

Act XXXVII of 2014

on the further development of the system of institutions strengthening the security of the individual players of the financial intermediary system

In order to maintain financial stability, ensure the continuous availability of the critical functions provided by the financial sector, efficiently manage any institutional crises, minimise the use of taxpayer funds for crisis management purposes and establish a framework for the administrative restructuring of distressed financial institutions, Parliament has adopted the following Act:

PART ONE

INTRODUCTORY PROVISIONS

Chapter I

Scope of the Act

Section 1

(1) The resolution framework defined herein shall be applicable to

- a)* credit institutions and investment firms established in Hungary (hereinafter collectively: institution)
- b)* financial holding companies, mixed financial holding companies and mixed-activity holding companies established in Hungary
- c)* financial undertakings established in Hungary which are covered by the consolidated supervision, if they are subsidiaries of the institutions or companies defined in point *b)*, and
- d)* the Hungarian branch of an institution incorporated in a third country.

(2) The scope of this act does not cover the Magyar Fejlesztési Bank Zrt. and Magyar Export-Import Bank Zrt.

(3) For the purposes of this Act, cooperative credit institutions defined in the Act on the integration of cooperative credit institutions and the modification of certain legal regulations focusing on economics (hereinafter: Szhitv.) together with the Integrational Organisation shall be treated as one credit institution if they fall into the scope of the joint and several liability specified in the Szhitv.

(4) The provisions of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (hereinafter: Hpt.), Act CXXXVIII of 2007 on Investment Enterprises and Commodity Exchange Service Providers as well as the Rules Governing Their Activities (hereinafter: Bszt.), Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (hereinafter: Csódtv.), Act IV of 1959 on the Civil Code, Act V of 2013 on the Civil Code (hereinafter: Ptk.), Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services (hereinafter: Ket.), and Act III of 1952 on the Code of Civil Procedure (hereinafter: Pp.) shall be applicable with the deviations specified herein.

Section 2

(1) Resolution is a procedure aiming to administratively restructure an institution or a group of institutions, ensure the continuous availability of the critical functions of the institution, maintain the financial stability of the financial intermediary system, and restore the viability of the institution or the whole group, or a portion thereof.

(2)¹ The following qualify as resolution actions applied during a resolution: decisions taken in respect of applying resolution tools and resolution powers, writing down or converting the capital instruments.

Chapter II

Definitions

Section 3

For the purposes of this Act and the regulations issued by virtue thereof

1. *parent undertaking*: means an undertaking as defined in Section 6 (1) of the Hpt.;
2. *transfer powers*: means the powers to transfer shares, debt instruments, assets, liabilities, rights and obligations, or any combination thereof from an institution under resolution to a recipient;
- 3.² *conversion rate*: means the factor that determines the number of Common Equity Tier 1 items into which the relevant capital items of the Additional Tier 1 capital and the Tier 2 capital will be converted by the Magyar Nemzeti Bank acting in its capacity of resolution authority

¹ Set forth by: Section 165 of Act CCXV of 2015. Effective from: 01/01/2016

² Set forth by: Section 166 of Act CCXV of 2015. Effective from: 01/01/2016

during the restructuring of the capital items and the liabilities that can be included in the bail-in;

4. *recipient*: means the entity to which shares, debt instruments, assets, liabilities, rights or obligations or any combination thereof are transferred from an institution under resolution;

5. *investment firm*: means an investment firm as defined in Section 4 (2) (10) of the Bszt.;

6. *investment protection scheme*: a system officially acknowledged in the specific EEA Member State which covers that part of the investments that does not exceed the coverage level, or a system that, according to the competent supervisory activity, provides investment protection equivalent to the officially acknowledged system;

7. *deposit insurance scheme*: a system officially acknowledged in the specific EEA Member State which covers that part of the deposits that does not exceed the coverage level, or a system that, according to the competent supervisory activity, provides deposit insurance equivalent to the officially acknowledged system;

8. *group*: means a group within the meaning of Section 6 (1) of the Hpt.;

9. *intra-group guarantee assumption*: means an agreement in which one of the enterprises within the group assumes a guarantee for the liabilities of another enterprise within the group towards a third party;

10. *group resolution plan*: means a plan for group resolution;

11. *group recovery plan*: means a plan drawn up for the group in accordance with Section 114 of the Hpt. or Section 102 of the Bszt.;

12. *group resolution*: means resolution action at the level of the parent undertaking or institution subject to consolidated supervision, or an institution which is covered by the consolidated supervision;

13. *group level resolution authority*: means the resolution authority in the Member State in which the consolidating supervisor is situated;

14. *EEA state*: means European Union Member States and any other states that are party to the agreement on the European Economic Area;

15. *set-off arrangement*: means an arrangement under which two or more claims owed between the contracting parties can be set off against each other;

16. *dominant influence*: means control within the meaning of Section 6 (1) (18) of the Hpt.;

17. *Common Equity Tier 1 capital*: means capital as defined in Regulation (EU) No. 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (hereinafter: Regulation (EU) No. 575/2013);

18. *relevant third country authority*: means a third country authority authorised to apply actions equalling resolution tools;

19. *affected creditor*: means a creditor whose claim relates to a liability of an institution under resolution that is reduced or converted to shares by the exercise of the write down or conversion power pursuant to the use of the bail-in tool;

20. *affected owner*: means a shareholder whose shares are cancelled or taken over by means of a transfer based on the powers defined herein;

21. *EU parent undertaking*: means an EU parent institution, EU parent financial holding company, EU parent mixed financial holding company;

22. *EU parent institution*: means an undertaking as defined in Regulation (EU) No. 575/2013;

23. *EU parent financial holding company*: means an undertaking as defined in Regulation (EU) No. 575/2013;

24. *EU parent mixed financial holding company*: means an undertaking as defined in Regulation (EU) No. 575/2013;

24a. *secured liability*: means a liability a liability where the performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements;

25. *dilution*: decrease in ownership resulting from the issue of instruments representing new shareholding;

26. *termination right*: means a right to terminate a contract, a right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes the payment obligation of a party to the contract or a provision that prevents a claim under the contract from arising that would otherwise arise;

27. *supervisory authority*: means an authority within the meaning defined in the Hpt.;

28. *college of supervisors*: means a body within the meaning defined in Act CXXXIX of 2013 on the Magyar Nemzeti Bank;

29. *branch*: means an undertaking within the meaning defined in the Act on the Hungarian Branches and Commercial Representations of Enterprises with Registered Offices abroad;

30. *core business lines*: mean business lines and associated activities, services which represent material sources of revenue, profit or value for the institution;

31. *third country*: means a country that is not a Member State of the European Economic Area;

32. *third country resolution proceeding*: means an action under the law of a third country to manage the insolvency of a third country institution that is comparable, in terms of objectives and anticipated results, to resolution actions under this Act;

33. *cross-border group*: means a group comprising enterprises incorporated in various EEA states;

34. *credit institution*: means an institution within the meaning of Section 8 (1) of the Hpt. and the Integrational Organisation;

35. Integrational Organisation: means the organisation within the meaning of the Szhitv.;

36. *competent supervisory authority*: the authority defined as competent authority in Regulation (EU) No. 575/2013;

37. *competent ministry*: the ministry of an EEA state designated to act as competent ministry in respect of resolutions by virtue of national law;

38. *Tier 2 capital*: means capital as defined in Regulation (EU) No. 575/2013;

39. *significant branch*: means a branch that qualifies as systemically significant pursuant to the Hpt. or the Bszt.;

40. *additional Tier 1 capital*: means capital as defined in Regulation (EU) No. 575/2013;

41. *back to back transaction*: means a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;

42. *critical functions*: mean those activities, services and operations, the discontinuance and limited substitutability of which would likely disrupt the operation of the economy or the financial markets in Hungary or any other EEA Member State significantly due to the institution's or group's size or market share, external and internal interconnectedness, complexity, or cross-border activities;

43. *subsidiary*: means subsidiary within the meaning of Point (78) of Section 6 (1) of the Hpt.;

44. *MNB*: means the Magyar Nemzeti Bank (The Central Bank of Hungary);

45. *emergency liquidity assistance of the Magyar Nemzeti Bank*: means an extraordinary central bank loan not listed under the monetary policy instruments defined in Sections 36 and 18 of Act CXXXIX of 2013 on the Magyar Nemzeti Bank, provided under individual conditions;

46. *net asset value*: means asset portfolio reduced by the liability portfolio;

47. *netting arrangement*: means an arrangement under which a number of claims or obligations can be converted into a single claim, including close-out netting arrangements under

which, on the occurrence of an event defined either in a legal regulation or by the parties themselves, the due date of the parties' obligations is brought forward so that the obligations become immediately due or terminated and, in either case, they are converted into or replaced by a single claim;

48. *on a consolidated basis*: means on the basis of the consolidated situation defined in Section 4 (1) (47) of Regulation (EU) No. 575/2013;

49. *consolidating supervisor*: means a concept within the meaning of Regulation (EU) No. 575/2013;

50. *financial holding company*: means an undertaking as defined in Regulation (EU) No. 575/2013;

51. *financial contracts*:

a) securities transactions, in particular:

aa) contracts for the purchase, sale or loan of a security, a group or index of securities;

ab) an option on a security or group or index of securities;

ac) a repurchase or reverse repurchase transaction on any security, security group or security index;

b) commodity contracts, in particular:

ba) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;

bb) an option on a commodity or group or index of commodities;

bc) a repurchase or reverse repurchase transaction on any such commodity, group or index;

c) stock exchange or OTC futures contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;

d) swap agreements, in particular:

da) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;

db) total return, credit spread or credit swaps;

dc) any agreement or transaction that is similar to an agreement referred to in points (da) or (db) of this point which is the subject of recurrent dealing in the swaps or derivatives markets;

e) inter-bank borrowing agreements;

f) master agreements for any of the contracts or agreements referred to in points (a)–(e);

52. *financial undertaking*: means an undertaking as defined in Section 9 (1) of the Hpt.;

53. *extraordinary public financial support*: means State Aid within the meaning of Section 107 (1) of the Treaty on the Functioning of the European Union, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or group;

54. *systemic crisis*: means a disruption of the financial intermediary system which may have a severe negative impact on the financial intermediary system, as well as the supporting infrastructure and the real economy;

55. *regulated market*: means a market as defined in Section 5 (1) (114) of Act CXX of 2001 on the capital markets;

56. *institution under resolution*: means an institution or organisation within the meaning of Section 1(1) b) or c) whose resolution has been ordered by way of a resolution issued by the MNB acting in its capacity of resolution authority or by any other resolution authority;

57. *resolution authority*: means an authority in an EEA state authorised to apply actions equalling resolution tools;

58. *resolution financing system*: means a system established by an EEA state with a view to ensuring the availability of funds required for the efficient application of resolution actions.

59. *regulatory capital*: means capital as defined in Regulation (EU) No. 575/2013;

60. *cooperative credit institutions*: means credit institutions participating in the integration of cooperative credit institutions pursuant to the Szhtv.;

61. *executive officer*: means a concept within the meaning of Section 6 (1) of the Hpt.

62. *sale of business*: means the tool for effecting a transfer by the MNB acting in its capacity of resolution authority capacity of resolution authority of shares or other instruments of ownership issued by an institution under resolution, or assets, liabilities, rights or obligations of an institution under resolution to a purchaser that is not a bridge institution;

63. *enterprise*: means a legal entity, sole proprietorship and self-employed person pursuing economic activities;

64. *mixed financial holding company*: means an undertaking as defined in Regulation (EU) No. 575/2013;

65. *mixed-activity holding company*: means an undertaking as defined in Regulation (EU) No. 575/2013;

66. *management*: means the directorate and supervisory committee of the institution and financial undertaking, as well as its heads and members including the persons who are in senior positions at the institution operating in the form of a branch.

THIS IS A NON-OFFICIAL TRANSLATION OF THE ACT EFFECTIVE AS OF 1 JULY 2016. THE PRESENT TEXT IS FOR INFORMATION PURPOSES ONLY, IN CASE OF DIFFERENCES BETWEEN THE ENGLISH TRANSLATION AND THE HUNGARIAN ORIGINAL WORDING, THE HUNGARIAN TEXT SHALL PREVAIL.

PART TWO

PREPARATIONS FOR RESOLUTION

Chapter III

Resolution plans

1. Preparation and contents of a resolution plan

Section 4

(1) Acting in its capacity of resolution authoritycapacity of resolution authority, the MNB prepares individual resolution plans for institutions that are not subject to consolidated supervision, and prepares group-level resolution plans for institutions that are subject to consolidated supervision, while it succeeding the proportionality requirement is provided.

(2) Acting in its capacity of resolution authoritycapacity of resolution authority, the MNB in relation to the nature of the activities, shareholding structure, legal form, the risk profile, size and legal status of the institution, consolidation with other institutions or with the whole financial system, dimension and complexity of its activities, its membership in a protection scheme or other cooperative mutual solidarity systems as referred to in Article 113 (7) of Regulation 575/2013/EU, as well as any exercise of investment services or activities specified in Article (5) of Bszt, and whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have significantly negative impact on financial markets, on other institutions, on funding conditions, or on the wider economy, is to determine:

- a) the content and details of resolution plans provided in Article 4-10,
- b) the schedule for the preparation and the frequency for updating of the resolution plan, which may be shorter than that defined in this Act,
- c) the scope and details of the information required from the institutions as provided for in Article 6 (1),
- d) the level of detail for the assessment of resolvability provided for in Article 10 and 13, and Annex 2.

(2a) The simplified obligations does not limit the power of the MNB acting in its capacity of resolution authoritycapacity of resolution authority, where necessary to impose full, unsimplified obligations, and to take crisis prevention measures or crisis management measure.

(2b)³ Acting in its capacity of resolution authoritycapacity of resolution authority, the MNB is entitled to waive the application of this Chapter to parent undertakings and related institutions, which are wholly or partially exempted from prudential requirements in accordance with Article 10 of Regulation 575/2013 / EU. In case of such waiver is granted group resolution plan shall be prepared for a group within the meaning of Article 10 of Regulation 575/2013 / EU.

³ Enacted by: Section 113 (2) of Act CIV of 2014. Amended by: Section 188 of Act CCXV of 2015.

(2c) Where a waiver pursuant to paragraph (2b) is granted, acting in its capacity of resolution authoritycapacity of resolution authority, the MNB shall inform the European Banking Authority of the way of the exemption.

(3) If the resolution conditions prevail, based on consultations with the MNB acting in its scope of authority for the supervision of the financial intermediary system (hereinafter: the Supervisory Authority), the individual resolution plan contains the actions and exceptional actions applicable by the Supervisory Authority against the institution, as well as the resolution actions which are applicable by the MNB acting in its capacity of resolution authoritycapacity of resolution authority in order to enforce the goals of the resolution.

(4) Apart from the individual resolution plans for the institutions belonging to the group, the group-level resolution plan includes the actions and exceptional actions applicable by the Supervisory Authority against the group if the resolution conditions prevail, as well as the resolution actions applicable by the MNB acting in its capacity of resolution authoritycapacity of resolution authority.

(5) The MNB acting in its capacity of resolution authoritycapacity of resolution authority reviews its decision pertaining to the preparation of the resolution plan at least biannually.

(6) The MNB acting in its capacity of resolution authoritycapacity of resolution authority based on consultations with the Supervisory Authority reviews the resolution plan at least annually and modifies it, if necessary.

Section 5

(1) The resolution plan contains scenarios for the case if the necessity of the resolution can be traced back to individual reason and if the resolution is the result of the general crisis situation prevailing in the financial intermediary system.

(2) When preparing the resolution plan, the extraordinary public financial support that can be provided in any form and the emergency liquidity assistance of the MNB or any other central bank shall be ignored.

(3) The review and modification will take place even if there is a change in connection with the institution's organisation, activity or financial situation which may substantially influence the success of the resolution.

(4) The minimum substantive elements of the individual and group resolution plan are set out in *Annex 1*.

(5) The level of detail of resolution plans is aligned to the expected impact of the institution's insolvency on financial markets, other financial institutions and financing conditions, considering, in particular, the size and risk assessment of the institution concerned, as well as the complexity of, and the risks associated with, its business model.

(6) The decision as per Subsection (1) of Section 4 and the resolution plan are not public.

(7) Acting in its capacity of resolution authority, the MNB may decide to share with the institution

a) the substantive part of the resolution plan, including, in particular, the information specified in Subpoints 1 and 6 of Point A) of Annex 1; and,

b) in order to carry out the resolvability review and to remove impediments to the resolution, the information specified in the sections of Annex 1, thus, in particular, in Subpoints 5, 8, 11 and 14 of Point A) of Annex 1.

Section 6

(1) In the context of data disclosure, the institution shall provide to the MNB acting in its capacity of resolution authority all information necessary to draw up the resolution plan as well as to review it.

(2) The MNB acting in its capacity of resolution authority may not request any data from the institution which are otherwise available to the Supervisory Authority, the MNB acting in its scope of authority as the central bank or the MNB acting in its scope of authority as macroprudential supervisor.

(3) In order to define the range of institutions affected by the resolution plan and for the preparation of the resolution plan, the MNB acting in its capacity of resolution authority may request and use any data available to the Supervisory Authority, the MNB acting in its scope of authority as the central bank or the MNB acting in its scope of authority as macroprudential supervisor.

(4) The MNB shall develop its own internal policy in respect of the information flow defined in Subsections (2) and (3).

2. Group resolution plan

Section 7

(1) If the institution is a member of a group and the resolution authority is the MNB acting in its capacity of resolution authority, then the MNB acting in its capacity of resolution authority

shall prepare the group's resolution plan in consultation with the resolution authority of the subsidiary.

(2) If the institution incorporated in Hungary is a member of a group but the group level resolution authority is not the MNB acting in its capacity of resolution authority, then the group resolution plan prepared by the group level resolution authority shall be drawn up in consultation with the MNB acting in its capacity of resolution authority.

(3) Since the group resolution plan also covers any significant branches belonging to the group,

a) if the group level resolution authority is the MNB acting in its capacity of resolution authority, it shall involve the competent resolution authority responsible for significant branch in the consultation about the group resolution plan;

b) if the MNB is the competent resolution authority responsible for the significant branch, the MNB acting in its capacity of resolution authority may also participate in the consultation about the group resolution plan.

(4) The group resolution plan includes

a) the resolution plan for the entire group (through the resolution of the EU parent undertaking);

b) the resolution plan for the EU parent undertaking;

c) the plan applicable following the separation of subsidiaries into independent enterprises.

(5) The scope of the group resolution plan shall apply to:

a) EU parent undertakings;

b) subsidiaries incorporated in EEA states belonging to the group;

c) financial undertakings as per Section 1 (1) belonging to the group; and

d) subsidiaries incorporated in third countries belonging to the group.

(6) The group resolution plan may not impose a disproportionate burden on any EEA state affected by the group resolution.

(7) The assessment of group-level resolvability shall be performed and updated in accordance with this Section. The assessment of group-level resolvability shall be presented in the group resolution plan.

(8) The group resolution plan shall

a) set out the resolution actions to be taken in relation to all group entities in the case of the alternative scenarios defined in Section 5 (1) which, if the group level resolution authority is the MNB acting in its capacity of resolution authority, shall be the actions to be taken in relation to the institution or the financial undertaking defined in Section 1 (1), and the resolution actions coordinated with the competent resolution authorities in the case of subsidiaries;

b) assess the efficiency and usability of resolution actions and powers and the extent to which impediments to the resolution may be eliminated in respect of group entities incorporated in EEA states, with the proviso that enabling the sale of a group entity or a part thereof to a third party shall also be considered as resolution action;

c) examine the possibility of cooperation with the relevant third country authorities in respect of group entities incorporated in third countries, and the applicable resolution actions as well as the consequences of a potential resolution in respect of group institutions incorporated in the EEA state;

d) identify the resolution actions required for group resolution also in respect of the group level resolution authority and the affected resolution authorities, including the legal and economic separation of particular functions or business lines;

e) identify the manner in which the group resolution will be financed and the sharing of financing responsibilities between the affected EEA states, as well as the possibility for or necessity of taking recourse to the financing arrangements.

(9) For the purposes of Subsection (8) a), if the MNB acting in its capacity of resolution authority is not the group level resolution authority but the subsidiary is incorporated in Hungary, then the MNB acting in its capacity of resolution authority shall be actively involved in the planning of the coordinated resolution action to be taken in respect of the subsidiary.

(10) For the purposes of Subsection (8) e), the group resolution plan may not include any extraordinary public financial support — except for the amount paid from the Resolution Fund — or any emergency liquidity assistance provided by the central bank, or central bank liquidity assistance provided under irregular conditions (collateral, maturity, interest rate).

(11) Upon the application of Subsection (8) e), as regards the sharing of financial responsibilities between EEA states, due consideration should be given to proportionality and soundness, as well as the impact on the stability of the relevant EEA state's financial system.

Section 8

(1) Pursuant to Section 6, the EU parent undertaking shall provide the MNB acting in its capacity of resolution authority — in case the MNB acting in its capacity of resolution authority is the group level resolution authority — with all necessary information for the preparation of the group resolution plan. The information thus provided must be pertinent to the EU parent undertaking, the group entities and the financial undertakings defined in Section 1 (1).

