BANKING REGULATION

Hungary

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Getting The Deal Through

Consulting editor
Debevoise & Plimpton LLP

Banking Regulation

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; supervision and enforcement; resolution; capital requirements; ownership restrictions and implications; changes in control; and recent trends.

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REGULATORY FRAMEWORK

Key policies

What are the principal governmental and regulatory policies that govern the banking sector?

The main elements of regulatory policies related to the Hungarian banking sector are:

- governmental control (including authorisation and supervision);
- financial and monetary stability;
- strict capital and risk-management requirements as well as organisational regulations;
- insurance of deposits; and
- regulation of information in the interest of the protection of bank secrecy, transparency and consumer protection.

Law stated - 08 February 2022

Regulated institutions

What are the defining characteristics of a bank to be caught by the banking laws and regulations? Is non-bank fintech regulated differently?

The general rules applicable to banks are set forth by Act CCXXXVII of 2013 on credit institutions and financial enterprises (the Banking Act). Banks operate in the form of business associations; therefore, the general rules applicable to the foundation and operation of legal persons established by Act V of 2013 on the Civil Code apply to them as well. However, the provisions explicitly applicable to banks are provided for in the Banking Act. Banks are credit institutions, the business of which is to carry out the activities of taking deposits and receiving other repayable funds from the public; credit and loan operations; and money transmission services. The only banks that shall be authorised to perform all of the activities enumerated in the Banking Act are those involved in:

- taking deposits and receiving other repayable funds from the public;
- credit and loan operations;
- financial leasing;
- money transmission services;
- issuance of electronic money;
- issuance of paper-based cash-substitute payment instruments (for example, traveller's checks and bills printed on paper) and the provision of the services related thereto, which are not recognised as money transmission services;
- providing surety facilities and guarantees, as well as other forms of bankers' obligations;
- commercial activities in foreign currency, foreign exchange – other than currency exchange services – bills and checks on own account or as commission agents;
- financial intermediation services;
- safe custody services and safety deposit box services;
- credit reference services; and
- purchasing receivables.

The Banking Act sets forth the minimum requirements for the initial capital of founding a bank, the documents and certifications necessary for the authorisation process and the provisions applicable to the operation of banks.

Act CXLV of 2017 on the amendment of certain acts relating to the harmonisation of law in the subject of insurance and payment services implemented the provisions of Directive (EU) 2015/2366 on payment services (PSD 2) (the PSD2 Directive). Hungarian National Bank (MNB) Decree No. 36/2017 (XII 14) on payment services activities is also related to the changes introduced by the PSD2 Directive. These laws – with respect to the material scope of the Banking Act – shall be applied generally to organisations engaged in the business of providing payment services under the Banking Act. These laws generally do not differentiate between banks and non-banks, and apply to the operation of every payment service provider (ie, fintech companies shall also be authorised by the MNB).

Law stated - 08 February 2022

Do the rules vary depending on the size or complexity of the banking institution?

Generally, the Banking Act does not differentiate between banks based on their size, initial capital or complexity. The rules applicable to the foundation, authorisation and operation of financial institutions depend on the type of the financial institution in question (eg, a bank or a financial enterprise) and not on the size of the given institution. However, certain special entities of the Hungarian banking system are regulated differently. For example, the provisions applicable to the operation of payment service providers are set forth by Act LXXXV of 2009 on the pursuit of the business of payment services.

Law stated - 08 February 2022

Primary and secondary legislation

Summarise the primary statutes and regulations that govern the banking industry.

The most important regulations regarding the banking sector are:

- Act XXXVII of 2014 on the further development of the system of institutions strengthening the security of the individual players of the financial intermediary system;
- the Banking Act;
- Act CXXXIX of 2013 on the National Bank of Hungary (the Central Bank Act);
- Act LXXXV of 2009 on the pursuit of the business of payment services;
- Act CIV of 2008 on strengthening the stability of financial systems;
- Act CLXII of 2009 on consumer credits;
- Act CXXII of 2011 on the Central Credit Information System; and
- Act CXXXV of 2013 on the integration of savings cooperatives and amendments to economic-related acts.

Furthermore, some aspects of other acts have significant effects on the banking sector, including:

- Act CXX of 2001 on capital markets;
- Act LIII of 2017 on the prevention and combatting of money laundering and terrorist financing;
- Act CCXXXV of 2013 on payment providers;
- Act XVI of 2014 on collective investment trusts and their managers, and on the amendment of financial regulations;
- Act V of 2013 on the Civil Code; and
- Act XLIX of 1991 on bankruptcy proceedings and liquidation proceedings.

Law stated - 08 February 2022

Regulatory authorities

Which regulatory authorities are primarily responsible for overseeing banks?

The financial markets are exclusively supervised by the MNB. The Hungarian Financial Supervisory Authority (HFSA) used to be almost exclusively responsible for financial markets supervision and had the necessary instruments for this responsibility. However, in 2013, the HFSA was integrated into the MNB. This means that the MNB assumed all functions, duties and responsibilities of the HFSA and the latter ceased to exist on 1 October 2013. Although the HFSA ceased to exist without a legal successor, continuity was preserved because, according to the Central Bank Act, the rights and obligations (including authority over certain state assets) were transferred to the MNB and the MNB took the HFSA's in ongoing procedures.

The reformed MNB is responsible for mitigating and managing risks that have the potential to arise in the financial sector at the system level (macroprudential policy), and for overseeing the safety and stability of individual financial institutions (microprudential policy). It has also assumed the functions of consumer protection, market supervision, capital supervision and insurance supervision while keeping its previous duties and responsibilities, such as the fundamental function of being responsible for monetary policy.

Law stated - 08 February 2022

Government deposit insurance

Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

The Hungarian system for insuring deposits consists of two elements.

Deposit insurance

For this purpose, the National Deposit Insurance Fund (NDIF) was established by Act CXII of 1996 on credit institutions and financial enterprises. This act was replaced by the Banking Act in 2014, but the regulation has basically remained the same.

Each credit institution must be a member of the NDIF (membership is a condition of foundation). According to the Banking Act, any credit institution shall, upon joining the NDIF, pay a one-time affiliation fee at the rate of 0.5 per cent of its subscribed capital to the NDIF within 30 days of receiving the authorisation.

In addition, NDIF members shall pay an ordinary and, in some cases, a risk-based variable annual fee. The amount of annual fee to be paid may not be higher than 0.3 per cent of:

- the amount up to the limit covered by the compensation scheme of the deposits insured by the NDIF and kept with the member institution on 31 December of the previous year;
- the amount of the total interest holdings indicated under accrued and deferred liabilities on deposits insured by the NDIF and kept with the member institution on 31 December of the previous year; and
- the deposits insured by the NDIF as provided for by statutory provisions on the annual accounting and bookkeeping obligations of credit institutions.

In the case of deposits being frozen, the NDIF undertakes to provide compensation to the depositors for the principal and interest on frozen deposits. The above undertaking may not be higher than the amount of principal and interest placed in the credit institution in question. Furthermore, only registered deposits will be insured by the NDIF. The capital and interest amount of the deposits will only be reimbursed by the NDIF up to €100,000 per person and per credit institution as compensation.

Receiving ordinary credit

The second element, laid down in the Central Bank Act, is the opportunity to receive extraordinary credit, which may be provided by the MNB for credit institutions and to the NDIF in the event of an emergency. For this purpose, 'emergency' means that the insolvency of the credit institution endangers the stability of the entire monetary system. The MNB has discretionary power to provide such extraordinary credit.

The Hungarian government aims to increase the direct and indirect state's stake in the Hungarian banking system. The exact percentage of its interest constantly varies as the state occasionally acquires and unloads new shares. The current state ownership in credit institutions is around 50 per cent, including the Hungarian Development Bank and the Hungarian Export-Import Bank, which are solely owned by the Hungarian state.

