

DECREE

No. 374/2009 Coll.,

of 23 October 2009

on the pursuit of business of payment institutions, electronic money institutions, small-scale payment service providers and small-scale electronic money issuers

Pursuant to Article 142 of Act No. 284/2009 Coll., on the Payment System (hereinafter referred to as the “Act”), the Czech National Bank stipulates the following regarding the implementation of Articles 9(3), 17(4), 18(6), 20(4), 23(3), 26(4), 29(2), 37(4), 47(2) and (3), 48(3), 49(2), 50(1) and 54(3) of the Act:

PART ONE

GENERAL PROVISIONS

Article 1

Subject matter

This Decree incorporates relevant regulations of the European Communities¹⁾ and regulates:

- a) the specimen forms and the content of annexes to applications for
 1. authorisation to perform activities of a payment institution;
 2. entry in the register of small-scale payment service providers;
 3. authorisation to perform activities of an electronic money institution;
 4. entry in the register of small-scale electronic money issuers;
 5. consent to the acquisition or increase of a qualifying holding in an electronic money institution or to control of an electronic money institution;
- b) the manner of compliance with the requirements for the control system of a payment institution and an electronic money institution;
- c) rules for the calculation of the capital and the calculation of the capital adequacy of a payment institution and an electronic money institution, including the individual methods a payment institution may apply in the calculation of capital adequacy;
- d) the assets in which a payment institution, an electronic money institution and a small-scale payment service provider may invest (hereinafter referred to as “limitations of investments”);
- e) the disclosure of information of electronic money institutions; and
- f) the specimen forms and the content of annexes to some notifications submitted by a payment institution and a small-scale payment service provider.

Article 2

Definitions

For the purposes of this Decree:

¹⁾ Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

- a) “certificate of integrity” shall mean a document analogous to an extract from the Criminal Register not more than three months old issued by the foreign state of which a natural person is a citizen as well as by any foreign state in which the said natural person resided for an unbroken period of more than six months during the last three years;
- b) “business licence certificate” shall mean a complete extract, or other document, from the register of entrepreneurs or other register pursuant to another legal rule²⁾, or from similar registers abroad, containing information valid at the time of submission of the application, including information on any proposal for entry into a relevant register submitted but not effected as of the date of submission of the application;
- c) “financial institution” shall mean a person other than an institution referred to in (h), the principal or major activity of which is to acquire or hold holdings or membership interests in legal entities, or to carry on any of the activities that may be performed by a bank, as well as an investment company, investment fund, pension fund, insurance company or reinsurance company which carries on activities pursuant to other legal rules, including any foreign entities carrying on similar activities;
- d) “financial statements” shall mean
 - 1. the annual reports and financial statements either for the last three accounting periods or for the period during which the applicant has been carrying on business if the latter period is shorter than three accounting periods; where the applicant belongs to a consolidated group, the consolidated annual reports and financial statements for the same period shall be also submitted; if, pursuant to another legal rule³⁾, the financial statements must be verified by an auditor, the audited financial statements shall be submitted;
 - 2. documents on income for the last three years and on assets and liabilities, in the case of a natural person;
- e) “hybrid payment institution” shall mean a payment institution that also carries on activities other than those listed in Article 8 of the Act;
- f) “information about persons having close links⁴⁾” shall mean a list of persons having close links with the applicant, a description of the group’s structure and of the way the group is interlinked, including a graphical representation of relations between individual persons having close links, including a statement of whether the laws of the state in which the group has close links impedes the exercise of supervision by the Czech National Bank; in the case of persons having close links with the applicant, details about such persons referred to in (f) and the subject of activities of individual persons having close links shall also be given;
- g) “information system” shall mean a functional unit ensuring the acquisition, processing, transfer, sharing and storage of information in any form, including relevant technical equipment;
- h) “institution” shall mean
 - 1. a bank or a foreign bank,
 - 2. a credit union,
 - 3. an electronic money institution or a foreign electronic money institution,

²⁾ For example, Act No. 513/1991 Coll., the Commercial Code, as amended; Act No. 15/1998 Coll., on Supervision in the Capital Market Area and on the Amendment of Other Acts, as amended; Act No. 455/1991 Coll., on Trade and Entrepreneurial Activities (the Trades Licensing Act), as amended; Act No. 85/1996 Coll., on Advocacy, as amended; Act No. 252/1997 Coll., on Agriculture, as amended; Act No. 83/1990 Coll., on Association of Citizens, as amended; Act No. 227/1997 Coll., on Charities and Charitable Funds and on the Amendment of Certain Related Acts (the Act on Charities and Charitable Funds), as amended.

³⁾ Act No. 563/1991 Coll., on Accounting, as amended.

⁴⁾ Article 2(2)(g) of Act No. 284/2009 Coll., on the Payment System.

4. an investment firm that satisfies the conditions laid down in Article 8a(1), (2) or (3) of the Capital Market Undertakings Act;
- i) “capital investment” shall mean a participating security, ownership interest, membership interest or similar asset, or a liability arising from a deposit, credit or loan or another liability whose repayment is bound by the condition of subordination⁵⁾;
- j) “business plan” shall mean
1. in the case of a payment institution or an electronic money institution, an actually intended and realistic plan for the first three years of business containing financial statement data pursuant to another legal rule⁶⁾ together with notes on the individual items thereof, each note containing the basic assumptions on which the plan is based; or
 2. in the case of a small-scale payment service provider or a small-scale electronic money issuer, an actually intended and realistic plan for the first 12 months of business together with notes on the individual items thereof, each note containing the basic assumptions on which the plan is based;
- k) “strategic plan” shall mean a plan of an applicant for consent to the acquisition or increase of a qualifying holding⁷⁾ regarding
1. the period for which the qualifying holding is to be held;
 2. the expected change in the size of the qualifying holding in the short and long terms;
 3. the expected degree of involvement in the strategic management of the electronic money institution;
 4. any support to be provided to the electronic money institution by means of additional own funds where necessary for the development or maintenance of the business;
 5. agreements with other members of the electronic money institution;
 6. the development of the business of the electronic money institution in relation to the existing business plan, the profit distribution or loss settlement policy, the method of funding further development, the control system and any changes in staffing and strategic development; this shall not apply where the qualifying holding does not exceed 20%;
- l) “details about a person” shall mean
1. in the case of a legal person, its commercial name, or designation, registered office and identification number if assigned;
 2. in the case of a natural person, the name(s) and surname, birth certificate number, date of birth if a birth certificate number has not been assigned, and residence address, stating the street, house number, municipality, part of municipality, postcode and state; in the case of an entrepreneur registered in the Commercial Register, also his commercial name, place of business and identification number if assigned;
- m) “details about professional experience” shall mean
1. information about the type of professional experience;
 2. identification of the entity with which the professional experience is or has been obtained;
 3. a job description and a description of activities performed;
 4. specification of the period of time for which activities referred to in (3) were performed;
 5. consent to the performance of a job required by other legal rules if such consent is necessary;
- n) “details about education” shall mean

⁵⁾ Article 34 of Act No. 190/2004 Coll., on Bonds, as amended by Act No. 296/2007 Coll.