(2) In consideration of compliance with the rules of secrecy, of the information provided by the EU parent undertaking, the MNB acting in its capacity of resolution authority shall forward to

a) the European Bank Authority (hereinafter: EBA) the information required by the EBA in order to perform its duties related to the group resolution plan;

b) the resolution authority of the subsidiary the information required for carrying out the duties within its competence;

c) the resolution authority of the significant branch belonging to the group the information required by the branch or by the relevant resolution authority for carrying out their duties;

d) the colleges of supervisors the information required by them in order to perform their duties under the supervisory agreements concluded with the Supervisory Authority or the duties stemming from their involvement;

e) the competent resolution authority of the financial undertaking defined in Section 1 (1) the information required for carrying out its duties.

(3) Information pertaining to subsidiaries incorporated in third countries may be forwarded to the organisations listed in Subsection (2) with the permission of the relevant third country authority.

(4) If the group level resolution authority is the MNB acting in its capacity of resolution authority, for the purposes of preparing and updating the group resolution plan, it shall cooperate and consult with the affected resolution authorities and the affected supervisory authorities — including the Supervisory Authority — within the framework of the resolution college if it has been set up

a) at least once a year, or

b) in case of any changes in a group entity, its activity or financial position that are deemed material for the purposes of the resolution plan.

(5) During the procedure specified in Subsection (4), the MNB acting in its capacity of resolution authority shall involve in the consultations the resolution authority of the subsidiary incorporated in a third country, the financial undertaking defined in Section 1 (1) or the significant branch, provided that the conditions set forth in Section 125 in respect of third country resolution authorities have been met.

(6) If the group level resolution authority is not the MNB acting in its capacity of resolution authority, but there is an institution, a financial undertaking as defined in Section 1 (1) or a significant branch within its competence that is affected by the group resolution plan, then the MNB acting in its capacity of resolution authority shall cooperate with the group level resolution authority.

Section 9

(1) The procedure specified in Section 8 is a multilateral procedure, and the decision passed shall qualify as a decision passed in the framework of a multilateral procedure. As group level resolution authority, the MNB acting in its capacity of resolution authority shall notify the EU parent undertaking and the competent resolution authorities of all EEA states participating in the multilateral procedure about its decision, providing detailed justification.

(2) In the framework of the multilateral procedure, as group level resolution authority, the MNB acting in its capacity of resolution authority may pass a valid decision — a decision passed within the framework of the multilateral procedure referred to in Subsection (1) — only with the consent of the competent resolution authorities of all EEA states participating in the procedure. The deadline for passing the decision shall be four (4) months from the submission by the MNB acting in its capacity of resolution authority of the report underlying the MNB's decision (hereinafter: Report) to the competent resolution authorities participating in the procedure.

(3) If, due to a lack of consent by the competent resolution authority of an EEA state participating in the procedure, the multilateral procedure is unsuccessful, then, upon request by the competent resolution authority of any EEA state participating in the procedure, the MNB acting in its capacity of resolution authority shall or may, at its own initiative, consult with the

EBA in respect of the unsuccessful outcome of the multilateral procedure within the deadline specified in Subsection (2), except for the case cited in Subsection (6).

(4) If, due to a lack of consent by the competent resolution authority of an EEA state participating in the procedure, the multilateral procedure is unsuccessful

a) and the group level resolution authority is the MNB acting in its capacity of resolution authority, then it may pass a decision on a stand-alone basis solely in respect of the EU parent undertaking concerned;

b) and the resolution authority of the subsidiary belonging to the group is the MNB acting in its capacity of resolution authority, then it may pass a decision on a stand-alone basis solely in respect of the subsidiary concerned.

(5) The MNB acting in its capacity of resolution authority shall pass its decision within ten (10) working days of the unsuccessful closure of the multilateral procedure, by sending the decision to the competent resolution authorities of all EEA states participating in the preparatory procedure for the decision passed within the framework of a multilateral procedure.

(6) If, in the opinion of the resolution authority of the subsidiary belonging to the group, the fiscal responsibilities of the EEA state to which it belongs based on its registered office have been violated, and it has turned to the EBA pursuant to Subsection (3), or the rest of the authorities have passed the decision within the framework of the multilateral procedure without its participation, then, within the framework of the resolution college controlled by the MNB acting in its capacity of resolution authority, it may initiate the reassessment of the group resolution plan, including the minimum requirements of regulatory capital and eligible liabilities.

(7) For the purposes of Subsection (6), if the resolution authority of the subsidiary is the MNB acting in its capacity of resolution authority, the MNB shall initiate the procedure referred to in Subsection (6) at the group level resolution authority.

(8) If the MNB acting in its capacity of resolution authority consults with the EBA pursuant to Subsection (3), then, contrary to Subsection (2), the deadline for passing the decision shall be ten (10) working days following the EBA's submission to the Supervisory Authority the decision taken in accordance with Section 19 (3) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European

Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

(9) Also in consideration to Subsections (6) and (7), following the consultation referred to in Subsection (8), the MNB acting in its capacity of resolution authority shall consider the EBA's decision in passing its decision. If the decision of the MNB acting in its capacity of resolution authority differs from the decision of the EBA, the MNB shall provide a reason for the difference in its decision.

(10) If the competent resolution authority of another EEA state is the authority entitled to carry out the procedure and the resolution authority of the EU parent institution's subsidiary credit institution is the MNB acting in its capacity of resolution authority, then the MNB acting in its capacity of resolution authority shall submit its opinion and reservations by the deadline set by the competent resolution authority of the EEA state entitled to carry out the procedure.

(11) The decision passed in the context of the procedure referred to in Subsection (1) by the resolution authority of the EEA state in which the EU parent institution is incorporated shall be directly applicable and enforceable in Hungary. The MNB acting in its capacity of resolution authority shall publish the decision passed by the competent resolution authority of the EEA state on its website, translated into Hungarian. In respect of the execution of and compliance with the contents of the decision passed by the competent resolution authority of another EEA state regarding the organisation under the competence of the MNB acting in its capacity of resolution authority and in respect of the measures to be taken based on the inspection, the governing legislation shall be the Hungarian regulations applicable to the decisions by the MNB acting in its capacity of resolution authority.

(12) The MNB acting in its capacity of resolution authority shall review the necessity of changing the decision referred to in Subsection (2) at least once a year *ex officio*, or upon the request of the parent undertaking or the competent resolution authority of the subsidiary.

Chapter IV Assessment of resolvability and powers for prevention

3. Assessment of resolvability

Section 10

(1) The MNB acting in its capacity of resolution authority shall assess the extent to which the institution or, if such institution is subject to consolidated supervision, all institutions and financial enterprises established in Hungary which are subject to the consolidated supervision, is/are resolvable without the institution itself or the institution or financial enterprise with which it is collectively subject to consolidated supervision using the extraordinary public financial support that can be provided in any form, or the central bank liquidity assistance provided by the MNB or another central bank under irregular conditions (collateral, maturity, interest rate), or their emergency liquidity assistance provided above and beyond the same.

(2) The MNB acting in its capacity of resolution authority shall cooperate with the Supervisory Authority during the assessment as per Subsection (1).

(3) Also in consideration to Section 17, the institution shall qualify as resolvable if, according to the judgement of the MNB acting in its capacity of resolution authority, in the course of its winding up or resolution based on a resolution plan

a) the continuity of critical functions can be maintained, and

b) considerable negative effects on the stability of the financial intermediary system of the country in which the institution is incorporated, or that of the EEA states or that of the EEA as a whole, may be avoided, even in case of a systemic crisis.

(4) The aspects to be considered during the assessment of resolvability are listed in Annex 2.

(5) Resolvability shall be assessed during the preparation and update of the resolution plan.

(6) If the MNB acting in its capacity of resolution authority finds an institution unresolvable, it shall inform the EBA immediately after the decision has been made.

4. Efforts to address or remove impediments to resolvability

Section 11

(1) When, pursuant to an assessment of resolvability for an institution the MNB acting in its capacity of resolution authority determines that there are substantive impediments to the resolvability of that institution, the MNB shall provide written notification on this for the institution and the Supervisory Authority.

(2) The institution shall make a proposal for the MNB acting in its capacity of resolution authority regarding the elimination or management of the impediments to resolvability specified in the notification, within maximum four months of the date of receipt of the notification specified in Subsection (1) to that effect.

(3) In consultation with the Supervisory Authority, the MNB acting in its capacity of resolution authority shall assess whether the steps proposed by the institution according to Subsection (2) above are suitable for managing and eliminating the impediments.

(4) If, according to the MNB acting in its capacity of resolution authority, the proposal of the institution as per Subsection (2) above is suitable for eliminating or effectively managing the impediments to resolvability, it may oblige the institution or group to take such steps by setting a deadline of maximum three months.

(5) If, according to the judgement of the MNB acting in its capacity of resolution authority, the proposal of the institution as per Subsection (2) does not eliminate or manage effectively the impediments to resolvability, the MNB acting in its capacity of resolution authority may oblige the institution or group to take the steps required for the mitigation or elimination of the impediments to resolvability as defined in Section 12 (1)–(2), by setting a deadline of maximum three months.

Section 12

(1) For the purposes of managing or eliminating the impediments to resolvability, after preliminary consultations with the Supervisory Authority, the MNB acting in its capacity of resolution authority shall be entitled to

- a)* require the institution to draw up, conclude or amend service agreements (whether intra-group or with third parties) to cover the provision of critical functions;
- b)* limit the individual and aggregate exposures of the institution;
- c)* impose specific or regular information requirements relevant for resolution purposes;
- d)* require the institution to divest specific assets;
- e)* restrict, prevent or refrain from starting the development of new or existing business lines or the sale of new or existing products;
- f)* require changes to legal or operational structures of the institution or any group entity, either directly or indirectly under its dominant influence, so as to reduce the complexity of the legal or operational structures of any group entities in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools; or
- g)* establish a financial holding company;
- h)* take necessary steps to meet the minimum requirements for own funds and eligible liabilities, including in particular the attempt to renegotiate any eligible liabilities, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the MNB acting in its capacity of resolution authority to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument.

(2) In respect of points b), d) and e) of Subsection (1), the decision of the MNB acting in its capacity of resolution authority requires the consent of the Supervisory Authority.

(3) For the purposes of managing or removing the impediments to resolvability, after preliminary consultations with the Supervisory Authority, the MNB acting in its capacity of resolution authority shall be entitled, where an institution is the subsidiary of a mixed-activity

holding company, to require that the mixed-activity holding company set up a separate financial holding company to exert dominant influence on the institution, if this is necessary in order to facilitate the resolution of the institution.

(4) Upon taking the steps specified in Subsections (1)–(3) and also in consideration of the principle of proportionality, the MNB acting in its capacity of resolution authority shall take into account the threat posed to the stability of the financial intermediary system by the impediments to resolvability and the effect of the measures to be taken to reduce or remove the impediments to resolvability on the business of the institution, its stability and its ability to contribute to the economy.

5. Assessment of a group's resolvability and the management or elimination of impediments to group-level resolvability

Section 13

(1) Also in consideration to Section 17, a group shall qualify as resolvable if, according to the judgement of the MNB acting in its capacity of resolution authority as group level resolution authority, in the course of its winding up or resolution based on a resolution plan

a) the continuity of critical functions can be maintained, and

b) considerable negative effects on the stability of the financial intermediary system of the country in which the group entities are incorporated, or that of the EEA states or that of the EEA as a whole, may be avoided, even in case of a systemic crisis.

(2) If the MNB is the group level resolution authority, the MNB acting in its capacity of resolution authority shall jointly assess group-level resolvability with the resolution authorities of the subsidiaries and the significant branches with the proviso that consultations must be conducted with the supervisory authority responsible for consolidated supervision and with the competent authorities of the significant branches.

(3) If the MNB acting in its capacity of resolution authority is the resolution authority of the subsidiary belonging to the group, the MNB shall make a decision in respect of the assessment of group-level resolvability jointly with the group level resolution authority.

(4) The assessment of group level resolvability shall not take into consideration the following:

a) extraordinary public financial support provided in any form, excluding the utilisation of the monetary assets of the resolution financing system and the use of the deposit insurance scheme — including the National Deposit Insurance Fund (hereinafter: OBA) — for resolution purposes;

b) central bank liquidity assistance provided under irregular conditions (collateral, maturity, interest rate), and

c) emergency liquidity assistance provided by the MNB or any other central bank.

(5) If the MNB acting in its capacity of resolution authority is the group level resolution authority, the MNB acting in its capacity of resolution authority passes its decision on the assessment of the resolvability of the group within the framework of the resolution college. In making the decision, the aspects listed in Annex 2 must be considered.

(6) Resolvability of the group shall be assessed during the preparation and update of the group resolution plan.

(7) In passing the decision pursuant to this Section, the provisions of Sections 7–9 shall be observed.

(8) If the MNB acting in its capacity of resolution authority as group level resolution authority finds a group unresolvable based on the resolvability assessment, it shall immediately inform the EBA thereof.

Section 14

(1) After the assessment of group level resolvability, impediments to resolvability, if necessary, must be removed.

(2) If the MNB acting in its capacity of resolution authority is the group level resolution authority, led by the MNB acting in its capacity of resolution authority, members of the resolution college shall pass a decision within the framework of a multilateral procedure on the removal of the impediments to resolvability. The resolution authority of the subsidiary belonging to the group participates in the procedure and in decision-making, and preceding the decision, the MNB acting in its capacity of resolution authority consults with the college of supervisors and with the competent resolution authority of the significant branch belonging to the group.

(3) If the MNB acting in its capacity of resolution authority is the group level resolution authority, after consultation with the competent supervisory authorities, the MNB acting in its

capacity of resolution authority prepares a report on the obstacles impeding the efficient group level application of resolution actions and resolution powers.

(4) The report referred to in Subsection (3) shall

- a) consider the business model of the institution and the impact exerted thereon, and
- b) present a proportionate and targeted proposal for possible action which is necessary and adequate for the removal of the obstacle mentioned in Subsection (3).

(5) The MNB acting in its capacity of resolution authority shall send the report referred to in Subsection (3) to

- a) the EU parent undertaking;
- b) the resolution authority of the subsidiary belonging to the group; and
- c) the competent resolution authority of the significant branch belonging to the group.

(6) If the resolution authority of the subsidiary belonging to the group is the MNB acting in its capacity of resolution authority, it shall send to the subsidiary the report received by it in respect of participation in the resolution college immediately upon receipt.

(7) Within four months of receipt of the report, the EU parent undertaking may

- a) submit comments, and
- b) propose to the group level resolution authority possible alternative actions intended to remove the obstacles specified in the report.

(8) If the MNB acting in its capacity of resolution authority is the group level resolution authority, the MNB acting in its capacity of resolution authority shall forward the comments and proposals submitted by the EU parent undertaking to

- a) the authority performing consolidated supervision;
- b) the EBA;
- c) the resolution authority of the subsidiary, and
- d) the competent resolution authority of the significant branch.

(9) If the MNB acting in its capacity of resolution authority is the group level resolution authority, led by the MNB acting in its capacity of resolution authority, members of the resolution college shall pass a decision within the framework of a multilateral procedure on the removal of the impediments to resolvability in accordance with Subsection (2). In passing the decision the comments and proposals of the EU parent undertaking shall be considered.

(10) The decision passed within the framework of a multilateral procedure shall consider the impact on all EEA states affected by the group and on the financial system of the European Union.

(11) Upon receipt of the comments and proposals of the EU parent undertaking but no later than four (4) months from the dispatch of the proposed decision, the decision shall be passed within the framework of a multilateral procedure and sent to the MNB acting in its capacity of resolution authority — if the MNB acting in its capacity of resolution authority is the group level resolution authority — and to the EU parent undertaking.

Section 15

(1) If the resolution authorities fail to pass a joint decision pursuant to Section 14 (11), then the MNB acting in its capacity of resolution authority — if the MNB acting in its capacity of resolution authority is the group level resolution authority — shall pass a decision in respect of the assessment of resolvability and in the justification of the decision shall also include the opinion and reservations of the resolution authorities concerned.

(2) If the MNB acting in its capacity of resolution authority is the group level resolution authority, the MNB acting in its capacity of resolution authority shall send the decision passed in accordance with Subsection (1) to the EU parent undertaking.

(3) The MNB acting in its capacity of resolution authority may not proceed as per Subsection (1) if, in respect of the assessment of resolvability, an affected resolution authority refers the matter to the EBA

a) within the four-month period specified in Section 14 (11), or

b) upon recognising the fact that no decision will be passed within the framework of a multilateral procedure.

(4) In case the situation outlined in Subsection (3) materialises, the EBA shall pass a decision within one (1) month of the referral. If the MNB acting in its capacity of resolution authority is the group level resolution authority, it shall pass its own decision in line with the EBA's decision. If the EBA fails to pass a decision within one month, then the MNB acting in its capacity of resolution authority — if the MNB acting in its capacity of resolution authority is the group level resolution authority — shall pass a decision in accordance with Subsection (1).

(5) In the absence of a decision passed within the framework of a multilateral procedure, in cases requiring a decision affecting the subsidiaries, the MNB acting in its capacity of resolution authority — if the MNB acting in its capacity of resolution authority is the resolution authority of the subsidiary — shall pass a decision on the required action with the proviso that the justification shall also include the opinion and reservations of the other affected resolution authorities. Apart from the subsidiary, this decision shall be sent to the group level resolution authority as well.

PART THREE

RESOLUTION

Chapter V

Objectives, conditions and general principles of the resolution

6. Resolution objectives

Section 16

(1) When applying the resolution actions and exercising the resolution powers, the MNB acting in its capacity of resolution authority shall take into account the resolution objectives, and shall choose the resolution actions and powers which best serve the achievement of the resolution objectives under the circumstances of the given case.

(2) The resolution objectives are aimed at:

- a) protecting public funds by minimising the need for and consumption of extraordinary public financial support that can be provided in any form;
- b) ensuring the continuous availability of critical functions;

- c) preventing the escalation of adverse effects jeopardising the stability of the financial intermediary system, or eliminating the effects;
- d) protecting the deposits covered by the deposit insurance scheme (including the National Deposit Insurance Fund, hereinafter: OBA) and the investments covered by the investment protection scheme (including the Investor Protection Fund, hereinafter: BEVA);
- e) protecting client funds and client assets; and
- f) retaining the confidence of depositors and investors to maintain the stability of the financial intermediary system.

(3)⁴ The MNB acting in its capacity of resolution authority shall enforce all of the resolution objectives specified in Subsection (2), with consideration to the specific circumstances of the given case.

(4) The MNB acting in its capacity of resolution authority shall strive to

(a) minimise the costs of resolution, and

(b) to avoid the reduction of the assets of the institution that is under resolution as a result of the resolution, except when it is indispensable in order to achieve the goal of the resolution.

7. Conditions for resolution and ordering the resolution

Section 17

(1) The MNB acting in its capacity of resolution authority shall order and launch the resolution proceeding in respect of an institution pursuant to Subsection (10) if all of the following conditions have been met:

- a) the Supervisory Authority establishes that the institution is failing or likely to fail;
- b) according to the judgement of the MNB acting in its capacity of resolution authority, apart from the resolution actions no other measure — including those of the Supervisory Authority, the institution, the voluntary institution protection fund or any other market player and the possibility for the MNB acting in its capacity of resolution authority to take action in order to write down or convert capital instruments — is likely to prevent the insolvency of the institution under the circumstances; and
- c) according to the judgement of the MNB acting in its capacity of resolution authority, the resolution is justified by public interests.

(2) An institution is failing or likely to fail when

a) the institution is in breach or, based on available, quantifiable data (capital adequacy, profitability and portfolio quality), is likely to be in breach in the near future but within 12 months at the latest, of the requirements constituting the conditions for the maintenance of its licence to such an extent that would (based on the conditions defined in the Hpt. and the Bszt.) justify the withdrawal of its licence, in particular, due to the institution's suffering of losses or

⁴ Set forth by: Section 167 of Act CCXV of 2015. Effective from: 01/01/2016.

presumable suffering of losses that would result in the loss of its regulatory capital as defined in Regulation (EU) No. 575/2013 either in full or in a significant part;

b) the assets of the institution would not or, based on available, quantifiable data (capital adequacy, profitability and portfolio quality), the assets of the institution are not likely to cover, in the near future but within 12 months at the latest, the claims of the known creditors, which would justify the withdrawal of its licence;

c) the institution fails to pay its non-disputed liabilities related to its financial services, supplementary financial services, investment services or services supplementing its investment services or, based on available, quantifiable data (deposit coverage ratio, asset coverage ratio and FX financing ratio with credit institution), this failure is likely to take place in the near future but within 12 months at the latest; or

d) the institution applies for or receives extraordinary public financial support except when such public support aims to remedy a serious disturbance in the economy of the country and to preserve financial stability, and the extraordinary public financial support takes any of the following forms:

da) a State guarantee or equivalent support to facilitate access to the MNB's monetary policy instruments;

db) a State guarantee or equivalent support to newly issued liabilities;

dc) equity increase by the state based on the private market investor principle or purchase of capital elements, where neither the circumstances set out in points (a)–(c) of this Subsection, nor the circumstances under which the write-down or conversion of capital instruments would be required prevail.

(3) The support referred to in Subsection (2) *d)* may be provided

a) solely to solvent institutions;

b) after approval as per European Union state aid rules;

c) with a precautionary, preventive nature;

d) to the extent necessary for remedying any disturbance in the national economy, and they may not be used to finance the formerly generated or expected losses of the affected institution.

(4) The capital increase referred to in Subsection (2) *(dc)* and *(d)* may only be provided up to the extent of the capital shortfall detected by the national, European Union or euro area stress tests, asset quality reviews or other equivalent procedures.