Law stated - 08 February 2022

Transactions between affiliates

Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

In accordance with the Banking Act, 'affiliate' refers to any company over which a parent company effectively exercises a dominant influence. All affiliates of affiliate companies will also be considered affiliates of the parent company.

From a regulatory perspective, a parent company or an affiliate will be considered a client; therefore, in cases of transactions between a parent company and an affiliate, the general prudential rules of the Banking Act will apply, including the rules for limitation of exposure.

Furthermore, some indirect limitations also apply if the parent company qualifies as a credit institution and its affiliate is also:

- a credit institution;
- a financial enterprise;
- an investment enterprise;
- owned by the parent company's holding in the institution; or
- if the credit institution's parent company is a financial holding company.

In such cases, the companies are subject to supervision on a consolidated basis, which means that they must jointly and severally meet the prudential and exposure rules of the Banking Act. This provision may influence the transactions between the companies concerned.

Members of groups that qualify as subject to supplementary supervision, such as financial conglomerates, must also

meet the prudential provisions both jointly and severally. Credit institutions subject to supervision on a consolidated basis and all other entities covered by supervision on a consolidated basis may enter into a group financial support agreement, under which a party to the agreement is to provide financial support to any other party to the agreement affected by the necessary measures. Exceptional measures are to be taken by the MNB upon the occurrence of events invoking such measures.

Pursuant to the Banking Act, financial institutions, in addition to financial services as determined by the Banking Act, are exclusively entitled to perform the following activities:

- activities auxiliary to financial services, such as:
  - currency exchange activities;
  - operation of payment systems;
  - money processing activities;
  - financial brokering on the interbank market; and
  - activities for the issue of negotiable credit tokens;
- credit consultancy services;
- insurance mediation services;
- securities lending or borrowing, acting as nominee for shareholders, providing investment services pursuant to Act CXXXVIII of 2007, auxiliary services, intermediary activities and commodity exchange services;
- transactions in gold;
- keeping registers of shareholders;
- trust service;
- activities in support of the lending operations of the Student Loan Centre;
- recruiting new members for voluntary mutual insurance funds;
- activities relating to the management of collateral held any other form of security with a view to reducing or avoiding losses from financial services;
- activities relating to management and enforcement claims as an agent;
- sale and purchase of information related to financial instruments;
- conveyance of subsidies from the European Union and the state;
- activities in connection with the acquisition of right of road usage pursuant to Act LXVII of 2013 on the fees payable for usage of motorways, highways and main roads in proportion to the distance that was travelled;
- services in connection with managing deposits;
- distribution of electronic money;
- in the case of credit institutions, the provision of services to companies closely associated with them; and
- a service for the provision of an electronic procedure or device for the customer facilitating the use of a service that can be performed in a businesslike manner.

Financial activities not listed above are prohibited activities with regard to financial institutions.

In addition, the provisions of the Banking Act limit certain market activities of financial institutions in the area of risk management in accordance with the relevant EU legislation. Such limitations include limitation of exposure related to the acquisition of ownership and restrictions on investment activities, including real estate investment restrictions.

Law stated - 08 February 2022

Regulatory challenges

What are the principal regulatory challenges facing the banking industry?

Hungary is facing similar regulatory challenges to those faced by other EU countries. The main challenges arise from the implementations of EU legal acts into national legislation. The implementation of Directive (EU) 2021/2160 on credit servicers and credit purchasers (the NPL Directive) will be a significant challenge to national legislation. The NPL Directive should enable credit institutions to better deal with loans that become non-performing by improving conditions for the sale of the credit to third parties. EU member states must adopt measures to implement the NPL Directive by 29 December 2023.

The implementation of the Basel IV framework is a remarkable challenge for the European banking industry because methodologies for the determination of capital requirements are to be revised.

Further regulatory challenges arise from the PSD2 Directive, which establishes a clear and comprehensive set of rules that will apply to existing and new providers of innovative payment services. The PSD2 Directive also aims to open up the EU market to new services and providers.

Digital transformation is becoming increasingly strategic for the banking sector and new regulatory challenges are arising from technological changes and development (ie, with regard to online banking, conducting contracts online and digital financial services). A group of these challenges are connected to fraud management, such as the digital identification of customers. The MNB's 2021 fintech strategy, titled 'Financial Innovation and Stability', raises awareness that high-level digitalisation supports the maintenance of the stability of the financial system and also its sustainable contribution to economic growth. However, high-level digitisation can also cause serious risks to stability and consumer protection if unregulated and unsupervised financial services become too powerful. The aim of this strategy is to provide insight into global and domestic financial digitalisation processes.

Law stated - 08 February 2022

Consumer protection

Are banks subject to consumer protection rules?

The Central Bank Act aims to protect the interests of parties that use the services rendered by financial organisations and to strengthen public confidence in the financial system. The main pillars of the consumer protection policy overseen and enforced by the MNB are efficient supervision, efficient enforcement of sanctions and the protection of defenceless groups in society.

The MNB, upon request or of its own motion, monitors compliance with consumer protection provisions of Hungarian law and opens proceedings. Proceedings for the protection of consumers' interests may not be opened more than five years after the infringement. If the infringement is constant, the time limit shall commence at the time the infringement is terminated. Where the unlawful conduct is realised through failure to terminate a particular situation or circumstance, the above-specified period shall not commence provided that such a situation or circumstance continues to prevail. The administrative time limit for these proceedings is six months. During this period, the MNB has the power to carry out trial transactions and to conduct direct inquiries or general inquiries. If the MNB finds any infringement, it may impose sanctions such as:

- issuing a warning to take the measures necessary for compliance with the relevant legal provisions and to eliminate the discrepancies detected;
- ordering the cessation of the infringement;
- prohibiting any further infringement;
- ordering the infringer to terminate, within the prescribed time limit, the deficiencies and disparities exposed, and

notify the MNB concerning the measures carried out to eliminate such deficiencies and disparities;
- baning or imposing conditions regarding the pursuit of the activity or the supply of services involved in the infringement until the infringement is eliminated; and
- imposing a consumer protection fine.

Additional sanctions may be laid down in the legislation that contains provisions for the protection of consumers for any violation of the provisions prescribed therein.

The most common practices that have attracted the attention of the MNB are practices such as unilateral increment of fees and misinforming consumers on practices related to the adoption of fintech. With regard to the latter, generally, consumers are more and more open to digital, innovative and easy-to-use financial services. However, such services open a new avenue for the possibility of fraud. With respect to the fact that these services mainly operate on digital platforms and they process a lot of data concerning their users, the associated cybersecurity risks increase significantly. The MNB supervises Hungarian-based and cross-border fintech service providers. In the case of the latter, the MNB cooperates closely with the competent foreign supervisory authorities. The MNB keeps raising awareness of the possibilities of infringements and fraud when using these new types of financial services. With regard to the operation of foreign-based service providers, the MNB keeps highlighting that the information related to the services provided by these entities shall be available in Hungarian to ensure that domestic users can understand the terms, conditions and other notifications properly.

Law stated - 08 February 2022

Future changes

In what ways do you anticipate the legal and regulatory policy changing over the next few years?

Climate change, sustainable finance, and green economy and its criteria will have a significant impact on future legal and regulatory policy. Sustainable finance refers to the process of taking environmental, social and governance (ESG) criteria into account when making investment or financial decisions. Sustainable finance and ESG criteria have a key role to play in future EU policy, as public and regulatory expectations are rapidly changing in this area. It is understandable that governments, regulators, policymakers and economic operators are becoming more vocal about the importance of the ESG criteria as, in the near future, we foresee that it will become inevitable for financial institutions to embed ESG criteria into their long-term strategies.