⁶⁾ Article 18 of the Accounting Act.

⁷⁾ Article 2(2)(f) of the Payment System Act.

1. the name and category or type of educational institution, study programme, specialisation of the study programme, duration of the study programme, manner and date of completion of the studies and, where applicable, degrees awarded;
2. a list of courses, internships and fellowships relevant to the activities of the payment institution or electronic money institution, stating the year in which they were taken, their specialisation and duration and, where applicable, degrees awarded.

PART TWO

LICENCE, REGISTRATION, CONSENT AND ENTRY

Heading I

Payment institutions

Application for authorisation

(Regarding Article 9(3) of the Act)

Article 3

(1) The application for authorisation to perform activities of a payment institution shall be submitted on a form, the specimen of which is given in Annex 1 hereto. The application shall include the annexes referred to in paragraphs 2 to 5.

(2) The annexes containing basic information about the applicant and information relating to the applicant's activities shall consist of:

- a) the original full documents of incorporation⁸⁾,
- b) the original business licence certificate,
- c) original documents on the source of the initial capital and any other financial resources;
- d) financial statements, and
- e) a list of petitions to have a resolution of the applicant's supreme body declared invalid in respect of which a court action was not closed with final and conclusive effect as of the date of application if such petitions have been filed and if such petitions might have a significant effect on the future operation of the applicant.

(3) The annexes containing information relating to the business of the payment institution shall consist of:

- a) a business plan pursuant to Article 2(j)(1) supported by realistic economic calculations;
- b) a business development strategy, particularly in relation to the proposed business plan and medium-term financial objectives;
- c) a description of the control system, containing in particular:
 1. the proposed organisational structure, defining areas of competence and decision-making powers, within which incompatible positions and procedures to prevent conflicts of interest shall also be defined,
 2. strategic and operational management principles,
 3. risk management system principles, including principles related to capital and capital adequacy,
 4. internal control system principles,
 5. the envisaged number of employees who are to perform the planned activities of the payment institution, and procedures for the organisational arrangements for individual activities, including procedures for the establishment and use of branches,

⁸⁾ Article 38i(1)(a) of the Commercial Code.

6. the proposed technical arrangements for individual activities, including an appropriate accounting system and statistical record-keeping systems, and security principles, including security principles for the information system, and
- d) draft internal regulations regulating the arrangements for protection of funds pursuant to Article 20 of the Act entrusted for the purpose of conducting a payment transaction.

(4) The annexes containing information about a director⁹⁾ of the applicant as well as about a person that actually manages the applicant's activities in the field of provision of payment services, to prove the professional qualifications, trustworthiness and experience of such persons, shall consist of:

- a) the questionnaire given in Annex 2 hereto, completed for each director,
- b) details about the professional experience and details about the education of each director, and
- c) the original certificate of integrity of each director.

(5) The annexes containing information about a person holding a qualifying holding⁷⁾ in the applicant and about a person having close links with the applicant shall consist of:

- a) a list of persons holding a qualifying holding in the applicant and of persons that hold a qualifying holding in the applicant by acting in concert with another person, including a graphical representation of the relations between such persons, with the details about such persons, stating the share in the applicant or other form of holding in the applicant; in the case of persons acting in concert, also the fact based on which the acting in concert occurs and the questionnaire listed in Annex 3 hereto, completed for each person listed;
- b) a list of persons that are the statutory body or members of the statutory body of each person listed in (a), including the position of this person, and the questionnaire given in Annex 2 hereto, completed in items 1 and 6 to 11 for each person listed;
- c) the questionnaire given in Annex 2 hereto, completed in items 1 and 6 to 11 for each natural person holding a qualifying holding in the applicant and for each natural person that holds a qualifying holding in the applicant by acting in concert with another person;
- d) the original certificate of integrity of each person listed in (a) and each person that is the statutory body or a member of the statutory body of each person listed in (a);
- e) the original business licence certificate of each person listed in (a);
- f) the financial statements of each person listed in (a);
- g) information about persons having close links with the applicant; and
- h) the original written opinion of the authority supervising the person holding a qualifying holding in the applicant on the plan of such person to take a holding in the applicant's business in the Czech Republic if the person holding the qualifying holding in the applicant is a person supervised in the state in which its registered office is situated.

Article 4

(1) An applicant that intends to provide payment services through an agent shall, in addition to the information referred to in Article 3, submit information about:

- a) the control system in respect of compliance with obligations relating to combating money laundering and terrorist financing as applied by the agent;
- b) the manner of verifying compliance of the agent's activities with the applicable legal rules and with the payment institution's authorisation to carry on business, including the manner of verifying the quality of the payment services provided by the agent;
- c) the manner and frequency of the provision of documents by the agent in order to perform the information duty of the payment institution to the Czech National Bank;

⁹⁾ Article 2(2)(h) of the Payment System Act.

- d) the manner of training of the agent in order to ensure the provision of payment services of the required quality and compliance with the applicable legal rules;
- e) the criteria for assessing trustworthiness, professional competence and sufficient experience of an agent who is a natural person and of the director of an agent that is a legal entity, including a list of documents that the payment institution will require from the agent for these purposes;
- f) the manner of ongoing assessment of trustworthiness, professional competence and sufficient experience of each person listed in (e);
- g) the manner of maintaining, recording and updating the details about each person listed in (e).

(2) The applicant shall also submit a draft model agreement between the payment institution and the agent.

Heading II

Small-scale payment service providers

Article 5

Application for entry in the register

(Regarding Article 37(4) of the Act)

(1) The application for entry in the register of small-scale payment service providers shall be submitted on a form, the specimen of which is given in Annex 4 hereto. The application shall include the annexes referred to in paragraphs 2 and 3.

(2) The annexes containing basic information about the applicant shall consist of:

- a) the original full documents of incorporation⁸⁾,
- b) the original business licence certificate,
- c) the original certificate of integrity
 1. for each director, and
 2. for the applicant, in the case of a natural person.

(3) The annexes containing information relating to the business of the small-scale payment service provider shall consist of:

- a) a business plan pursuant to Article 2(j)(2) supported by realistic economic calculations;
- b) a description of the measures whereby compliance with the limits laid down in Article 36(2) of the Act will be ensured;
- c) a business development strategy, particularly in relation to the proposed business plan; and
- d) draft internal regulations regulating the arrangements for protection of funds pursuant to Article 20 of the Act entrusted for the purpose of conducting a payment transaction.

Heading III

Electronic money institutions

Article 6

Application for authorisation

(Regarding Article 47(2) of the Act)

(1) The application for authorisation to perform activities of an electronic money institution shall be submitted on a form, the specimen of which is given in Annex 5 hereto. The application shall include the annexes referred to in paragraphs 2 to 5.

(2) The annexes containing basic information about the applicant and information relating to the existing and future activities of the applicant shall consist of:

- a) the original full documents of incorporation⁸⁾;
- b) the original business licence certificate;
- c) original documents on the source of the initial capital and any other financial resources and on the extent of the paying-up of capital if such information is not evident from the business licence certificate;
- d) financial statements;
- e) a list of petitions to have a resolution of the applicant's general meeting declared invalid in respect of which a court action was not closed with final and conclusive effect as of the date of application if such petitions have been filed and if such petitions might have a significant effect on the future operation of the company; and
- f) the original written opinion of the authority supervising the person holding a qualifying holding in the applicant on the plan of such person to take a holding in the applicant's business in the Czech Republic if the person holding the qualifying holding in the applicant is a person having its registered office outside a Member State and is supervised in the state in which its registered office is situated.