(5) The resolution action serves public interest, when

a) the action is required to fulfil one or more of the resolution objectives defined herein and is proportionate to them; and

b) upon the termination of the institution in an insolvency procedure these resolution objectives would not be realised at least to the extent possible by the use of the resolution action.

(6) Upon the application of Subsection (1) *(b)*, prior to the resolution of the cooperative credit institution as per the Szhitv., the MNB acting in its capacity of resolution authority shall examine whether it is possible to prevent the insolvency of the cooperative credit institution with the measures of the Integrational Organisation.

(7) The MNB acting in its capacity of resolution authority prepares a resolution action plan for the institution no later than the ordering of the resolution procedure as per Subsection (1), which takes into account the resolution plan, if available at the time, except when the deviation is justified by the circumstances of the case.

(8) The resolution action plan includes the planned resolution actions and the planned schedule of the application thereof; along with the financing plan of the resolution and the contribution of the OBA and the Resolution Fund as per this Act as well as the need and method of the state's temporary budgetary role which is based on the principle of fiscal neutrality.

(9) The government's preliminary approval is necessary for the usage of the public funds if the state's budgetary role becomes necessary during the resolution, including the provision of a loan to the Resolution Fund in connection with the given resolution action or resolution proceeding, or it is expected to become necessary within twelve months based on the information available. In passing its decision, the government is not bound by the resolution action plan prepared by the MNB acting in its capacity of resolution authority or the ordered resolution action.

(10) The decision on resolution as per Subsection (1) (establishing that the conditions for resolution are in place) is made by the Financial Stability Board (hereinafter: the FSB) stipulating that the managers responsible for the fulfilment of the tasks included in Section 4 (9) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank (hereinafter: MNB tv.) do not have a voting right.

Section 18

A resolution action in relation to a financial undertaking referred to in Section 1 (1) may only be taken when the conditions for resolution are met with regard to both the institution and the related financial undertaking which is covered by the consolidated supervision.

Section 19

(1) A resolution action in relation to a financial holding company, mixed financial holding company or mixed-activity holding company established in Hungary may only be taken when the conditions for resolution are met with regard to the aforementioned holding company and its one or more subsidiary institutions. In case of a subsidiary incorporated in a third country, a resolution action may be commenced if the resolution conditions are in place pursuant to the legislation of the third country.

(2) Where the subsidiary of a mixed-activity holding company is held directly or indirectly by a financial holding company, the resolution actions for the purposes of group resolution may only be taken in relation to the financial holding company, and therefore, no resolution actions may be taken in relation to the mixed-activity holding company.

(3) In deviation from Subsection (1) herein, the MNB acting in its capacity of resolution authority may take resolution actions in relation to the holding company referred to in Subsection (1) if the conditions for resolution are met with regard to the subsidiary institution

only and resolution actions are necessary against the holding company for the successful resolution of the subsidiary institution.

(4) For the purposes of Subsections (1) and (3), if the resolution authority of the institution or the financial undertaking as per Section 1 (1) is the MNB acting in its capacity of resolution authority, in the course of establishing the fulfilment of resolution conditions, the MNB may make an agreement with the other affected resolution authority to disregard group financial support, including the exercising of write-down and conversion powers.

8. General requirements governing resolution

Section 20

(1) When taking the resolution actions and exercising the resolution powers, the following principles shall apply:

- a)* the shareholders of the institution under resolution bear losses first;
- b)* creditors of the institution under resolution shall bear the losses after the shareholders in the order of priority and in the proportion set forth in Section 57 (1) of the Csődtv., also in consideration to the provisions of the Hpt. and the Bszt. in respect of the resolution procedure;
- c)* the appointment of the senior officer of an institution under resolution shall be withdrawn except when the MNB acting in its capacity of resolution authority deems it necessary to retain the group of senior officers either in full or in part, in order to achieve the resolution objectives; thus, in particular, the removal of the senior officer would hinder the successful execution of the resolution;
- d)* the reasons of the insolvency or expected insolvency of the institution under resolution have to be explored;
- e)* unless otherwise provided in this Act, creditors of the same creditor class are treated in an equitable manner;
- f)* no shareholder or creditor shall incur greater losses directly related to the application of the resolution actions than would have been incurred if the institution had been liquidated; and
- g)* resolution action shall be taken in accordance with the safeguards included herein.
- h)* the part of the covered deposits under the coverage level shall receive full protection.

(2) The management and the auditor of the institution shall cooperate with the MNB acting in its capacity of resolution authority for the purposes of achieving the resolution objectives.

(3) If the institution is a member of a group, the MNB acting in its capacity of resolution authority endeavours to minimise the adverse effect of the resolution actions and the resolution tools on the group, the group members and the affected financial market during the implementation of such actions and the application of such tools.

(4) Within the framework of continuous supervision, including the evaluation of regular data supply, upon detecting the existence of the resolution conditions as per Section 17 (1) *a*), the Supervisory Authority notifies the MNB acting in its capacity of resolution authority about the fulfilment of the resolution conditions, and whether it is impossible to terminate the resolution conditions by the actions and exceptional actions that can be applied by it.

(5) Any claim for compensation by a third party against the MNB acting in its capacity of resolution authority and its employees or the parties they used in connection with the resolution due to their actions or failure to act in this capacity may only be raised in the case of a severe, neglectful violation of their material obligations, provided that the given action or failure to act caused the damage directly.

9. Termination of resolution

Section 21

The MNB acting in its capacity of resolution authority terminates the resolution proceeding in a decision if the circumstances giving rise to the resolution ceased to exist and the resolution objectives were either fulfilled or their realisation may no longer be expected.

Chapter VI

Valuation of assets and liabilities

10. Independent valuation

Section 22

(1) Prior to the decision on taking a resolution action, the MNB acting in its capacity of resolution authority makes sure that the reliable and fair valuation of the institution's assets and liabilities (hereinafter: independent valuation) is performed by a person who complies with the professional requirements defined in the legal regulation as well as the requirements on the conflict of interests (hereinafter: independent valuer).

(2) The register of independent valuers is maintained by and published on the website of the MNB acting in its capacity of resolution authority. The register of independent valuers shall include the following:

a) in case of natural persons

aa) name, residential address, postal and e-mail address, registration date and number;

ab) name, registered office and registration number of the legal entity in which the independent valuer natural person have a direct or indirect stake;

b) in case of legal entities

ba) name, postal and e-mail address, registered office, site, branch office (area of operation);

bb) registration date and number;

bc) name and residential address of executive officer and auditor;

bd) core business activity and additional activities as defined in the Sections of Incorporation based on the nomenclature issued by the Hungarian Central Statistical Office;

be) name (company name) and address (registered seat) of all members with a direct or indirect stake and, if the independent valuer is the Hungarian branch of an enterprise incorporated abroad, the name (company name), registered seat and registration number of the enterprise incorporated abroad; and

bf) name, registered office and registration number of the legal entity in which the independent valuer have a direct or indirect stake.

(3) In respect of the independent valuers, registration number, date of registration as well as the authorisation for performing independent valuer activity, the registry referred to in Subsection (2) shall qualify as an authentic record.

(4) The MNB acting in its capacity of resolution authority issues a public call for applications by independent valuers at least every half a year. The applications received shall be assessed by an evaluation committee consisting of minimum three but maximum seven members appointed by the MNB acting in its capacity of resolution authority. The decision of the evaluation committee cannot be subject to an appeal, the applicant may request a judicial review of the Capital Court. If the applicant complies with the legal conditions, the MNB acting in its capacity of resolution authority enters it into the register.

(5) The MNB acting in its capacity of resolution authority shall draw up an internal policy for the selection of the members of the evaluation committee referred to in Subsection (4), and this policy shall be published on the MNB's website.

(6) The MNB acting in its capacity of resolution authority shall delete the independent valuer from the register as per Subsection (2) if

- a)* the independent valuer disclosed false data in its application;
- b)* the independent valuer no longer meets the conditions set forth in the legislation adopted by virtue of this Act;
- c)* the independent valuer requests this in writing;
- d)* the person registered as independent valuer has died or the legal entity independent valuer has been terminated;
- e)* it becomes aware of the conduct linked to the economic or professional activities of the natural person or legal entity registered as independent valuer that is in breach of legislation, professional or ethical rules or provides the grounds for violating or jeopardising public trust necessary for performing independent valuer duties.

(7) The natural person who holds the following qualifications may be entered into the register of independent valuers:

- a)* a university or college level degree received in tertiary education in economics, or an economist qualification obtained in undergraduate or master courses in economic sciences, or
- b)* an attorney qualification,
- c)* an auditor qualification, specialised in financial institutions or investment firms, and
- d)* a certificate of clean criminal record and a no-debt tax certificate.

(7a) Any natural person or legal entity should not be entered into the register of independent valuers if the MNB acting in its capacity of resolution authority becomes aware of the conduct linked to the economic or professional activities of the natural person or legal entity that is in breach of legislation, professional or ethical rules or provides the grounds for violating or jeopardising public trust necessary for performing independent valuer duties, furthermore if the MNB acting in its capacity of resolution authority has deleted the natural person or legal entity entered into to the register of independent valuers from the register pursuant to paragraph (6) *e)*, for a period of five years following such deletion.

(8) A legal entity may be registered as independent valuer if it employs at least one employee who complies with the requirements defined in Subsection (7) and is not subject to a proceeding resulting in its termination without a legal successor.

(9) In case of submitting an application for or being appointed to perform a certain task, the independent valuer shall declare that it is independent of the affected institution, the MNB acting in its capacity of resolution authority and the Supervisory Authority. The independent valuer shall be deemed independent if its revenues from the institution under resolution or from the MNB did not exceed 5 per cent of its gross sales revenue in the current business year or either of the preceding 3 business years.

(10) The MNB acting in its capacity of resolution authority shall draw up an internal policy for the

a) selection and

b) assignment of the independent valuer,

and publish this policy on the website of the MNB acting in its capacity of resolution authority.

(11) Parallel to assigning the independent valuer, the MNB acting in its capacity of resolution authority defines the deadline for the independent valuation and the assumptions to be taken into account during the independent valuation.

(12) Any claim for compensation by a third party against the independent valuer or the parties it used in connection with the resolution due to their actions or failure to act in this capacity may only be raised in the case of a severe, neglectful violation of their material obligations, provided that the given action or failure to act caused the damage directly.

11. Objective of independent valuation

Section 23

(1) The basic objective of the independent valuation shall be to assess the value of the assets and liabilities of the institution, which is insolvent or, based on the available information, is likely to become insolvent.

(2) Supplementary objectives of the independent valuation:

- a)* to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of capital instruments are met;
- b)* if the conditions for resolution are met, to provide information in respect of the applicability of the appropriate resolution action to be taken in respect of the institution;
- c)* when the bail-in tool and the power to write down or convert capital instruments are applied, to provide information for the decision on the extent of the cancellation, write-down or dilution of shares, and the extent of the write down or conversion of the additional Tier 1 capital and the Tier 2 capital instruments;
- d)* when the bridge institution tool or asset separation tool is applied, to provide information for the decision on the assets, liabilities, rights and obligations or shares to be transferred, and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the shares;
- e)* to provide information to the MNB acting in its capacity of resolution authority to determine market terms when the sale of business tool is applied, for the decision on the assets, liabilities, rights and obligations or shares to be transferred and;
- f)* to ensure that any losses in connection to the assets of the institution are fully recognised at the moment the resolution tools are applied or before the power to write down or convert capital instruments is exercised.

(3) The independent valuation shall be based on prudent assumptions including the definition of the default ratio of the assets and the extent of the expected losses.

(4) The independent valuation shall not assume any potential future provision of extraordinary public financial support to the institution from the point at which resolution action is taken or the power to write down or convert capital instruments is exercised. If the institution received extraordinary public financial support within three months prior to the independent valuation, its potential value increasing impact shall be ignored.

(5) The independent valuation shall take account of the fact that, if any resolution tool is applied:

- a)* the MNB acting in its capacity of resolution authority is entitled to request the reimbursement of its reasonable and properly incurred expenses from the institution under resolution;
- b)* the Resolution Fund may charge an interest or fees in respect any loans or guarantees provided to the institution under resolution.

(6) In addition to the information as appearing in the accounting books and records of the institution, the independent valuation shall be supplemented by the following:

- a)* an updated balance sheet and a report on the financial position of the institution as at the date specified by the MNB acting in its capacity of resolution authority;
- b)* an analytic inventory presenting the marketability and book value of the assets and liabilities;
- c)* the list of existing liabilities, specifying the rank and proportion of each liability as per Section 57 (1) of the Csődtv., with the deviation defined in the Hpt. or the Bszt.;
- d)* the list of assets held by the institution for account of third parties to whom the losses cannot be passed on;
- e)* presentation of the provisions to be generated for anticipated additional losses.

(7) The list referred to in point (c) of Subsection (6) shall be supplemented by the independent valuer by an estimate of the recovery that each class of shareholders and creditors would have been expected to receive if the institution were wound up.

(8) The MNB acting in its capacity of resolution authority approves the independent valuation with a decision which can only be challenged together with the remedy against the decision ordering the resolution.

12. Provisional valuation

Section 24

(1) If prior to or during the resolution proceeding, in light of the institution's financial situation, the stability of the financial intermediary system and the additional circumstances of the proceeding, it is not possible to carry out the independent valuation because of its time requirement, or if during the independent valuation, compliance with the requirements set forth in Section 23 (6) to (7) cannot be ensured, the MNB acting in its capacity of resolution authority may carry out a valuation of the assets and liabilities of the institution (hereinafter: provisional valuation) based on the books of accounts of the institution, and applying valuation buffers and discount factors taking into account the marketability of asset elements and the uncertainty factors related to the enforcement of collaterals.

(2) The MNB acting in its capacity of resolution authority may involve contributors in the preparation of the provisional valuation under Subsection (1), including the non-profit business company conducting the liquidation of the organisations defined in the MNB tv. Except for Section 22 (9), the same professional and conflict of interest requirements shall be applicable to the contributor as to the independent valuer, and the contributor must be listed in the registry of independent valuers, except when the resulting loss of time jeopardises the efficient fulfilment of the resolution objectives.

(3) Upon the provisional valuation, efforts should be made to take into account the objectives and requirements defined as the goal of the independent valuation to the fullest extent possible.

Section 25

(1) The provisional valuation may lay the foundation for the MNB acting in its capacity of resolution authority the applying of the resolution tools or the exercising of its power to write down or convert capital instruments.

(2) The provisional valuation shall be a part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write down or conversion power of capital instruments.

(3) Prior to the commencement of the resolution proceeding, the MNB acting in its capacity of resolution authority approves the provisional valuation with a decision which can only be challenged together with the remedy against the decision ordering the resolution. If the provisional valuation is performed after the decision ordering the resolution has been made, it shall be approved by the MNB acting in its capacity of resolution authority.

13. Ex post definitive valuation

Section 26

(1) The provisional valuation may not considered an independent valuation before an independent valuer completes the evaluation that conforms to the objectives stated in Section 23 (1) and (2) and meets all the criteria applicable to independent valuations (hereinafter: ex post definitive valuation).

(2) The ex post definitive valuation shall be completed as soon as possible following the approval of the provisional valuation by the MNB acting in its capacity of resolution authority, but no later than within six months of the provisional valuation.

(3) Beyond the objectives of the independent valuation, the goals of the ex post definitive valuation shall be:

a) to ensure that any losses on the assets of the institution are fully recognised in the books of accounts of the institution;

b) to provide information for a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with Subsection (4).

(3a) The valuation referred to in Subsection (3) shall be approved by MNB, acting in its capacity of resolution authority in a decision.

(4) In the event that the ex post definitive valuation's estimate of the equity of the institution is higher than the provisional valuation's estimate of the equity of the institution, the MNB acting in its capacity of resolution authority will oblige in its decision a bridge institution or the resolution asset management vehicle to make a further payment of consideration in respect of the assets, liabilities, rights and commitments to the institution under resolution, or to the owners of a shareholding in the institution.

14. Resolution college

Section 27

(1) The resolution authorities affected in the case of the group establish a resolution college in respect of the

a) group resolution plan;

b) assessment of group level resolvability;

c) removal of the impediments to group level resolvability;

d) minimum requirements of the bail-in;

e) resolution of a subsidiary;

f) group resolution actions; and

g) consultation on and execution of actions required in the case of cross-border activity,

in which the MNB acting in its capacity of resolution authority shall also participate if it is the group level resolution authority or the resolution authority of the subsidiary, financial holding company or significant branch belonging to the group.

(2) The resolution college may consult and cooperate with the relevant third country authority of the institution incorporated in a third country and belonging to the group, if the third country institution is involved in the resolution proceeding or is directly affected by the resolution proceeding.

(3) Within the framework of the resolution college, in consultation with the competent supervisory authority and the consolidating supervisor, the group level resolution authority and the resolution authority of the subsidiary shall

- a) develop the group resolution plan;
- b) assess the resolvability of the group;
- c) make preparations and take action to manage and remove the impediments to the group's resolvability;
- d) decide on the necessity of the establishment of a group resolution system and facilitate its establishment;
- e) coordinate the announcement of and communications about the group resolution strategy, actions, tools and systems;
- f) coordinate the application of financing arrangements;
- g) determine the minimum requirements on an aggregate basis and as per Sections 65–68 at the subsidiary level; and
- h) discuss any issues arising in connection with the resolution of the cross-border group

with the proviso that the MNB acting in its capacity of resolution authority may participate as a group level resolution authority or as the resolution authority of the subsidiary, financial holding company or significant branch belonging to the group, while the Supervisory Authority may participate as the competent supervisory authority or as the consolidating supervisor.

(4) Members of the resolution college defined in Subsection (1)

- a) the group level resolution authority;
- b) the resolution authority of the subsidiary belonging to the group in respect of consolidated supervision;
- c) the resolution authority of the financial holding company defined in Section 1 (1) b);
- d) the competent resolution authority of the significant branch belonging to the group;
- e) the competent supervisory authority of the EEA state in which the resolution authority referred to in points a) and b) is located or, as per the decision of the competent supervisory authority, also a representative of the central bank of the EEA state concerned;
- f) the competent ministry;

g) the authority responsible for the deposit guarantee scheme of the EEA state, if the resolution authority of that EEA state is a member of the resolution college; and

h) the EBA.

(5) For the purposes of Subsection (4), the member shall be

a) in respect of point a), the MNB acting in its capacity of resolution authority if the MNB acting in its capacity of resolution authority is the group level resolution authority;

b) in respect of points b)–d), the MNB acting in its capacity of resolution authority if the MNB acting in its capacity of resolution authority is the resolution authority of the subsidiary, financial holding company or significant branch belonging to the group;

c) in respect of point e), the Supervisory Authority, if the Supervisory Authority is the competent supervisory authority;

d) in respect of point f), the Hungarian ministry in charge of the regulation of the money market, the capital market and the insurance market if, in respect of any of points a)–d) the MNB acting in its capacity of resolution authority is the resolution authority; and

e) in respect of point g), the OBA if, in respect of any of points a)–d) the MNB acting in its capacity of resolution authority is the resolution authority.

(6) If the group includes a subsidiary or a significant branch incorporated or having a registered seat in a third country, the third country authorities of such subsidiary or significant branch, upon their request, shall be invited as observers to the meetings of the resolution college by the MNB acting in its capacity of resolution authority if it is the group level resolution authority, provided that the conditions defined in Section 125 have been met.

(7) The MNB acting in its capacity of resolution authority, if it is the group level resolution authority, may also invite the EBA with the proviso that the EBA, with no voting powers, may put forward proposals to facilitate the efficient, effective and consistent operation of the resolution college.

Section 28

(1) If the MNB acting in its capacity of resolution authority is the group level resolution authority, the MNB acting in its capacity of resolution authority shall lead the resolution college as its chair.

(2) For the purposes of Subsection (1), the MNB acting in its capacity of resolution authority shall

a) draw up in writing the rules and the policy pertaining to the resolution college based on consultations with members of the resolution college;

b) coordinate the tasks and activities of the resolution college;

c) arrange the meetings of the resolution college, including the provision of comprehensive, advance information in respect of the dates and times, the discussion topics and the agenda, and chair the meetings;

d) notify in writing the members of the resolution college of the scheduled meetings in order to enable them to request permission to participate as required, and to formulate the background of the position they are to take;

e) may decide that, based on the potential impact on financial stability, it is not necessary to invite to the meetings of the resolution college the members defined in Section 27 (4) c)–g) in respect of every institution; and

f) inform members of the resolution college on the decision passed as a result of the meeting of the resolution college, as well as the results and conclusions of the meeting.

(3) The MNB acting in its capacity of resolution authority shall cooperate closely with members of the resolution college in order to facilitate efficient and effective operations.

(4) Regardless of having not been invited by the group level resolution authority in its capacity as a resolution authority member of the resolution college in respect of Subsection (2) or any similar regulation set forth in the national legislation of the group level resolution authority, the MNB acting in its capacity of resolution authority shall be entitled to attend the meetings of the resolution college if a decision is being passed within the framework of a multilateral procedure, or in case matters related to an organisation covered by its authority functions are on the agenda of the meeting of the resolution college.

15. European resolution college

Section 29

(1) If a third country institution or a third country parent undertaking has a subsidiary or a significant branch in at least one other EEA state apart from Hungary, then the MNB acting in

its capacity of resolution authority will also be a member of the European resolution college set up by the competent resolution authorities of the subsidiaries or significant branches.

(2) If the condition specified in Subsection (1) has been met, the European resolution college shall perform the tasks of a resolution college in relation to the subsidiary or the significant branch, and the European resolution college shall operate according to the rules of the resolution college within the framework of which the MNB acting in its capacity of resolution authority participates in the work.

