

DECREE
No. 347/2006 Coll.

of 31 May 2006,

implementing certain provisions of the Act on Financial Conglomerates
(version in force as from 1 August 2016)

As amended by:
Decree No. 250/2013 Coll.
Decree No. 198/2016 Coll.

Pursuant to Article 34 to implement Articles 21(5), 22(6), 24(2), 25(3) and 26(2) of Act No. 377/2005 Coll., on Supplementary Supervision of Banks, Credit Unions, Insurance Corporations and Securities Dealers in Financial Conglomerates and on the Amendment of Certain Other Acts (Act on Financial Conglomerates), as amended by Article 57/2006 Coll. (hereinafter referred to as the “Act”), the Czech National Bank stipulates the following:

PART ONE

INTRODUCTORY PROVISIONS

Article 1

Subject matter

This Decree implements the relevant legal act of the European Union,¹⁾ is related to the directly applicable regulations of the European Union¹³⁾ and sets forth

- a) criteria for the exclusion of entities from the calculation of the supplementary capital adequacy requirement and time limits for compiling reports on the supplementary capital adequacy requirement,
- b) documents for assessing the trustworthiness and competence of senior officers of a mixed financial holding entity,
- c) the structure and time limits for supplying information for the purposes of supplementary supervision,

¹¹⁾ Articles 6 to 9 and Annexes I and II of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as amended by Directives 2010/78/EU and 2011/89/EU of the European Parliament and of the Council.

¹³⁾ Commission Delegated Regulation (EU) No 342/2014 of 21 January 2014 supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates.

Commission Delegated Regulation (EU) No 2015/2303 of 28 July 2015 supplementing Directive of the European Parliament and of the Council No 2002/87/EC with regard to regulatory technical standards specifying the definitions and coordinating the supplementary supervision of risk concentration and intra-group transactions.

d) the manner, structure and dates of disclosure of information about a financial conglomerate.

Article 2

Liable entity

For the purposes of this Decree, “liable entity” shall mean an entity which is obliged under Article 25(1) and (2) of the Act to supply the coordinator with information necessary for performing supplementary supervision of compliance with the supplementary capital adequacy requirement, risk concentration, intra-group transactions and compliance with the supplementary requirements for the internal control system including the risk management system.

PART TWO

ADDITIONAL PRUDENTIAL RULES

Heading deleted

Article 3

The liable entity shall calculate the supplementary capital adequacy requirement and compile reports on the supplementary capital adequacy requirement at least four times a year, doing so as of 31 March, 30 June, 30 September and 31 December of the calendar year. The supplementary capital adequacy requirement shall be calculated in accordance with the rules laid down in the directly applicable legislative act of the European Union regulating the application of the calculation methods of capital adequacy requirements for financial conglomerates.¹³⁾

Article 4

Detailed specification of the criteria for the exclusion of entities from the calculation of the supplementary capital adequacy requirement

(1) For the purposes of supplementary supervision, an entity in a financial conglomerate is considered insignificant if the balance sheet total of that entity is lower than the smaller of the following values:

- a) EUR 10,000,000, where the value in euro in the period from 31 December of the given year to 30 December of the following year is converted into Czech koruna using the exchange rate declared by the Czech National Bank as the last one in October of the given year, or
- b) 1% of the sum of the balance sheet totals of the entities which are members of the financial conglomerate.

If, however, the sum of the balance sheet totals of entities which each individually would be considered insignificant amounts to at least 1% of the sum of the balance sheet totals of the entities which are members of the financial conglomerate, those entities shall be included in the calculation of the supplementary capital adequacy requirement.

(2) The inclusion of an entity in the calculation of the supplementary capital adequacy requirement shall be inappropriate or misleading with regard to the purpose of supplementary supervision in cases where

a) the share in this entity is held temporarily, especially with the intention of selling it within 12 months; if the share is not sold within 12 months from its acquisition or from the taking of the decision to sell it, the entity shall be included in the calculation of the supplementary capital adequacy requirement,

b) this entity is in bankruptcy or liquidation, or

c) other reasons have arisen which were proven to the coordinator.

Article 5

Cancelled

Article 6

Cancelled

Article 7

Cancelled

Article 8

Cancelled

Heading deleted

Article 9

Cancelled

Article 10

Cancelled

Article 11

Cancelled

Article 12

Cancelled

Heading deleted

Article 13

Cancelled

Article 14

Cancelled

PART THREE

PERSONAL REQUIREMENTS

Article 15

(1) In order to prove the competence and trustworthiness of a senior officer of a mixed financial holding entity (hereinafter referred to as the “senior officer”), the mixed financial holding entity shall submit documents to the extent referred to in paragraph 2.