(3) The annexes containing information relating to the business of an electronic money institution shall consist of:

- a) a business plan pursuant to Article 2(j)(1) supported by realistic economic calculations;
- b) a business development strategy, particularly in relation to the proposed business plan and medium-term financial objectives;
- c) a description of the control system, containing in particular:
 1. the proposed organisational structure, defining areas of competence and decision-making powers, within which incompatible positions and procedures to prevent conflicts of interest shall also be defined;
 2. strategic and operational management principles;
 3. risk management system principles, including principles related to capital and capital adequacy;
 4. internal control system principles;
 5. the envisaged number of employees who are to perform the planned activities, and procedures for the organisational arrangements for individual activities; and
 6. the proposed technical arrangements for individual activities, including an appropriate accounting system and statistical record-keeping systems, and security principles, including security principles for the information system.

(4) The annexes containing information about the directors⁹⁾ of the applicant shall consist of:

- a) the questionnaire given in Annex 2 hereto, completed for each director;
- b) details about the professional experience and details about the education of each director; and
- c) the original certificate of integrity of each director.

(5) The annexes containing information about persons holding a qualifying holding⁷⁾ in the applicant and about persons having close links with the applicant shall consist of:

- a) a list of persons holding a qualifying holding in the applicant and of persons that hold a qualifying holding in the applicant by acting in concert with another person, including a graphical representation of the relations between such persons, with details about such

- b) a list of persons that are the statutory body or members of the statutory body of each person listed in (a), including the position of this person, and the questionnaire given in Annex 2 hereto, completed in items 1 and 6 to 11 for each person listed;
- c) the questionnaire given in Annex 2 hereto, completed in items 1 and 6 to 11 for each natural person holding a qualifying holding in the applicant and for each natural person that holds a qualifying holding in the applicant by acting in concert with another person;
- d) the original certificate of integrity of each person listed in (a) and each person that is the statutory body or a member of the statutory body of each person listed in (a);
- e) the original business licence certificate of each person listed in (a);
- f) the financial statements of each person listed in (a); and
- g) information about persons having close links with the applicant.

Article 7

Application for prior consent to the acquisition or increase of a qualifying holding

(Regarding Article 47(2) of the Act)

(1) The application for prior consent to the acquisition or increase of a qualifying holding in an electronic money institution shall be submitted on a form, the specimen of which is given in Annex 6 hereto. The application shall include the annexes referred to in paragraphs 2 to 4.

(2) The annexes containing basic information about the applicant and information relating to the existing and future activities of the applicant shall consist of:

- a) the original business licence certificate;
- b) an original document on the source of the funds from which the acquisition or increase of the qualifying holding is being covered;
- c) financial statements;
- d) information about persons having close links with the applicant;
- e) a description of relations between the applicant and the electronic money institution in which the applicant intends to acquire or increase the qualifying holding, and of relations between the applicant and persons having a special relation¹⁰⁾ to the electronic money institution, and at least to persons that are directors or members of the supervisory board of the electronic money institution;
- f) a list of persons that have, or are to acquire or increase, a qualifying holding in an electronic money institution by acting in concert with the applicant, with details about such persons, stating the share or other form of holding in the electronic money institution and the fact based on which the acting in concert occurs;
- g) the original written opinion of the authority supervising the applicant in the country in which the registered office of the applicant is situated, on the plan of the applicant to acquire or increase the qualifying holding in the electronic money institution if the applicant has its registered office outside a Member State and is supervised in the state in which its registered office is situated; and
- h) a strategic plan.

¹⁰⁾ Article 19 of Act No. 21/1992 Coll., on Banks, as amended by Act No. 16/1998 Coll., Act No. 165/1998 Coll., Act No. 126/2002 Coll. and Act No. 257/2004 Coll.

(3) Where the applicant is a natural person, the following shall be submitted together with the application:

- a) the original certificate of integrity and
- b) the questionnaire given in Annex 2 hereto, completed in items 1 and 6 to 11 for this person.

(4) Where the applicant is a legal entity, the following shall be submitted together with the application:

- a) a list of persons that are the applicant's governing body or members of the governing body, including the position of each person;
- b) the questionnaire given in Annex 2 hereto, completed in items 1 and 6 to 11 for each natural person listed in (a); and
- c) the original certificate of integrity for each natural person listed in (a).

Article 8

Application for prior consent to take control

(Regarding Article 47(2) of the Act)

(1) A person or persons applying for prior consent to the acquisition or increase of a qualifying holding in order to become persons controlling¹¹⁾ an electronic money institution, shall follow the procedures set out in Article 7 and shall justify their intention.

(2) A person or persons applying for consent to become persons controlling an electronic money institution on the basis of a contract¹²⁾ shall submit the application on a form, the specimen of which is given in Annex 6 hereto.

(3) The annexes to the application referred to in paragraph 2 shall consist of:

- a) the draft contract;
- b) a rationale for the plan;
- c) original documents on the source of the funds from which the obligation to outside members will be discharged if the control contract is concluded;
- d) a strategic plan pursuant to Article 2(k)(6);
- e) the documents referred to in Article 7(2)(a), (c), (d) and (3) and (4); and
- f) the original written opinion of the authority supervising the applicant on the plan of the applicant to become a person controlling an electronic money institution having its registered office in the Czech Republic if the applicant has its registered office outside a Member State and is supervised in the state in which its registered office is situated.

Article 9

Special provisions regarding the acquisition or increase of a qualifying holding and regarding control

(1) Where the applicant for consent to the acquisition or increase of a qualifying holding in an electronic money institution is a person to which the Czech National Bank has granted consent to the acquisition or increase of a qualifying holding in an electronic money institution in the past five years, it shall submit the application on a form, the specimen of which is given in Annex 6 hereto and, together with the application, it shall submit only the original written opinion pursuant to Article 7(2)(g) and the other documents given in Article 7(2) to (4) for which a change has occurred compared to the situation in which the

¹¹⁾ Article 66a of the Commercial Code.

¹²⁾ Article 190b of the Commercial Code.

previous consent to the acquisition or increase of the qualifying holding in the electronic money institution was granted. In this case, the applicant shall state in the annex to the application that the other details and documents submitted to the Czech National Bank in the previous application for consent to the acquisition or increase of a qualifying holding remain unchanged.

(2) Paragraph 1 shall apply *mutatis mutandis* to an applicant for the taking of control of an electronic money institution, except that the applicant shall submit the application on a form, the specimen of which is given in Annex 6 hereto, and, together with the application, it shall submit only the original written opinion pursuant to Article 8(3)(f) and the other documents given in Article 8(3) for which a change has occurred compared to the situation in which the previous consent was granted. In this case, the applicant shall state in the annex to the application that the other details and documents submitted to the Czech National Bank in the previous application for consent remain unchanged.