(3) If the consolidating supervisor of the group is the Supervisory Authority, the chair of the European resolution college shall be the MNB acting in its capacity of resolution authority.

(4) The affected resolution authorities — including the MNB acting in its capacity of resolution authority — may refrain from setting up the European resolution college if there is another group or college to perform the tasks of the European resolution college.

16. Information exchange

Section 30

(1) Upon request, members of the resolution college shall provide all information related to the resolution that is required by the other authorities in order to carry out their tasks. This information, together with the information flow required by the resolution college in order to carry out its tasks shall be coordinated by the MNB acting in its capacity of resolution authority if the MNB acting in its capacity of resolution authority is the group level resolution authority.

(2) The information sent or disclosed by the resolution authority of a third country institution or parent undertaking may be forwarded only with the approval of the sender third country authority.

(3) Information made available by the resolution authorities shall be made available to the competent ministry by the MNB acting in its capacity of resolution authority — if the MNB acting in its capacity of resolution authority is the group level resolution authority — if such information is related to a decision or a matter where notification of or consultation with the ministry is mandatory, or where public funds may be involved.

17. Group resolution involving a subsidiary of the group

Section 31

(1) If the MNB acting in its capacity of resolution authority establishes that the resolution conditions are in place in the case of a subsidiary belonging to the group or in the case of a financial holding company as per Section 1 (1), it shall immediately inform the group level resolution authority, the authority performing consolidated supervision and members of the resolution college of the affected group of

a) the decision establishing that the resolution conditions are in place, and

b) the resolution or insolvency proceeding deemed appropriate in the case of the affected subsidiary or financial holding company.

(2) After having consulted with members of the resolution college the MNB acting in its capacity of resolution authority — if the MNB acting in its capacity of resolution authority is the group level resolution authority — shall assess and review, immediately after notifying a foreign resolution authority as per Subsection (1), the possible effect of the procedure and actions defined in Subsection (1) b) on the group and on the institutions and undertakings belonging to the group. This review shall also examine whether, as a possible effect, the resolution conditions will be also met in the case of another undertaking belonging to the group.

(3) If, after having consulted with the other members of the resolution college, the MNB acting in its capacity of resolution authority determines that spillover to another undertaking as referred to in Subsection (2) is not likely to happen, the MNB acting in its capacity of resolution authority shall carry out the resolution within its own competence in relation to group members incorporated in Hungary, in line with the notification provided as per Subsection (1) b). If the MNB acting in its capacity of resolution authority is not the group level resolution authority, however, it is a member of the resolution college, it shall participate in the consultation conducted by the group level resolution authority at the meeting of the resolution college.

(4) If, after having consulted with the other members of the resolution college, the group level resolution authority determines that spillover to another undertaking as referred to in Subsection (2) is not likely to happen,

a) if the group level resolution authority is the MNB acting in its capacity of resolution authority, it shall propose, within 24 hours, a group resolution action plan to members of the resolution college.

b) if the group level resolution authority is not the MNB acting in its capacity of resolution authority, then it shall proceed according to the group level resolution action plan proposed

within 24 hours of receipt of the notification referred to in Subsection (1) and approved by the members of the resolution college.

(5) If the MNB acting in its capacity of resolution authority is the group level resolution authority, the MNB acting in its capacity of resolution authority may extend the 24-hour deadline specified in Subsection (4) subject to consent by the resolution authority establishing the existence of the resolution conditions.

(6) If after the expiry of the deadline defined in Subsection (4) or Subsection (5) the review conducted by the group level resolution authority has not been completed, the MNB acting in its capacity of resolution authority shall pass a decision.

(7) The group resolution action plan considers the resolution plans and the efficient implementation of the resolution objectives, and determines the resolution actions to be taken by the resolution authorities in order to meet the resolution objectives and principles. The group resolution action plan — which includes the financing plan as well — defines the coordination of the resolution actions.

(8) The group resolution action plan shall be the decision passed within the framework of a multilateral procedure by the MNB acting in its capacity of resolution authority — if the MNB acting in its capacity of resolution authority is the group level resolution authority — and by the subsidiaries affected by the group resolution action plan, for the passing of which the cooperative support of the EBA may be requested. If the MNB acting in its capacity of resolution authority is not the group level resolution authority but it is the resolution authority of the subsidiary affected by the group resolution action plan, then the decision passed within the framework of a multilateral procedure by the group level resolution authority, the MNB acting in its capacity of resolution authority, and the resolution authority of another subsidiary affected by the resolution action plan shall be the group resolution action plan, for the passing of which the cooperative support of the EBA may be requested.

(9) If a resolution authority does not approve the group resolution action plan proposed by the MNB acting in its capacity of resolution authority as group level resolution authority, and in its opinion the resolution actions have a significant impact on financial stability, it shall notify the MNB acting in its capacity of resolution authority and all other affected resolution authorities of the difference in opinion and its reasons, as well as the actions planned to be taken by it with the proviso that, as part of the notification, it must analyse the effects of the actions planned by

it on the group, on the entities belonging to the group and on the EEA states in which the entities are incorporated.

(10) If the MNB acting in its capacity of resolution authority is not the group level resolution authority and it does not approve the group resolution action plan proposed by the group level resolution authority, and in its opinion the resolution actions have a significant impact on financial stability, it shall notify the group level resolution authority and all other affected resolution authorities of the difference in opinion and its reasons, as well as the actions planned to be taken by it with the proviso that, as part of the notification, it must analyse the effects of the actions planned by it on the group, on the entities belonging to the group and on the EEA states in which the entities are incorporated.

(11) The decision passed within the framework of a multilateral procedure referred to in Subsection (8) and the separate decision referred to in Subsection (9) shall be directly applicable and enforceable in Hungary.

(12) If no group resolution action plan is adopted by the resolution college but the MNB acting in its capacity of resolution authority passes a decision on the required actions in the case of an undertaking belonging to the group, the MNB shall continuously inform the members of the resolution college of its actions and their possible effects, as well as the related processes.

18. Group resolution:

Section 32

(1) If the MNB acting in its capacity of resolution authority, as the group level resolution authority, concludes that the EU parent undertaking meets the resolution conditions, it shall immediately inform the authority responsible for consolidated supervision and the resolution authorities belonging to the resolution college of the information referred to in Section 31 (1).

(2) The resolution action must be designed with due consideration to the conditions and objectives defined in Section 31 (7) and to

a) the fact that the appropriate resolution or insolvency proceeding as per Section 31 (1) b) must surmise that the resolution conditions are also met in respect of an entity that belongs to the same group but is located in a different EEA state;

b) the fact that the resolution actions applicable in the case of an EU parent undertaking are not sufficient;

c) whether the resolution conditions are also in place in the case of a subsidiary belonging to the group; or

d) whether the group resolution actions may benefit the subsidiaries belonging to the group to such an extent that justifies the application of the group resolution.

(3) If the resolution proceeding launched on the basis of the conclusion referred to in Subsection (1) does not include a group resolution proceeding, then the MNB acting in its capacity of resolution authority, as the group level resolution authority, shall pass its decision within its own competence after consultation with the resolution college, and in the decision it shall consider

a) and follow the group resolution plan, i.e. it may only deviate from it in justified, exceptional cases, thus, in particular, if the deviation facilitates a more efficient achievement of the resolution objectives, and

b) the effect on the financial stability of the affected EEA states.

(4) If the resolution proceeding launched on the basis of the conclusion referred to in Subsection (1) does include a group resolution proceeding, then the group resolution proceeding shall be launched by the decision passed within the framework of a multilateral procedure by the MNB acting in its capacity of resolution authority as the group level resolution authority and by the resolution authority of the subsidiary affected by the group resolution proceeding, with the proviso that the EBA may participate if invited by the resolution authorities.

(5) If the resolution proceeding launched on the basis of the conclusion referred to in Subsection (1) does include a group resolution proceeding and the MNB acting in its capacity of resolution authority is not the group level resolution authority, but the resolution authority of the subsidiary affected by the group resolution proceeding, then the group resolution proceeding shall be launched by the decision passed within the framework of a multilateral procedure by the group level resolution authority, the MNB acting in its capacity of resolution authority and the resolution authority of another subsidiary affected by the resolution action plan, with the proviso that the EBA may participate if invited by the resolution authorities.

(6) If the MNB acting in its capacity of resolution authority does not agree with the group resolution action plan proposed by the group level resolution authority, it shall proceed in accordance with Section 31 (10),

(7) The decision passed within the framework of a multilateral procedure referred to in Subsection (5) and the separate decision referred to in Subsection (6) shall be directly applicable and enforceable in Hungary.

(8) If no group resolution action plan is adopted by the authorities specified in Subsection (1) but the MNB acting in its capacity of resolution authority passes a decision on the required actions in the case of an undertaking belonging to the group, the MNB shall continuously inform the authorities specified in Subsection (1) of its actions and their possible effects, as well as the related processes (including their progress).

(9) In order to facilitate the exercising of the right to remedy against a decision passed within the framework — or in case of an unsuccessful — multilateral procedure as per this Act, and the decision was not passed by the MNB acting in its capacity of resolution authority, the MNB acting in its capacity of resolution authority shall publish on its website the information pertaining to the remedy made available by the chair and the members of the resolution college.

(10) (9) In order to obtain the information referred to in Subsection (9), the MNB acting in its capacity of resolution authority shall contact the chair and the members of the resolution college.

Chapter VII

Resolution tools

19. General principles of the resolution tools and the available resolution tools

Section 33

Where the application of a resolution tool results in losses being borne by creditors, the MNB acting in its capacity of resolution authority, will exercise the right to write down and convert capital instruments immediately before or together with the application of the resolution tool.

Section 34

(1) Resolution tools that may be applied in the resolution procedure include

- a)* the sale of business tool,
- b)* the bridge institution tool,
- c)* the asset separation tool,
- d)* the bail-in tool.

(2) The resolution tools may be applied individually or in combination with one another, with the proviso that the asset separation tool may only be applied in combination with another resolution tool.

(3) If the resolution tool referred to in points *(a)* or *(b)* of Subsection (1) is used to transfer only part of the assets, liabilities, rights and commitments of the institution under resolution, the MNB will request the Supervisory Authority to revoke the operating licence of the institution under resolution in respect of which part of its assets, liabilities, rights and commitments have been transferred.

(4) The procedure for revoking the operating licence defined in Subsection (3) may not be completed until

a) there is in need for the institution to provide services or support pursuant to Section 86 in order to enable the recipient to carry on the activities or services acquired by virtue of that transfer, and

b) the continuation of the residual institution is necessary to achieve the resolution objectives or comply with the principles set out in Section 20.

(5) In case of a systemic crisis, the MNB acting in its capacity of resolution authority may seek an alternative financing solution within the framework of the public financial stabilisation tool defined in Sections 81-83, if

a) the owners of the shareholdings Tier 1 or Tier 2 capital elements and other liabilities that can be written down or converted contributed, through write-down, conversion or any other way, to the bail-in, the amount of which is at least 8 per cent of the liabilities — including the regulatory capital of the institution subject to resolution — as calculated on the basis of the independent valuation, and

b) it is an approved state subsidy in accordance with the Treaty on the Functioning of the European Union.

Section 35

(1) The MNB acting in its capacity of resolution authority and the Resolution Fund are entitled to claim reimbursement from the institution under resolution for the justified and verifiable

costs that they may incur in relation to the application of the resolution tools or the exercising of the resolution powers in line with the legislation issued by virtue of this Act

a) as a deduction from any consideration paid by a recipient to the institution under resolution or to the owners of shareholdings in the institution; or

b) as a resolution cost from the institution under resolution, within the framework of a bridge institution tool or from the resolution asset management vehicle in the course of the insolvency or liquidation proceedings.

(2) The MNB acting in its capacity of resolution authority, may also combine the tools defined in Subsection (1).

Section 35/A

(1) The resolution asset management vehicle — in order to the achievement of any resolution objectives and the improvement of the efficiency of resolution actions — may, for the purpose of fulfilling its obligations, to use the services of financial enterprises owned by the state or the MNB, or in which the MNB holds a controlling interest, or of the business organisation owned by such financial enterprise

a) for utilising security or collateral in order to mitigate or prevent the loss arising from financial services,

b) for participation in sales,

c) for the mandatory winding-up or recovery of claims,

d) for IT services or any other activities related to financial or supplementary financial services or any activities stipulated under the law that involves the management, processing or storage of data.

(2) The state or MNB owned financial enterprise, or the financial enterprise in which the state or the MNB holds a controlling influence, is entitled to perform the activities specified in Paragraph (1) *a)-d)* for the resolution asset management vehicle without a supervisory license within the meaning of the Hpt. pursuant to the agreement concluded with the resolution asset management vehicle.

20. The sale of business tool

Section 36

(1) When applying the sale of business tool, by way of an official decision as defined in Section 6:2 (3) of the Ptk., the MNB acting in its capacity of resolution authority is entitled to transfer to a recipient that is not a bridge institution:

- a) shareholdings issued by the institution under resolution;
- b) all or any assets, funds rights or liabilities of the institution under resolution.

(2) If the Supervisory Authority informs the MNB acting in its capacity of resolution authority that the conditions for the application of supervisory authority actions or exceptional actions as per the Hpt. or the Bszt. are still in existence despite the action and exceptional action applied by it, then the MNB acting in its capacity of resolution authority may oblige the management of the institution through the Supervisory Authority to contact purchasers or it may contact a potential purchaser itself even before passing the decision on ordering the resolution, subject to the conditions laid down in Section 42 (2) and the confidentiality provisions. The MNB acting in its capacity of resolution authority, shall take all reasonable steps to obtain commercial terms for the transfer that conform with the independent valuation or ex post definitive valuation conducted under Sections 22–26.

(3) Within the framework of the sale of business tool, the transfer may take place in multiple phases in the course of the resolution procedure. In this case, when applying the tool, the MNB acting in its capacity of resolution authority may transfer the shareholdings or the assets or liabilities of the institution under resolution or a part thereof to different recipients.

(4) Except for the consent of the recipient, for the transfer referred to in Subsection (1) there is no need to obtain the consent of the owner of the institution under resolution or any other person, not including the Supervisory Authority and the foreign competent supervisory authority in the cases of the acquisition and alienation of qualifying holdings as well as the increase of existing qualifying holdings reaching or exceeding the levels set out by law. In the course of the transfer, the requirements for the sale of business set out in this Act shall also be taken into account.

Section 37

After the reimbursement of the justified and verifiable costs that the MNB acting in its capacity of resolution authority and the Resolution Fund may incur due to the application of the resolution tools in line with the legislation issued by virtue of this Act, the purchase price paid in the course of the application of the sale of business tool shall be paid to

a) the owners of the shareholding in the institution, where the sale of business tool has been applied by transferring shareholdings issued by the institution under resolution from the holders of those shareholdings to the recipient; and

b) the institution under resolution, if the sale of business tool has been applied by transferring some or all of the assets or liabilities of the institution under resolution to the recipient.

Section 38

(1) Following the application of the sale of business tool, the MNB acting in its capacity of resolution authority may, with the consent of the recipient, return the assets, funds rights or liabilities transferred to the recipient to the institution under resolution, or the shareholding back to the original owners.

(2) If the transaction defined in Subsection (1) applies, the institution or original owners shall be obliged to take back any such assets, funds rights or liabilities, or shareholdings in the institution, and return their consideration received formerly in respect thereof to the recipient.

(3) Transfers between the institution under resolution, or the original owners of the shareholdings on the one hand, and the recipient on the other hand shall be subject to the rules of this Act applicable to the protection of the rights of shareholders and creditors.

Section 39

(1) If the sale of business tool is applied, the recipient must have the appropriate authorisation to carry on the activities related to the assets and funds it acquires.

(2) Based on the notification by the MNB acting in its capacity of resolution authority, the Supervisory Authority shall conduct the procedure for the approval of the acquisition of a qualifying holding as per Section 36 (1) or transfer of deposit portfolio or instruments arising from other contractual obligations *ex officio*, in a timely manner that does not delay the application of the sale of business tool and prevent the application of the resolution tool from achieving the resolution objectives.

(3) If the Supervisory Authority is unable to conclude the approval procedure referred to in Subsection (2) as of the date of transfer of shareholding in the application of the sale of business tool by the MNB acting in its capacity of resolution authority, the following provisions shall apply:

a) such transfer of shareholdings to the recipient shall have immediate legal effect;

b) during the assessment period and during any divestment period provided by item *e)*, the recipient's voting rights from such shareholdings in the institution shall be suspended and may be exercised, on behalf of the transferor, solely by the MNB acting in its capacity of resolution authority, which shall have no obligation to exercise any such voting rights and which shall have no liability whatsoever for exercising or refraining from exercising any such voting rights;

c) ⁵upon completion of the approval procedure, the Supervisory Authority shall notify the recipient and the MNB acting in its capacity of resolution authority in writing of whether it approves such transfer of shareholding to the recipient;

d) if the Supervisory Authority approves such transfer of shareholdings to the recipient, then the voting rights arising from such shareholdings in the institution shall be deemed fully vested in the recipient immediately upon receipt of the notice from the Supervisory Authority concerning the conclusion of the approval procedure;

e) if the Supervisory Authority does not license the transfer of shareholding to the recipient; then

ea) under point *b)*, the voting rights related to the given shareholding will remain fully valid;

eb) the MNB acting in its capacity of resolution authority may require the recipient to divest the shareholdings issued by the institution within a divestment period determined on the basis of prevailing market conditions; and

ec) if the recipient does not complete such divestment within the divestment period established by the Supervisory Authority, then the Supervisory Authority may impose on the recipient sanctions and measures for breaches of requirements for acquisitions or disposals of qualifying holdings.

*f)*⁶ during the approval procedure and within the divestment period established by the Supervisory Authority, the Supervisory Authority does not need to apply the sanctions and measures for breaches of requirements for acquisitions or disposals of qualifying holdings.

(4) Transfers made by virtue of the sale of business tool shall be subject to the rules of this Act applicable to the protection of the rights of shareholders and creditors.

Section 40

(1) The MNB acting in its capacity of resolution authority may declare, in order to facilitate the exercising of the freedom to provide services and the freedom of establishment in another EEA state, that the recipient shall have the same rights as the institution under resolution had in respect of the assets, rights or liabilities transferred, and therefore it may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred. Such rights include the rights related to membership in and rights

⁵ Set forth by: Section 168 (1) of Act CCXV of 2015. Effective from: 01/01/2016.

⁶ Enacted by: Section 168 (2) of Act CCXV of 2015. Effective from: 01/01/2016.

of access to payment, clearing and settlement systems, regulated markets, the National Deposit Insurance Fund (OBA), the Investor Protection Fund (BEVA) or the Resolution Fund. In its decision declaring continuation the MNB acting in its capacity of resolution authority specifies the legal relationships in regard to which the recipient qualifies as continuation or it specifies the legal relationships in regard to which the recipient does not qualify as continuation.

(2) By law, and from the date the contract is validly concluded, and to the extent of the transferor's rights, the recipient shall be granted a licence to use and utilise the electronic communication tools, computer programmes and the related documentation necessary for keeping records of the assets and deposit portfolio affected by the transfer and other funds and liabilities to be returned and for the carrying out of the related operations.

(3) Access as defined in Subsection (1) may not be denied for the reason that the recipient does not possess a rating from a credit rating agency, or this rating is not commensurate to the rating levels required to be granted access to the above systems.

(4)⁷ Where the recipient does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, regulated market, OBA (National Deposit Insurance Fund), BEVA (Investor Protection Fund) or Resolution Fund schemes, the MNB acting in its capacity of resolution authority may set the period of time for exercising the rights referred to in the Subsection (1) and also specify a deadline for obtaining the required licenses. Upon request by the recipient, this deadline may be extended; however, the period of time granted for obtaining the license may not exceed twenty-four months in total.

Section 41

Without prejudice to the rules of this Act applicable to the protection of the rights of shareholders and creditors, shareholders or creditors of the institution under resolution and other third parties whose assets, funds, rights or liabilities are not transferred shall not have any rights over or in relation to the assets, funds, rights or liabilities transferred.

21. Sale of business tool: procedural requirements

Section 42

⁷ Set forth by: Section 169 of Act CCXV of 2015. Effective from: 01/01/2016.

(1) Pools of assets and liabilities, fund, rights and liabilities, or shareholdings in the institution may be marketed separately.

(2) The following requirements shall be met in the course of applying the sale of business tool:

- a)* it shall be as transparent as possible, having regard to the circumstances and in particular the need to maintain the stability of the financial intermediary system;
- b)* in the course of the sale, distinction between potential recipients may only be made on the basis of objective criteria;
- c)* it shall not confer any unfair market advantage on a potential recipient;
- d)* it shall consider the need to effect a rapid resolution action, while also taking into account that the resolution objectives must be reached to the fullest possible extent;
- e)* it shall be aimed at maximising, as far as possible, the sale price for the shareholding, assets and liabilities involved while also taking into account the resolution objectives.
- f)* it shall be free from any conflict of interest.

(3) The MNB acting in its capacity of resolution authority shall contact potential recipients identified on the basis of objective aspects.

(4) When a cooperative credit institution is subject to resolution, upon selecting potential recipients on the basis of the criteria listed below, the MNB acting in its capacity of resolution authority shall give priority to:

- a)* an institution with the same or a larger geographical area of operation;
- b)* an institution with a similar product or service structure;
- c)* an institution whose network of branch offices may be supplemented naturally by the network of branch offices of the institution to be taken over (taking into account also the typical size of towns or cities in which the recipient operates branch offices);
- d)* an institution using the same IT system, taking into account in particular the resources necessary for migrating the asset and liability portfolio to the recipient institution;
- e)* an institution with similar operating regulations.