The general legal framework of the regulation regarding the sustainable finance and ESG criteria are established by EU directives and regulations, such as:

- Directive (EU) 2014/9 on the disclosure of non-financial and diversity information;
- Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment; and
- Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR).

The European Commission announced a renewed sustainable finance strategy on 6 July 2021, which aims to support the financing of the transition to a sustainable economy. The European Banking Authority (EBA) has also launched its Sustainable Finance Action Plan with a mandate from the European Commission to sequentially integrate the provisions of the plan in prudential regulation. Among other things, the EBA's Sustainable Finance Action Plan included the dissemination of ESG risks according to Pillar 3 of Basel (2022), and a report on the classification and prudential treatment of assets with a sustainability perspective looking ahead to 2025.

The EBA published its own ESG-related reporting requirements (the EBA Requirements) on 24 January 2022. The EBA

Requirements define prudential and conduct reporting requirements, with which certain EU-based financial institutions will be required to comply under Regulation (EU) No. 575/2013. The EBA Requirements refer to the physical impact of climate change and the transition risks (eg, the challenges inherent in a move towards an environmentally sustainable economy) as direct effects. The EBA Requirements are intended to operate alongside other ESG-related reporting initiatives that apply to both corporates and financial institutions.

Many national banks are already moving towards greener and more sustainable financial solutions. The MNB ensures that the domestic system of financial intermediation should support environmental sustainability through its financial products and services. The MNB also provides regulations on green financial services, green bonds and green credits, and has published a recommendation after measuring the performance of the financial sector in its Green Financial Report. Cybersecurity, digitalisation, fintech and other new technologies will likely indicate changes in legal and regulatory policies over the next few years to provide a supportive, consumer-friendly and stable environment to digital financial services.

Law stated - 08 February 2022

SUPERVISION

Extent of oversight

How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

The basis of supervisory control is regular disclosure of data and the supervisory procedure performed by the Hungarian National Bank (MNB). The banks and Hungarian branch offices of credit institutions established in other EU member states have to provide the MNB with a report at least once per year and must report certain events (eg, an increase or decrease of capital, and suspension, limitation and cancellation of certain financial services and activities auxiliary to financial services). Furthermore, the MNB is entitled to compel the banks to supply data on certain issues. In the event that they find themselves in danger of breaching the rules on prudence, banks are obliged to notify the MNB.

During the supervisory review, the MNB reviews the strategies, policies, processes and methods relating to the capital adequacy of credit institutions. The MNB then evaluates their exposure in accordance with the Hungarian regulation and Regulation (EU) No. 575/2013. The frequency and extent of the review and evaluation are determined by the MNB, based on the size and the extent of the activity of the bank in question. It must, however, be updated on at least an annual basis.

The MNB may conduct comprehensive inspections and direct inquiries into financial organisations in connection with a specific problem or, if the same problem arises at several financial institutions, a general inquiry. It may also conduct post-inspections or may request information concerning compliance with its resolutions. Comprehensive inspections and direct inquiries may take no longer than nine months. In the event of general inquiries, the deadline is 12 months.

The MNB conducts a market surveillance procedure if suspicion of unlawfulness arises, which can be caused by, inter alia, operations or services being conducted by a bank without proper authorisation or notification. The MNB may also conduct enquiries, ex officio or upon an application, into breaches of consumer protection laws.

Credit institutions (financial holding companies) that are supervised on a consolidated basis must comply with the provisions concerning prudent operation, risk exposure and capital adequacy not only separately but also collectively.

Law stated - 08 February 2022

Enforcement

How do the regulatory authorities enforce banking laws and regulations?

Laws are enforced during an authorisation procedure by the rejection of authorisation and the withdrawal of authorisation. On the other hand, the MNB may choose between measures determined in Act CCXXXVII of 2013 on credit institutions and financial enterprises (the Banking Act) according to the seriousness of the violation.

Concerning regulatory instruments, other supervisory tools also exist. These supervisory tools – such as recommendations, supervisory guidance and samples for by-laws – can help, inform and guide the banking sector in connection with the supervisory interpretation of the legislation and the expectations of the authority.

In the event of a bank violating the laws concerning it, the MNB will consider taking measures (eg, calling upon the bank and the legal person other than a financial institution engaged in providing financial services or financial auxiliary services, or both, to take the necessary steps to comply with the regulations of the Banking Act and regulations relating to prudential requirements, requiring the extraordinary supply of data, obliging the financial institution to draw up and execute an action plan, or adopting a resolution to declare the fact of infringement). In the event of considerable violations of the provisions and where the Banking Act orders it to do so, the MNB will take the necessary measures prescribed in the Banking Act. In the event of any serious infringement and where the Banking Act orders it to do so, the MNB will take the necessary measures or extraordinary measures (eg, delegate a supervisory commissioner to the credit institution, or limit or prohibit certain transactions and payments), as applicable.

The MNB may (simultaneously with a necessary measure or an extraordinary measure, or by itself) impose fines and penalties. Penalties may be imposed both on banks and executive officers that fail to fulfil the provisions on operation, breach their own internal regulations, breach an obligation set out by the MNB in its resolution or comply late with those provisions. The basic penalty is between 100,000 and 2 billion forints. The penalty varies according to the nature and severity of the violation. It could amount to 200 per cent of the supervisory fee (basic fee and variable fee) if this exceeds 2 billion forints. The penalties imposed on an executive officer may be between 100,000 and 500 million forints that cannot be paid off by the bank itself.

An inquiry by the MNB may be initiated by a foreign financial supervisory authority.

If the Hungarian branch of a financial institution established in another EU member state or the cross-border financial services and activities in the territory of Hungary of a financial institution established in another member state violate the provisions of Hungarian law, the MNB first calls upon the branch or bank to rectify the situation. If it refuses to comply, the MNB will notify the supervisory authority of the other EU member state and request that the supervisory authority take appropriate action. If the supervisory authority fails to act, the MNB may take the issue to the European Banking Authority.

If the MNB considers that the continued anomalous situation presents a serious threat to the stability of the financial system or the interests of customers, it is entitled to act directly. In that event, the MNB informs the supervisory authority of the concerned member state about the necessary measures applied, as well as any extraordinary measures and the reasons for them.

Law stated - 08 February 2022

What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

The long-term primary supervisory issues that face the MNB concerning the banking sector are assuring (if they need enforcing) the prudent operation of the sector, in line with EU rules, ensuring:

- the stability and uninterrupted operation of the financial markets;
- the provision of a framework for safe, competitive and sustainable growth;
- the identification of poor market practices in the mortgage-lending market and risks threatening the liquidity of certain financial institutions;
- the handling of known risks, including conduct risks;
- the provision of substantiation for reorganisation plans;
- the proactive and consistent protection of consumers' rights and interests;
- the provision of a forum for resolving disputes;
- the education of consumers;
- aid to EU-level supervision;
- internal and external controls to detect fraud;
- the quality of the data of data services; and
- the detection of the risk of money laundering and terrorist financing.

Digitalisation and new technologies are increasing in the financial sector. With respect to these new tendencies, the MNB wishes to uphold a financial system that offers competitive and secure financial instruments to consumers. The four strategic goals for the future are:

- supporting the headway of competitive financial services;
- increasing the efficiency and stability of the financial system;
- invigorating the Hungarian fintech ecosystem; and
- strengthening general financial culture and supporting the education of digital literacy.

In its 2021 fintech strategy, titled 'Financial Innovation and Stability', the MNB identifies several challenges ahead of the general use of innovative financial services. For example, a considerable number of natural persons still prefer to use cash instead of bank cards and also avoid online banking.

Law stated - 08 February 2022

RESOLUTION

Government takeovers

In what circumstances may banks be taken over by the government or regulatory authorities? How frequent is this in practice? How are the interests of the various stakeholders treated?