(2) The documents referred to in paragraph 1 are:

a) an extract from the Criminal Register, not more than one month old, concerning the senior officer. A person who is a citizen of the Czech Republic and who has resided in a country other than the Czech Republic for an unbroken period of more than six months during the last three years shall moreover provide a document, not more than three months old, from that state analogous to the extract from the Criminal Register. A foreign natural person shall also provide an analogous document, not more than three months old, issued by the state of which he is a citizen as well as by any state in which this person has resided for an unbroken period of more than six months during the last three years. Should the acquisition of such document be associated with provably excessive time demands or financial costs, the senior officer may provide a declaration replacing such document;

b) a curriculum vitae specifying all engagements, entrepreneurial activities, other self-employment activities, memberships of professional associations and memberships of bodies of other legal entities, including memberships already terminated. If the senior officer has held senior positions, he shall state in every case the scope of his powers and responsibilities and the number of people he managed;

c) documents or certified copies thereof proving the level of education attained or professional qualifications otherwise acquired; the document proving level of education attained may be replaced by a certificate of recognition of the professional qualifications of the proposed officer

issued pursuant to the Recognition of Professional Qualifications Act¹¹⁾,

d) a brief job description for the position of the senior officer;

e) a completed questionnaire as given in Annex 1 hereto;

f) other documents and information relating to the senior officer that may prove, above and beyond the scope of the documents given in (a) to (e), the trustworthiness and competence of the senior officer, for instance a reference from his previous employer,

g) a declaration made by the senior officer that all the information he has stated and all the documents he has submitted are up-to-date, complete and truthful.

(3) The mixed financial holding entity shall also submit a job description for the position to which the senior officer is to be elected or appointed, including his envisaged competences and powers. This document may be replaced by an internal regulation of the mixed financial holding entity governing the position that the officer is to hold, including the competences and powers ensuing from this position.

(4) If the senior officer is not to be a statutory body or a member of the statutory body of the mixed financial holding entity, or if the powers of a statutory body of the mixed financial holding entity have not been delegated to the proposed officer, the mixed financial holding entity shall state upon which fact the proposed officer manages the activities of the mixed financial holding entity.

(5) A public document issued by an authority of another state must be superlegalised or certified with an apostille in accordance with the relevant international treaty¹²⁾, save as where a promulgated international treaty which is binding on the Czech Republic provides otherwise.

PART FOUR

CONTENT AND TIME LIMITS FOR MEETING DISCLOSURE DUTIES

CHAPTER I

INFORMING THE COORDINATOR

Article 16

(1) The liable entity shall report the following to the coordinator:

a) the structure of the group and the entities in the group,

b) the supplementary capital adequacy requirement,

c) risk concentration,

¹¹⁾ Act No. 18/2004 Coll., on the recognition of professional qualifications and other competences of nationals of the Member States of the European Union, as amended (the Recognition of Professional Qualifications Act).

¹²⁾ Memorandum of the Ministry of Foreign Affairs No. 45/1999 Coll., on the accession of the Czech Republic to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

d) intra-group transactions.

(2) The manner of reporting pursuant to (1)(a) and (b) shall be agreed in advance between the liable entity and the coordinator. The manner of reporting pursuant to (1)(c) and (d) is governed by the directly applicable legislative act of the European Union regulating technical standards in the area of risk concentration and intra-group transactions¹³⁾.

Article 17

Reports on the structure of the group and on the entities in the group

(1) The liable entity shall report to the coordinator on the structure of the group and on the entities in the group as of 1 January by 31 January of the same calendar year. In addition, the liable entity shall inform the coordinator about changes made in the previous quarter or that no changes were made in the previous quarter by the 30th calendar day after the end of the first, second and third quarter.

(2) The report on the structure of the group and on the entities in the group shall consist of diagrams and a text.

(3) The diagrams shall illustrate the ownership structure of the group and the management structure of the group, in both cases identifying the entities in the financial conglomerate.

(4) The text shall contain at least the information given in Annex 2 hereto. Where the information has already been disclosed to supervisory authorities for the purposes of supervision of regulated entities on a solo or consolidated basis, the liable entity may state only the name and address of the supervisory authority to which this information has been disclosed and the date of disclosure. The liable entity shall always supply the coordinator with information on whether the regulated entity in the financial conglomerate is compliant with the capital requirements on a solo and consolidated basis as stipulated by special legal rules.