Section 43

The MNB acting in its capacity of resolution authority may apply the sale of business tool without complying with the requirement to market as set out in Section 42 (2) when it determines that compliance with those requirements would be likely to undermine or severely jeopardise one or more of the resolution objectives. The MNB acting in its capacity of resolution

authority may forsake compliance with the requirements set out in Section 42 (2) in particular if the following conditions are met:

a) it considers that there is a material threat to the stability of the financial intermediary system arising from or aggravated by the failure or, according to available data, potential failure of the institution under resolution;

b) it considers that compliance with those requirements would reduce the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective specified in Section 16 (2) b).

22. Application of the bridge institution tool

Section 44

(1) By way of an official decision as per Section 6:2 (3) of the Ptk., the MNB acting in its capacity of resolution authority is entitled to transfer to a bridge institution:

a) shareholdings issued by one or more institutions under resolution;

b) all or any assets, rights or liabilities of one or more institutions under resolution.

(2)⁸ With the deviation referred to in Subsection (3), the bridge institution is an institution that is owned fully or partly by the Resolution Fund, or in which the Resolution Fund has a dominant influence and it is managed by the MNB acting in its capacity of resolution authority. The bridge institution is set up for the purpose of receiving and holding some or all of the shareholdings issued by one or more institutions under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution with a view to continuing some or all of their functions, services and activities.

(3) If the funds available to the Resolution Fund are insufficient for the application of a bridge institution, the bridge institution may be also owned by the state, or operate under the state's dominant influence.

(4) When applying the bridge institution tool, the MNB acting in its capacity of resolution authority shall ensure that the total value of liabilities transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.

(5) Except for the consent of the bridge institution, for the transfer referred to in Subsection (1) there is no need to obtain the consent of the owner of the institution under resolution or any

⁸ Amended by: Section 188 b) of Act CCXV of 2015.

other person. In the course of the transfer, the rules concerning the application of a bridge institution set out in this Act shall apply.

Section 45

After the reimbursement of the justified and verifiable costs that the MNB acting in its capacity of resolution authority and the Resolution Fund may incur due to the application of the resolution tools in line with the legislation issued by virtue of this Act, the consideration paid by the bridge institution shall be paid

a) to the original owners of the shareholding issued by the institution, where the transfer to the bridge institution has been applied by transferring shareholdings issued by the institution under resolution from the holders of those shareholdings to the bridge institution; and

b) to the institution under resolution, where the sale of business has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the bridge institution.

Section 46

(1) In the course of the resolution procedure, the transfer to the bridge institution may take place in multiple phases. One bridge institution may be applied for each institution under resolution.

(2) Following the application of the bridge institution tool, in the course of the resolution procedure, the MNB acting in its capacity of resolution authority shall

a) transfer assets, liabilities or rights back from the bridge institution to the institution under resolution, or the shareholdings issued by the institutions back to their original owners in a way that the institution under resolution or original owners shall be obliged to take back such assets, rights or liabilities, or shareholdings issued by the institution, provided that the conditions specified in Subsection (3) are met;

b) transfer shareholdings or assets, rights or liabilities from the bridge institution to a third party.

(3)⁹ The MNB acting in its capacity of resolution authority may transfer back from the bridge institution the shareholdings or assets, rights or liabilities issued by the institution if

a) the possibility that the specific shareholdings, assets, rights, or liabilities may be transferred back is stated expressly in the decision by which the transfer was made; or

b) the affected shareholdings, assets, rights, or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of shareholdings, assets, rights, or liabilities specified in the decision by which the transfer was made.

⁹ Set forth by: Section 170 of Act CCXV of 2015. Effective from: 01/01/2016.

(4) If the transaction referred to in Subsection (2) applies, the institution under resolution or the original owners shall be obliged to take back any such assets, rights or liabilities, or the shareholdings in the institution and return the consideration received earlier in respect thereof to the bridge institution.

(5) Such a transfer back may be made until the expiry of the operating licence of the institution and shall comply with any other conditions stated in the decision for the relevant purpose.

(6) Transfers between the institution under resolution, or the original owners of shareholdings on the one hand, and the bridge institution on the other hand shall be subject to the rules of this Act applicable to the protection of the rights of shareholders and creditors.

Section 47

(1) The MNB acting in its capacity of resolution authority may declare, in order to facilitate the exercising of the freedom to provide services and the freedom of establishment in another EEA state, that the bridge institution shall have the same rights as the institution under resolution had in respect of the assets, rights or liabilities transferred, and therefore it may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred. Such rights include the rights related to membership in and rights of access to payment, clearing and settlement systems, regulated markets, the National Deposit Insurance Fund (OBA), the Investor Protection Fund (BEVA) or the Resolution Fund. In its decision declaring continuation the MNB acting in its capacity of resolution authority specifies the legal relationships in regard to which the recipient qualifies as continuation or it specifies the legal relationships in regard to which the recipient does not qualify as continuation.

(2) By law, from the date the contract is duly concluded and to the extent of the transferor's rights, the bridge institution shall be granted a licence to use and utilise the electronic communication tools, computer programmes and the related documentation necessary for keeping records of the assets and deposit portfolio affected by the transfer and other funds and liabilities to be returned and for the carrying out of the related operations.

(3) Access under Subsection (1) may not be denied for the reason that the bridge institution does not possess a rating from a credit rating agency, or this rating is not commensurate to the rating levels required to be granted access to the above systems.

(4)¹⁰ Where the bridge institution does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, regulated market, OBA (National Deposit Insurance Fund), BEVA (Investor Protection Fund) or Resolution Fund schemes, the MNB acting in its capacity of resolution authority shall set the period of time for exercising the rights referred to in the Subsection (1) and also specify a deadline for obtaining the required licenses. Upon request by the bridge institution, this deadline may be extended; however, the period of time granted for obtaining the license may not exceed twenty-four months in total.

Section 48

Without prejudice to the rules of this Act applicable to the protection of the rights of shareholders and creditors, the shareholders or creditors of the institution under resolution and other third parties whose assets, liabilities, rights or obligations are not transferred to the bridge institution shall not have any rights over or in relation to the assets, rights or liabilities transferred to the bridge institution.

23. Operation of a bridge institution

Section 49

The bridge institution shall have an appropriate licence for carrying out the activities and providing the services related to the assets and liabilities taken over.

Section 50

(1) If no bridge institution is available for the application of the resolution tool, the MNB acting in its capacity of resolution authority shall immediately notify the Resolution Fund or the minister in charge of the money, capital and insurance markets.

(2) In the case specified in Subsection (1)

a) the bridge institution may be established as an institution under the dominant influence of the Resolution Fund or the state;

b) the funds necessary for its establishment may be provided from the Resolution Fund or from the chapter of the central budget specifying the expenditure related to state property;

¹⁰ Set forth by: Section 171 of Act CCXV of 2015. Effective from: 01/01/2016.

c) ownership rights shall be exercised by the founder of the bridge institution; and

d) within no more than ten (10) working days of receipt of the notice by the MNB acting in its capacity of resolution authority as per Subsection (1), the decision on the establishment of the bridge institution shall be made by the Resolution Fund or — based on the recommendation of the minister in charge of the money, capital and insurance markets — by the Government.

(3) The bridge institution may apply for a foundation licence to be issued by the Supervisory Authority only after the MNB acting in its capacity of resolution authority has

a) approved the Deed of Foundation of the bridge institution;

b) approved the election or appointment of the bridge institution's management;

c) defined the responsibilities of management;

d) approved the remuneration of management;

e) approved the strategy and risk profile of the bridge institution.

(3a) At the foundation of the bridge institution the followings shall act as founder

a) the representative of the Resolution Fund on behalf of the Resolution Fund,

b) the minister in charge of the regulation of the money, capital and insurance market on behalf of the state.

(4) The bridge institution may start its activities in possession of the licence specified in Subsection (2) for the establishment of a bridge institution.. The licence for the establishment of the bridge institution includes the permit required for the appointment and election of senior/executive officers.

(5) The Supervisory Authority, when assessing the application for the licence specified in Subsection (4), will only examine the business plan, whether the initial capital required for the issue of the licence is available and whether the staffing requirements are met.

(6) In the decision containing the licence for establishing the bridge institution, the Supervisory Authority will specify a deadline of maximum three months for the establishment of the institution and for meeting all the criteria for starting its activities with the proviso that the MNB acting in its capacity of resolution authority may request the approval of the bridge institution's establishment and the commencement of its operations even in cases where, for a maximum period of 180 days, the bridge institution does not satisfy all the conditions set forth in the Hpt., the Bszt. and Regulation (EU) No. 575/2013 for approval and for performing activities. In this

case, the permission granted by the Supervisory Authority specifies exactly how long the bridge institution is exempted from satisfying which conditions.

(7) The following must be attached to the licence application specified in Subsection (4):

- a)* the deed of foundation of the bridge institution to be established;
- b)* a certificate that the entire initial capital has been paid up and is available;
- c)* a certificate that the bridge institution to be established meets the staffing requirements applicable to the provision of financial services;
- d)* a medium-term business plan;
- e)* for credit institutions, a copy of the declaration of joining the National Deposit Insurance Fund (OBA) — or, if necessary, the Investor Protection Fund (BEVA) — or, in the case of legal succession, a copy of the decision verifying legal succession;
- f)* for credit institutions, a copy of the declaration of joining the central credit information system or, in the case of legal succession, a copy of the decision verifying legal succession;
- g)* the description of the activities to be performed as per the classification in sectoral laws.

(8) The application for the licence specified in Subsection (4) may be applied for within fifteen 15 business days from the day the Resolution Fund or the minister regulating the money, capital and insurance markets receives the notification specified in Subsection (1) from the MNB acting in its capacity of resolution authority.

(9) For a period of 6 months from the issue of the decision specified in Subsection (6), the bridge institution need not comply with the statutory regulations on capital adequacy, large exposure and the restriction on investment.

(10) In respect of the bridge institution the MNB does not qualify as a parent undertaking pursuant to Act C of 2000 on Accounting, and Government Decree 250/2000 (XII. 24) on the specificities of annual reporting and bookkeeping obligations of credit institutions and financial enterprises.

(11) By the expiry of the exemption referred to in Subsection (6), the bridge institution shall submit to the Supervisory Authority the documents verifying that it has fully satisfied the governing conditions for the performance of activities.

Section 51

The MNB acting in its capacity of resolution authority shall operate the bridge institution with a view to maintaining access to critical functions in connection with the assets and liabilities transferred and selling the institution, its assets, liabilities, rights or obligations, based on the principle of private market investor, to one or more private sector recipients when conditions are appropriate and within the period specified in Section 52 (3) or (4).

Section 52

(1) The operation of the bridge institution shall be terminated if

- a) the bridge institution merges with another institution;
- b) if the bridge institution ceases to meet the statutory requirements;
- c) the sale of over 90 per cent of the bridge institution's assets, liabilities, rights or obligations to a third party;
- d) the period specified in Subsection (3) or (4) expires; or
- e) the claims against the bridge institution no longer exist.

(2) If the MNB acting in its capacity of resolution authority intends to sell the bridge institution or its assets, liabilities, rights or obligations,

- a) the bridge institution or the assets and liabilities concerned shall be sold in an open and transparent manner;
- b) the sale does not favour or discriminate between potential recipients on a subjective basis;
- c) the sale shall be made on commercial terms; and
- d) consent by the Government or the Resolution Fund — depending on the founder — shall be a condition of the sale.

(3) If none of the outcomes referred to in Subsection (1) applies, the MNB shall terminate the operation of a bridge institution no later than the end of a two-year period following the date on which the last transfer from an institution under resolution to the bridge institution was made.

(4) Upon the recommendation of the MNB acting in its capacity of resolution authority, during its procedure commenced *ex officio* the Supervisory Authority may extend the period stated in Subsection (3), subject to the approval of the state or the Resolution Fund exercising dominant influence, maximum five times by one year at each time if the extension, according to the reasoning presented in the recommendation of the MNB acting in its capacity of resolution authority,

- a) presumably promotes the sale of the bridge institution or its assets, liabilities, rights or obligations, or

b) is necessary to ensure the continuity of critical functions.

(5) The MNB acting in its capacity of resolution authority will be required to give a reasoning for any decision on extending the period specified in Subsection (3). The reasoning shall contain a detailed assessment of the situation, including market conditions and outlook, and a statement as to why all of this justifies the extension.

(6) If the operations of a bridge institution are terminated in the circumstances referred to in Points *c)* or *d)* of Subsection (1), the bridge institution's operating licence shall be revoked.

(7) If a bridge institution is used for the purpose of transferring assets and liabilities of more than one institution under resolution, the obligation referred to in Subsection (6) shall be applicable if the reason for termination is in place for the unit including the assets and liabilities transferred from each of the institutions under resolution as separate portfolios.

24. Asset separation

Section 53

(1) By applying the asset separation tool, the MNB acting in its capacity of resolution authority may transfer the assets, liabilities, rights or obligations of an institution under resolution or a bridge institution to one or more resolution asset management vehicles by way of the official decision specified in Section 6:2 (3) of the Ptk..

(1a) Except for the consent of the resolution asset management vehicle, for the transfer referred to in Subsection (1) there is no need to obtain the consent of the owner of the institution under resolution or any other person.. In the course of the transfer, the rules concerning asset separation set out in this Act shall apply.

(2) The resolution asset management vehicle is an institution owned fully or partly by the state or the Resolution Fund or is under the dominant influence of the state or the Resolution Fund, and it has been set up for the purpose of receiving some or all of the assets, liabilities, rights and obligations of one or more institutions under resolution or bridge institutions.

(3) The resolution asset management vehicle shall manage the assets, liabilities, rights or obligations transferred to it with a view to maximising their value through eventual sale or winding up or liquidation. To that end, the non-profit business company conducting the liquidation of the organisations defined in the MNB tv. may provide consulting services to the resolution asset management vehicle.

(4) If the capacity of resolution authority resolution asset management vehicle intends to sell the assets, liabilities, rights or obligations transferred to the resolution asset management vehicle, the sale transaction

- a)* shall be executed in an open and transparent manner;
- b)* shall not favour or discriminate between potential recipients on a subjective basis;
- c)* shall be executed on commercial terms; and
- d)* shall not need the administrative decision of the MNB acting in its scope of authority for resolution.

(5) Rights of ownership over the resolution asset management vehicle shall be exercised by the MNB acting in its capacity of resolution authority.

(6) In respect of the resolution asset management vehicle the MNB does not qualify as a parent undertaking pursuant to Act C of 2000 on Accounting, and Government Decree 250/2000 (XII. 24) on the specificities of annual reporting and bookkeeping obligations of credit institutions and financial enterprises.

(7) Any claim for compensation by a third party against the board members and executive officers of the resolution asset management vehicle due to their actions or failure to act in this capacity may only be raised in the case of a severe, neglectful violation of their material obligations, provided that the given action or failure to act caused the damage directly.

Section 53/A

The authorisation of the establishment of a resolution asset management vehicle may be requested from the Supervisory Authority if the MNB acting in its capacity of resolution authority

- a)* has approved the statutes of the resolution asset management vehicle,
- b)* has approved the election or appointment of its management,
- c)* has defined the managements' scopes of responsibility,
- d)* has approved the remuneration of its management,
- e)* has approved its strategy and risk profile.

Section 54

(1) The MNB acting in its capacity of resolution authority may use the asset separation tool if:

- a)* the situation of the particular market for those assets is of such a nature that the sale of those assets through insolvency proceeding could have an adverse effect on one or more financial markets;
- b)* such a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution; or
- c)* such a transfer is necessary to maximise proceeds from sale, winding up and liquidation.

(2)¹¹ When applying asset separation, the MNB acting in its capacity of resolution authority shall determine the consideration for the assets, liabilities, rights and obligations transferred to the resolution asset management vehicle in accordance with the principles defined for independent valuation. The consideration may be a nominal value or a negative value as well.

(3) Any consideration paid by the resolution asset management vehicle for the assets, liabilities, rights or obligations acquired shall benefit the institution under resolution. Consideration may be paid in the form of securities issued by the resolution asset management vehicle.

Section 55

(1) In the course of the resolution procedure, the MNB acting in its capacity of resolution authority may also transfer the assets, liabilities, rights or obligations of an institution under resolution to one or more resolution asset management vehicles in multiple phases.

(2) Before the conclusion of the resolution procedure, the MNB acting in its capacity of resolution authority may also return the assets, liabilities, rights or obligations from one or more resolution asset management vehicles to the institution under resolution by transferring them back if the conditions stated in Subsection (4) are met.

(3) In the case defined in Subsection (2), the institution under resolution shall — in parallel with refunding the amount of consideration received earlier on — be obliged to take back any such assets, liabilities, rights and obligations.

(4) The MNB acting in its capacity of resolution authority may also return the assets, liabilities, rights or obligations from an resolution asset management vehicle to the institution under resolution if

¹¹ Set forth by: Section 172 of Act CCXV of 2015. Effective from: 01/01/2016.

a) the decision on which the transfer based, expressly provides for the possibility of a return of the relevant assets, liabilities, rights or obligations; or

b) in the course of the individual identification and valuation of the relevant assets, liabilities, rights or obligations it is found that despite contrary expectations they do not belong to the categories of assets, liabilities, rights or obligations that are specified by the decision underlying the transfer and/or they do not meet the conditions applying to the transfer of assets, liabilities, rights and obligations as prescribed in the decision cited.

(5) In the case referred to in Subsection (4), the transfer back may take place before the conclusion of the resolution procedure and shall comply with any other conditions stated in the decision for the relevant purpose.

Section 56

(1) Transfers between the institution under resolution and the resolution asset management vehicle shall be subject to the safeguards for partial property transfers specified in Sections 97–103.

(2) Without prejudice to Sections 97–103, the shareholders and creditors of the institution under resolution and other third parties whose assets, liabilities, rights or obligations are not transferred to the resolution asset management company shall not have any rights over or in relation to the assets, rights or liabilities transferred to the resolution asset management vehicle.

(3) In relation to the application of asset separation, for the approval by the Supervisory Authority of the acquisition of a qualifying holding or the transfer of a deposit portfolio or holdings stemming from other contractual obligations the provisions set out in Section 39 shall adequately apply..

25. Bail-in

Section 57

(1) In the context of the bail-in, with a view to achieving the resolution objectives and if the conditions for resolution have been met, the MNB acting in its capacity of resolution authority may issue a decision to apply the following actions and to achieve the following objectives:

a) bailing in the institution or the financial undertaking referred to in Section 1 (1), with a view to enabling — through the recapitalisation — the institution or undertaking to satisfy the conditions for approval once again and to continue to provide financial services, supplementary financial services, investment services or services supplementing its investment services, and with a view to facilitating the preservation of market confidence in respect of the institution; or

b) conversion into regulatory capital or reduction of the value of debt securities or other liabilities that have been transferred

ba) to a bridge institution for the purpose of providing capital to the bridge institution,
or

bb)¹² in the context of the application of the sale of business or asset separation resolution tool.

(2) The MNB acting in its capacity of resolution authority may only apply the bail-in tool as per Subsection (1) a) if, based on the information available

a) the bail-in tool applied at the institution under resolution achieves the resolution objectives and is expected to resolve the financial issues of the institution, and

b) there is a reasonable prospect that by carrying out a reorganisation plan, the institution's solvency, financial stability and ability to perform sustainable operations can be restored.

(3) If the criteria listed in Subsection (2) are not satisfied, the MNB acting in its capacity of resolution authority may only apply the resolution tool specified in Section 34 (1) a)–c), or take the action stated in Subsection (1) b).

(4) Aligned to company form, the bail-in tool may be applied to any institution and financial undertaking as per Section 1 (1) with the proviso that, in order to facilitate the achievement of the resolution objectives, the MNB acting in its capacity of resolution authority may instruct an institution under resolution operating in a cooperative form to transform into a company limited by shares.

(5) The bail-in tool may be applied to any liabilities with the exceptions specified in this Act.

Section 58

(1) The scope of the bail-in does not extend to the liabilities listed below, irrespective of whether they arose or exist by virtue of the legislation of an EEA state or a third country:

¹² Set forth by: Section 173 of Act CCXV of 2015. Effective from: 01/01/2016.

a) in respect of deposit guarantee, covered deposits, including deposit parts covered by the reimbursement obligation related to deposits secured by the National Deposit Insurance Fund (OBA);

b) receivables recognised as liabilities in the context of the activities defined in Section 5 (2) a) and b) of the Bszt., thus, in particular, receivables secured by the Investor Protection Fund (BEVA), including receivables from long-term investment contracts and retirement plan contracts;

c) secured liabilities up to the extent of coverage, including covered bonds and mortgage bonds;

d) liabilities with an agreed maturity of less than seven (7) days vis-à-vis an institution outside of the group;

e) liabilities with a remaining maturity of maximum seven (7) days vis-à-vis the payment and settlement systems or participants thereof;

f) the following liabilities:

fa) regular monthly income of the employees of the institution or the financial undertaking as per Section 1 (1), or those related to retirement purpose benefits payable to the employee or a third party, or fixed amount bonuses payable to the employee, excluding variable value bonuses which do not constitute a part of the collective bargaining agreement;

fb) those arising from service contracts related to trade and activities other than the core activity (financial services, supplementary financial services, investment services or services supplementing investment services), where the goods and services constituting the subject of the contract are critical to daily operations, including IT services, and liabilities arising from the maintenance, leasing, or utility charges of buildings and facilities;

fc) tax and tax-type liabilities, contributions and social security contributions, including health insurance contributions, pension contributions, early retirement insurance contributions, health insurance contributions in kind, monetary health insurance contributions, labour market contributions, social contribution taxes and vocational training contributions.

fd) Outstanding and due payment obligations toward the OBA and BEVA.