(3) Where the applicant for consent to the acquisition or increase of a qualifying holding in an electronic money institution or to take control of such an entity is a legal entity that is an institution, financial institution or another person carrying on activities on the financial market, having its registered office in a Member State and subject to supervision by a competent authority in the state in which its registered office is situated and this authority, if it is not the Czech National Bank, informs the Czech National Bank that it has no objections to the plan to acquire or increase the qualifying holding, it shall submit the application on a form, the specimen of which is given in Annex 6 hereto and, together with the application, it shall submit only the original business licence certificate, the strategic plan and original documents on the source of the funds from which the acquisition or increase of the qualifying holding is being covered.

(4) Where the applicant is to acquire a qualifying holding in an electronic money institution through an institution, financial institution or another person carrying on activities on the financial market, having its registered office in a Member State, and this person is supervised in the state in which its registered office is situated, it shall submit the application on a form, the specimen of which is given in Annex 6 hereto. Where the supervision is not performed by the Czech National Bank, the applicant shall submit only the original final and conclusive decision whereby consent was granted to the taking of control of the entity through which the applicant is to acquire the qualifying holding. Where no such decision has been issued, the applicant shall submit a statement by a competent supervisory authority that the applicant became a controlling person in accordance with the law and that this supervisory authority has no objections to the acquisition of the qualifying holding.

Heading IV

Small-scale electronic money issuer

Article 10

Application for entry in the register

(Regarding Article 54(3) of the Act)

(1) The application for entry in the register of small-scale electronic money issuers shall be submitted on a form, the specimen of which is given in Annex 7 hereto. The application shall include the annexes referred to in paragraphs 2 and 3.

(2) The annexes containing basic information about the applicant shall consist of:

- a) the original full documents of incorporation⁸⁾,

- b) the original business licence certificate,
- c) the original certificate of integrity
 - 1. for each director, and
 - 2. for the applicant, in the case of a natural person.

(3) The annexes containing information relating to the business of a small-scale electronic money issuer shall consist of:

- a) a business plan pursuant to Article 2(j)(2) that accords with the conditions laid down in Article 53(2) of the Act, supported by realistic economic calculations;
- b) a business development strategy, particularly in relation to the proposed business plan, and a list of material areas in which the electronic money will be used;
- c) a description of the measures whereby the applicant will ensure compliance with the condition that the payment instrument issued to the holder shall store electronic money of an amount of not more than EUR 150;
- d) depending on the provision of the Act under which the applicant intends to issue electronic money:
 - 1. a description of the measures whereby compliance with the limits laid down in Article 53(2) of the Act will be ensured,
 - 2. a description of the group of recipients of the electronic money according to their relationship to the issuer pursuant to Article 53(2)(b)(1) or (2) of the Act, or
 - 3. a definition of the premises on which the applicant intends to provide its services pursuant to Article 53(2)(b)(3) of the Act;
- e) a description of the process of issuing, using, storing and settling electronic money, including the redemption thereof;
- f) the proposed technical arrangements for individual activities, including an appropriate accounting system and statistical record-keeping systems, and security principles, including security principles for the information system;
- g) a description of measures to prevent unauthorised intervention in the electronic money system or to prevent the misuse thereof; and
- h) a description of sources making it clear that the issuer will not finance the issuance of electronic money from funds received from the holder for the purpose of the immediate exchange thereof for electronic money.

PART THREE

SOME CONDITIONS GOVERNING THE PURSUIT OF BUSINESS

Heading I

Requirements for the control system

Part 1

Control system of a payment institution

(Regarding Article 18(6) of the Act)

Conditions for sound corporate governance

Article 11

(1) The payment institution shall configure the control system so that it covers all its activities and, in the case of a hybrid payment institution, covers above all the activities referred to in Article 8 of the Act. The control system of a payment institution shall always

(2) The payment institution shall use appropriate resources, systems and processes and take into account developments in the environment in which it carries on business.

(3) The payment institution shall ensure that the control system is commensurate with the scope, nature and complexity of its activities, and shall always ensure

- a) constant compliance with the conditions under which the payment institution was granted authorisation to carry on business and with other stipulated requirements and rules,
- b) proper and prudent performance of its activities and effective implementation of its business strategy, and
- c) that sufficient and reliable information is used for decision-making and the performance of the other activities of the payment institution.

Article 12

(1) The payment institution shall ensure that the control system also fulfils the stipulated functions when activities are performed through agents and other persons (hereinafter referred to as “outsourcing”).

(2) The payment institution shall configure the control system so that the agreement of outsourcing does not restrict compliance of the activities subject to outsourcing with the legal rules, the payment institution’s ability to control the activities, the fulfilment of information duties to the Czech National Bank, the execution of supervision, including the examination of facts subject to supervision at the outsourcing provider, and the auditing of financial statements and other verifications stipulated by the legal rules.

(3) The payment institution shall ensure that the outsourcing contract, including any amendments thereto, is concluded in a manner that enables its content to be covered and the persons that concluded it to be identified.

Article 13

(1) The payment institution shall provably incorporate the requirements for the control system and the procedures for their implementation into the strategies, organisational manual, plans and other internally set principles and procedures of the payment institution (hereinafter referred to as the “internal regulations”).

(2) The payment institution shall set a procedure for the adoption and amendment of internal regulations and ensure that the internal regulations and procedures applied are regularly reviewed and revised where necessary.

(3) The payment institution shall ensure that all employees are familiarised with the internal regulations to the necessary extent and act in accordance with them.

(4) In order to fulfil the conditions for sound corporate governance, the payment institution shall incorporate into the internal regulations selected recognised and tested principles and procedures issued by recognised persons and used in analogous activities (hereinafter referred to as “recognised principles”) and apply them consistently. The payment institution shall regularly verify whether the recognised standards selected and applied by it are still suitable and commensurate with the nature, scope and complexity of its activities and eliminate any shortcomings detected where necessary.

(5) The control system of the payment institution shall ensure that powers to approve and sign documents within the activities of the payment institution are clearly defined and all

relevant approval and decision-making processes and control activities, including related responsibilities, powers and internal regulations, can be recorded, stored and retrieved.

Article 14

(1) The board of directors or other body or person with similar competence (hereinafter referred to as the “management body”) shall ensure that a functional and effective control system of the payment institution is created and shall be responsible for the systematic maintenance and application thereof.

(2) The management body shall ensure that a business strategy is set, such strategy to include controllable objectives and principles for fulfilment of the strategy, including the elaboration of procedures for the implementation of the strategy and the day-to-day management of the performance of the activities of the payment institution.

(3) The management body shall ensure that a functional and effective organisational structure is set and maintained, such structure to include separation of conflicting activities and prevention of potential conflicts of interests.

(4) The management body shall ensure that a functional and effective information system is created and maintained, such system to include a system of internal reports and statistical record-keeping systems so that it provides reliable and sufficient information.

Article 15

(1) The management body shall ensure that human resources management principles are set for the recruitment, remuneration, appraisal and motivation of employees; the principles shall include a requirement that all activities be performed by qualified staff with the necessary knowledge and experience.