To maintain financial stability, ensure the continuous availability of the critical functions provided by the financial sector, efficiently manage any institutional crises, minimise the use of taxpayer funds for crisis management purposes and establish a framework for the administrative restructuring of distressed financial institutions, the Hungarian parliament has adopted Act XXXVII of 2014 on the further development of the system of institutions strengthening the security of the individual players of the financial intermediary system (the Resolution Act). According to the Resolution Act, the Hungarian National Bank (MNB) shall, in the case of a systemic crisis, notify the minister in charge of monetary regulation and the capital and insurance market if the objective of the resolution actions applied by the MNB has not been accomplished.

Based on the notification in his or her decision, the minister in charge of the monetary regulation, capital and insurance market (currently the Minister of Finance) may resolve that the state financial stabilisation instrument is to be applied. A state financial stabilisation instrument may take the form of a capital increase or take the form of temporary

nationalisation of the shareholdings. Upon temporary nationalisation in the context of the state financial stabilisation instrument, the shareholdings in the institution, financial holding company, mixed financial holding company or mixed activity holding company under resolution that has its registered office in Hungary shall be transferred to the state or a solely state-owned enterprise. In the course of recapitalisation by the state and temporary nationalisation, it shall be ensured that the institution concerned or the financial undertaking keeps operating on a commercial basis and that on the principle of private investment in the market the role of the state as the owner of the equity elements is taken over by market players through a public auction. A bank with liquidity problems has never been fully acquired permanently by the Hungarian state.

According to Act CCXXXVII of 2013 on credit institutions and financial enterprises (the Banking Act), the MNB may appoint a supervisory commissioner if the dissolution procedure opens after the date of the resolution at the same time as it passes the resolution of dissolution (if this has not happened earlier). The commissioner's assignment shall end at the time when the receiver takes over. He or she shall have powers to stop all payments until the time of the opening of the dissolution procedure.

When taking resolution actions and exercising resolution powers, the shareholders of the institution under resolution bear losses first. No shareholder shall incur greater losses directly related to the application of the resolution actions than would have been incurred if the institution had been liquidated. After the execution of the resolution action, it shall be assessed by the independent asset appraiser whether the shareholders and the creditors would have been treated better by having the institution under resolution liquidated. That valuation shall be distinct from the independent valuation specified in the Resolution Act. If the assessment carried out determines that any shareholder or creditor has incurred greater losses than it would have incurred in the case of liquidation, it shall be entitled to indemnification.

Law stated - 08 February 2022

Bank failure

What is the role of the bank's management and directors in the case of a bank failure? Must banks have a resolution plan or similar document?

If a bank failure is caused by reasons set out in the Banking Act, the MNB may pass a resolution in which it appoints a supervisory commissioner. In certain cases, the MNB does not have the right to decide and must appoint a commissioner. The board of directors and members of the supervisory board have the right to seek remedy against such a resolution of the MNB.

During the period of the supervisory commissioner's appointment, members of the board of directors cannot perform their duties or exercise their signatory rights as described in the statutory provisions governing business associations and cooperatives. For the period of appointment, the supervisory commissioner exercises the rights of board members described by law and the charter documents.

According to the Banking Act, each credit institution that is not covered by supervision on a consolidated basis or is specifically required to do so upon the review of the group recovery plan is required to have in place a recovery plan proportionate to the nature, scale and complexity of the risks inherent in the business model, and the credit institution's financial services and financial auxiliary services. The credit institution shall submit the recovery plan to the MNB after it is approved by its management body in its managerial function.

The minimum content of the recovery plan is prescribed by the Banking Act. The recovery plan shall contain the following, among others:

- a summary of the key components of the plan, any significant changes relative to the previous plan and the overall recovery capacity of the credit institution;
- a communication and information plan for addressing adverse reactions in the market;

- definitions of the credit institution's critical functions;
- arrangements designed to ensure a service level of the credit institution's critical functions with regard to liquidity and solvency;
- an estimated time frame for each and every major action set out in the plan;
- descriptions of circumstances that may constitute hindrances for the implementation of the plan, including the impact they may have on counterparties, contractual partners and, if the credit institution is subject to supervision on a consolidated basis, on other entities of the group; and
- procedures for determining the value and the marketability of the credit institution's core business lines, processes and assets, including the measures required for their marketing and an estimated time frame for the implementation thereof.

The recovery plan shall include a framework of indicators that identifies the points at which the credit institution may take appropriate actions referred to in the plan. The indicators may be of a qualitative or quantitative nature relating to the credit institution's financial position, with the proviso that the credit institution is to ensure that such indicators shall be capable of being monitored easily.

Law stated - 08 February 2022

Are managers or directors personally liable in the case of a bank failure?

The liability of the members of the board and the supervisory board is regulated by different acts. Act V of 2013 on the Civil Code provides for the provisions applicable to the liability of members of the board and members of the supervisory board towards the company. The liability of both executive officers and members of the supervisory board are connected to contractual liability (ie, the rules of liability for the damages caused by the breach of contract shall be applied to the damages caused by executive officers and members of the supervisory board to the company accordingly). Executive officers and supervisory board members shall act with due care and diligence, bearing in mind the best interests of the company. The board and supervisory board members are both personally and financially responsible towards the company for any damages that they have caused by breaching the rules, the charter document or resolutions of the general meeting, or by breaching their managerial duties.

Concerning liability, specific regulations are laid down in the Banking Act.

The executive officers, members of the board and the supervisory board of the financial institution are liable to ensure that the financial institution carries out the licensed activities in accordance with the provisions set out by the Banking Act and other laws.

The executive officers and employees of the financial institution will act at all times with due diligence and expertise consistent with the professional requirements applicable for their respective positions. They will also act in the interests of the financial institution and its customers, and in compliance with the relevant regulations.

The board of directors of the credit institution shall forthwith notify the MNB in writing if certain circumstances specified by the Banking Act arise (eg, in the event where any danger of financial failure (illiquidity) is imminent).

The case is different from the foregoing if a manager or a director is an employee of the credit institution. In that case, the provisions of Act I of 2012 on the Labour Code shall be applied to his or her liability as well.

The MNB continuously monitors the operation of credit institutions, thus it notices when a credit institution fails to comply with the requirement of prudent operation. In those cases, the MNB aims to enforce the prudent operation. In this regard, the MNB can impose penalties, including fines, on executive officers who fail to fulfil provisions, or who breach the law or the internal regulations of the bank.

The executive officers of financial institutions can also have criminal liability. If any of their actions are in breach of the Criminal Code – in the case of executive officers in breach of sections listed in the chapter of economic and business-related offences – the executive officers shall also be held liable for such actions.

Law stated - 08 February 2022

Planning exercises

Describe any resolution planning or similar exercises that banks are required to conduct.

Credit institutions' management bodies, in their managerial functions, shall adopt an adequate strategy and communicate risk tolerance to all relevant business lines. The strategies and policies shall be proportionate to the complexity, risk profile and scope of operation of the credit institution and risk tolerance set by the management body in its managerial function. The strategies and policies shall also reflect the credit institution's systemic importance in each European Economic Area member state in which it carries out financial service activities and financial auxiliary service activities. Credit institutions must have written policies and procedures for the identification, measurement, management and monitoring of liquidity risk as well as costs and benefits over an appropriate period of time. According to the Banking Act, credit institutions are required to distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They also take into account:

- the legal entity in which assets reside;
- the country where assets are legally recorded, either in a register or in an account, and their eligibility to be used as extra liquidity buffers;
- how assets can be mobilised in a timely manner; and
- existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets among entities, both within EU member states and in third countries.