(2) The exemption referred to in Subsection (1) f) fa) shall not apply to the performance-oriented remuneration of the persons referred to in Section 117 (2) of the Hpt. and Point 2 of Annex 4 of the Bszt.

(3) The scope of the bail-in may extend to unsecured deposits and the deposit part in excess of the coverage level payable on secured deposits.

(4) The MNB acting in its capacity of resolution authority may apply the bail-in tool to the value portion in excess of the coverage of secured bonds, including mortgage bonds.

(5) Without prejudice to the regulation pertaining to large exposures as defined in Regulation (EU) No. 575/2013, in order to ensure the resolvability of the institution or the group, the MNB acting in its capacity of resolution authority may limit, by way of a the extent of risk-taking in respect of the liabilities that may be included in the bail-in, except for the extent of the liabilities towards institutions and financial undertakings belonging to the same group.

Section 59

(1) One or more liabilities or a part of a liability may be excluded from the write-down or conversion carried out within the framework of the bail-in, if it is or they are required, either directly or indirectly, for maintaining the critical functions and main business lines of the institution concerned.

(2) One liability at an institution — thus, in particular, the parts of the secured deposits of natural persons, micro, small and medium-sized enterprises that are in excess of the coverage level — must be excluded, in full or in part, from the write-down or conversion carried out within the framework of the bail-in, if it is both necessary and proportionate in view of the objective of avoiding a widespread spillover of a negative process (contagion), which would undermine the operation of financial markets, thereby generating a severe disturbance in Hungary or any other EEA state.

(3) The MNB acting in its capacity of resolution authority may exclude, in full or in part, one or more liabilities from the write-down or conversion carried out within the framework of the bail-in, if

a) the application of the bail-in tool is not possible;

b) the decline in the value of the receivables of the other creditors affected by the bail-in would be higher than would be the case if the liability defined in this Subsection was excluded from the bail-in.

(4) If the MNB acting in its capacity of resolution authority excludes, pursuant to this Section, one or more liabilities or a whole liability class from the write-down or conversion carried out within the framework of the bail-in, this may only result in a higher write-down or conversion

in the case of the other liabilities included in the bail-in if the provision specified in Section 20 (1) f) is still satisfied.

Section 60

(1)¹³ If the MNB acting in its capacity of resolution authority excludes one or more liabilities or a liability class from the bail-in and the losses which would have been borne by those excluded from the bail-in may not be fully passed on to the creditors not excluded from the bail-in, the Resolution Fund may provide monetary assets to the institution under resolution in order to

a) cover any losses not covered by the liabilities to be written down or converted and restore the value of the shareholders' equity of the institution under resolution to zero in accordance with Section 61 (1) a), or

b) restore capital adequacy pursuant to Section 61 (1) b) by purchasing the shares, other shareholdings or capital elements of the institution under resolution.

(2) The contribution referred to in Subsection (1) may be granted if, at the time of the resolution and based on the independent evaluation it can be established that

a) in the context of the bail-in, the shareholders, the holders of members' shares or capital elements, as well as the creditors involved in the bail-in have contributed to the covering of losses and to recapitalisation at an extent that equals 8 per cent of the total liability portfolio — including the regulatory capital — of the institution under resolution; and

b) the contribution provided from the Resolution Fund is less than 5 per cent of the total liability portfolio — including the regulatory capital — of the institution under resolution.

(3) The contribution from the Resolution Fund may come from

a) the amount available pursuant to Section 133 (1) a) aa) and ab) (including the proceeds realised on the assets of the Resolution Fund);

b) the amount paid into the Resolution Fund pursuant to Section 133 (1) a), ac);

c) the amount paid into the Resolution Fund pursuant to Section 133 (1) b)-c).

(4) After the Resolution Fund has contributed by up to the 5 per cent limit specified in Subsection (2) b) and the unsecured and non-preferred liabilities (including the value part above

¹³ Set forth by: Section 174 of Act CCXV of 2015. Effective from: 01/01/2016.

the coverage level of secured deposits) have been written off or converted, then, under exceptional circumstances, the MNB acting in its capacity of resolution authority may initiate the addition of other funds in compliance with the provisions of this Act.

(5) In derogation of Subsection (2)(a), the Resolution Fund may also provide contribution within the meaning of Subsection (1) if

a) the amount of contribution for covering losses and required for recapitalisation within the meaning of Subsection (2)(a) reaches 20% of the institution's risk weighted exposure,

b) the amount available in the Resolution Fund as per Section 133(1)(a)(aa) and (ab) is at least 3% of the covered deposit for all credit institution, and

c) the aggregate balance sheet total of the affected institution does not exceed HUF 270 000 billion.

(6) The MNB, acting in its capacity of resolution authority, shall assess the following in the context of its decision defined in Section 59:

a) in case of an institution under resolution, the loss shall be borne first by shareholders, then by the other creditors of the institution under resolution, their order and proportion of loss assumption equal to the order and satisfaction ratio applicable for liquidation procedures,

b) in the event of the exclusion of one or several liabilities or a class of liabilities, the loss assumption capacity of the institution under resolution and

c) the level of replenishment of the Resolution Fund and its required level.

26. Defining the amount of bail-in

Section 61

(1) The MNB, acting in its capacity of resolution authority, shall determine the following amounts in the context of bail-in:

a) the value of liabilities eligible for write-down and conversion required to reach zero equity of the institution under resolution, or

b) the value of liabilities eligible for write-down or conversion to a shareholding or other capital instrument required for recovery in case of an institution or a bridge institution under resolution related to its Common Equity Tier 1 capital adequacy ratio.

(2) The liabilities eligible for write-down and conversion as per Subsection (1) shall be determined as follows:

a) market confidence in the institution under resolution or in the bridge institution should be maintainable at a satisfactory level, and should be capable of meeting licensing conditions foreseeably for another year based on the available information, and

b) the capital contribution within the meaning of Section 126(3)(d) provided from the Resolution Fund in order to restore the Common Equity Tier 1 capital adequacy ratio of the institution under resolution or to determine the Tier 1 capital adequacy ratio of the bridge institution shall also be taken into account.

(3) If the capital elements are written down pursuant to Sections 74-79 or the bail-in tool is applied pursuant to Section 57 and the degree of write-down based on the subsequent final evaluation exceeds the necessary degree, the degree of write-down shall be subsequently adjusted to indemnify creditors and shareholders.

(4) The MNB, acting in its capacity of resolution authority, shall take all necessary steps and measures to ensure that the necessary and possible estimates and evaluations regarding the institution under resolution are carried out using up-to-date and accurate information.

27. Requirements for regulatory capital and liabilities eligible for write-down and conversion

Section 62

(1) The institution shall fulfil the minimum requirement pertaining to regulatory capital and liabilities eligible for write-down or conversion, defined by the MNB, acting in its capacity of resolution authority, in consultation with the Supervisory Authority.

(2) The minimum requirement specified in Subsection (1) is the quotient of the sum of the institution's regulatory capital and liabilities eligible for write-down and conversion divided by the institution's regulatory capital and total unweighted liabilities expressed as a percentage.

(3) Derivative liabilities are also part of the value of total liabilities defined in Subsection (2) on the basis that full recognition is given to counterparties netting rights.

(4) In derogation of Subsection (1), the MNB, acting in its capacity of resolution authority, may grant exemption to mortgage credit institutions accessing funding by issuing covered bonds — including mortgage bonds — from meeting the minimum requirement if the mortgage credit institution did not or does not collect deposits.

(5) The bail-in resolution tool cannot be applied to mortgage credit institutions granted exemption under Subsection (4).

Section 63

(1) Liabilities not qualifying as additional Tier 1 capital or Tier 2 capital eligible for use for bail-in — including subordinated loans and subordinated debt securities — may be taken into account as regulatory capital and liabilities eligible for write-down and conversion when calculating the amount defined in Subsection (2) of Section 62, if

a) the liabilities do not stem from derivatives *b)* the liabilities do not stem from deposits owned by a natural person or a micro, small or medium-sized enterprise and the deposit value exceeds the coverage limit,

c) the residual maturity of the liability is one year ,

d) the financial asset or instrument has been issued and its value fully paid,

e) the liability is not owed to, secured by or guaranteed by the institution itself, and

f) the purchase of the financial asset is not funded by the institution, either directly or indirectly.

(2) If early repayment may occur in respect of a liability, maturity within the meaning of Subsection (1) point *c)* shall be defined using the earliest date when repayment could take place as the maturity date.

(3) If the liability is governed by the legislation of a third country, the MNB, acting in its capacity of resolution authority, may request the institution under resolution to certify that the contract and the legislation of the third country — including any international agreements — allow for the execution of the decision on the write-down and conversion of the liability by the MNB, acting in its capacity of resolution authority.

(4) If the condition set out in Subsection (3) is not met, the affected liability cannot be taken into account for meeting the obligation pertaining to regulatory capital and liabilities eligible for write-down and conversion.

Section 64

(1) The MNB, acting in its capacity of resolution authority, shall individually define for each institution in a decision the minimum requirement within the meaning of Section 62 for own fund and liabilities eligible for use in bail-in in consultation with the Supervisory Authority taking into account the following aspects:

a) the resolvability of the institution shall be allowed for, i.e. the adequate use of resolution tools — including bail-in — for meeting the resolution objectives,

b) a level of liabilities (capital elements eligible for right down or conversion) shall be ensured within the institution eligible for inclusion in bail-in ensuring coverage of any losses in case of the application of the bail-in tool, that the institution's Common Equity Tier 1 capital adequacy

ratio can be restored to the value defined as the condition for licensing, that licensed activities can be performed adequately, and the maintenance of financial confidence in the institution,

c) if certain liabilities eligible for right down or conversion based on the resolution plan could be excluded from bail-in or fully assigned to a receiving party in the context of partial assignment, the institution must still hold sufficient liabilities eligible for right down or conversion after this has been performed to ensure that the requirements defined in point b) are met

d) taking into account the size, operations, funding model and the risk profile of the institution,

e) the possible extent of the National Deposit Insurance Fund's contribution obligation for purposes of resolution,

f) the level of threat to the stability of the financial intermediary system represented by the institution.

(2) The institution shall meet all of the conditions defined in Subsection (1) and Sections 62-63, and the MNB, acting in its capacity of resolution authority, may decide, if warranted in the interest of effectively meeting the resolution objectives, that the financial enterprise within the meaning of Section 1 must also meet all of the conditions defined in Subsection (1) and Sections 62-63.

(3) The MNB, acting in its capacity of resolution authority, may decide on the basis of the consultations carried out with the Supervisory Authority, if warranted in the interest of effectively meeting the resolution objectives, to apply the minimum objective defined in Subsection (1) and Sections 62-63

a) to the enterprise defined in Section 1(1) b)-d) on an individual basis

b) to the EU parent undertaking on a consolidated basis.

(4) The MNB, acting in its capacity of resolution authority,, in consultation with the Supervisory Authority, shall require the institution to meet the minimum requirement defined in this Section and in Section 68 in terms of regulatory capital and liabilities eligible for write-down and conversion, which the Supervisory Authority shall verify.

(5) The MNB, acting in its capacity of resolution authority, shall ensure the well-foundedness of its decisions defined in Sections 65-68 by elaborating resolution plans and keeping them continuously up-to-date.

28. Defining the consolidated minimum requirement

Section 65

(1) If the MNB, acting in its capacity of resolution authority, is the resolution authority tasked with the resolution of the EU parent undertaking, it shall define the minimum requirements specified in Sections 62-64 both individually and on a consolidated basis.

(2) If the MNB, acting in its capacity of resolution authority, is the resolution authority tasked with the resolution of the EU parent undertaking, it may grant exemption to the EU parent

undertaking for meeting the minimum requirements for regulatory capital and liabilities eligible for write-down and conversion on an individual basis if

a) the EU parent undertaking fulfils the minimum requirement specified in Section (3) on a consolidated basis, and

b) the subsidiary has been granted exemption by the Supervisory Authority from meeting the individual requirements on the basis of Section 7(1) of Regulation (EU) No. 575/2013.

(3) If the MNB, acting in its capacity of resolution authority, is the resolution authority tasked with the resolution of the EU parent undertaking, it shall define the minimum requirements for regulatory capital and liabilities eligible for write-down and conversion, in consultation with the Supervisory Authority and in consideration of Subsection (4),

a) of Section 64(1) and

b) the elements defined in the separate resolution plan of the the third country subsidiary.

(4) If the MNB, acting in its capacity of resolution authority, is the resolution authority tasked with the resolution of the EU parent undertaking, it shall proceed jointly with the resolution authority in charge of the resolution of the subsidiaries (hereinafter: multilateral procedure) when defining the minimum requirements applicable on a consolidated basis.

(5) If the MNB, acting in its capacity of resolution authority, is the resolution authority tasked with the resolution of the EU parent undertaking, upon commencement of the procedure defined in Subsection (4)

a) immediately forward the necessary information and documents to the competent resolution authority of the EEA member state affected by the consolidated resolution procedure, and

b) simultaneously notify such resolution authorities of the deadline for sending any opinions, reservations and analyses regarding the draft decision to the MNB, acting in its capacity of resolution authority.

(6) In the framework of the multilateral procedure, the MNB acting in its capacity of resolution authority may pass a valid decision within the framework of the multilateral procedure only with the consent of the competent resolution authorities of all EEA states participating in the procedure (hereinafter: decision passed in the context of a multilateral procedure). The deadline for passing the decision shall be four months from the submission by the MNB acting in its capacity of resolution authority of the draft decision to the competent resolution authorities participating in the procedure.

(7) If, due to a lack of consent by the competent resolution authority of an EEA state participating in the procedure, the multilateral procedure is unsuccessful, then, upon request by the competent resolution authority of any EEA state participating in the procedure, the MNB acting in its capacity of resolution authority shall or may, at its own initiative, consult with the EBA in respect of the unsuccessful outcome of the multilateral procedure within the deadline specified in Subsection (6).

(8) If, due to a lack of consent by the competent resolution authority of an EEA state participating in the procedure the multilateral procedure is unsuccessful, then the MNB acting

in its capacity of resolution authority shall issue its decision within ten days of conclusion of the multilateral procedure taking into account the decision, analysis and reservations of the competent resolution authority of an EEA state participating in the procedure provided in the context of the multilateral procedure.

(9) If the MNB acting in its capacity of resolution authority consults with the EBA pursuant to Subsection (7), then, contrary to Subsection (6), the deadline for the procedure shall be ten (10) working days following the EBA's submission to the MNB, acting in its capacity of resolution authority, the decision taken in accordance with Section 19 (3) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

(10) Following the consultation referred to in Subsection (7), the MNB acting in its capacity of resolution authority shall consider the EBA's decision when passing its decision. If the decision of the MNB acting in its capacity of resolution authority differs from the decision of the EBA, the MNB shall provide a reason for the difference in its decision.

(11) The MNB acting in its capacity of resolution authority shall notify the EU parent undertaking and the competent resolution authorities of all EEA states participating in the multilateral procedure about its decision, providing detailed justification.

(12) If the competent resolution authority of another EEA state is the authority entitled to carry out the procedure and the resolution authority of the EU parent credit institution's subsidiary credit institution is the MNB acting in its capacity of resolution authority, then the MNB acting in its capacity of resolution authority shall submit its opinion and reservations by the deadline set by the competent resolution authority of the EEA state entitled to carry out the procedure.

(13) The decision passed in the context of the procedure referred to in Subsection (4) by the resolution authority of the EEA state in which the EU parent credit institution is incorporated shall be directly applicable and enforceable in Hungary. The MNB acting in its capacity of resolution authority shall publish the decision passed by the competent resolution authority of the EEA state on its website, translated into Hungarian. In respect of the execution of and compliance with the contents of the decision passed by the competent resolution authority of another EEA state regarding the organisation under the competence of the MNB acting in its capacity of resolution authority and in respect of the measures to be taken based on the inspection, the governing legislation shall be the Hungarian regulations applicable to the decisions by the MNB acting in its capacity of resolution authority.

(14) The MNB acting in its capacity of resolution authority shall review the necessity of changing the decision referred to in Subsection (6) at least once a year, or upon the request of the parent undertaking or the competent resolution authority of the subsidiary.

Section 66

- (1) The MNB, acting in its capacity of resolution authority, may define the minimum requirement specified in Sections 62-63 pertaining to the subsidiary in line with the principle of proportionality on the basis of Section 64(1), taking into consideration Section 65(1) in terms of the amount and composition of regulatory capital.
- (2) In case of subsidiaries established in Hungary, the minimum requirements is defined by the MNB, acting in its capacity of resolution authority, in the context of a multilateral procedure by virtue of a decision, jointly with the competent authority in charge of the resolution of the EU parent undertaking.
- (3) The MNB, acting in its capacity of resolution authority, shall immediately forward all necessary information and documents to the competent authority in charge of the EU parent undertaking's resolution and simultaneously notify such resolution authorities of the deadline for sending any opinions, reservations and analyses regarding the draft decision to the MNB, acting in its capacity of resolution authority.
- (4) In the framework of the multilateral procedure, the MNB acting in its capacity of resolution authority may pass a valid decision within the framework of the multilateral procedure only with the consent of the EU resolution authority (hereinafter: decision passed in the context of a multilateral procedure). The deadline for passing the decision shall be four (4) months from the submission by the MNB acting in its capacity of resolution authority of the draft decision.
- (5) If, due to a lack of consent by the competent resolution authority of an EU parent undertaking the multilateral procedure is unsuccessful, then upon request by the competent resolution authority the MNB acting in its capacity of resolution authority shall consult with the EBA in respect of the unsuccessful outcome of the multilateral procedure within the deadline specified in Subsection (4).
- (6) If, due to a lack of consent by the competent resolution authority of an EU parent undertaking the multilateral procedure is unsuccessful, then the MNB acting in its capacity of resolution authority shall issue its decision within ten days of conclusion of the multilateral procedure taking into account the decision, analysis and reservations of the EU parent undertaking's resolution authority provided in the context of the multilateral procedure.
- (7) If the MNB acting in its capacity of resolution authority consults with the EBA pursuant to Subsection (5), then, contrary to Subsection (4), the deadline for the procedure shall be ten (10) working days following the EBA's submission to the Supervisory Authority the decision taken in accordance with Section 19 (3) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.
- (8) Following the consultation referred to in Subsection (5), the MNB acting in its capacity of resolution authority shall consider the EBA's decision when passing its decision. If the decision of the MNB acting in its capacity of resolution authority differs from the decision of the EBA, the MNB shall provide a reason for the difference in its decision.

(9) The MNB acting in its capacity of resolution authority shall notify the EU parent undertaking and the EU parent undertaking's resolution authority about its decision, providing detailed justification.

(10) If the competent resolution authority of another EEA state is the authority entitled to carry out the procedure and the resolution authority of the EU parent undertaking is the MNB acting in its capacity of resolution authority, then the MNB acting in its capacity of resolution authority shall submit its opinion and reservations by the deadline set by the competent resolution authority of the EEA state entitled to carry out the procedure.

(11) If a decision has been passed in the context of the procedure referred to in Subsection (2) by the resolution authority of the EEA state in which the EU parent institution is incorporated, such decision shall be directly applicable and enforceable in Hungary. The MNB acting in its capacity of resolution authority shall publish the decision passed by the competent resolution authority of the EEA state on its website, translated into Hungarian. In respect of the execution of and compliance with the contents of the decision passed by the competent resolution authority of another EEA state regarding the organisation under the competence of the MNB acting in its capacity of resolution authority and in respect of the measures to be taken based on the inspection, the governing legislation shall be the Hungarian regulations applicable to the decisions by the MNB acting in its capacity of resolution authority.

(12) The MNB acting in its capacity of resolution authority shall review the necessity of changing the decision referred to in Subsection (4) at least once a year or upon the request of the competent resolution authority of the EU parent undertaking.

Section 67

(1) If the resolution authority of the EU parent undertaking is the MNB, acting in its capacity of resolution authority, it may grant exemption from applying the minimum requirements in respect of the EU parent undertaking if

a) the EU parent undertaking fulfils the requirements specified in Section 65(2) and (3) on a consolidated basis, and

b) the EU parent undertaking's supervisory authority is the Supervisory Authority, which has granted exemption to the institution from meeting the individual capital requirements on the basis of Section 7(3) of Regulation (EU) No. 575/2013.

(2) If the resolution authority of a subsidiary is the MNB, acting in its capacity of resolution authority, it may grant exemption from applying the minimum requirements in respect of the subsidiary if

a) if the resolution authority of the EU parent undertaking is also the MNB, acting in its capacity of resolution authority,

b) the subsidiary is subject to the consolidated supervision of the EU parent undertaking and the Supervisory Authority performs consolidated supervisory functions,

c) the subsidiary is subject to the consolidated supervision of the member state parent undertaking and the Supervisory Authority performs consolidated supervisory functions and the elements defined in Section 64(2) on the subconsolidated level in terms of the member state parent undertaking,

d) there is no obstacle to the immediate

da) transfer of the regulatory capital element or

db) repayment of the liability by the parent undertaking to the subsidiary,

e) the parent undertaking's consolidated corporate governance system in the provision of guarantee by the parent undertaking for its subsidiary's liabilities has been improved for the Supervisory Authority or, if the parent undertaking does not provide any guarantees, the subsidiary's risks are not significant,

f) the subsidiary's risk assessment, risk measurement and risk control system is identical to the one used by the parent undertaking, and

g) the subsidiary has been granted exemption by the Supervisory Authority from meeting the individual capital requirements on the basis of Section 7(1) of Regulation (EU) No. 575/2013.

