order to gain pecuniary benefits or to alter its balance-sheet result capital requirement,
 - k) employs an auditor who fails to inform the Commission, the board of directors and the supervisory board of the financial institution about any severe infringement, deficiencies and other problems found at the financial institution and endangering the prudent operation of the financial institution,
 - l) repeatedly infringes the regulations specified in Subsection (1) within five years of the operative date of the measure taken by the Commission under Subsection (2) or the resolution imposing a penalty,
 - m) fails to fulfil the provisions of the supervisory measures taken for any severe violation of regulations.
- (4) The Commission shall, in addition to the provisions set forth in Subsection (3), take the necessary regular or extraordinary measures (Sections 157-160), also if
- a) the capital maintenance ratio of a branch office of a third-country credit institution falls below one-hundred per cent,
 - b) a branch office of the foreign credit institution in another country has become insolvent.
- (5) The Commission may also take measures if the supervisory authority with jurisdiction over the registered office of the third-country credit institution has taken measures against or penalized the given credit institution or one of its branch offices operating in any country for a reason that affects the safe operation of the branch office.
- (6) The Commission shall take the aforementioned major sanctions or exceptional measures if, according to the findings of the supervisory review and evaluation carried out under Section 145/A:

- a) the own funds held by credit institutions is insufficient to ensure sound management and coverage of their risks; or
 - b) the credit institutions' internal control mechanism, corporate governance functions and risk management procedures, internal models for the assessment of capital adequacy, and management of large exposures fail to comply with the requirements set out in this Act and other legal regulations implemented by authorization of this Act.
- (7) Prior to taking exceptional measures with respect to a credit institution that is subject to supervision on a consolidated basis, the Commission shall - with the exception set out in Subsection (8) - consult the competent supervisory authority of the Member State where a credit institution to which supervision on a consolidated basis applies under Subsection (2) of Section 90 jointly with the credit institution in question is established.
- (8) Before adopting a resolution for taking the exceptional measures the Commission shall not be required to consult with the competent supervisory authority of the other Member State, if the time required for consultation may jeopardize the effectiveness of the decisions. In this case, the Commission shall, without delay, inform the other competent supervisory authority.

Section 152/A.

If, according to the findings of the supervisory review and evaluation, the economic value of a credit institution (assets and liabilities, off-balance-sheet items, net cash flow at current value) declines by more than twenty per cent of its own funds as a result of the change in interest rates as specified in Paragraph h) of Subsection (2) of Section 145/A, relative to its economic value calculated without the effects of the interest rate changes, the Commission shall take the measures necessary.

Section 153.

- (1) In the event if any violation of regulations or deficiencies are established - if these do not severely endanger the prudent operation of the financial institution -, the Commission shall take the following measures:
- a) it may call upon the financial institution within the framework of negotiations held with an executive officer to take the necessary steps
 - 1) in order to eliminate the revealed deficiencies to comply with the regulations of this Act and the provisions of legal regulations on prudent operation,
 - 2) to maintain or improve its financial position;
 - b) it may advise the financial institution
 - 1) to provide further training to its employees (managers) or to hire employees (managers) with the appropriate professional skills,
 - 2) to draw up its standard service agreement and/or internal rules and regulations before the prescribed deadline, or to adapt it according to specific criteria,
 - 3) to change its business management concept;
 - c) it may stipulate the fulfillment of obligation for extraordinary supply of data;
 - d) it may oblige the financial institution to draw up and execute an action plan;

- e) issue a disciplinary warning to the executive officer of the financial institution.
 - f) adopt a resolution to declare the fact of infringement, and shall order the cessation of the infringement or prohibit any further infringement;
 - g) require the credit institution to take measures for the reinforcement of the arrangements, processes, mechanisms and strategies relating to its internal control mechanism, corporate governance functions, risk management procedures and internal models for the assessment of capital adequacy.
- (2) In the cases listed in Subsections (2) and (6) of Section 151, the Commission shall apply the following measures:
- a) delegate - one or more - on-site inspectors to the financial institution;
 - b) oblige the financial institution
 - 1) to adopt internal rules and regulations, or to adapt and apply these regulations according to specific criteria,
 - 2) to provide professional training for employees (managers) or to hire employees (managers) with the appropriate professional skills,
 - 3) to conduct an investigation in the interest of determining responsibilities for the damages caused and to initiate proceedings against the responsible person,
 - 4) to reduce operating costs,
 - 5) to accumulate sufficient reserves,
 - 6) to convene the board of directors or the supervisory board and advise these bodies to discuss specific items on the agenda and to the necessity of making specific decisions,
 - 7) to draw up and implement a restoration plan,
 - 8) to elect another auditor;
 - 9) to comply with the additional capital requirement prescribed under Subsection (2) of Section 76, however, the additional capital charge of the credit institution may not be higher than the capital requirement specified in Subsection (1) of Section 76.
 - c) it may prohibit, limit or make subject to conditions
 - 1) payment of dividends,
 - 2) payment of remuneration of executive officers,
 - 3) raising of loans by the owners of financial institutions, or rendering services to them by credit institutions which involve any exposure,
 - 4) extension of loans by financial institutions to enterprises belonging to the sphere of interests of the owners or executive officers,
 - 5) extension (prolongation) of deadlines specified in loan or credit agreements,
 - 6) performing certain financial service activities or activities auxiliary to financial services,
 - 7) opening new branches, starting new financial services as well as starting up new activities (business lines) within a financial service.
- (3) If the asset retention index of a credit institution operating as a branch office falls below one hundred per cent, the Commission shall order the parent foreign credit institution to bring the branch office into compliance with the provisions on capital maintenance ratio.

Section 154.

The on-site inspector delegated by the Commission under Paragraph a) Subsection (2) of Section 153 shall have powers

- a) to perform any supervisory activity in accordance with Subsection (3) of Section 146;

- b) to participate and make comments as an observer at the meetings of the management, the board of directors, the supervisory board or at the general meeting;
- c) to consult with the financial institution's auditor.

Section 155.

- (1) If the Commission finds it is necessary to approve a restoration plan as well, it may allow a maximum period of thirty days for the elaboration of such.
- (2) Where it is necessary to increase the capital, an additional period of thirty days may be allowed for convening the extraordinary general meeting. If the general meeting has decided on a capital increase or on providing of subordinated loan capital, not more than an additional fifteen days may be allowed of the date of the resolution for payment of the capital.