Law stated - 08 February 2022

CAPITAL REQUIREMENTS

Capital adequacy

Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

Banks may be founded with a minimum subscribed capital of 4 billion forints and a credit institution set up as a cooperative society may be established with a minimum initial capital of 300 million forints. A branch office of a third-country credit institution may be established with a minimum of 4 billion forints in endowment capital.

The requirement of prudent operation as it relates to banks means that they have to manage the funds placed in their custody as well as their own resources to maintain liquidity and solvency at all times. Credit institutions shall have sufficient own funds at all times to cover the risks of their activities. The own funds of an institution may not fall below the amount of initial capital required at the time of its authorisation, covering at least the minimum capital requirement defined in article 92 of Regulation (EU) No. 575/2013, which is the extra capital requirement prescribed in the framework of a supervisory review. However, this may not be less than the minimum amount of subscribed capital prescribed as a precondition for authorisation.

The provisions concerning the equity capital, solvency margin, reserves, limitations of exposure (ie, limitations and restrictions on high exposure, investments, acquisitions, qualification of assets and risk reserves), collections of

resources, and the approximation of maturity and liquidity come within the requirement of prudent operation.

Banks shall allocate funds from their net profit into a reserve account and must place 10 per cent of their annual after-tax profits into a general reserve to offset losses incurred during their activities. Upon request, a credit institution may be exempted by the Hungarian National Bank (MNB) from the obligation to maintain general reserves. A credit institution may pay dividends and shares from the profit only if it has set aside general reserves in the given calendar year or if the MNB has granted exemption from the obligation to maintain general reserves. Credit institutions are allowed to use general reserves only to cover operating losses that arise from their activities.

As Regulation (EU) No. 575/2013 and Directive 2013/36/EU influenced Act CCXXXVII of 2013 on credit institutions and financial enterprises (the Banking Act), credit institutions also have the obligation to maintain a capital conservation buffer and an institution-specific countercyclical capital buffer. Special rules apply to the capital buffers of global and other systemically important institutions.

Law stated - 08 February 2022

How are the capital adequacy guidelines enforced?

Banks have certain notification and data disclosure requirements to the MNB; in particular, that the banks comply with the capital requirements. The board of directors of a credit institution must immediately notify the MNB in writing:

- in the event where any danger of financial failure (illiquidity) is imminent;
- if any emergency has developed in the credit institution's everyday operations, such as insolvency;
- if its own funds have diminished by 25 per cent or more;
- if the credit institution has suspended its payments; or
- if it has stopped its operations or financial service activities.

Furthermore, the board of directors of a credit institution must notify the MNB within two business days in writing if the subscribed capital is increased or reduced, or their certain financial activities have been suspended, limited or terminated. Credit institutions that operate as a branch office have additional reporting obligations.

Through the supervisory review, the MNB reviews the strategies, policies, processes and methods relating to the capital adequacy of credit institutions and evaluates their exposure.

Necessary measures and extraordinary measures will also be applied (besides fines) in the case of infringement of capital adequacy requirements.

Law stated - 08 February 2022

Undercapitalisation

What happens in the event that a bank becomes undercapitalised?

The amount of a financial institution's equity capital may not be less than the minimum amount of initial capital prescribed in the Banking Act as a precondition for authorisation. If the amount of a bank's equity capital falls below the minimum amount of subscribed capital prescribed by the Banking Act, the MNB may give the credit institution a maximum of 18 months to bring its equity capital to compliance level. If the amount of equity capital of a bank falls below the amount of the subscribed capital, the MNB may compel the financial institution's executive board to convene a general meeting. In this case, the general meeting will decide whether the financial institution should reduce the subscribed capital or the owners who have a qualifying holding should provide for the financial institution's equity

capital to be restored to at least the level of the mandatory subscribed capital.

Law stated - 08 February 2022

Insolvency

What are the legal and regulatory processes in the event that a bank becomes insolvent?

The MNB applies extraordinary measures in lieu of bankruptcy proceedings; for example, it may:

- prescribe the sale of certain assets of the credit institution;
- set a deadline for the financial institution to settle its capital structure;
- prohibit certain transactions and payments;
- set the maximum of the interest applicable by the credit institution;
- compel the board of directors to convene the general meeting;
- delegate a supervisory commissioner;
- revoke its consent to the appointment of liable executive officers; and
- call upon the owner of the financial institution to take the necessary measures.

If the bank becomes insolvent, the board of directors must immediately notify the MNB in writing. In the event of insolvency, liquidation proceedings will ensue. The liquidation proceedings can be initiated either by the bank in question itself or the MNB at the Metropolitan Court. The Budapest Metropolitan Court has exclusive jurisdiction to conduct proceedings in connection with the liquidation of financial institutions.

The MNB initiates liquidation proceedings against the bank or the branch office of a third-country financial institution in the event that:

- the MNB withdraws the credit institution's authorisation on the basis of its inability to be relied on to fulfil its obligations;
- the credit institution fails to pay any of its undisputed debts within five days of the date on which they are due; or
- the credit institution no longer possesses sufficient funds (assets) to satisfy the known claims of creditors.

The MNB may also initiate liquidation proceedings if the conditions for resolution are met, but in the opinion of the MNB, the resolution of the credit institution is not justified by the public interest.

Furthermore, liquidation proceedings will commence if the person in charge of the dissolution procedure of a credit institution informs the MNB that the assets of the credit institution will not cover the claims of the creditors and the owners or members do not pay the outstanding amount, or, in the case of a branch office, if insolvency proceedings have been initiated against the foreign financial institution that is operating the branch office in Hungary. The Hungarian branch office of a credit institution established in another EU member state may not be liquidated under Hungarian law. The court shall order liquidation without having to establish the insolvency of a financial institution incorporated as a limited company or set up as a cooperative society, or when a foreign financial institution operates a branch.

The court shall adopt a decision concerning a request for the opening of liquidation proceedings within eight days of the date of submission thereof. The decision ordering the liquidation shall be enforceable notwithstanding any appeal.

During the liquidation of a financial institution, creditors shall present their claims within 60 days of the publication of the court ruling ordering liquidation.

The court appoints the liquidator in the order adopted on the liquidation. Only the non-profit business association

specifically established for liquidating organisations covered by Act CXXXIX of 2013 on the National Bank of Hungary shall be appointed as the liquidator or receiver of a financial institution.

The MNB may, from the submission of the request for liquidation, order the prohibition of all payments until the starting date of the procedure (the date of the order's promulgation in the Official Gazette). The MNB's permission is also required for the settlement's approval during the settlement process if the further operation of the bank constitutes a condition of the settlement. If no settlement has been reached or the court refuses to confirm the settlement, the court issues an order concerning, inter alia, the satisfaction of the creditors, the conclusion of the liquidation, and the dissolution of the debtor and any subsidiary of it.

Special rules apply to credit institutions that operate branch offices in other European Economic Area (EEA) member states or provide cross-border services. With respect to dissolution or liquidation proceedings and the practical consequences thereof, the MNB shall – without any delay – inform the competent supervisory authorities of the EEA member states where the credit institution undergoing dissolution or liquidation operates any branches or provides cross-border services. The liquidation order applies to all EEA member states.

The provisions of Act XLIX of 1991 on bankruptcy proceedings and liquidation proceedings shall be applied to the issues not covered by the Banking Act.

Law stated - 08 February 2022

Recent and future changes

Have capital adequacy guidelines changed, or are they expected to change in the near future?

The Banking Act has been amended to conform with Regulation (EU) No. 575/2013 and Directive (EU) 2013/36. The first amendment is the Capital Requirements Regulation (CRR) and the second is the Capital Requirements Directive (CRD). These legal acts comprise the new Capital Requirements Directives, broadly referred to as CRD V.