(2) The management body shall ensure that clearly formulated ethical principles and assumed models of behaviour and actions of employees in line with these principles are set and enforced.

(3) The management body shall ensure that all employees understand their role in the control system and are actively engaged in this system.

(4) The management body shall ensure that such manners and methods of management are applied that will prevent undesirable policies, in particular the prioritising of short-term results and targets that do not accord with the business strategy, a remuneration scheme that is overly dependent on short-term performance and other inappropriate stimuli, or that is not sufficiently transparent, and other policies that allow or might allow the misuse of resources or the concealment of poor performance.

Article 16

(1) The management body shall approve and regularly assess the business strategy, organisational arrangements, risk management strategy, capital and capital adequacy strategy, information system development strategy, internal control system principles and security principles, including the security principles for the information system.

(2) The management body shall approve new products, activities and systems that are of key importance to the payment institution and the system of limits the payment institution will use to manage risks, unless the management body delegates these powers to committees.

(3) The management body shall approve material, organisational, personal and other aspects of ensuring risk management, compliance (Article 25) and internal auditing, including

(4) The management body shall review in a timely manner regular reports and extraordinary findings submitted to it above all by the relevant management levels as part of the performance of risk management, compliance and internal auditing, by the statutory auditor¹³⁾ or by an auditing company¹⁴⁾ (hereinafter referred to as the “auditor”) or the competent supervisory authorities. On the basis of these reviews the management body shall take appropriate measures, which shall be implemented at the earliest opportunity.

(5) The management body shall evaluate the overall functionality and effectiveness of the control system at least once a year and ensure that steps are taken to remedy any shortcomings found.

Article 17

(1) The control system of the payment institution shall enable timely identification of conflicts of interest and areas where they might occur and contain appropriate processes for minimising conflicts of interest and separating conflicting activities.

(2) Bodies, employees, units and committees, where established, shall be assigned responsibilities and powers at all management and organisational levels so that potential conflicts of interest are sufficiently prevented.

(3) The control system of the payment institution shall be configured so as to ensure an appropriate degree of independence and prevention of conflicts of interest in the performance of control activities.

(4) The areas of conflict of interest and the areas of potential occurrence thereof shall be subject to independent examination.

Article 18

(1) The payment institution shall ensure that the relevant bodies, employees, units and committees, where established, have access to reliable and sufficient information for their decision-making and other specified activities.

(2) The payment institution shall ensure that the management body is always informed

- a) immediately in cases where the liquidity situation of the payment institution is changing significantly for the worse,
- b) without undue delay of all facts that could significantly change the liquidity situation of the payment institution for the worse, including the effects of changes in the internal or external environment, and
- c) without undue delay of all cases of the exceeding of limits endangering compliance with the accepted level of risk undertaken.

(3) The payment institution shall ensure that the members of the management body and other relevant persons within the payment institution have systematic access to information

- a) on compliance with the requirements laid down in the legal rules and internal regulations, including compliance with the capital adequacy rules and investment restriction rules, and
- b) on any significant differences found in the payment institution’s processes compared to the requirements laid down in the legal rules and internal regulations.

¹³⁾ Article 2(c) of Act No. 93/2009 Coll., on Auditors and Amendments to Certain Acts (Act on Auditors).

¹⁴⁾ Article 2(d) of the Act on Auditors.

Article 19

The payment institution shall ensure that its promotional, marketing and other communications and information for the public are always objective and clear and not misleading.

Article 20

(1) The system of the payment institution for the creation, checking and transmission of information to the Czech National Bank is created and maintained so as to provide information in a timely, reliable and complete manner.

(2) The control system of the payment institution shall include internal control mechanisms ensuring the correctness and completeness of all calculations, data, statements and other information submitted to the Czech National Bank. The processes applied to the creation, checking and transmission of information to the Czech National Bank, including the submission of statements, shall be possible to retrace.

Risk management system

Article 21

(1) The payment institution shall ensure systematic management of the risks associated with its activities, including outsourced activities.

(2) The payment institution shall identify and manage the risks associated with new products, activities and systems, and shall ensure that the identification of risks enables any new risks to be revealed.

(3) The control system of the payment institution shall be configured so as to provide an undistorted picture of the degree of risk taken.

(4) The control system of the payment institution shall take into account and ensure systematic management of all significant risks to which the payment institution is or may be exposed with regard to the nature, scope and complexity of its activities. The management of risks shall take into account internal and external factors, including the payment institution's future business strategy.

Article 22

(1) As part of its risk management strategy, the payment institution shall specify the following in particular:

- a) internal definitions of the significant risks to which the payment institution is or may be exposed,
- b) principles of management of individual risks,
- c) the accepted level of risk undertaken, and
- d) principles for drafting and changing a contingency plan for the event of a liquidity crisis and for ensuring the renewability and continuity of the payment institution's activities in the case of emergencies.

(2) The control system shall include specific processes for the implementation of the risk management strategy.

(3) Within the risk management system, the payment institution shall specify control activities, including verification of compliance with the specified processes and limits for risk management.

Article 23

(1) The control system of the payment institution shall be configured so as to ensure that the payment institution maintains adequate capital to cover the risks it is or may be exposed to. The strategy and processes for risk management and the strategy and processes for maintenance of capital to cover risks shall be integrated and interconnected.

(2) If the overall level of risk undertaken is not sufficiently covered by capital even when the effect of internal control mechanisms (the overall risk profile) is taken into account, the payment institution shall adopt appropriate remedial measures.

Internal control system

Article 24

The control system of the payment institution shall include principles and processes for internal control, which shall form part of its routine, usually day-to-day, activities. The internal control system of the payment institution shall always include

- a) appropriate control mechanisms for individual activities, including accounting and physical controls,
- b) top level review,
- c) a compliance function,
- d) an internal audit function, and
- e) monitoring and evaluation of the functionality and effectiveness of the control system and its elements.

Article 25

(1) The control system of the payment institution shall include compliance function principles and processes aimed above all at ensuring:

- a) compliance of the internal regulations with the legal rules,
- b) mutual compliance between the internal regulations, and
- c) compliance of activities with the legal rules and internal regulations.

(2) The compliance principles and processes shall be integrated and interconnected.

Article 26

(1) The control system of the payment institution shall be configured so as to ensure an effective internal audit function.

(2) The internal audit shall always include independent examination of:

- a) compliance with the requirements and rules stipulated in the legal rules and internal regulations,
- b) financial management, risk management, capital management and liquidity management,
- c) the completeness, conclusiveness, accuracy and reliability of the accounting,
- d) the sufficiency and reliability of the system of internal reports, information provided to the payment institution's bodies, accounting and statistical information and information for clients,
- e) the reliability and the system of creation, checking and submitting of statements and other information to the Czech National Bank, and
- f) the sufficiency and reliability of internal control mechanisms.

(3) The internal audit shall inform the payment institution's management body and supervisory body, where the payment institution has such a body, of its findings. In the event

Article 27

(1) The control system of the payment institution shall be configured so as to ensure monitoring and evaluation of its functionality and effectiveness on a continuous basis and at all management and organisational levels.