Section 156.

For the purposes of implementation of the restoration plan, the Commission may exempt the financial institution from the obligations set forth in Sections 76, 79-81 and 83-85 for a specific period but not more than for a period of one year. The Commission may extend this exemption on one occasion for a maximum period of six months.

Section 157.

- (1) In the cases described in Subsection (3) of Section 151, the Commission shall apply the following extraordinary measures - in addition to those set forth in Subsections (2)-(3) of Section 153 - in lieu of bankruptcy proceedings:
 - a) it may stipulate
 - 1) to sell the credit institution's assets used for purposes other than banking operations,
 - 2) for the financial institution to settle its capital structure within the deadline and in compliance with the requirements prescribed by the Commission,
 - 3) compliance with the capital requirement above the limit specified in Subsections (1)-(2) of Section 76, which may not be higher than the capital requirement specified in Subsection (1) of Section 76, in respect of the financial services performed by the financial institution and the exposures of the financial institution;
 - b) it may limit or prohibit the credit institution
 - 1) to conclude transactions between the owners and the credit institution,
 - 2) to effect payment of deposits and other repayable resources,
 - 3) to undertake commitments;
 - c) it may determine the highest rate of interest that may be charged by the credit institution;
 - d) it may compel the board of directors to convene the general meeting, and furthermore, it may advise these bodies to discuss specific items on the agenda and to the necessity of making specific decisions; as well as
 - e) it may delegate a supervisory commissioner to the credit institution.
- (2) In addition to the exceptional measures described in Subsection (1), the Commission may simultaneously call upon the owner of the financial

institution, or the founders of the financial enterprise operating as a foundation:

- a) entered into the register of shareholders - in the case of financial institutions operating as cooperatives, into the register of members - having a direct ownership interest reaching or exceeding five percent,
 - b) having a qualifying holding, to take the necessary measures.
- (3) In the case of a branch office of a third-country credit institution, the Commission shall notify the third-country credit institution and its supervisory authority at the same time that it takes the extraordinary measures specified in Subsection (1).
 - (4) Simultaneously with the notice described in Subsection (2), the Commission shall notify the financial institution's board of directors, supervisory board and auditor and shall call upon the board of directors to immediately take the measures listed in Paragraph b) of Subsection (2) of Section 153.
 - (5) The extraordinary measures described in Paragraphs b), c) and e) of Subsection (1) - with the exception of Point 2 of Paragraph b) - may be taken by the Commission for a specific period of time but not more than one year. The Commission may extend this time limit on one occasion for a maximum period of six months.
 - (6) The Commission may order the measure specified in point 2 of Paragraph b) of Subsection (1) for a maximum period of ninety days.
 - (7) Upon taking the extraordinary measures specified in Points 1 and 2 of Paragraph b) of Subsection (1), the Commission shall forthwith notify the supervisory authorities of the Member States in which the credit institution affected by the measure operates any branch offices or provides cross-border services.

Section 158.

- (1) Upon receiving the notification described in Subsection (1) of Section 157, the credit institution's board of directors shall take an immediate action to ensure that
 - a) the deposits and other receivables of the owners due from the credit institution are blocked,
 - b) the lending to companies in their sphere of interests of the owners is suspended,
 - c) no financial services involving exposures to the owners are rendered.
- (2) If the measures listed in Subsection (1) have been implemented, the owners [Subsection (2) of Section 157] may not claim set-offs from the credit institution.
- (3) The owners shall be exempted from the legal consequences related to the notification governed in Subsection (2) of Section 157 only if they announced to the Commission the sale of their shares in writing at least sixty days prior to receiving the notification.
- (4) The board of directors of the credit institution shall keep the restrictions listed in Subsections (1) and (2) in effect until the owners terminate the cause for taking the measures or the liquidation of the credit institution is ordered by the court.

Section 159.

- (1) If the financial institution fails to comply with the supervisory measures adopted under Paragraph d) of Subsection (1) of Section 157, the

- Commission may initiate the convening of the financial institution's general meeting at the court of registry.
- (2) In the request referred to in Subsection (1), the Commission shall make a proposal on the time, location and items on the agenda of the general meeting.
 - (3) The court of registry shall issue a resolution within eight days for calling the general meeting.

Section 160.

In addition to the measures listed in Subsection (1) of Section 157, the Commission may suspend the voting rights of the owners of the financial institutions belonging into its sphere of authority for a specific period of time, but not more than for a period of one year if the owner's activity or influence exercised on the financial institution, based on the available facts, endangers the financial institution's reliable and prudent operation; in such cases, when determining the quorum, the votes effected by such restriction must be ignored.

Section 161.

- (1) Customer accounts and other repayable funds may - pursuant to the agreement between the transferring and receiving credit institutions - be transferred with the permission of the Commission. While transferring the holdings, the provisions of the Civil Code on the substitution of debt must be applied with the exception that the consent of the contracting parties is not necessary to transfer the holdings. The Commission's permission shall not replace the permission of the Economic Competition Office specified in Act LVII of 1996 on the Prohibition of Unfair Market Practices and Restraint of Trade.
- (2) The application for authorization for the transfer of customer accounts shall contain
 - a) the contract between the transferor and the transferee for the conveyance of the accounts,
 - b) indication of the assets and collaterals attached to the accounts to be transferred,
 - c) the date and value of transfer of the accounts,
 - d) the certification that the receiving credit institution has the minimum solvency margin required for the accounts received in addition to the solvency margin for its own accounts.
- (3) The credit institution taking the contracts over shall notify all contracting parties concerned on the transfer - within thirty days of receipt of the authorization - in writing. In respect of bearer deposits or securities, the notice must be published as an announcement in at least two national daily newspapers.
- (4) The Commission shall refuse to authorize the transfer of accounts if it endangers the fulfilment of liabilities assumed in the deposit contract by the transferee and the transferor.

Section 162.

If necessary, the Commission may take the measures (regular and extraordinary) described in Sections 153 and 157-160 separately or jointly, and repeatedly as well.

Section 163.