The CRD is the legal framework for the supervision of credit institutions, investment firms and their parent companies in every EU member state and the EEA. The CRR has been in force since 27 June 2013, while the supervised entities within its scope are subject to it as of 1 January 2014. The CRR is directly applicable to anyone in the European Union and is not transposed into national law, although the Banking Act makes references to it and complies with its provisions. Much of the CRR is derived from the Basel III standards issued by the Basel Committee on Banking. It includes most of the technical provisions that govern the prudential supervision of institutions. The future implementation of the Basel IV framework is a remarkable challenge for the European banking industry because methodologies for the determination of capital requirements are to be revised.

Law stated - 08 February 2022

OWNERSHIP RESTRICTIONS AND IMPLICATIONS

Controlling interest

Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank (or non-bank). What constitutes 'control' for this purpose?

According to Act CCXXXVII of 2013 on credit institutions and financial enterprises (the Banking Act), in the Hungarian regulation, 'qualifying holding' has the same meaning as laid down by Regulation (EU) No. 575/2013. It means a direct or indirect holding in an undertaking that represents 10 per cent or more of the capital or of the voting rights, or that makes it possible to exercise a significant influence over the management of that undertaking.

In respect of the acquisition of a qualifying holding, the Banking Act does not discriminate between persons or types of

entities. Generally speaking, anyone who satisfies the assessment criteria can acquire a qualifying holding in a bank. The acquirer must obtain the permission of the Hungarian National Bank (MNB).

According to the Banking Act, any person who wishes to acquire a qualifying holding in a credit institution must be independent of any influences that may endanger the institution's sound, diligent and reliable (prudent) operation, must have goodwill and the capacity to provide reliable and diligent guidance and control of the credit institution, and also its ownership structure as well as business connections must be transparent so as to allow the competent authority to exercise effective supervision over the credit institution. The person who wishes to acquire a qualifying holding in a credit institution shall attach certain documents and statements listed in the Banking Act to its application for authorisation (eg, the evidence concerning the legitimate source of the remuneration paid for the qualifying holding).

Law stated - 08 February 2022

Foreign ownership

Are there any restrictions on foreign ownership of banks (or non-banks)?

Generally, there are no restrictions on foreign ownership of banks. However, Act LVII of 2018 on the control of foreign investments that violate Hungary's security interests (the Foreign Investments Act) sets forth some restrictions, according to which certain investments shall be notified to the appointed minister. The general legal framework of the regulation regarding foreign ownership is established by Regulation (EU) 2019/452 of the European Parliament. According to these restrictions, nationals, legal persons or other entities outside the European Union, the EEA or Switzerland shall announce their financial services and operations of payment systems provided in Hungary. As regards legal persons registered in Hungary, the European Union, the EEA or Switzerland, specific provisions apply to the following:

- legal persons that own more than 25 per cent – in the case of a public limited company, more than 10 per cent – of the ownership rights;
- legal persons that seek to obtain the right to use or operate the infrastructure, equipment and devices indispensable for the pursuit of the restricted activities; and
- legal persons that have a dominant influence in a company incorporated in Hungary that provides services specified in the Foreign Investments Act (eg, financial services or ancillary financial services).

If the shareholder who has – according to Act V of 2013 on the Civil Code – majority control of the legal person is a citizen of a jurisdiction or a legal person registered in a jurisdiction other than the European Union, the EEA or Switzerland, then there must also be an announcement of its financial services and operations of payment systems provided in Hungary. The foreign investor may acquire the specified ownership rights or dominant influence after the announcement of this to the appointed minister and the receipt of the acknowledgement of the acquisition of ownership.

Law stated - 08 February 2022

Implications and responsibilities

What are the legal and regulatory implications for entities that control banks?

The permission of the MNB shall be obtained by the person who wishes to acquire a qualifying holding in a bank. The acquirer shall meet certain criteria established by the Banking Act, and shall attach a number of documents and evidence to its application submitted to the MNB.

Any person with a qualifying holding in a financial institution shall satisfy the following requirements:

- be independent of any influences that may endanger the financial institution's sound, diligent and reliable operation;
- have a good business reputation;
- have the capacity to provide reliable and diligent guidance and control of the financial institution; and
- provide transparency in business connections and ownership structure so as to allow the competent authority to exercise effective supervision over the financial institution.

Once the permission is obtained in accordance with the Banking Act, there are no further special implications for entities that have acquired a qualifying holding. However, the requirements specified in the Banking Act as conditions for obtaining the MNB's permission shall also be fulfilled during the course of the credit institution's operation.

Law stated - 08 February 2022

What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

The essential requirements against persons and entities with a qualifying holding are diligent and reliable operation, goodwill, transparency, and guidance and control of the financial institution.

For this purpose, the main duty of acquirers is to provide the credit institution's capital. With that capital, the credit institution, in compliance with the provisions on prudent operation, shall manage the funds placed in its custody as well as its own resources so as to maintain liquidity and solvency at all times. The amount of the credit institution's own funds may not be less than the minimum amount of initial capital prescribed by the Banking Act. The owners will, however, not be directly compelled to provide further capital contributions; the prudent operation is simply not the owners' responsibility. Therefore, if the amount of a credit institution's own funds falls below the minimum level of the initial capital, the MNB will give the credit institution (in essence, the owners) a maximum of 18 months to bring its own funds into compliance. The MNB may otherwise compel the financial institution's board of directors to convene a general meeting. In this case, the general meeting will decide whether the financial institution should reduce the subscribed capital or if the owners who have a qualifying holding should provide for the financial institution's own funds to be restored to at least the amount of prescribed initial capital.

Pursuant to the Banking Act, the MNB may also take certain measures and exceptional measures if the owner of a financial institution:

- violates the Banking Act itself;
- violates the legal provisions on effective, reliable and independent ownership and prudent operation; or
- obviously conducts its activities without due care.

For example, the MNB must consider the need for such measures if the credit institution's own funds fail to reach the capital requirements prescribed by the Banking Act or the owners violate any of the regulations on:

- exposures;
- determination, analysis, evaluation and definition of exposures;
- the management of exposures; or
- the management and reduction of risks.

There are also certain circumstances when the MNB must take necessary measures or exceptional measures against the credit institutions or the owners. In such circumstances, the MNB may, inter alia:

- stipulate an extraordinary supply of data;
- require the credit institution to take measures for 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;
- order the credit institution to comply with provisions relating to publication requirements above and beyond those publication requirements provided for by law;
- order the credit institution to comply with provisions relating to publication requirements above and beyond those publication requirements provided for by law; or
- prohibit, limit or make subject to conditions payment of dividends, raising of loans by the owners of financial institutions, or rendering services to them by credit institutions that involve any exposure.

When applying exceptional measures, the MNB may limit or prohibit the credit institution from concluding transactions between the owners and the credit institution. The MNB may also simultaneously call upon the owner of the financial institution that has a qualifying shareholding to take any necessary measures.

Law stated - 08 February 2022

What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

For insolvency, the regulations do not contain special implications for entities or individuals with a qualifying holding; therefore, the general regulations for the owners will apply.

In the event of insolvency, the MNB may apply certain measures and exceptional measures prescribed by the Banking Act, such as compelling the financial institution's board of directors to convene a general meeting and calling on the owners of the financial institution with a share of 5 per cent or more to take the necessary measures.

Following the foregoing call upon the owners, the credit institution's board of directors must take immediate action to ensure that deposits and other owners' receivables due from the credit institution are blocked, that lending to companies in the sphere of interests of the owners is suspended and that no financial services involving exposure of the owners are rendered. If these measures have been implemented, the owners may not claim set-offs from the credit institution.

The board of directors of the credit institution must keep these restrictions in effect until the owners resolve the reason that the measures were imposed or the credit institution's liquidation is ordered by the court.

If the financial institution fails to comply with the supervisory measures, the MNB may initiate at the court of registry the convening of the financial institution's general meeting.