Article 18

Reports on the supplementary capital adequacy requirement

(1) The liable entity shall report to the coordinator on the supplementary capital adequacy requirement by the 90th calendar day after the day as of which the liable entity is compiling the report; the report as of 31 December shall be submitted by 30 April of the following calendar day.

(2) The report on the supplementary capital adequacy requirement shall contain at least the information given in Annex 3 hereto.

Article 19

Cancelled

Article 20

Cancelled

CHAPTER II

DISCLOSURE OF INFORMATION

Article 21

(1) Regulated entities in a financial conglomerate shall disclose at least the following information about the financial conglomerate of which they are part, in a downloadable document on their website:

- a) the name of the group,
- b) an overview of the entities in the financial conglomerate, stating the commercial name, identification number and registered address in the case of a legal entity, and the name(s) and surname in the case of a natural person, and identifying the entity at the head of the financial conglomerate,
- c) the value of the capital at the financial conglomerate level,
- d) the value of the capital requirements at the financial conglomerate level,
- e) the value of the difference between the capital at the financial conglomerate level and the capital requirements at the financial conglomerate level subject to technical standards,
- f) whether or not the supplementary capital adequacy requirement is complied with.

(2) Regulated entities in a financial conglomerate shall disclose the information referred to in (1) within five days from the lapse of the time limit given in Article 18(1).

PART FIVE

TRANSITIONAL AND FINAL PROVISIONS

Article 22

The liable entity shall

- a) calculate the supplementary capital adequacy requirement pursuant to Article 3 and report to the coordinator on the supplementary capital adequacy requirement pursuant to Article 18,
- b) compile a risk concentration report pursuant to Article 12 and report to the coordinator on risk concentration pursuant to Article 19 and
- c) compile a report on intra-group transactions pursuant to Article 14 and report to the coordinator on intra-group transactions pursuant to Article 20 for the first time according to the

position as of 31 December 2006.

Article 23

Effect

This Decree shall take effect on 30 September 2006.

Governor

Zdeněk Tůma

Annex 1

Questionnaire for the senior officer

1. Are you, as of the date of submission of the document, a statutory body or a member thereof or a member of the supervisory body of a legal entity? If so, please state the commercial name of the legal entity and the position held, including the date since which you have held this position, together with a declaration of whether or not you will continue to hold this position.

2. Has bankruptcy ever been declared or composition permitted in respect of your assets or the assets of any legal entity controlled by you, or has any bankruptcy petition ever been dismissed due to insufficient assets? Have you ever performed duties as the statutory body or member of the statutory, managing or supervisory body of a legal entity within a period of three years prior to bankruptcy being declared or composition permitted in respect of the assets of that legal entity? If so, please state the name of that legal entity.

3. Have you ever performed duties as the statutory body or member of the statutory, managing or supervisory body of a legal entity within a period of three years prior to administration being imposed on that legal entity? If so, please state the name of that legal entity.

4. Have you ever had a business licence or other licence suspended or withdrawn, or has a court of law or administrative authority ever refused to grant its consent to your election, nomination or appointment to a position where such consent was a necessary condition for your election, nomination or appointment? If so, please briefly describe the circumstances.

5. Has your permission, licence or other authorisation to carry on business activities ever terminated for reasons other than withdrawal? If so, please briefly describe the circumstances.

6. Have you ever been expelled from a professional association or chamber, be it domestic or foreign, in the past five years? Have you ever had an application to join such an association or chamber refused in the same period? Have you ever had a disciplinary penalty imposed on you by such an association or chamber in the past five years? If so, please briefly describe the circumstances.

7. Have you ever performed duties as the statutory body or member of the statutory, managing or supervisory body of a legal entity which has been expelled from a professional association or chamber, be it domestic or foreign? Has this legal entity ever had an application to join such an association or chamber refused or has it ever had a disciplinary penalty imposed on it by such an association or chamber? If so, please briefly describe the circumstances.

8. Have you ever had a legally effective penalty imposed on you in the past ten years for an administrative offence related to operations on the financial market? Have you ever had a duty to pay compensation imposed on you for serious or repeated breaches of your legal duties, for misuse of confidential information or for committing any similar administrative offence related to operations on the financial market? If so, please briefly describe the circumstances.