- (1) The Commission may appoint a supervisory commissioner particularly if
 - a) suspension of payments is imminent,
 - b) the credit institution falls in a situation to impose potential and imminent jeopardy for the credit institution's failure to fulfil its obligations,
 - c) the credit institution's board of directors is unable to perform its tasks and thus the interests of the deposit-holders are endangered,
 - d) the deficiencies revealed in respect of the credit institution's accounting or internal control system are of the extent that it has become impossible to evaluate the credit institution's actual financial position.
- (2) The situation described in Paragraph b) of Subsection (1) exists particularly if the credit institution's own funds falls below twenty-five percent of the capital requirement prescribed in Subsections (1)-(2) of Section 76, and
 - a) despite the Commission's exceptional measure the board of directors fails to convene the general meeting, or
 - b) the owner or the third-country credit institution is incapable or unwilling to increase the credit institution's equity capital or own funds to the level prescribed by law or Commission resolution, or
 - c) the restoration plan approved by the Commission is not executed, or executed with a considerable delay or with divergences.
- (3) Natural persons who satisfy the requirements specified in Section 68 for credit institution managers may be appointed to serve as regulatory commissioners.
- (4) Where the appointment of supervisory commissioners is necessary, at least two shall be appointed to a credit institution at the same time.

Section 164.

- (1) Until receipt of the resolution on the appointment of the supervisory commissioner, the responsibilities of the members of the credit institution's board of directors described in the Companies Act and in the regulations on cooperatives shall remain in effect.
- (2) If it is not possible to take the credit institution's affairs over, the supervisory commissioner may have recourse to the collaboration of a notary public or the police.

Section 165.

- (1) During the period of the supervisory commissioner's appointment, members of the executive board may not perform their tasks and exercise their signatory rights as described in the statutory provisions governing business associations and cooperatives, and the charter. For the period of appointment, the supervisory commissioner shall exercise the rights of board members described by law and the charter.

- (2) By way of derogation from Subsection (1), members of the executive board and the supervisory board shall have the right to seek remedy against the resolution appointing the regulatory commissioner and the resolution the Commission has adopted against the credit institution, and to represent the credit institution in such proceedings or delegate a representative on the credit institution's behalf.

Section 166.

The supervisory commissioner shall be held responsible for damages caused in his such capacity according to Section 348 of the Civil Code if he is employed by the Commission, and according to Section 350 of the Civil Code if he is appointed thereby.

Section 167.

The name and address of the supervisory commissioner shall be conveyed to the court of registry for registration and publication purposes.

Section 168.

- (1) For the purposes of this Act, receivables described in Paragraph b) of Subsection (1) of Section 157 and Paragraph a) of Subsection (1) of Section 158 due from the credit institution shall not qualify as frozen deposits. Deposits that cannot be paid out because of the Commission's prohibition on payments ordered pursuant to Subsection (5) of Section 176/B shall not be considered frozen deposits for fifteen days from the day on which the resolution declaring liquidation was passed.
- (2) The Commission shall notify the Fund without delay on the notification specified in Section 48 and on the necessity of the taking of the extraordinary measures specified in Section 157.

Section 168/A.

- (1) If a branch office of a financial institution authorized in another Member State of the European Union or the cross-border services provided in Hungary by such financial institution violates the regulations in force in Hungary or if insufficiencies are detected in the operation of the branch office or the financial institution, the Commission shall call upon the branch office or the financial institution to rectify the situation that is in contravention of the rules.
- (2) In the event of the failure of the branch office or financial institution to comply with the above-specified request, the Commission shall notify the supervisory authority of the other Member State of the European Union with regard to the anomalous situation and request that the supervisory authority take appropriate action.
- (3) The Commission may act directly if it determines that the continuance of the anomalous situation presents a serious threat to the stability of the financial system or the interests of customers. The European Commission

shall review the measures of this type that are taken by the Commission and subsequently determine their legality.

Section 169.

- (1) The Commission may impose fines and penalties for any violation of the provisions stipulated in the legal regulations pertaining to financial services and activities auxiliary to financial services.
- (2)-(3)

Section 176/B.

- (1) The Commission shall have powers to order the winding up of financial institutions.
- (2) The Commission shall order the winding up of a financial institution if
 - a) it revokes the financial institution's authorization, except where it is revoked pursuant to Paragraph c) of Subsection (1) of Section 30 or
 - b) it learns that a foreign financial institution's foundation permit, activity (operating) permit or authorization of a financial institution for the foundation of a branch office, which had been issued by the supervisory authority of the country where the financial institution is registered, has been revoked.
- (3) The prior agreement specified in Subsection (1) of Section 8 of the Bankruptcy Act need not be obtained for the Commission to pass a resolution declaring termination by winding up.
- (4) The Commission's resolution for winding up shall indicate the appointed receiver and set the date for beginning of the proceeding, which may not antedate the resolution.
- (5) The Commission shall appoint a commissioner - if the winding up procedure begins after the date of the resolution - at the same time it passes the resolution for winding up (if this has not happened earlier). The commissioner's assignment shall last until the beginning of the winding up procedure, and he may order a prohibition on all payments until the starting date of the procedure.
- (6) The completion of the winding up procedure is contingent on proof that the unpaid deposit holdings have been transferred to the entitled persons.

Section 177.

- (1)
- (2) The Budapest Metropolitan Court has exclusive jurisdiction in conducting proceedings in connection with the compulsory liquidation of financial institutions.
- (3) The court shall promptly notify the Commission of the commencement of any liquidation proceedings that were not initiated by the Commission.

Section 178.

- (1) Chapter II of the Bankruptcy Act may not be applied in respect of credit institutions.

- (2) In respect of credit institutions, the liquidation proceedings may not be suspended.
- (3) The provisions of Subsection (7) of Section 46 of the Bankruptcy Act may not be applied in respect of claims against financial institutions.

Section 179.

- (1) The Commission may initiate liquidation proceedings against a financial institution or the branch office of a third-country financial institution in the cases described in Subsection (2).
- (2) The Commission shall initiate liquidation proceedings
 - a) if the financial institution's authorization is revoked pursuant to Paragraph c) of Subsection (1) of Section 30 or
 - b) in the case of a branch office, if insolvency proceedings have been initiated against a foreign financial institution that is operating a branch office in Hungary.
- (3) The court shall order liquidation, without having to establish the insolvency:
 - a) of a financial institution operating as a joint-stock company or cooperative,
 - b) of a foreign financial institution operating a branch office.