If the measures taken by the MNB were insufficient to prevent insolvency, the MNB must initiate the liquidation of the credit institution pursuant to liquidation rules governed by the Act XLIX of 1991 on bankruptcy proceedings and liquidation proceedings.

Law stated - 08 February 2022

CHANGES IN CONTROL

Required approvals

Describe the regulatory approvals needed to acquire control of a bank (or non-bank). How is 'control' defined for this purpose?

Pursuant to Act CCXXXVII of 2013 on credit institutions and financial enterprises (the Banking Act), 'qualifying holding' shall follow the definition laid out in Regulation (EU) No. 575/2013. Qualifying holding means a direct or indirect holding in an undertaking that represents 10 per cent or more of the capital or of the voting rights, or that makes it possible to exercise a significant influence over the management of that undertaking. According to the Banking Act, any person with a qualifying holding in a financial institution shall satisfy the following requirements:

- be independent of any influences that may endanger the financial institution's sound, diligent and reliable operation;
- have a good business reputation;
- have the capacity to provide reliable and diligent guidance and control of the financial institution; and
- provide transparency in business connections and ownership structure so as to allow the competent authority to exercise effective supervision over the financial institution.

Permission must be obtained from the Hungarian National Bank (MNB) before executing a contract regarding the acquisition of a qualifying holding in a credit institution, as well as regarding the acquisition of additional qualifying holding by which 20, 33 or 50 per cent of ownership share or voting rights would be reached. Accordingly, shareholders of a financial institution may enter into a contract regarding shareholders' shares or voting rights, or to secure advantages in excess of such rights, only upon the MNB's permission.

Finally, the MNB's permission must be obtained before executing a contract for the acquisition of majority ownership in a company with a qualifying holding in a credit institution.

The permissions shall be obtained in each case prior to the conclusion of the contract. Accordingly, following the conclusion of the contract, the MNB must be informed within 30 days about the execution of the above transactions.

In cases specified in Act LVII of 1996 on the prohibition of unfair trading practices and unfair competition, the person who wishes to acquire control shall also obtain the approval of the Hungarian Competition Authority.

Law stated - 08 February 2022

Foreign acquirers

Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

The process basically corresponds to the general process prescribed for any acquirers. However, there are supplementary rules provided for foreign acquirers, as follows.

- If there is a foreign-registered financial institution, insurance company or investment company among the founders that wishes to acquire a qualifying holding, in addition to the general requirements, a statement from the competent supervisory authority of the country of origin stating that the enterprise conducts its activities in compliance with prudential regulations must also be attached to the application for authorisation.
- If the applicant is a financial institution, investment firm, insurance company, reinsurance company or an

undertakings for collective investment in transferable securities management company authorised in another European Economic Area (EEA) member state, or is the parent of either of the companies or controls any of these companies, the MNB shall forward the application without delay to the competent supervisory authority of the place where the applicant is established.

- Pursuant to Act LVII of 2018 on the control of foreign investments that violate Hungary's security interests (the Foreign Investments Act), which has been in force since 1 January 2019, nationals, legal persons or other entities outside the European Union, the EEA or Switzerland shall announce their acquisition of ownership in business associations that provide financial services and operations of payment systems in Hungary. Specific provisions apply to legal persons registered in Hungary, the European Union, the EEA or Switzerland that: own more than 25 per cent – in the case of a public limited company, more than 10 per cent – of the ownership rights; seek to obtain the right to use or operate the infrastructure, equipment and devices indispensable for the pursuit of the restricted activities; or have a dominant influence in a company incorporated in Hungary that provides services specified in the Foreign Investments Act (eg, financial services or ancillary financial services). If the shareholder who has – according to Act V of 2013 on the Civil Code – majority control of the legal person is a citizen of a jurisdiction or a legal person registered in a jurisdiction other than the European Union, the EEA or Switzerland, then there must also be an announcement of its financial services and operations of payment systems provided in Hungary.
- The foreign investor may acquire the specified ownership rights or dominant influence after the announcement of this to the appointed minister and the receipt of the acknowledgement of the acquisition of ownership. The minister monitors whether the acquisition of ownership rights, or the acquisition of the right to operate or carry out the newly started activity by the foreign investor violates the security interests of Hungary. In 60 days – which can be extended by a maximum of 60 days in justified cases – from the receipt of the announcement, the minister must confirm the acknowledgement of the announcement in writing or ban the acquisition of ownership rights, or the acquisition of the right to operate or carry out the newly started activity if it would violate the security interests of Hungary. The foreign investor has the right to challenge the decision of the minister in cases specified in the Foreign Investments Act in an administrative lawsuit.

Law stated - 08 February 2022

Under what circumstances can a foreign bank (or non-bank) establish an office and engage in business? For example, can it establish a branch or must it form or acquire a locally chartered bank?

According to the Banking Act, a foreign company may provide financial services or engage in financial auxiliary service activities solely by way of its Hungarian branch. Credit institutions established in any EEA member state need not obtain the authorisation issued by the MNB for activities pertaining to cross-border services or for activities that are carried out by their Hungarian branches and authorised by the competent supervisory authority of their home state.

Act CXXXII of 1997 on Hungarian branch offices and commercial representative offices of foreign-registered companies (the Offices Act) governs the general conditions and rules for the establishment, operation and termination of branch offices and direct commercial representative offices of foreign-registered companies in Hungary. A branch shall have legal capacity, and may obtain rights and undertake commitments under its corporate name on the foreign parent company's behalf – such as acquiring property and concluding contracts – and may sue and be sued.

A branch office is regarded as established upon having been entered in the company registration records and may commence entrepreneurial activities following such registration. According to the Offices Act, a foreign company shall, in respect of the establishment and operation of its branch office, receive the same treatment as a domestic economic

organisation. The foreign company shall continuously provide the assets required for the operation of the branch and the settlement of its liabilities. The foreign-registered company and the branch shall be subject to unlimited joint and several liability for the debts of the branch incurred during its activity. Proceedings in that respect may be initiated against the foreign-registered company and its branch before a Hungarian court.

Unless otherwise prescribed by specific other legislation, the provisions of the Offices Act shall be applied to:

- the establishment of Hungarian branch offices by foreign credit institutions;
- the operation, state supervision, auditing and dissolution of such branch offices; and
- insolvency proceedings.

The financial branch office of a foreign company registered in any EEA member state established in Hungary may commence operations in accordance with the provisions of specific other legislation upon submission of an application for registration.

According to the Banking Act, as regards the establishment of a financial institution incorporated as a branch, the financial institution shall enclose further documents with the application for authorisation of establishment than non-foreign institutions, such as:

- the foreign financial institution's charter document;
- the foreign financial institution's certificate of incorporation or a certificate issued within three months to date in proof of the foreign financial institution being registered in the companies (trade) register;
- a copy of the authorisation issued by the competent supervisory authority of the state where the foreign financial institution is established;
- a certificate issued within 30 days to date proving that the foreign financial institution participating in the foundation has no outstanding debts owed to the tax or customs authorities, the health insurance administration agency or pension insurance administration agency of competence in Hungary, or in the state where the said foreign financial institution is established;
- a certificate from the competent supervisory authority of the state in which the foreign financial institution is established stating that the financial institution's head office from which its operations are directed is in that state;
- in the case of a credit institution or a financial enterprise, the audited and approved balance sheet and the profit and loss account of the founder for the previous three fiscal years or for the previous fiscal year;
- a statement concerning the off-balance sheet liabilities of the foreign financial institution;
- a detailed description of the founder's ownership structure and of the circumstances under which the founder is considered to belong to the group of persons being affiliated with;
- the leading company's consolidated annual account for the previous year if the leading company is required to prepare a consolidated annual account;
- a statement executed in a private document representing conclusive evidence from the persons indicated in the application in which consent is granted to have the authenticity of the documents attached to the application for authorisation checked by the MNB by way of the agencies it has contacted;
- an indication of the financial services and financial auxiliary services performed by the applicant as authorised by the competent supervisory authority of the place in which it is established and the locations where such activities are performed;
- a description of the scope of authority of the senior executive of the branch;
- a description of the applicant's bodies, the approval of which is expressly required for passing certain decisions; and
- a statement of the competent supervisory authority of the place in which the foreign financial institution is

established in evidence of having no grounds for exclusion regarding the senior executive – of citizenship other than Hungarian – filling and occupying such an office.