9. Have you ever performed duties as the statutory body or member of the statutory or

supervisory body of a legal entity at a time when actions occurred, for which the legal entity had a legally effective penalty for an administrative offence or a duty to pay compensation for serious or repeated breaches of a legal duty or for committing any similar administrative offence related to the financial market imposed on it? If so, please briefly describe the circumstances.

10. Do you have overdue liabilities to banks or other entities or tax payable or tax arrears? Do you have outstanding public health insurance payments, social security payments or state employment policy contributions?

Annex 2

Reports on the structure of the group and on the entities in the group

1. The text of the report on the structure of the group and on the entities in the group shall contain at least

- a) information about the identification of the Report on the structure of the group and on the entities in the group,
- b) information about the entity at the head of the financial conglomerate,
- c) information about the other entities in the financial conglomerate,
- d) information about the other entities in the group,
- e) any additional information necessary for identifying the structure of the group.

2. The information about the identification of the report shall contain

- a) the name of the group,
- b) the designation of the liable entity; the commercial name, identification number and registered address in the case of a legal entity; the name(s) and surname, title, home address and the date of birth in the case of a natural person,
- c) the date as of which the report is compiled,
- d) the name(s) and surname, phone number and e-mail address of the contact person.

3. The information about the entity at the head of the financial conglomerate shall contain

- a) the commercial name, identification number and economic activity classification;
- b) the registered address,
- c) the subscribed and paid-in amount of capital stock;
- d) the subject of business (activities) entered in the Companies Register and the activities actually performed;
- e) the name, surname, title, home address and date of birth of persons which are a statutory body or members of statutory, management or supervisory bodies, stating the commercial names and objects of business of the legal entities in whose bodies these persons feature,
- f) whether an audit will be performed and, if so, by which auditor or audit company;
- g) whether or not it is a regulated entity,

h) if it is a regulated entity, whether it is compliant with the capital requirements on a solo and consolidated basis,

i) a list of persons having a qualifying holding in the entity at the head of the financial conglomerate. The direct and indirect share in the capital stock and the direct and indirect share in the voting rights, expressing the actual influence on the entity, shall be stated for each entity. If significant influence is applied in another way, a brief description of this way shall be given.

If the financial conglomerate has a natural person at its head, his name(s), surname, title and date of birth shall be given; in this case, the information referred to in (c), (e) and (i) shall not be given and the information referred to in (b) shall state his business address or home address.

4. The information about the other entities in the financial conglomerate shall be provided for individual entities within the scope referred to in (3)(a) to (h), stating also

a) for a regulated entity, the name and address of supervisory authorities and third-state supervisory authorities,

b) whether or not it is a subsidiary of the entity at the head of the financial conglomerate,

c) whether it is included in the calculation of the supplementary capital adequacy requirement. If it is not included in the calculation of the supplementary capital adequacy requirement, the reasons for its exclusion shall be given.

5. The information about the other entities in the group which are not entities in the financial conglomerate shall be provided for individual entities within the scope referred to in (3)(a) to (d).

Annex 3

Reports on the supplementary capital adequacy requirement

1. The report on the supplementary capital adequacy requirement shall contain at least
 - a) information about the identification of the Report on the supplementary capital adequacy requirement,
 - b) information about compliance with the supplementary capital adequacy requirement.

2. The information about the identification of report shall contain
 - a) the name of the group,
 - b) the designation of the liable entity; the commercial name, identification number and registered address in the case of a legal entity; the name(s) and surname, title, home address and date of birth in the case of a natural person,
 - c) the date as of which the report is compiled,
 - d) the name(s) and surname, phone number and e-mail address of the contact person.

3. The information about compliance with the supplementary capital adequacy requirement shall contain
 - a) the method or combination of methods used to calculate the supplementary capital adequacy requirement,
 - b) the value of the capital at the financial conglomerate level,
 - c) the value of the capital requirements at the financial conglomerate level,
 - d) the value of the difference between the capital at the financial conglomerate level and the capital requirements at the financial conglomerate level subject to technical standards,
 - e) whether or not the supplementary capital adequacy requirement is complied with. If the supplementary capital adequacy requirement is not complied with, the way in which the non-compliance will be addressed shall be stated;
 - f) whether the capital shortfall has been deducted in accordance with the regulation of a subsidiary in a financial conglomerate. If so, the amount deducted and whether the deduction has been made in full or proportionally shall be stated. If the deduction has been made proportionally, how this proportional level was set shall be stated.

Annex 4
Repealed

Annex 5
Repealed