Section 180.

- (1) The court shall process a request for liquidation within eight days of the submission thereof. The decision ordering the liquidation shall be executable irrespective of any appeal.
- (2) If the court institutes the liquidation proceeding upon the request of the Commission, the preliminary approval described in Subsection (1) of Section 8 of the Bankruptcy Act shall not be required.

Section 181.

- (1) If the Commission appoints a supervisory commissioner before the request for liquidation proceedings is submitted, the appointment shall remain in effect until the court appoints the liquidator in its decision to order liquidation.
- (2) The Commission may order a full ban of payments from submission of the application for liquidation until the decision on liquidation is published in the Companies Gazette.
- (3) During the liquidation of a financial institution, the creditors must present their claims within sixty days of the publication of the court order calling for liquidation.

Section 182.

- (1) The amount of the liquidation fee must not exceed 1.25 per cent of the aggregate amount of proceeds from sold assets and the receivables actually received. In the case of a composition, the liquidator's fee may not exceed 1.25 per cent of net value of the assets.

- (2) The preliminary approval described in Subsection (1) of Section 8 of the Bankruptcy Act shall not be required for the submission of a request for the opening of liquidation proceedings.

Section 183.

- (1) During the liquidation of a credit institution, any claims deriving from placement of deposits must be listed according to Paragraph d) of Subsection (1) Section 57 of the Bankruptcy Act; these claims have equal status.
- (2) In the case of liquidation of a credit institution, debts from the core loan capital, subsidiary loan capital or subordinated loan capital defined in Schedule No. 5 and from the junior subordinated loan capital shall be satisfied after the liability referred to in Paragraph g) of Subsection (1) of Section 57 of the Bankruptcy Act has been satisfied.
- (3) The representatives of the state and the Fund shall participate in the composition negotiations held in the course of the liquidation - in connection with and in the interest of the deposits insured by them - as creditors and they shall be entitled to make the allowances required for reaching the composition.
- (4) In the process of winding up a credit institution, the funds deposited on behalf of clients within the framework of safe custody services shall not comprise part of the assets to be liquidated.
- (5) The compulsory reserves placed by the credit institution through a correspondent bank to comply with the reserve requirement shall, by way of derogation from the provisions of the Bankruptcy Act, not comprise a part of the assets which are subject to liquidation.

Section 184.

- (1) In the course of liquidation proceedings, the liquidator or, upon the Fund's justified request, the Commission may grant - the financial institution in liquidation - temporary authorization to engage in specific financial services.
- (2) In the course of a financial institution's liquidation, the Commission's permission shall be required for approval of any composition during the composition process if it is conditional upon the further operation of the financial institution as a credit institution or a financial enterprise.

Section 185/A.

The special provisions on the winding up or liquidation of credit institutions shall apply

- a) to the credit institutions that operate branch offices in other Member States of the European Union or provide cross-border services,
- b) to the branch offices of third-country credit institutions with respect to Section 185/H if the credit institution has branch offices in at least two Member States of the European Union.

Section 185/B

As regards the legal ramifications of any bankruptcy proceeding, liquidation or winding up of a credit institution with headquarters in another Member State of the European Union, the laws of the country in which the credit institution is established shall apply. The decisions adopted in such proceedings shall be recognized without any further proceeding.

Section 185/C.

The Hungarian branch office of a credit institution established in another Member State of the European Union shall not be liquidated or wound up under Hungary law.

Section 185/D.

As regards the legal aspects of any contract pertaining to real estate involved in liquidation or similar proceedings, the laws of the country in which the property is located shall apply.

Section 185/E

The rights attached to securities that are to be registered or kept in an account as a prerequisite for transfer shall be subject to the laws of the Member State in which the register or account is kept.

Section 185/F.

- (1) With respect to any winding up or liquidation proceedings and the ramifications of these proceedings, the Commission shall inform the supervisory authorities of the Member States of the European Union where the credit institution under liquidation or winding up proceedings operates any branch offices or provides cross-border services.
- (2) Following publication of the court ruling ordering liquidation or winding up in the Companies Gazette (hereinafter referred to as "court ruling"), the Commission shall forthwith publish the contents of the ruling - in Hungarian on the forms referred to in Subsection (4) of Section 185/G - in the Official Journal of the European Communities and also in two national daily newspapers in the country where the branch office is operated or where cross-border services are provided.
- (3) Any creditor whose permanent residence or corporate domicile is located in another Member State of the European Union shall file its claim within 60 days following the publication in the Official Journal of the European Communities as specified in Subsection (2). Regarding such creditors, the legal ramifications attached to publication as set out in Section 28 of the Bankruptcy Act shall be contingent upon the publication referred to in Subsection (2).
- (4) The effect of the court ruling shall apply to the entire territory of the European Union.
- (5) The regulations contained in the Bankruptcy Act on the avoidance of contracts shall not apply in cases in which the party acquiring any right through a contract is able to verify that the contract in question falls

within the scope of the law of another Member State of the European Union and such law does not allow the contract to be contested.

Section 185/G.

- (1) Receivers and liquidators shall have powers to exercise the rights conferred by this Act and the Bankruptcy Act in all Member States in due observation of the laws of the respective Member State.
- (2) In order to carry out their duties more effectively, receivers and liquidators shall have powers to delegate representatives in the territory of the Member States affected to provide assistance to local creditors.
- (3) The receiver or liquidator shall be required to inform the known creditors whose head office, domicile or normal place of residence is located in another Member State of the European Union immediately upon receiving the court ruling concerning the contents of such ruling and the legal consequences attached to specific deadlines.
- (4) The information specified in Subsection (3) shall be provided in Hungarian. A form with the title "Invitation to lodge a claim. Time limits to be observed" in all the official languages of the European Union shall be used for this purpose.
- (5) Any creditor who has his domicile, normal place of residence or head office in another Member State of the European Union may lodge his claim in Hungarian. In addition, he may submit the claim in the official language of his home Member State on condition that the title "Lodgement of claim" [Követelés benyújtása] is indicated in Hungarian.
- (6) The receiver or liquidator shall be required to regularly inform the Commission and the creditors on the status of the liquidation or winding up procedure.
- (7) At the request of the supervisory authorities of other Member States of the European Union, the Commission shall be required to provide information concerning the status of the liquidation or winding up procedure.