(2) Control deficiencies, whether identified by top level review, by the internal audit or on the basis of other internal controls, by an auditor or in some other way, must be reported without undue delay to the appropriate management level and addressed swiftly.

(3) Significant deficiencies in the control system must be reported to the management body and the supervisory body, where the payment institution has such a body.

(4) The system for detecting and reporting deficiencies in the control system shall be configured so as to enable timely rectification of such deficiencies. The effectiveness of the remedial measures adopted shall be subsequently verified.

Part 2

Control system of an electronic money institution

(Regarding Article 47(3) of the Act)

Article 28

Conditions for sound corporate governance

(1) The control system of the electronic money institution shall cover all its activities. The control system of the electronic money institution shall also always include a system of internal principles, rules and processes to prevent money laundering and financing of terrorism.

(2) To meet the requirements regarding the control system, the electronic money institution shall use appropriate resources, systems and processes and take into account developments in the environment in which it carries on business.

(3) To meet the other conditions for sound corporate governance, the electronic money institution shall follow the procedures set out in Articles 11 to 20.

Article 29

Risk management system

The control system of the electronic money institution shall be configured so as to enable systematic management of risks. To meet the other requirements for the risk management system and processes, the electronic money institution shall follow the procedures set out in Articles 21 to 23.

Article 30

Internal control system

The electronic money institution shall create, maintain and apply principles and processes for internal control, which shall form part of its routine, usually day-to-day, activities. To

meet the other requirements for the internal control system, the electronic money institution shall follow the procedures set out in Articles 24 to 27.

Heading II

Capital adequacy

Part 1

Capital adequacy of a payment institution

(Regarding Article 17(4) of the Act)

Article 31

Calculation of capital adequacy

For the calculation of the payment institution's capital adequacy, the capital defined in Articles 32 to 37 shall be compared with the capital requirement to cover risks defined in Articles 38 and 42 determined using the method the payment institution is authorised to use.

Article 32

Definition of capital

(1) Subject to compliance with the limits laid down in Article 37, capital shall be determined as the sum of original capital and additional capital minus deductible items.

(2) Capital shall be derived from the payment institution's balance sheet. Items included in capital shall not be taken into account more than once and their amount must be determined net of any tax liabilities.

(3) Original capital must be at the payment institution's immediate and unrestricted disposal to cover losses from risks to which it is exposed.

(4) Capital shall not include any profits or losses due to fair value measurement of the payment institution's liabilities relating to changes in the payment institution's credit risk; these shall include profits or losses that are part of retained profit for previous periods, after-tax profit for the current period, profit for the current period recorded in the interim financial statement, accumulated losses for previous periods including the loss for the preceding accounting period, and losses for the current accounting period. Capital shall also exclude valuation changes from derivatives hedging cash flows.

(5) Where the payment institution belongs to the same group as another payment institution, institution, investment firm or insurance company, capital shall exclude items or parts thereof that are included in the capital of such entities.

(6) Hybrid payment institutions shall not include in capital items or parts thereof that are used to perform activities other than those laid down in Article 8 of the Act, and when performing such activities the hybrid payment institution shall maintain the level of capital laid down in other legal rules.¹⁵⁾

Article 33

Original capital

Original capital shall consist of paid-up registered capital:

¹⁵⁾ For example Act No. 256/2004 Coll., on Capital Market Undertakings, as amended.

- a) minus acquired own shares¹⁶⁾, including items stemming from transactions in own shares, in particular forwards and options, decreasing the registered capital,
- b) plus share premium, which shall include
 - 1. paid-up share premium relating to paid-up registered capital, and
 - 2. share premium stemming from transactions in own shares,
- c) plus reserve funds and retained profit, which shall be the sum of items 1 to 4 minus item 5:
 - 1. mandatory reserve funds and risk funds,
 - 2. other funds created from profit distribution that can be used only to cover losses recorded in the payment institution's financial statement,
 - 3. retained profit from previous periods recorded in the payment institution's financial statement verified by an auditor and approved by the supreme body on the distribution whereof the supreme body has not decided and which has not been allocated to settlement shares,
 - 4. after-tax profit for the accounting period recorded in the payment institution's financial statement verified by an auditor, minus estimated dividends and other expected payments from profit distribution,
 - 5. accumulated losses, including losses for the preceding accounting period,
- d) plus current profit as per the payment institution's interim financial statement verified by an auditor, minus estimated dividends and other expected payments from profit distribution where the intention to include such profit in original capital, evidenced by the auditor's consent, has been announced to the Czech National Bank, unless the Czech National Bank refuses to allow the inclusion of such profit in original capital within one month of the submission of the auditor's consent or informs the payment institution within one month of the submission of the auditor's consent that it reserves the right to refuse the inclusion of such profit in original capital within a further one month at maximum and then refuses to allow the inclusion of such profit in original capital within this extended time limit,
- e) plus valuation changes stemming from the consolidation of data on a foreign branch; where such valuation changes are negative they shall be subtracted,
- f) minus the loss for the current year,
- g) minus goodwill,
- h) minus intangible assets other than goodwill, and
- i) minus valuation changes from changes in the fair value of equity instruments included for accounting purposes in the portfolio of realisable financial instruments, where such valuation changes are negative.

Article 34

Additional capital

Additional capital shall consist of:

- a) subordinated debt and
- b) valuation changes from changes in the fair value of equity instruments for which an active market exists and which are included for accounting purposes in the portfolio of realisable financial instruments, where such valuation changes are positive. Valuation changes shall be determined net of any deferred tax liabilities.

¹⁶⁾ Article 61 of the Commercial Code.

Article 35

Subordinated debt

For the definition of subordinated debt, the provisions of the decree stipulating prudential rules for banks, credit unions and investment firms on subordinated debt A in capital on an individual basis shall apply *mutatis mutandis*.¹⁷⁾

Article 36

Deductible items

Deductible items shall consist of:

- a) the value of capital investments in
 - 1. institutions,
 - 2. insurance companies, reinsurance companies, insurance holding companies or mixed-activity insurance holding companies, or
 - 3. other financial institutions,where they exceed 10% of the registered capital of the entities in which they are invested,
- b) the sum of the values of capital investments in
 - 1. institutions,
 - 2. insurance companies, reinsurance companies, insurance holding companies or mixed-activity insurance holding companies, or
 - 3. other financial institutions,in the amount that exceeds 10% of the capital before the deduction of the items in subparagraph a) and items 1 to 3, where the individual capital investments represent up to and including 10% of the registered capital of the entities in which they are invested, and
- c) the value of exposures from securitisation which would have a risk weight of 1250% under the decree stipulating prudential rules for banks, credit unions and investment firms.¹⁸⁾

Article 37

Limits for capital items on an individual basis

(1) Additional capital may not be taken into account to an extent exceeding 50% of original capital.

(2) Without prejudice to paragraph 1, 50% of the deductible items shall be deducted from the original capital and 50% shall be deducted from the additional capital. If 50% of the deductible items exceeds the additional capital, an amount corresponding to this excess shall be deducted from original capital.

Article 38

Methods for calculating the capital requirement to cover risks

(1) The methods for calculating the capital requirement shall be:

- a) the overhead-based method (hereinafter referred to as “Method A”),
- b) the payment volume method (hereinafter referred to as “Method B”), or
- c) the basic indicator method (hereinafter referred to as “Method C”).