Section 68

(1) MNB acting in its capacity of resolution authority may determine, in its decision taken as specified in Sections 62-67, that the minimum requirement pertaining to the regulatory capital (own funds), liabilities that can be written off or converted must be met in full or in part using liabilities involved in bail-in on the basis of a contractual stipulation.

(2) An instrument governed by the law of a third country shall qualify as liability that can be involved in bail-in on the basis of contractual stipulation as specified in Subsection (1) if it fulfils the provisions defined in Section 72 (7) and the MNB, acting in its capacity of resolution authority, finds that

a) the contract pertaining to the liability contains a contractual provision stipulating that on the basis of the decision taken by the resolution authority the instrument may be involved in bail-in in a way that it has to be written off or converted before the writing off or conversion of other liabilities that can be written off or converted, and

b) in the course of the insolvency proceedings the beneficiary of the liability cannot be satisfied before other liabilities that can be written off or converted according to its ranking.

29. Tasks relating to those with shareholdings in the company in relation to bail-in or the write off or conversion of equity elements

Section 69

(1) The MNB, acting in its capacity of resolution authority, in the course of the application of bail-in or the write off or conversion of equity elements

a) cancels existing securities constituting shareholdings or hands them over to those involved in bail-in,

b) if according to the result of the independent valuation the institution under resolution has positive equity value, it dilutes the shareholding on the basis of

ba) the procedure set out in Section 79 (1) or

bb) the provisions set out in Section 84 (1) *h)*

relating to other instruments.

(2) In regard to Subsection (1) *b)* such conversion rate shall be applied in conversion on the basis of which a significant dilution takes place in regard to securities constituting shareholdings.

(3) The actions specified in Subsection (1) shall also be taken in relation to securities constituting shareholdings

a) that have been converted into equity securities from debt securities and that had, in accordance with the terms and conditions of the contract applying to the debt securities before the decision was made concerning the meeting of the conditions for resolution, been converted into securities constituting shareholdings,

b) where additional Tier 1 and Tier 2 capital instruments were converted into primary Tier 1 capital instruments as specified in Section 80.

(4) MNB, acting in its capacity of resolution authority, shall, in the course of its action referred to in Subsection (1), take into consideration

a) the result of the independent valuation,

b) the value by the valuation of which MNB, acting in its capacity of resolution authority, established the capital adequacy ratio pertaining to the Common Equity Tier 1, and

c) the sum of the equity elements to be written off or converted pursuant to Section 61.

(5) If the institution would, pursuant to Sections 126-134 of the Hpt. and Sections 37-39 of the Bszt., acquire a qualifying holding, the Supervisory Authority shall conduct the procedure as quickly as possible, to avoid impeding bail-in or the write off or conversion of the equity elements.

(6) If the procedure referred to in Subsection (5) has not yet been completed by the application of bail-in, the write off or conversion of equity elements, and as a result of bail-in or the write

off or conversion of equity elements qualifying holding was acquired or its ratio increased, the procedure referred to in Section 42 (3) shall be followed.

30. Sequence of write off and conversion

Section 70

(1) In the course of applying bail-in, the MNB, acting in its capacity of resolution authority, shall define the classes of liabilities eligible for write off or conversion in accordance with this Section, providing that

a) it shall define what amount of liability has written off to ensure that the institution's equity is at least zero; and

b) after determining the amount referred to in Subsection *a)* it specifies what amount of liability will need be converted to allow the own funds of the institution to reach the level at which it will be able to meet the prudential requirements and to generate market confidence concerning its solvency according to the assessment of the MNB acting in its capacity of resolution authority.

(2) In relation to Subsection (1) *b)* the MNB, acting in its capacity of resolution authority, will take into account the contribution made by the Resolution Fund.

(3) The MNB, acting in its capacity of resolution authority – in view of Section 58 (1) and Section 59 – applies its write-off and conversion powers in the following order:

a) the nominal value of the instruments qualifying as Common Equity Tier 1 capital items will be written off up to the amount of losses to be accounted for;

b) if the write-off under item (a) is not sufficient for accounting for the losses, the value of instruments qualifying as Additional Tier 1 capital items will be written off up to the amount necessary for absorbing the losses;

c) if the write-off under items (a) and (b) is not sufficient for accounting for the losses, the value of instruments qualifying as Tier 2 capital items will be written off up to the amount necessary for absorbing the losses;

d) if the write-off under items (a), (b) and (c) is still not sufficient for accounting for the losses and for reaching the necessary level of own funds, then the value of the instruments qualifying as subordinated debt and not qualifying as own funds will be converted into Common Equity Tier 1 capital items up to an amount required in order to absorb the losses and reach the required level of own funds; and

e) if not even the write-off according to items (a) to (d) above is sufficient to cover the losses and to reach the required level of own funds, then the other liabilities will be written off in the order of loss bearing specified in Section 57 (1) of the Csödtv., taking into account the rules of the Hpt. and the Bszt. related to liquidation procedures and the differences stated in this Act as well.

(4) In the course of the write-off or conversion of capital items and liabilities, the property share or claim of the owners or creditors of the same ranking according to the priority of claims specified in the Csődtv. will be written off to the same extent, except for liabilities exempted under this Act or by the MNB acting in its capacity of resolution authority. The MNB, acting in its capacity of resolution authority, will apply different conversion rates to capital items and liabilities of different rankings as described in Subsection (3) below.

(5) The conversion rate must compensate the financial losses suffered by the creditor as a result of the write-off or conversion of the creditor's claim, also with regard to the losses to be accounted for. The conversion rate applied to liabilities or capital items with a lower ranking in the order of loss bearing shall be lower than the conversion rate of liabilities and capital items with a higher ranking.

(6) If it is found by the independent valuation following the provisional valuation that the write-off and conversion carried out on the basis of the provisional valuation exceeded the necessary level according to the independent valuation, then the MNB, acting in its capacity of resolution authority,

a) may write back the nominal value of the instruments of ownership or the claims of the affected creditors or owners;

b) submit a proposal to the board of directors of the Resolution Fund concerning compensation of the creditors or owners concerned for their losses, from the Resolution Fund.

(7) If according to the contractual terms of any of the instrument listed in Subsection (3) b)-d) the principal amount of the given instrument needs to be written off or converted into an instrument constituting shareholding if an event defined in advance and related to the financial situation (and in particular to the solvency position or the own funds level) of the issuing institution or organisation occurs (including the case convertible bonds as defined in the Civil Code (Ptk.), the following steps shall be taken before the measure defined in Subsection (1) is applied

a) the MNB, acting in its capacity of resolution authority, will issue a decision stating that the relevant contractual terms of the instrument have been met, and

b) the write-off measure described in Subsection (4) shall be applied to the securities written off or converted into shareholding.

(8) If the principal amount of an instrument has been reduced, on the basis of the condition referred to in Subsection (7), not to zero as specified in Subsection (1), then, pursuant to Subsection (1) the residual value of the principal amount must be reduced to zero in the framework of write off and conversion.

31. Recovery and reorganisation after bail-in

Section 71

(1)¹⁴ If the MNB acting in its capacity of resolution authority has applied, in accordance with Section 57 (1) a), bail-in to a given institution or financial undertaking as specified in Section 1, then within 30 days of the entry into force of the decision of the MNB acting in its capacity of resolution authority concerning the bail-in the board of directors of the institution or of the financial undertaking concerned prepares a reorganisation plan and submits it to the MNB acting in its capacity of resolution authority.

(2) The MNB, acting in its capacity of resolution authority, may appoint one or more natural persons, business entities or a resolution commissioner for the preparation of the reorganisation plan and the implementation of its contents. The professional and conflict of interest related requirements pertaining to the resolution commissioner shall also be applied to the person working out the reorganisation plan.

(2a) If the MNB, acting within its capacity of resolution authority, assigns a natural person for drawing up the reorganisation plan, it is entitled to manage the identifying data of the assigned person specified in Annex 2 of the Hpt. during the term of the assignment in the interest of the smooth fulfilment of its duties. The personal data of the natural person assigned for drawing up the reorganisation plan may only be disclosed by third parties in the case defined by law.

(3) In the case of the application of the framework of state aids set out in Sections 107-109 of the Treaty on the Functioning of the European Union the reorganisation plan must be aligned to the EU framework of state aids and the reorganisation plan must be transmitted to the European Commission. The deadline for the preparation of the reorganisation plan shall be determined by the MNB acting in its capacity of resolution authority in a way that from among

a) 90 days unlike as specified in Subsection (1) or

b) the time frame according to the framework of state aids as specified in Sections 107-109 of the Treaty on the Functioning of the European Union

it shall prescribe the longer time frame.

(4) If that is necessary for the attainment of the resolution objectives, the time frame specified in Subsection (1) may be prolonged by the MNB acting in its capacity of resolution authority at the request of the institution or the financial undertaking referred to in Section 1 by 2 months.

(5) If bail-in is applied to two or more undertakings belonging to the group as specified in Section 57 (1) a), the reorganisation plan must be worked out by the EU-level parent company, for all members of the Group, and the EU-level parent company must submit it to its resolution authority. If the MNB acting in its capacity of resolution authority is the resolution authority of the EU-level parent company, the MNB acting in its capacity of resolution authority shall transmit the reorganisation plan filed by the EU-level parent company to the other relevant resolution authorities and to the EBH.

(6) The MNB acting in its capacity of resolution authority shall, within thirty days of receipt, evaluate the reorganisation plan in cooperation with the Supervisory Authority and if the long

¹⁴ Set forth by: Section 175 of Act CCXV of 2015. Effective from: 01/01/2016.

term viability of the institution or financial undertaking as specified in Section 1 under reorganisation can, in their view, be restored by the actions proposed in the plan, the MNB acting in its capacity of resolution authority approves the reorganisation plan.

(7) If in agreement with the Supervisory Authority the MNB acting in its capacity of resolution authority finds that the reorganisation plan does not ensure the long term viability of the institution or the financial undertaking as specified in Section 1, it notifies the managing body with governing power of the institution or the financial undertaking as specified in Section 1 under reorganisation or the person referred to in Subsection (2), calling for amendments to be made to the reorganisation plan, for which the managing body or the designated person shall have 14 days.

(8) The reorganisation plan modified as referred to in Subsection (7) shall be evaluated by the MNB acting in its capacity of resolution authority after consultation with the Supervisory Authority, within 7 days of its submission and

a) approves it or

b) returns it for further amendments as specified in Subsection (7)

providing that if it is rejected for the second time, a new person must be designated for working out the reorganisation plan.

(9) The managing body with governing power of the institution or the financial undertaking as specified in Section 1 under reorganisation or the person referred to in Subsection (2) shall execute the tasks set out in the approved reorganisation plan and shall submit reports at least once every six months to the MNB acting in its capacity of resolution authority concerning the results achieved and the process of execution.

(10) If on the basis of the report referred to in Subsection (9) the MNB acting in its capacity of resolution authority finds – on the basis of consultation with the Supervisory Authority – that the reorganisation plan needs to be modified, it calls on the managing body with governing power of the institution or the financial undertaking as specified in Section 1 under reorganisation or the person referred to in Subsection (2) to modify the reorganisation plan as specified in Subsection (7).

32. Provisions for ensuring the effectiveness and legal effect of bail-in

Section 72

(1) In the interest of ensuring the legal effect of bail-in, during the implementation of bail-in ordered by the MNB acting in its capacity of resolution authority, the reduction of the value or the complete write-off of a liability item and also the conversion or write-off of the amount payable under the liability will create an obligation for the institution under resolution and will have an effect on the relevant owner and creditor with immediate effect.

(2) To ensure the legal effect of bail-in, the MNB, acting in its capacity of resolution authority, is authorised to

a) modify or order the modification of the register of shareholders or members and the central securities register;

b) arrange the delisting of securities from the regulated market or the listing of securities on the regulated market;

c) relist securities whose value has been reduced by the MNB acting in its scope of resolution-related duties, to the regulated markets, without the obligation to prepare and publish a prospectus under the Tpt.

(3) If the MNB acting in its capacity of resolution authority writes off the value of a liability item to zero, then the given liability and any accrued but yet unpaid or capitalised interest or similar debt will cease to exist by the operation of this Act, and no claim in connection with such liability may be enforced in a court or insolvency procedure.

(4) If the MNB, acting in its capacity of resolution authority, reduces the value of a liability item but does not write the value off to zero, then the instrument or contract that originally created the obligation will continue in effect for the reduced value, taking into account any interest change due to the reduced principal amount or any modification ordered under Section 84(1)(h) by the MNB acting in its capacity of resolution authority.

(5) Without prejudice to the issuance of the shareholding or other equity element prescribed for the institution under resolution or the parent institution, the institution or the financial undertaking as specified in Section 1 must keep equity or Common Equity Tier 1 partly in the event that the MNB acting in its capacity of resolution authority exercises the power specified in Section 84 (1) to the institution, the financial undertaking as specified in Section 1 or its subsidiary, the institution or the financial undertaking as specified in Section 1 should be capable of issuing sufficient new securities constituting shareholdings to actually make it possible to convert the liabilities into shareholding.

(6) The MNB acting in its capacity of resolution authority evaluates whether the requirement specified in Subsection (1) has been met and has adequately met

a) in regard to the resolution plan worked out for the institution or the group,

b) in regard to the reorganisation plan, and it covers the sum of the amounts specified in Section 69 (1) b) and c).

(7) Any securities or liability issued or generated by the institution and the financial undertaking as specified in Section 1 – that is not relieved from bail-in, not a deposit to be classified under point a) and b) of Subsection (1) of Section 57 and is not regulated by the statutory regulations of an EEA state – contains any contractual terms and conditions that

a) recognise that the given liability may be added to the scope of the bail-in by the MNB acting in its capacity of resolution authority, and

b) allows the MNB acting in its capacity of resolution authority to exercise its write-off, cancellation and conversion powers.

(8) The institution or the financial undertaking as specified in Section 1 is not obliged to integrate the condition referred to in Subsection (7) among the contractual terms and conditions

applying to the given security or liability, if in its decision the MNB acting in its capacity of resolution authority stipulates that the agreement ensures the replacement of the legal effect of the bail-in as specified herein. An institution or a financial undertaking as specified in Section 1 intending to issue securities or generate liability at the request of the MNB acting in its capacity of resolution authority must present a legal opinion proving that the MNB acting in its capacity of resolution authority may exercise its write off or conversion power concerning the security or liability concerned.

(9) Any failure to fulfil the obligation under Subsection (7) shall not prevent the MNB, acting in its capacity of resolution authority, from applying bail-in to the instrument or liability concerned.

(10) If in the course of bail-in qualifying holding is acquired, the authorisation regulation set out in the Hpt. and the Bszt. shall be applied – with a view to the meeting of the rules on resolution – by the MNB acting within the scope of its resolution-related duties within the timeframe requested from the Supervisory Authority.

Section 73

(1) The MNB acting in its capacity of resolution authority will have the right to terminate derivative contracts and close out positions at the same time or after the resolution is ordered. Bail-in may only be applied after the closure of positions.

(2) If the MNB, acting in its capacity of resolution authority, exempts a liability arising out of a derivative transaction from bail-in, the MNB, acting in its capacity of resolution authority, will not be required to terminate or close out the given transaction.

(3) If a derivative transaction falls within the scope of a netting arrangement, the MNB, acting in its capacity of resolution authority, will establish in the course of the provisional valuation, or the independent appraiser engaged by the MNB will establish in the course of the independent evaluation the net liability arising out of the derivative transaction on the basis of the netting terms of the affected transaction.

(4) In the assessment of a derivative transaction the MNB acting in its capacity of resolution authority determines the as-of date for the valuation of the transaction and it compares the potential losses borne in the case of the closure of the transaction and bringing it under bail-in or in the liquidation procedure.

CHAPTER VIII

Write off or conversion of capital instruments and the state financial stabilisation instrument

33. Write off or conversion of capital instruments

Section 74

(1) In the circumstances and under the conditions specified in this act the MNB, acting in its capacity of resolution authority, shall be entitled to write-off the capital instruments of the institution or convert them into shareholdings in the institution.

(2) The power to write off or convert capital instruments may be exercised on its own or together with a resolution tool in cases when the conditions for resolution are met.

(3) Acting in its capacity of resolution authority, the MNB may exercise its power to write-off or convert additional Tier 1 or Tier 2 capital elements issued by the institution

- a) if it finds that the institution is not going to be viable again, unless it exercises its power to write off convert additional Tier 1 and Tier 2 capital elements;
- b) in the case of capital instruments issued at the level of the parent undertaking and where these capital instruments are recognised by the Supervisory Authority for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and the MNB, acting in its capacity of resolution authority, makes a determination that unless the write off or conversion power is exercised in relation to those instruments, the group will no longer be viable;
- c) if extraordinary public financial support is required by the institution, or
- d) in the course of capital increase by the state as specified in this Act.

(4) For the purposes of Subsection (3), an institution or a group shall be deemed to be no longer viable, if

- a) the institution or the group is insolvent or is, according to available information, expected to become insolvent; and
- b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including, in particular, alternative private sector or supervisory action (including early intervention measures), other than the write off or conversion of capital instruments, either singly or in combination with resolution action, would prevent the insolvency of the institution or the group within a reasonable time frame.

(5) For the purposes of point Subsection (4) (a), a group shall be deemed to be or according to available information expected to become insolvent, if the group is in breach or there are

objective elements to support a determination that the group will be in breach, in the near future – but within a maximum of 12 months –, of its consolidated prudential requirements in a way that would justify action by the Supervisory Authority, because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

Section 75

(1) A additional Tier 1 and Tier 2 capital elements issued by a subsidiary shall not be written off or converted pursuant Subsection 74 (3) b) by a greater extent than equally ranked capital instruments at the level of the parent undertaking have been written off or converted.

(2) Acting in the scope of its resolving duties the MNB shall exercise its right to write off or convert capital instruments on a mandatory basis if the conditions set out in Section 74 (3) c) or d) are met.

34. Rate of conversion of liabilities into Tier 1 capital

Section 76

(1) In exercise of the powers referred to in point Section 84 (1) e) Subsections (2) and (3) the MNB, acting in its capacity of resolution authority may apply different conversion rates to the different categories of capital instruments.

(2) MNB, acting in its capacity of resolution authority shall, compensate the owner of the affected capital instrument for the loss incurred by virtue of the exercise of the write off and conversion power, to an extent corresponding to the conversion rate.

(3) If the MNB, acting in its capacity of resolution authority, applies different conversion rates according to Subsection (1), the conversion rate applicable to senior liabilities shall be higher than the conversion rate applicable to subordinated liabilities.

35. Treatment of owners in the course of the write off or conversion of capital instruments

Section 77

(1) In the course of writing off or converting capital instruments the MNB, acting in its capacity of resolution authority, may cancel or dilute shareholdings in the institution.

(2) The actions specified in Subsection (1) shall also be taken in relation to shareholdings in institutions in the case of which they were issued or transferred

- a) after the conversion of debt instruments into shareholdings, or
- b) after the conversion of the additional Tier 1 and Tier 2 capital instruments into primary Tier 1 capital as specified in Section 79 as the case may be

(3) The conversion of the capital instrument referred to in point (a) of Subsection (2) shall take place when conversion is carried out in accordance with the contractual terms and conditions applying to the original debt instrument in relation to an event that occurred before or simultaneously with the ordering of the resolution of the institution.

(4) Should the conversion of capital instruments result in the recipient's acquiring of qualifying holding in an institution or in an increase in its qualifying holding, the Supervisory Authority – acting ex officio – shall carry out the authorisation procedure applying to the acquiring of qualifying holding within a time frame that will ensure that it does not delay the conversion of the capital instruments and that it does not prevent the attainment of the resolution objectives by taking the required resolution actions.

(5) If the Supervisory Authority fails to complete the authorisation procedure referred to in Subsection (4) by the date of the conversion of the capital instruments, the provisions set out in Section 39 (3) shall be applied in all cases when as a result of the conversion of capital instruments a recipient acquires qualifying holding or increases its qualifying holding.

36. Independent valuation before the write off or conversion of capital instruments

Section 78

The independent valuation referred to in Section 22 (1) shall constitute the basis for

- a) the determination of the value of the write off to be applied to additional Tier 1 and Tier 2 capital instruments to absorb losses,
- b) of the calculation of the rate of conversion to be applied to the additional Tier 1 and Tier 2 capital instruments in order to recapitalise the institution and
- c) in the course of the determination of the rate of the capital increase by the state as specified in this Act.

37. Provisions governing the write off or conversion of capital instruments

Section 79

(1) In proceeding as prescribed in Sections 74-78 the MNB, acting in its capacity of resolution authority, shall exercise its write off or conversion power in accordance with the priority of claims under liquidation proceedings, ensuring that

- a)* the amount of instruments qualifying as Common Equity Tier 1 capital instruments is reduced in proportion to the losses, up to the capacity to bear loss,
- b)* the MNB, acting in its capacity of resolution authority, takes in respect of holders of Common Equity Tier 1 instruments the action specified in Section 77 (1);
- c)* the principal amount of additional Tier 1 and Tier 2 capital instruments is written off or converted into Common Equity Tier 1 instruments, to the extent required and up to the capacity of the additional Tier 1 and Tier 2 capital instruments;

(2) The principal amount of an additional Tier 1 and Tier 2 capital instrument is written off, if:

- a)* its decrease is permanent and
- b)* no liability to the owner of the additional Tier 1 and Tier 2 capital instruments remains under or in connection with that amount of the instrument which has been written off, except for any liability already accrued, and any liability for damages that may arise as a result of judicial review of the legality of the exercise of the write off power.