Section 185/H

- (1) Where a liquidation proceeding is initiated against a branch office of a third country, the Commission shall notify the supervisory authorities of the Member States in which the credit institution whose branch office is undergoing liquidation has any branch offices that are listed in the register published annually in the Official Journal of the European Communities.
- (2) The Commission, the court ordering liquidation and the liquidator shall collaborate with the competent authorities of the countries concerned in order to coordinate their actions.

C/ Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings

Section 1.

- (2) 'Bankruptcy insolvency proceeding' means when the debtor requests relief from its financial obligations in an attempt to seek composition agreement, or attempts to have a composition agreement concluded.
- (3) 'Liquidation' means the proceeding aimed to provide satisfaction, as laid down in this Act, to the creditors of an insolvent debtor upon its dissolution and termination of its corporate existence.

Section 6.

- (1) Bankruptcy and liquidation proceedings are non-judicial proceedings conducted by the county (Budapest) court (hereinafter referred to as "court") of jurisdiction by reference to the debtor's registered office of record on the day when the request for opening the proceedings has been submitted.
- (2) The Municipal Court of Budapest shall have exclusive jurisdiction to conduct main and territorial insolvency proceedings under Council Regulation 1346/2000/EC on insolvency proceedings concerning economic operators [Paragraph a) of Subsection (1) of Section 3] established in a place other than Hungary.
- (3) The provisions of Act III of 1952 on the Code of Civil Procedure (hereinafter referred to as "CPC"), with the derogations arising from the characteristics of nonlitigious civil proceedings, shall apply mutatis mutandis to the procedural matters which are not governed under this Act, noting that - with the exception laid down in Section 6/A - no suspension, interruption or discontinuance is allowed in bankruptcy proceedings, and no interruption is allowed in liquidation proceedings.
- (4) In bankruptcy proceedings the debtor, the creditor, and the temporary administrator, in liquidation proceedings the debtor, the creditor shall be considered parties. If the conduct or negligence of a temporary administrator, liquidator or a receiver affects the rights or lawful interest of any third person, this person shall also qualify as a party concerning the judgment of his complaint (Section 51).

Section 6/A.

- (1) A bankruptcy or liquidation proceeding cannot be opened against a legal person who is indicted in a criminal proceeding, when the court hearing the case or the competent public prosecutor has notified the court of registry that certain measures may be pending [Subsection (1) of Section 6].
- (2) If the bankruptcy or liquidation proceeding is already in progress, it shall be suspended until the court hearing the criminal case has delivered a final ruling, or until the measure imposed under the criminal proceeding is enforced.
- (3) If the provisions set forth in Subsections (1)-(2) are deemed to cause substantial delay or to jeopardize the satisfaction of creditors' claims, the opening or continuation of the bankruptcy or liquidation proceeding shall be subject to authorization by the public prosecutor before the indictment, or by the court after the indictment.

Section 6/B.

- (1) The liquidator appointed in an insolvency proceeding opened in another Member State of the European Union under Council Regulation 1346/2000/EC on insolvency proceedings may request a court order that key elements of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in the Company Gazette.
- (2) Key elements of the decision shall comprise:
 - a) designation and address of the court opening the proceeding;
 - b) name and address or principal place of business administration of the debtor;
 - c) an indication as to whether the proceeding is main or territorial;
 - d) the liquidator's name and means of access;
 - e) the deadlines for filing of creditors' claims;
 - f) legal consequences stipulated in connection with the deadlines;
 - g) designation of the bodies or authorities authorized to receive creditors' claims.
- (3) The application shall have attached the original document and an official Hungarian translation, as well as proof of payment of the costs of publication.
- (4) If a main proceeding has been opened under Council Regulation 1346/2000/EC on insolvency proceedings in another Member State of the European Union and the debtor has an establishment in Hungary, the liquidator of the main proceeding must request that key elements of the judgment opening the insolvency proceeding and, where appropriate, the decision appointing him, be published. The liquidator shall be held liable for damages resulting from his failure to do so.
- (5) The notice published shall contain all key elements of the decision.

Section 6/C.

- (1) If a main proceeding has been opened under Council Regulation 1346/2000/EC on insolvency proceedings in another Member State of the European Union and the debtor has any immovable or other assets in Hungary according to the land register, the trade register and any other public register, the liquidator of the main proceeding must request that the judgment opening the insolvency proceeding is registered in the land register or any other public register as appropriate. The liquidator shall be held liable for damages resulting from his failure to do so.
- (2) The request shall have attached the original document along with an official Hungarian translation.

Section 6/D.

The requests referred to in Sections 6/B and 6/C shall be submitted to the Municipal Court of Budapest. The court shall adopt a decision in a nonlitigious proceeding within thirty days following the date of receipt, taking into account the deadlines prescribed in the notice to be published for filing claims in the case of Section 6/B. This decision shall be final and it may not be appealed.

Section 27.

- (2) The court shall declare the debtor insolvent

- a) upon the debtor's failure to settle or contest his previously undisputed and acknowledged contractual debts within fifteen days of the due date, and failure to satisfy such debt upon receipt of the creditor's written payment notice, or
- b) upon the debtor's failure to settle his debt within the deadline specified in a final court decision, or
- c) if the enforcement procedure against the debtor was unsuccessful, or
- d) if the debtor did not fulfil his payment obligation as stipulated in the composition agreement.

Section 27/A.