Law stated - 08 February 2022

Factors considered by authorities

What factors are considered by the relevant regulatory authorities in an acquisition of control of a bank (or non-bank)?

While considering an application, the MNB must investigate whether the applicant's activity and its influence over the credit institution endanger the prudent guidance and control of the credit institution. The MNB will also investigate whether the applicant's transparency in business connections and ownership structure, and the structure of its direct or indirect holding in other businesses, allows the competent authority to exercise effective supervision over the financial institution.

The MNB shall refuse to grant the authorisation if:

- the applicants' – or its members' or executive officers' – activities and influence on the financial institution are considered harmful to the financial institution's independent, sound and prudent management, business activities or relations;
- the applicants' – or its members' or executive officers' – direct or indirect members' share or holdings in other companies is structured in a manner to obstruct supervisory activities;
- good business reputation is lacking; or
- there are reasonable grounds to suspect that, in connection with the acquisition of qualifying holding, money laundering or terrorist financing within the meaning of the relevant legislation is being or has been committed or attempted, or that the planned acquisition of qualifying holding could increase the risk thereof.

The Banking Act only gives examples of the circumstances when the applicant's or its owner's influence on the credit institution endangers its prudent operation.

According to the Banking Act, prudent operation is endangered particularly if:

- the applicant's or its owner's financial and economic standing is inconsistent with the extent of the acquisition of ownership share as proposed;
- the legitimacy of the origin of the funds used for acquisition of the ownership interest or the authenticity of the information the person specified as owner of the funds is not sufficiently evidenced;
- the applicant or its owner fails to meet the conditions determined for the credit institution by the MNB in the extraordinary action plan; or
- the MNB has suspended its right to exercise voting rights within the five years before the notification or, in the case of private individuals, he or she:
  - has (or had) a qualifying holding in or who is (or has been) the senior executive of such a financial institution:
    - in the case of which insolvency can only be avoided by exceptional measures taken by the MNB; or
    - that was liquidated due to its activity licence being revoked and whose personal responsibility for the development of this situation has been established by final or definitive resolution;
  - has seriously or systematically violated the provisions of the Banking Act or another piece of legislation pertaining to banking or the management of financial institutions and such has been determined by the MNB,

another authority by definitive decision or a court by a final ruling dated within the previous five years;
- has a criminal record; or
- is not of good business reputation.

Law stated - 08 February 2022

Filing requirements

Describe the required filings for an acquisition of control of a bank.

When applying for acquisition authorisation, the following filings are necessary according to the Banking Act:

- in the case of credit institutions that are subject to supervision on a consolidated basis or supplementary supervision:
  - a description of the apparatus for the conveyance of information related to supervision on a consolidated basis or supplementary supervision and a statement from the persons with close links to the credit institution guaranteeing to provide the authority with the data, facts and information necessary for supervising the credit institution on a consolidated basis or for supplementary supervision; and
  - a statement from each natural person with close links to the credit institution containing his or her consent to have the personal data he or she has disclosed to the credit institution processed and disclosed for the purposes of supervision on a consolidated basis or for supplementary supervision;
- the applicant's specific identification data as described in the Banking Act;
- evidence concerning the legitimacy of the financial means for acquiring a qualifying holding – authorisation will be refused if documents issued within 30 days to date in proof of having no outstanding debts owed to the tax authority (if the taxpayer is listed in the taxpayers' register as being free of tax debts, it shall be recognised as equivalent), customs authority, health insurance administration agency or pension insurance administration agency of competence under the applicant's national law;
- a statement declaring that other holdings and business activities of the applicant are not harmful to the prudent management of the financial institution;
- for natural persons, an official certificate from the body operating the penal register for the purpose of verification of having no prior criminal record or a similar document that is deemed equivalent under the applicant's national law;
- if other than a natural person, the applicant's consolidated instrument of constitution in effect on the date of application, a certificate issued within the last 30 days to date proving that the applicant was established (registered) in compliance with the relevant national regulations and is not adjudicated in bankruptcy, liquidation or dissolution proceedings, and its senior executives are not subject to any disqualifying factors;
- if other than a natural person, a detailed description of the applicant's ownership structure supported by documentary evidence and information about beneficial owners, and if the applicant is subject to supervision on a consolidated basis, a detailed description of these circumstances;
- the consolidated annual account for the previous year of the credit institution or investment firm subject to supervision on a consolidated basis, if they are required to prepare a consolidated annual account;
- a statement declaring any and all contingent liabilities and commitments;
- a statement by the applicant executed in a private document representing conclusive evidence that gives consent to attaching authentic documents to the application; and
- if there is a foreign financial institution proposing to acquire a qualifying holding, a statement or certificate from the competent supervisory authority of the country of establishment stating that the enterprise conducts its activities in compliance with prudential regulations.

Law stated - 08 February 2022

Time frame for approval

What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

The applicant or the owner may exercise voting rights that derive from the qualifying holding or the rights that derive from the advantages secured by the agreement connected with acquisition of ownership or voting rights on the 60th business day of the MNB's receipt of the application for authorisation, unless the MNB refuses to authorise the acquisition on the 60th business day of the receipt of the application.

The MNB may, however, call the applicant for the completion of documents. The duration for the completion is 20 business days. In the cases of companies seated in another EU member state, it is 30 business days. This period is not included in the aforementioned 60-business-day period.

Law stated - 08 February 2022

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in banking regulation in your jurisdiction?

The main issues and challenges are connected to new technologies and digitalisation. The covid-19 pandemic has significantly accelerated the global digitalisation processes. The Hungarian National Bank (MNB) asserts that high-level digitalisation supports the maintenance of the stability of the financial system and also its sustainable contribution to economic growth.

The MNB publishes a fintech and digitalisation report on an annual basis to provide insight into global and domestic financial digitalisation processes. Based on the comprehensive digitalisation survey of the banking system prepared by the MNB, the level of digitalisation of the domestic banking system is still medium in Hungary, but several banks caught up significantly during the past year.

Another significant and up-to-date change is the MNB's green policy. The MNB ensures that the domestic system of financial intermediation should support environmental sustainability through its financial products and services. The MNB has published a recommendation after measuring the performance of the financial sector in its Green Financial Report, and expects its products, services and internal operations to become more green and sustainable. MNB Decree 20/2021 (VI 23) provides regulations on the greening of financial services, such as on green bonds and green credits.

Law stated - 08 February 2022

Jurisdictions

Andorra	Cases & Lacambra
Australia	Piper Alderman
Ghana	Nobisfields
Greece	Zepos & Yannopoulos
Hungary	Nagy és Trócsányi
India	Shardul Amarchand Mangaldas & Co
Ireland	Dillon Eustace LLP
Israel	Tadmor Levy & Co
Italy	Ughi e Nunziante
Japan	TMI Associates
Lebanon	Abou Jaoude & Associates Law Firm
Luxembourg	Loyens & Loeff
Monaco	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
Singapore	WongPartnership LLP
South Africa	White & Case LLP
Sri Lanka	Tiruchelvam Associates
Switzerland	Lenz & Staehelin
United Kingdom	1 Crown Office Row
USA	Debevoise & Plimpton LLP