(2) Hybrid payment institutions shall apply one of these methods only for activities under Article 8 of the Act.

¹⁷⁾ Article 58 of Decree No. 123/2007 Coll., on prudential rules for banks, credit unions and investment firms.

¹⁸⁾ Annexes 17 and 18 to Decree No. 123/2007 Coll., as amended by Decree No. 282/2008 Coll.

Article 39

Method A

(1) The capital requirement determined using Method A shall equal 10% of the sum of the overheads for the immediately preceding accounting period; “overheads” shall mean costs of depreciation and amortisation of tangible and intangible assets and administrative costs.

(2) In the event of a significant change in the business of a payment institution that determines its capital requirement using Method A since the immediately preceding accounting period, the Czech National Bank may allow a change in the calculation of the capital requirement where justified.

(3) A payment institution that started its activities during the current accounting period shall determine the capital requirement using Method A as 10% of the sum of the overheads as projected for the current accounting period, adjusted in accordance with the requirements of the Czech National Bank where applicable.

(4) A hybrid payment institution shall include in its overheads only those overheads which relate to activities under Article 8 of the Act.

Article 40

Method B

(1) The capital requirement determined using Method B shall equal the product of the scaling factor defined in Article 42 and the sum of:

- a) 4% of the slice of payment volume up to the equivalent of EUR 5 million,
- b) 2.5% of the slice of payment volume above the equivalent of EUR 5 million and up to the equivalent of EUR 10 million,
- c) 1% of the slice of payment volume above the equivalent of EUR 10 million and up to the equivalent of EUR 100 million,
- d) 0.5% of the slice of payment volume above the equivalent of EUR 100 million and up to the equivalent of EUR 250 million, and
- e) 0.25% of the slice of payment volume above the equivalent of EUR 250 million.

(2) During the period from 31 December to 30 December of the following year the amounts in euros defined in paragraph 1 shall be converted to amounts in the Czech koruna at the exchange rate announced by the Czech National Bank as the last in October of the year in which the period starts.

(3) Payment volume shall represent one-twelfth of the total amount of payment transactions executed by the payment institution in the immediately preceding accounting period.

Article 41

Method C

(1) The capital requirement determined using Method C shall equal the higher of the following values:

- a) the product of the relevant indicator defined in paragraph 2, the multiplication factor defined in paragraph 5 and the scaling factor defined in Article 42, or
- b) 80% of the three-year average of the relevant indicators, calculated from data for the last three accounting periods verified by an auditor.

(2) The relevant indicator shall equal the sum of interest income, interest expenses, income from fees and commissions and other operating income, and the calculation shall be performed as follows:

- a) the relevant indicator shall be calculated on the basis of the twelve-monthly observations from data as of the end of the last twelve-month accounting period;
- b) a hybrid payment institution shall include in other operating income only other operating income relating to activities under Article 8 of the Act;
- c) each item shall be taken into account in the corresponding positive or negative value;
- d) extraordinary and irregular income shall not be included in the calculation of the relevant indicator; and
- e) expenditure on outsourcing rendered by an entity subject to comparable supervision by a competent supervisory authority may be subtracted from the relevant indicator.

(3) Where a payment institution whose financial statements are verified by an auditor in accordance with another law does not have data from the financial statement verified by the auditor within the legally defined time limit, it shall use data not verified by the auditor.

(4) Where a payment institution started its activities during the current accounting period, it shall determine the relevant indicator on the basis of its plan, adjusted in accordance with the requirements of the Czech National Bank where applicable.

(5) The multiplication factor shall equal the sum of:

- a) 10% of the slice of the relevant indicator up to the equivalent of EUR 2.5 million,
- b) 8% of the slice of the relevant indicator above the equivalent of EUR 2.5 million and up to the equivalent of EUR 5 million,
- c) 6% of the slice of the relevant indicator above the equivalent of EUR 5 million and up to the equivalent of EUR 25 million,
- d) 3% of the slice of the relevant indicator above the equivalent of EUR 25 million and up to the equivalent of EUR 50 million, and
- e) 1.5% of the slice of the relevant indicator above the equivalent of EUR 50 million.

(6) During the period from 31 December to 30 December of the following year the amounts in euros defined in paragraph 5 shall be converted to amounts in the Czech koruna at the exchange rate announced by the Czech National Bank as the last in October of the year in which the period starts.

Article 42

Scaling factor

The scaling factor to be used when applying Method B or Method C shall be:

- a) 0.5 where the payment institution provides only the payment service listed in Article 3(1)(f) of the Act,
- b) 0.8 where the payment institution provides the payment service listed in Article 3(1)(g) of the Act,
- c) 1 where the payment institution provides any of the payment services listed in Articles 3(1)(a) to (e) of the Act.

Part 2

Capital adequacy of an electronic money institution

(Regarding Article 48(3) of the Act)

Article 43

Calculation of capital adequacy

For the calculation of the capital adequacy of an electronic money institution, the capital defined in Article 44 and the capital requirement to cover risks defined in Article 45 shall be compared.

Article 44

Calculation of capital

Articles 32 to 37 shall apply *mutatis mutandis* to the calculation of the capital of an electronic money institution.

Article 45

Calculation of the capital requirement to cover risks

- (1) The capital requirement shall equal the higher of the following values:
- a) 2% of the current amount of total financial liabilities related to outstanding electronic money, or
 - b) 2% of the average of the preceding six months' total financial liabilities related to outstanding electronic money.
- (2) Where the electronic money institution has been carrying on its activity for less than six months, the capital requirement shall equal the higher of the following values:
- a) 2% of the current amount of total financial liabilities related to outstanding electronic money as of the moment of calculation, or
 - b) 2% of the six months' target total amount of financial liabilities related to outstanding electronic money, where the estimated amount shall be evidenced by the business plan.

Heading III

Limitations of investments

Article 46

(Regarding Articles 20(4) and 49(2) of the Act)

Low-risk assets shall mean government or qualifying instruments defined in the decree stipulating prudential rules for banks, credit unions and investment firms, excluding other qualifying instruments that would have a coefficient for the calculation of the capital requirement for specific interest risk below or equal to 1.6%.¹⁹⁾

¹⁹⁾ Table 2 in Annex 20 to Decree No. 123/2007 Coll., as amended by Decree No. 282/2008 Coll.

Heading IV

Disclosure of information by an electronic money institution

Article 47

Scope of information disclosed

(Regarding Article 50(1) of the Act)

(1) The electronic money institution shall disclose information on the structure of shareholders having shares in the registered capital or voting rights of at least 10%. In the case of a shareholder that is:

- a) a legal entity, the business name or designation, legal form, registered address and share in the registered capital or voting rights expressed in percentages shall be given,
- b) a natural person, the name or names, surname and share in the registered capital or voting rights expressed in percentages shall be given.

(2) The electronic money institution shall disclose in particular the following information on its activities:

- a) the subject of business (activities) entered in the Companies Register,
- b) a list of the activities it actually performs, and
- c) a list of activities restricted by the Czech National Bank or terminated at the request of the Czech National Bank.