- (1) In the decree of liquidation the court shall appoint a liquidator. The temporary administrator appointed in the preceding bankruptcy proceedings, if any, may also be appointed as liquidator. Simultaneously with the liquidator's appointment the court shall include a clause authorizing the appointed liquidator to function as a temporary administrator up to the time of the opening of liquidation, if so requested by the creditor at the time of submitting the petition for liquidation, or subsequently, before the decree of liquidation is adopted, and if having advanced the fee of the liquidator as specified in Paragraph c) of Subsection (2) of Section 24/A, and placed it in court custody. If the final decision ordering liquidation has been published the liquidator's fee shall be covered by the debtor.
- (2) The conditions under which a person can be listed in the register of liquidators shall be decreed by the Government. The Government shall select eligible liquidators by way of public tender.
- (3) The liquidator shall appoint a receiver to carry out the liquidation of a debtor in the name and on behalf of the liquidator; the receiver is either employed by or is a member of, or is contracted by, the liquidator. The appointed receiver must have the appropriate training.
- (4) In the application of this Act the following reasons of exclusion shall apply to liquidators and receivers:
 - a) A business association may not be appointed liquidator:
 - aa) if it is the owner or creditor of the debtor;
 - ab) if its owner is an owner or creditor of the debtor;
 - ac) if any of its executive employees or close relatives [Paragraph b) of Section 685 of the Civil Code] thereof has majority control [Section 685/B of the Civil Code] in the debtor organization or in any other organization that is engaged in any incompatible activities [Paragraph a) of Subsection (3) of Section 27/C].
 - b) A person may not be appointed receiver:
 - ba) if he is the owner or creditor of the debtor;
 - bb) if he is the close relative of any person to whom Paragraph ba) applies;
 - bc) if his close relative is the owner or creditor of the debtor;
 - bd) if he is an executive employee of a business association that is the owner or creditor of the debtor;
 - be) if he is the close relative of an executive employee referred to in Paragraph bd);
 - bf) if he himself or his close relative is a member, shareholder or executive employee of a legal person or unincorporated business association that is engaged in any incompatible activities.
- (5) When appointed, the liquidator shall notify the court if any grounds for his disqualification exist within 8 days of receipt of the appointment, or, if any grounds for disqualification arise at a later point in time, within 8 days of

the occurrence of such. The liquidator may reject the appointment only in such cases. Should a liquidator fail to disclose grounds for disqualification, the court shall proceed to have his name removed from the register of liquidators. The liquidator shall announce to the court of registry the name and address of the appointed receiver within 8 days of receiving the decree of liquidation. The order, by which the liquidator is appointed, shall not be subject to appeal.

- (6) If, subsequent to the appointment, the court determines that there are grounds for disqualification of the liquidator, and/or the receiver, or the appointed liquidator has been removed from register of liquidators, or if the liquidator himself is subject to liquidation (whether compulsory or voluntary), the court shall dismiss the liquidator ex officio.
- (7) The court shall proceed as defined in Subsection (6), irrespective of whether a demurrer is lodged or not, if it determines in its order based on the particulars of the procedure that the liquidator seriously or repeatedly violates the law.
- (8) The liquidator may appeal the court decisions defined in Subsections (6) and (7), which shall be resolved by the court of second instance forthwith. Upon the ruling becoming final, the court shall appoint a new liquidator.
- (9) The appointed liquidator shall act on behalf of the debtor economic operator and may not assign the execution of liquidation proceedings to any other party.
- (10) The liquidator shall discharge his duties in principle using the debtor's or his own work organization, including the statutory employment of persons in possession of the qualifications required by law, in civil relationships. The liquidator may also enter into civil relationships to the extent necessary to discharge his duties:
 - a) for services which are not covered by the scope of expertise prescribed under specific other legislation for liquidation activities;
 - b) for activities which are not commonly required in connection with liquidation proceedings, or which are in excess of what is commonly required;
 - c) in the cases prescribed as mandatory by legal regulation;
 - d) if authorized by the court in advance at the liquidator's request in the cases not mentioned under Paragraphs a)-c).

Section 28.

- (1) Upon the decree for opening the liquidation of a debtor becoming final, the court shall forthwith adopt a ruling in accordance with the provisions of specific other legislation to have it published in the Company Gazette. Publication in the Company Gazette shall take place in the form display on the official website of the Company Gazette updated a daily basis.
- (2) The public announcement shall contain
 - a) the name of the court and the case number;
 - b) the names, registered offices, and tax numbers of the debtor and its subsidiaries, of the work associations operating under the debtor's liability, and the trust companies established by the debtor in accordance with Section 49 of Act VI of 1977 on State-Owned Companies. If legal succession has taken place within two years prior to the opening of the proceedings, the name, registered office and tax number of the predecessor shall also be indicated;
 - c) the date of filing the petition for the opening of the liquidation proceedings;

- d) whether bankruptcy proceedings took place before the liquidation proceedings;
 - e) the time of the opening of liquidation (the date of disclosure of the final decree of liquidation);
 - f) the notice sent to the creditors to report their known claims to the liquidator within 40 days of publication of the decree of liquidation;
 - g) the name and registered office of the liquidator and the name and mailing address of the receiver;
 - h) the number of the special account referred to in Subsection (7) of Section 46;
 - i) if the debtor is a single member company, the name and domicile (registered office) of the founder (member, shareholder);
 - j) other material facts.
- (3)

Section 46.

- (1) The liquidator shall analyze the financial standing of the economic operator and the claims against it.
- (2) The liquidator shall prepare an opening liquidation account, estimate the costs of liquidation and set up a timetable for its implementation, including the duties and financial conditions required for the rational conclusion of business operations, as well as to conservation, with particular regard to the reduction of any superfluous workforce. Upon request the liquidator shall present the timetable to the creditors' select committee or to any of the creditors entitled to contest it in court (Section 51).
- (3) In the event that the creditors have formed a select committee the debtor shall be required to obtain the consent of the committee for continuing business operations during liquidation within 120 days of the publication of the opening of liquidation proceedings. If the select committee is established at a later date, such consent is to be obtained within 60 days of announcement of the committee's establishment.
- (4) The committee's consent referred to in Subsection (3) shall be for one year. If the liquidator intends to continue operations after the one-year period, it is subject to the committee's consent that is to be obtained within 30 days before the end of the one-year period.
- (5) The liquidator shall keep individual records of the following:
 - a)
 - b) claims notified before the deadline specified in Paragraph f) of Subsection (2) of Section 28, and
 - c) claims notified past the deadline specified in Paragraph f) of Subsection (2) of Section 28, but within one year.
- (6) The liquidator shall review the claims described in Paragraphs a) and b) of Subsection (5) within 45 days of the deadline of notification, converse with the parties concerned and forward the claims deemed disputable to the court ordering liquidation for judgment within 15 days. The results of such review shall be inserted in the interim account prescribed in Subsection (2) of Section 50.
- (7) With the exception of the claims set out in Paragraphs a) and c) of Subsection (1) of Section 57, the registration of claims defined in Subsection (5) is contingent upon the creditor paying 1 per cent of its claim (minimum 1000 forints and maximum 100,000 forints) to the special account of the court's Financial Administration Office, with reference to the court case number, and providing proof of this payment to the liquidator.

The sums paid by the creditors shall be classified as creditors' claims under Paragraph f) of Subsection (1) of Section 57. The Financial Administration Office shall inform the liquidator every six months regarding the balance of the account.

- (8) If a notified claim is acknowledged by the liquidator, however, the beneficiary does not wish to pay the amount specified in Subsection (7) to the special account, upon the beneficiary's request the liquidator shall issue a statement on the acknowledged claim forthwith as prescribed under Point 5 of Section 4 of Act LXXXI of 1996 on Corporate Tax and Dividend Tax, provided however, that the notified claim has not been assigned following the time of the opening of liquidation proceedings.

Section 47.

- (1) The liquidator shall have powers to terminate, with immediate effect, the contracts concluded by the debtor, or if none of the parties rendered any services, the liquidator may rescind from the contract. The claim due to the other party owing to the above may be enforced by notifying the liquidator within 40 days from the date when the rescission or termination was communicated.
- (2) The liquidator shall withdraw, with immediate effect, the statement of commitment given to a work association if no agreement was concluded within 60 days following the time of the opening of liquidation proceedings.
- (3) The liquidator may not exercise the right of cancellation or rescission with immediate effect as set forth in Subsection (1) with regard to the tenancy agreements of natural persons, with the exception of company residences and garages, the contracts concluded with a school or student for the organization of vocational training, employment contracts, loan contracts which are not related to business activities, the contracts of members of cooperatives in connection with their business relationships, as well as the collective bargaining agreement. Contracts underlying close-out netting arrangements or framework contracts may be avoided or cancelled only if done concurrently.
- (4) In the event that an alimony or a life-annuity contract is terminated, the other party shall be entitled to appropriate compensation.
- (5) From the time of the opening of liquidation proceedings, employer's rights shall be exercised and obligations shall be fulfilled by the liquidator within the framework of legal regulations, the collective agreement, and internal regulations and contracts of employment.
- (6) In respect of wage increases after the time of the opening of liquidation proceedings, the liquidator may assume any new obligations only upon the committee's consent.

Section 48.

- (1) The liquidator shall collect the claims of the debtor when due, enforce his claims and sell his assets. If consented by the creditors as defined under Section 44, the liquidator may invest the debtor's property into private limited-liability companies, public limited liability companies or cooperatives as non-pecuniary assets (contribution) if it promises to draw a better price this way.
- (2)

- (3) In the process of liquidation the liquidator shall provide for the protection and safeguarding of the debtor's assets, such as in particular to sustain the productivity of arable lands, to carry out planting and rehabilitation works in forests, furthermore, the observation of regulations concerning environmental protection, nature conservation and protection of historical monuments, to provide a solution for any damage and contamination of the environment that of which is proven to originate from before the time of the opening of liquidation proceedings by way of cleaning up the damage or contamination during the proceedings, or by selling the assets in question in their state of contamination.
- (4) The regulations to be observed during liquidation with regard to environmental protection, nature conservation and protection of historic monuments, including the definition of the content of the statement prescribed in Paragraph c) of Subsection (1) of Section 31 and the option to render an environmental status survey obligatory, the requirements and the manner of resolving environmental damage and contamination, furthermore, the types of expenses originating therefrom, which are acknowledged as liquidation expenses in accordance with Subsection (2) of Section 57 shall be decreed by the Government.
- (5) The competent authority shall have powers to compel the debtor to observe the regulations on environmental protection, nature conservation and protection of historic monuments, in connection with any operations during the proceedings and to clean up any damage or contamination of the environment.

D/ Act CXXXV of 2007 on the Hungarian Financial Supervisory Authority

Section 7

Within the framework of its vested responsibilities, the Authority shall:

- a) evaluate the applications submitted for authorization and other petitions;
- b) maintain the records and registers prescribed in the acts listed under Section 4;
- c) monitor the systems of information supply and oversee the data disclosure of the bodies and persons described under Section 4;
- d) supervise and control the operations and activities of the bodies and persons described under Section 4 in terms of compliance with the statutory provisions within the Authority's competence, and oversee the implementation of the Authority's resolution;
- e) unless otherwise prescribed by law, open proceedings in the event of any infringement of the provisions referred to in Paragraph d), including the taking of action and exceptional measures, and imposing fines;
- f) provide assistance to the board of directors of the National Deposit Insurance Fund to carry out its functions, and in the preparation and implementation of its decisions;
- g) open market surveillance procedures where there is reasonable suspicion of insider dealing or market manipulation, in connection with operations conducted without proper authorization or notification, and with the enforcement of regulations relating to company takeovers;

- h) collaborate with foreign financial supervisory authorities, in particular with the competent authorities of Member States of the European Economic Area exercising financial supervision;
- i) discharge disclosure requirements within its sphere of competence and the obligation of reporting to the European Commission;
- j) discharge notification and information requirements in connection with the formation of branches and cross-border activities;
- k) place voluntary mutual insurance funds under temporary government control and administration in the cases defined by law;
- l) cooperate in discovering and eliminating obstacles that hamper the development of voluntary mutual insurance funds and private pension funds, and their guarantee funds, and in coordinating the cooperation of the above with the competent social security offices and agencies;
- m) monitor and examine compliance with and enforcement of the regulations and principles relating to the acquisition of participating interests in public limited companies;
- n) exercise supervision over the activities of the operator of the Claims Security Account, and the activities of the Claims Organization and the Information Center specified in the Insurance Act; and
- o) collaborate with the supervisory body of public warehouses as prescribed in Act XLVIII of 1996 on Public Warehousing in connection with authorization and supervisory proceedings.

Section 8

(1) The Authority shall operate a public information system with a view to providing a platform where the information required to be supplied by the bodies and persons referred to in Section 4 to the general public are made available via the Authority.