(3) The electronic money institution shall disclose in particular the following information on its financial situation:

- a) a quarterly balance sheet,
- b) a quarterly profit and loss account,
- c) information on the amount of capital and the capital requirement to cover risks.

(4) Where information required to be disclosed is subject to a reporting duty to the Czech National Bank, the electronic money institution shall disclose such information in a structure similar to that used in reports submitted to the Czech National Bank.

Article 48

Manner of disclosing information

(Regarding Article 50(1) of the Act)

(1) The electronic money institution shall disclose the information referred to in Article 47 in the Czech language on its website in a downloadable data file in a commonly used format.

(2) Information as of 31 March, 30 June and 30 September shall be disclosed within six weeks of the end of the relevant calendar quarter, while information as of 31 December shall be disclosed within four months of the end of the relevant calendar year; the information shall be disclosed together with the disclosure date. The requirements regarding the manner of disclosing information as of 31 December shall be deemed met if the electronic money institution discloses the required information in its annual report as part of the duties it has as an accounting entity.

(3) The part of the first sentence of paragraph 2 following the semicolon shall apply *mutatis mutandis* to the disclosure of additions or corrections to already disclosed information.

(4) The electronic money institution shall inform the Czech National Bank without undue delay about the exact internet address where such information is available and about any updates to this address.

Heading V

Some information and documents submitted by a payment institution to the Czech National Bank

Article 49

Notification of provision of payment services through an agent

(Regarding Article 23(3) of the Act)

(1) The payment institution shall submit notification of its intention to provide payment services through an agent providing payment services in the Czech Republic using the form, the specimen of which is given in Annex 8 hereto.

(2) Together with the notification referred to in paragraph 1, the payment institution shall submit:

- a) information about agents pursuant to Article 27 of the Act and the decree governing disclosure of information by payment institutions to the Czech National Bank,²⁰⁾
- b) copies of documents referred to in Article 4(1)(e) proving the trustworthiness, competence and sufficient experience of each agent who is a natural person and each director of an agent that is a legal entity about whom information is submitted in accordance with subparagraph a),
- c) a declaration, the specimen of which is given in Annex 8 hereto, that the control system of each agent about whom information is submitted in accordance with subparagraph a) is suitable as regards fulfilment of duties connected with combating money laundering and terrorist financing.

(3) The documents referred to in paragraph 2(b) may be replaced by a declaration, the specimen of which is given in Annex 8 hereto, that the payment institution has verified the trustworthiness, competence and sufficient experience of each agent who is a natural person and each director of an agent that is a legal entity about whom information is submitted pursuant to paragraph 2(a) in accordance with the criteria for the evaluation of trustworthiness, competence and sufficient experience. If the Czech National Bank has any doubts about whether any of the persons about whom information is submitted pursuant to paragraph 2(a) is trustworthy, competent or sufficiently experienced, it shall call upon the payment institution to submit the documents referred to in paragraph 2(b). The payment institution shall submit the required documents to the Czech National Bank without undue delay and within 15 days of delivery of the call of the Czech National Bank.

(4) The payment institution shall submit the information referred to in paragraphs 1 to 3 to the Czech National Bank in electronic form.

(5) If the payment institution intends to provide payment services through an agent in a host Member State, it shall follow the procedures set out in Article 53.

²⁰⁾ Article 7 of Decree No. 375/2009 Coll., concerning submitting of information by payment institutions, small-scale payment service providers and electronic money institutions to the Czech National Bank.

Article 50

Notification of the performance of some operating activities through another entity

(Regarding Article 26(4) of the Act)

(1) The payment institution shall submit notification of its intention to delegate the performance of some operating activities relating to the provision of payment services to another entity using the form, the specimen of which is given in Annex 9 hereto.

(2) Together with the notification, the payment institution shall submit a draft contract between the payment institution and the entity to which the performance of the agreed activities is to be delegated.

Notification of the performance of activities in a host Member State

(Regarding Article 29(2) of the Act)

Article 51

(1) The payment institution shall submit notification of its intention to carry on its activities in a host Member State through a branch on a form, the specimen of which is given in Annex 10 hereto.

(2) Together with the notification, the payment institution shall submit a description of the organisation structure of the branch, containing the following information in particular:

- a) the work of each department and a description of the departments' links to other units of the branch and the payment institution, the competencies and powers of these departments, and information on whether the branch is considering establishing more business outlets within the branch, the number of such outlets, the forecasted extent and types of payment services provided by them, their position in the organisation structure of the branch, and their responsibilities and manner of management,
- b) a definition of the decision-making responsibilities of the branch, and
- c) the manner of control of the branch and its position in the internal control system of the payment institution.

Article 52

A payment institution intending to perform activities in another Member State without establishing a branch shall submit notification on a form, the specimen of which is given in Annex 10 hereto.

Article 53

(Regarding Article 23(3) of the Act)

(1) A payment institution intending to provide payment services through an agent in a host Member State shall submit notification on a form, the specimen of which is given in Annex 10 hereto.

(2) If the agent is a natural person, the payment institution shall also submit, together with the notification, copies of documents referred to in Article 4(1)(e) proving the trustworthiness, competence and sufficient experience of the agent.

(3) If the agent is a legal entity, the payment institution shall submit the following together with the notification:

- a) a list of persons that are the agent's statutory body or members of the statutory body, including the position of each person, and
- b) copies of documents referred to in Article 4(1)(e) proving the trustworthiness, competence and sufficient experience of the person specified in subparagraph a).

(4) Together with the notification, the payment institution shall also submit a description of the organisational arrangements relating to the use of agents, containing the following information in particular:

- a) a definition of the responsibilities of the agent, and
- b) the manner of control of the agent and the agent's position in the internal control system of the payment institution.

PART FOUR

COMMON, TRANSITIONAL AND FINAL PROVISIONS

Article 54

Common provisions

(1) The Czech National Bank shall publish the specimen forms stipulated in this Decree in a manner allowing remote access.

(2) If an entity acts through a representative, a power of attorney or other document proving the representative's authorisation shall be annexed to the application or notification. The authorising person's signature shall be authenticated.

(3) An authenticated copy may be submitted instead of the original document.

(4) If the nature of the matter does not allow an annex to the application or notification to be submitted or information to be given, and if this is not sufficiently evident from the application or notification, the applicant or notifying entity shall state this fact in the application or notification together with the reasons why the annex cannot be submitted or the information cannot be given and shall substantiate such reasons appropriately.

(5) Instead of submitting the prescribed annex, the applicant or notifying entity may refer to a precisely identified document which it has submitted to the Czech National Bank during the past three years and which meets the requirements laid down herein.

(6) A documentary annex to the application or notification can be submitted in the original provided that it was issued by a public authority of

- a) a Member State, or
- b) a foreign country with which the Czech National Bank has signed a memorandum of understanding; a list of such authorities shall be published by the Czech National Bank in a manner allowing remote access.

Article 55

Transitional provision on information disclosure

Electronic money institutions do not have to disclose the information referred to in Article 47 for 2009.

Article 56

Effect

This Decree shall take effect on the date of its promulgation.