Section 9

- (1) The Authority shall publish the following on its official website:
- a) the list of bodies and persons the Authority has authorized or registered;
 - b) a list of foreign financial supervisory authorities with which the Authority has entered into cooperation agreements on the basis of mutual recognition;
 - c) any petition for remedy filed against a resolution or ruling of the Authority, if the said resolution or ruling was published in accordance with Section 32;
 - d) the final decisions adopted in proceedings for remedy against any resolution or ruling of the Authority, if the said resolution or ruling was published in accordance with Section 32;
 - e) the full text of legal regulations which are binding upon financial institutions and investment firms;
 - f) the criteria and the methods used in regulatory review and assessment procedures;
 - g) the summary statistical data and the related analysis concerning the application of the provisions of specific other legislation relating to the operations of credit institutions and investment firms, and to capital adequacy and prudential requirements;
 - h) the directive containing the guidelines of judicial principles employed by the Authority relating to the bodies and persons referred to in Section 4;
 - i) the annual accounts of voluntary mutual insurance funds and institutions for occupational retirement provision, together with the audit

certificate or qualified audit certificate from the independent auditor, each year by 30 June of the year following the current year;

j) the supervision fee declaration forms;

k) the Authority's annual report as approved by the Government and annual account approved by the minister; and

l) all other information the publication of which is prescribed as mandatory by legal regulation.

(2) The Authority shall make available the information mentioned in Paragraph g) of Subsection (1) at least semi-annually.

(3) The information published by the Authority according to Paragraphs e), f) and h) of Subsection (1) shall be sufficient to enable a meaningful comparison of the approaches and methodologies adopted by the financial supervisory authorities of other Member States.

(4) The Authority shall effect the publications referred to in Subsection (1) in due observation of the legal regulations on bank secrets, securities secrets, fund secrets, insurance secrets, occupational retirement pension secrets and trade secrets.

Section 41

(1) The Authority shall conduct inspections to monitor compliance with the statutory provisions pertaining to the operation and activities of the bodies and persons referred to in Section 4, and for the purposes of enforcement of the resolutions it has adopted (hereinafter referred to as "supervisory control").

(2) Supervisory control shall comprise the verification of data supplied within the framework of regular disclosures specified by law, as well as inspections conducted by the Authority.

(3) The supervisory control proceedings of the Authority are comprised of comprehensive inspections and direct inquiries at the bodies and persons referred to in Section 4 in connection with a specific problem or, if the same problem arises at several bodies or persons, a general inquiry.

(4) The Authority may conduct post inspections or may request information concerning compliance with its resolutions.

(5) The Authority shall be assisted by the MNB in the comprehensive inspection of bodies providing clearing or settlement services and the central depository regarding operation reliability and system risks.

(6) The Authority shall carry out inspections relating to printed securities in terms of compliance with the provisions of specific other legislation, to the extent and in the manner specified therein, in cooperation with the National Security Service.

(7) The supervisory control proceedings of the Authority, if launched upon a notification under Section 26/B, shall comprise comprehensive inspections and direct inquiry at the body or person referred to in Section 4 to whom the notification pertains in connection with a specific problem or, if the same problem arises at other bodies or persons, a general inquiry also covering such persons and bodies (hereinafter referred to as "inquiry opened upon notification").

Section 45

Pursuant to the acts referred to in Section 4, the Authority may carry out regulatory inspections at the request of a foreign financial supervisory authority.

Section 46

The Authority may adopt a ruling for the cessation or prohibition of the infringement with immediate effect for the period ending upon the passing of the peremptory resolution, where such action is deemed urgently necessary with a view to the protection of the legal and economic interests of the parties affected. The Authority shall adopt this decision in expedited proceedings. This ruling may be contested in an appeal filed against the peremptory resolution.

Section 47

(1) Unless otherwise prescribed by law, the Authority shall have powers to take the action and exceptional measures, and may impose the fines specified in the acts listed under Section 4, (hereinafter referred to as "sanctions") for any violation or circumvention of or non-compliance with the provisions:

- a) of the acts listed under Section 4, other legal regulations adopted by authorization of these acts, and other statutory provisions governing the operations of the bodies and persons referred to in Section 4;
- b) contained in the Authority's resolutions;
- c) set out in the own internal regulations of the bodies and persons referred to in Section 4.

(2) The Authority may impose sanctions initiated by the MNB, or by a foreign financial supervisory authority on the strength of law.

(3) The Authority may impose these sanctions repeatedly and collectively.

(4) The Authority shall weigh the following circumstances when imposing a sanction:

- a) the gravity of the infringement or negligence;
- b) the impact the act has on the principle of prudent and sound management and on the market;
- c) the impact the act has on the bodies and persons referred to in Section 4 and also on their members and clients;
- d) the impact the act has on other members of the entire financial system;
- e) the risk caused by the infringement or negligence, the extent of damage, and the perpetrator's willingness to provide retribution;
- f) cooperation with the Authority on the part of the persons responsible;
- g) whether or not the person affected by the sanction has acted in good or bad faith, and the pecuniary advantage obtained by that person through the infringement or negligence;
- h) the suppression of the data, facts and information on which the sanction is based, or the intention to do so;
- i) the recurrence or frequency of the infringement.

(5) No sanction shall be imposed in connection with any negligence or breach of duty past two years from the time when the Authority has gained knowledge of the act, or past five years from the time it was committed.

(6) Within the time limits referred to in Subsection (5) a sanction may also be imposed even if the natural person affected is no longer in the employ of the bodies and persons referred to in Section 4, their mandate has been terminated or they are no longer engaged in any of the activities governed by the acts listed under Section 4.

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Section 14.

The NBH may extend an emergency loan - subject to the prohibition of monetary financing - to a credit institution whose operation jeopardizes the stability of the financial system in consequence of specific circumstances. The NBH may render such a loan subject to the actions of the State Financial Institutions Commission (hereinafter referred to as the 'Commission') or performance of actions by the credit institution as initiated by the Commission.

Section 16.

(1) In accordance with what is contained in Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104(b)(1) of the Treaty, the NBH may not provide overdraft credit or any other loan facilities to the State, to local self-governments, to other government institutions, to the institutions and bodies of the European Union, to the central governments of Member States, to regional, local and other administrative agencies of Member States, to other public bodies, or to an economic operator in which the above-specified bodies or agencies hold any controlling interest. Furthermore, the NBH may not purchase securities issued by such institutions directly from the issuer.

Section 43.

(1) In the course of performing its tasks, the NBH shall cooperate with the Commission.

Section 44.

(1) The NBH and the Commission shall exchange data and information which is necessary for the other organization to perform its tasks.

(2) The NBH and the Commission shall stipulate the method and system of exchanging data and information, which is necessary to perform their tasks, in an agreement.