(3) In order to effect a conversion of additional Tier 1 and Tier 2 capital instruments under Subsection (1)(b), the MNB, acting in its capacity of resolution authority, may require the institution to issue Common Equity Tier 1 instruments to the owners of the additional Tier 1 and Tier 2 capital instruments. Additional Tier 1 and Tier 2 capital instruments may only be converted, if:

- a)* the relevant Common Equity Tier 1 instruments are issued by the institution or the parent undertaking of the institution, with the agreement of the Supervisory Authority or the competent supervisory authority of the parent undertaking;
- b)* the Common Equity Tier 1 instruments are issued prior to any issuance of shareholdings by that institution for the purposes of capital increase by the state;
- c)* the Common Equity Tier 1 instruments are allocated and transferred without delay following the exercise of the conversion power; and
- d)* the conversion rate that determines the amount of Common Equity Tier 1 that is provided in respect of each additional Tier 1 and Tier 2 capital instruments complies with the principles set out in Section 76.

(4) For the purposes of the provision of Common Equity Tier 1 in accordance with Subsection 3, the MNB, acting in its capacity of resolution authority, may require the institution to maintain

at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1.

38. Consolidated application: procedure for determination

Section 80

(1) Before making a determination referred to in Section 74 (3) a)-c) in relation to a subsidiary that issues additional Tier 1 and Tier 2 capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the MNB, acting in its capacity of resolution authority, shall immediately notify

a) the Supervisory Authority, or

b) the authority performing consolidated supervision if that function is performed by an authority of another country.

(2) MNB, acting in its capacity of resolution authority, shall provide an explanation justifying the determination in the notification referred to in Subsection (1).

(3) If a notification has been made pursuant to Subsection (1), the MNB, acting in its capacity of resolution authority, shall, after consultation with the competent supervisory authority, assess

a) whether an alternative measure to the exercise of the write off or conversion power in accordance with Section 74 is available;

b) if such an alternative measure is available, whether it can feasibly be applied;

c) if such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require a determination referred to in Section 74 to be made.

(4) For the purposes of the above Subsection (3) alternative actions shall include:

a) the Supervisory Authority's actions, or

b) provision of funds or capital by the parent undertaking.

(5) If, after consultation with the competent supervisory authorities notified as specified in Subsection 3, the MNB, acting in its capacity of resolution authority, concludes that no alternative measures are available that would deliver the outcome referred to in Subsection (3) c), it shall decide whether the determination referred to in Section 74 under consideration is appropriate.

39. State financial stabilisation instrument

Section 81

(1) The Governor of the MNB shall, in the case of a systemic crisis, notify the minister in charge of the regulation of the money, capital and insurance market if the objective of resolution has not been accomplished by way of the resolution actions applied by MNB acting in its capacity of resolution authority and there is no reasonable likelihood of its accomplishment through any further resolution actions.

(2) The notification referred to in Subsection (1) shall include:

- a)* the current solvency and liquidity position of the institution under resolution,
- b)* the supervisory measures and extraordinary measures taken and the applied resolving measures,
- c)* the key findings and conclusions of the independent valuation, particularly about the current amount of the institution's equity per shareholding; and
- d)* the objectives of resolution.

(3) Based on the notification referred to in Subsection (1), in his decision the minister in charge of the regulation of the money, capital and insurance market may resolve that the state financial stabilisation instrument is to be applied if he has found that

- a)* the application of further resolution actions would not be sufficient to avert significant negative impacts affecting the financial intermediary system, or
- b)* the application of further resolution actions would not be sufficient to protect the interest of the public if the institution under resolution has already resorted to MNB's extraordinary liquidity credit.

(4) A state financial stabilisation instrument may

- a)* take the form of a capital increase in the institution, financial holding company, mixed financial holding company or mixed activity holding company having its registered office in Hungary, or

b) take the form of temporary nationalisation of the shareholdings in the institution, financial holding company, mixed financial holding company or mixed activity holding company under resolution, having its registered office in Hungary.

(5) The court review of the decision referred to in Subsection (3) shall be governed by the provisions applying to the review of the decision ordering resolution,, providing that where Chapter XIII refers to the MNB acting in its capacity of resolution authority, it must be understood as the minister in charge of the regulation of the money, capital and insurance market.

(6) The annulment of the decision referred to in Subsection (3) shall not affect the validity of the transactions effected on or before the day of the communication of the court's verdict on the basis of the decision that has been annulled.

(7) Following the decision referred to in Subsection (3) the Government decides on the application of the state financial stabilisation instrument on the basis of the proposal put forth by the minister in charge of the regulation of the money, capital and insurance market.

(8) In the case of the application of the state financial stabilisation instrument the minister in charge of the regulation of the money, capital and insurance market has all of the powers granted by Chapter IX to the MNB acting in its capacity of resolution authority.

Section 82

(1) The capital increase applied in the context of the state financial stabilisation instrument may be carried out applying Common Equity Tier 1, Additional Equity Tier 1 and Tier 2 capital.

(2) The capital increase approved by the Government shall be carried out by the minister in charge of overseeing state assets – via Magyar Nemzeti Vagyonkezelő Zrt. – pursuant to this Act, from the central budget. The capital increase may be effected by way of a cash contribution or by making government bonds available. The capital increase shall be charged to the central budget chapter containing the central budget's expenditures relating to state assets as a budgetary expenditure item, with may exceed the chapter's budgeted expenditure.

(3) The institution, the financial holding company, the mixed financial holding company or the mixed activity holding company shall not pay dividends, interests or make coupon payments to the owners of capital instruments not in state ownership until the State sells its shareholding acquired on the basis of the state financial stabilisation instrument.

Section 83

(1) Upon temporary nationalisation in the context of the state financial stabilisation instrument the shareholdings in the institution, financial holding company, mixed financial holding company or mixed activity holding company under resolution, having its registered office in Hungary, shall be transferred to the state or a solely state-owned enterprise.

(2) Upon transfer to the state the rights of ownership shall be exercised by the minister in charge of the regulation of the money, capital and insurance market.

(3) Upon temporary nationalisation the rules on the sale of assets shall be applied with the difference that where this act refers to the MNB acting in its capacity of resolution authority, it shall be understood as a reference to the minister in charge of the regulation of the money, capital and insurance market.

(4) In the course recapitalisation by the state and temporary nationalisation it shall be ensured that the institution concerned or the financial undertaking referred to in Section 1 keeps operating on a commercial basis and that on the basis of the principle of private investment in the market the role of the state as the owner of the equity elements are taken over by market actors through a public auction.

Chapter IX

Resolution powers

40. General powers

Section 84

(1) MNB, acting in its capacity of resolution authority, shall be authorised

a) to require the institution to provide any information – not available for the Supervisory Authority – required for the resolution authority to prepare a resolution action, including

updates and supplements of information provided for the resolution plans and including requiring information to be provided through on-site audits;

b) to exercise controlling influence of an institution under resolution and exercise the rights and powers of the owners and management of the institution under resolution, as specified in this Act;

c) the transfer of shareholdings issued by the institution under resolution;

d) to reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of eligible liabilities of an institution under resolution;

e) to convert eligible liabilities of an institution under resolution into shareholdings of that institution or parent institution or bridge institution involved in resolving, to which assets, rights or liabilities of the institution are transferred;

f) ¹⁵the reduction – even to zero, as the case may be – of the nominal value of the debt securities issued by the institution, and to the cancellation or write off of such debt securities;

g) to require an institution under resolution or the parent institution involved in resolution to issue new shareholdings, or other capital instruments, including preference shares and contingent convertible instruments;

h) to alter the maturity of the eligible liabilities issued by an institution under resolution or amend the amount of interest payable under on such eligible liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period;

i) ¹⁶to close down or terminate financial contracts or any other derivatives contracts for the application of the provisions of Section 73;

j) replacement of the management of the institution under resolution;

(2) MNB, acting in its capacity of resolution authority, may exercise the resolution powers specified in Subsection (1) separately or in any combination.

(3) If any of the powers listed in Subsection (1) is not applicable to an institution covered by this Act, the MNB, acting in its capacity of resolution authority, may apply actions that are as close to the exercising of those power – including the effects thereof – as possible.

41. Ancillary powers

Section 85

(1) MNB, acting in its capacity of resolution authority, shall be authorised to

a) ¹⁷transfer – also with a view to Section 100 and Section 101 – the relevant financial instruments, assets, liabilities, rights or obligations of the institution under resolution free of charge;

¹⁵ Set forth by: Section 176 (1) of Act CCXV of 2015. Effective from: 01/01/2016.

¹⁶ Set forth by: Section 176 (2) of Act CCXV of 2015. Effective from: 01/01/2016.

¹⁷ Set forth by: Section 177 (1) of Act CCXV of 2015. Effective from: 01/01/2016.

b) suspend or withdraw the rights of the institution under resolution to acquire further shareholdings;

c) ¹⁸call on the competent organisation or authority to suspend or terminate the financial instrument's trading or admission to trading on a regulated market;

d) declare that the recipient is to be regarded as continuation for the purposes of any one or all of the rights or obligations of, or any one or all of the actions taken by, the institution under resolution, including the rights or obligations relating to participation in a market infrastructure;

e) order the institution under resolution or the recipient to provide the other with information and assistance; and

f) cancel or modify the terms of contracts to which the institution under resolution is a party; and

g) designate the recipient as contractual continuation.

(2) The MNB, acting in its capacity of resolution authority, may exercise the powers specified in Subsection (1) where it finds that it is necessary for ensuring that a resolution action is effective or to achieve one or more resolution objectives.

(3) When exercising the resolution powers the MNB, acting in its capacity of resolution authority, may apply business continuity measures necessary to ensure that the resolution action is effective and that the business operations to be transferred can be continued by the recipient, also including

a) regarding any transferred financial instrument, right, asset or liability of the institution under resolution, in order to ensure continuity, it may replace the institution under resolution with the recipient in any contract in which the institution under resolution is included either explicitly or indirectly;

b) in any legal procedure related to any transferred financial instrument, right, asset or liability of the institution under resolution it may initiate the replacement of the institution under resolution by the recipient, based on which initiative the replacement shall be implemented.

(4) The powers in point (d) of Subsection (1) and in Subsection (3) shall not affect the following:

a) the right of the employees of the institution under resolution to terminate their employment contracts;

b) subject to Sections 89-91, any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the institution under resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

¹⁸ Set forth by: Section 177 (2) of Act CCXV of 2015. Effective from: 01/01/2016.

42. Power to require the provision of services and facilities

Section 86

(1)¹⁹ The MNB, acting in its capacity of resolution authority, may prescribe for the institution under resolution or for any undertaking belonging to the group to which the institution under resolution belongs, including where the institution under resolution or relevant group entity has entered into liquidation proceedings subsequent to resolution, to provide any services or make available any facilities to the recipient institution that are necessary to enable a recipient to continue the business operation transferred to it.

(2) The services and facilities specified in Subsection (1) are restricted to operational services and facilities and do not include any form of financial support.

(3) Services and facilities shall be provided and made available as referred to in Subsection (1) subject to the following conditions:

- a)* if the services and facilities were provided to the institution under resolution immediately before the resolution action was taken under an agreement, under the same terms for the duration of that agreement;
- b)* if point (a) does not apply, on reasonable terms.

(4)²⁰ The MNB, acting in its capacity of resolution authority, is entitled to apply the sanctions stipulated herein against any obligor who breached the provisions of Subsection (1).

43. Power in respect of property located in third countries

Section 87

(1) If the resolution action taken by the MNB, acting in its capacity of resolution authority, involves action taken in respect of property located in a third country or shareholdings, rights or obligations under the law of a third country, the MNB, acting in its capacity of resolution authority, may prescribe that

- a)* the person exercising dominant influence of the institution under resolution and the recipient must take all necessary steps to ensure that the transfer, write off, conversion or action becomes effective;

¹⁹ Set forth by: Section 178 (1) of Act CCXV of 2015. Effective from: 01/01/2016.

²⁰ Enacted by: Section 178 (2) of Act CCXV of 2015. Effective from: 01/01/2016.

b) the person exercising dominant influence of the institution under resolution must hold the shareholdings, assets or rights or discharge the liabilities on behalf of the recipient until the transfer, write off, conversion or action becomes effective;

c) the reasonable expenses of the recipient properly incurred – in accordance with the statutory regulation adopted in exercise of the authorisation provided herein – in carrying out any action required under points (a) and (b) are reimbursed in any of the ways set out in Section 35.

(2) If the MNB, acting in its capacity of resolution authority, transfers or intends to transfer any of the shareholdings or any of the assets, rights or obligations of an institution under resolution to another entity, but certain shareholdings or rights or obligations transferred or intended to be transferred are located in a third country, or certain shareholdings, rights or obligations transferred or intended to be transferred are governed by the law of the third country, the MNB, acting in its capacity of resolution authority, may require that other person exercising dominant influence of the institution under resolution and the recipient are subject to the conditions set out in Subsection (1).

44. Ruling out certain contractual terms in the course of resolution

Section 88

(1) The application of resolution actions, including the occurrence of any event directly linked to the application of such measure, shall in itself not be recognised as enforcement or insolvency proceedings within the meaning of Act XXIII of 2003 on Settlement finality in payment and securities settlement systems (hereinafter: Tvt.), if the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

(2) The application of resolution actions, including the occurrence of any event directly linked to the application of such measure, shall not make the following possible:

a) exercising of the right of termination, suspension, netting or settlement between the two parties in relation to contracts concluded by a subsidiary in the case of which the performance of the obligations as set out in the contract, is guaranteed or otherwise supported by the parent undertaking or another undertaking that is a member of the same group;

b) ²¹taking possession of the assets of the institution concerned or the financial undertaking defined in Section 1 (1) which serve as collateral for the contract that contains provisions permitting the termination of the contract in case of non-performance, exercising dominant influence of such assets or enforcing collateral from the assets;

²¹ Set forth by: Section 179 of Act CCXV of 2015. Effective from: 01/01/2016.

c) ²²influencing any contractual right of the institution concerned, the financial undertaking defined in Section 1 (1), or any group member which arises from the contract that contains provisions permitting the termination of the contract in case of non-performance;
provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

(3) The provisions set out in this Section shall not affect the right of a person to exercise their rights referred to in Subsection (2) where that right arises by virtue of an event other than the resolution action or the occurrence of any event directly linked to the application of such measure.

(4) A suspension or restriction under Sections 89-91 shall not constitute non-performance of a contractual obligation for the purposes of Subsections (1) and (2).

(5) The provisions contained in this Section shall be considered imperative provisions within the meaning of Section 9 of European Parliament and Council Regulation 593/2008/EC on the law applicable to contractual obligations (Rome 1) 593/2008/EC.

(6) Resolution proceedings in a third country recognised pursuant to this act shall qualify as a resolution action for the purposes of this Section.

45. Power to suspend certain obligations

Section 89

(1) The MNB, acting in its capacity of resolution authority, shall have the power to suspend payment or delivery obligations pursuant to any contract to which an institution under resolution is a party from the publication of a notice in accordance with Section 114 (4) until midnight on the business day following that publication.

²² Set forth by: Section 179 of Act CCXV of 2015. Effective from: 01/01/2016.

(2) When a payment or delivery obligation would be due during the suspension period the payment or delivery obligation shall be due upon expiry of the suspension period.

(3) If an institution under resolution's payment or delivery obligations under a contract is suspended under Subsection (1), the payment or delivery obligations of the institution under resolution's counterparties under that contract shall also be suspended for the same period of time.

(4) The suspension referred to in Subsection (1) shall not need to be applied to payment and delivery obligations owed to systems or operators of systems designated for the purposes of the Tvt., central counterparties, and central banks; receivables protected by BEVA and those secured by OBA.

(5) When exercising power under this Section, the MNB shall have regard to the impact the exercise of that power might have on the undisturbed functioning of the financial markets.

46. Power to restrict the enforcement of security interests

Section 90

(1) The MNB, acting in its capacity of resolution authority, shall be authorised to restrict covered creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution under resolution from the publication of a notice of the restriction in accordance with Section 114 (4) until midnight on the business day following that publication.

(2) The MNB, acting in its capacity of resolution authority, shall not exercise the power set out in Subsection (1) in relation to any security interest of systems or operators of systems designated for the purposes of the Tvt., central counterparties, and central banks over assets pledged by way of margin or collateral by the institution under resolution.

(3) If Section 103 is applied the MNB, acting in its capacity of resolution authority, shall ensure that any restrictions imposed pursuant to the power set out in Subsection (1) are consistent for all group entities in relation to which a resolution action is taken.

(4) When exercising a power under this Section, the MNB, acting in its capacity of resolution authority, shall have regard to the impact the exercise of that power might have on the undisturbed functioning of the financial markets.

47. Power to temporarily suspend termination rights

Section 91

(1) From the publication of the notice pursuant to Section 114 (4) until midnight on the business day following that publication the MNB, acting in its capacity of resolution authority, may suspend the termination rights of any party to a contract with the institution under resolution.

(2) From the publication of the notice pursuant to Section 114 (4) until midnight, according to the time of the EEA state in which the subsidiary of the institution under resolution has its registered office, on the business day following that publication the MNB, acting in its capacity of resolution authority, may suspend the termination rights of any party to a contract with the subsidiary of the institution under resolution if:

a) the obligations under the contract concerned are guaranteed by the institution under resolution;

b) the termination rights under the contract concerned are based solely on the insolvency or financial condition of the institution under resolution; or

c) the transfer power has been or may be exercised in relation to the institution under resolution, all the relevant assets and liabilities of the institution under resolution in the subsidiary relating to the contract concerned have been or may be transferred to and assumed by the recipient or the MNB acting in its capacity of resolution authority provides in any other way adequate protection for such obligations.

(3) The suspension referred to in Subsections (1) and (2) shall not apply to systems or operators of systems designated on the basis of the Tvt., to central counterparties, and central banks.

(4)²³ A person may exercise a termination right under a contract before the end of the period referred to in Subsections 1-2 if that person receives notice from the MNB, acting in its capacity of resolution authority, that the rights and obligations covered by the contract will not be transferred to the recipient, the bridging institution or the asset management vehicle, provided that the person concerned is not included in the bail-out.

²³ Amended by: Section 188 c) of Act CCXV of 2015.

(5) If the MNB, acting in its capacity of resolution authority, exercises its power specified in Subsections (1) and (2) concerning the suspension of the termination right and the notice referred to in Subsection (4) is not delivered, then in the case of the transfer of the rights and obligations under the contract to another organisation, the counterparty may exercise termination rights in accordance with the terms of that contract only if the breach of contract continuously prevails continuously for at least three days on the part of the recipient, the bridge institution or the asset management vehicle.

(6) When exercising an power under this Section, the MNB, acting in its capacity of resolution authority, shall have regard to the impact the exercise of that power has on the undisturbed functioning of the financial markets.

(7) At the request of MNB, acting in its capacity of resolution authority, the trade repository shall make the necessary information available to supervisory authorities or resolution authorities to enable them to fulfil their respective responsibilities and mandates in accordance with Section 81 of Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories.

48. Exercising of the resolution powers

Section 92

(1) In order to attain the resolution objectives and to take the resolution actions, from ordering the resolution proceeding until its termination, the MNB, acting in its capacity of resolution authority, shall exercise all the controlling rights over the institution under resolution of the owners and the management of the institution under resolution in order to ensure

a) the functioning of the institution under resolution and the continuity of the its operations and service provisions , and

b) the management and alienation of the assets and property of the institution under resolution.

(2) The MNB, acting in its capacity of resolution authority, shall exercise the owner's and management rights referred to in Subsection (1) directly or through a person it has commissioned to do so, including the exercising of voting rights stemming from the shares and other forms of ownership in the institution under resolution. The owners of the shares and other forms of ownership shall not exercise their voting rights during the resolution proceeding.

(3) The MNB, acting in its capacity of resolution authority, may also take resolution actions necessary to achieve the resolution objectives without exercising the control rights of the owners and the management of the institution under resolution, through administrative decisions, and may determine the scope of controlling rights that may be exercised by the owners and the management of the institution under resolution.

(4) The MNB, acting in its capacity of resolution authority, shall determine which of the methods specified in Subsections (1)–(3) are the most efficient in implementing the resolution actions, considering

- a)* the resolution objectives,
- b)* the general principles governing resolution,
- c)* the individual circumstances of the institution under resolution, and
- d)* the necessity of facilitating the effective resolution of groups engaged in cross-border operations.

49. The resolution commissioner

Section 93

(1) The MNB, acting in its capacity of resolution authority, may appoint a resolution commissioner to an institution under resolution.

(2) The resolution commissioner shall exercise, during his mandate, the powers of the board of directors of the institution under resolution and those of its general meeting (unless the state financial stabilisation instrument is being applied).

(3) The following may be delegated as a resolution commissioner:

- a)* natural persons,
- b)* business organisations.

(4) The commissioner referred to in point (b) of Subsection (3) shall designate the natural person who will represent the business organisation as the individual primarily in charge in the course of the performance of the tasks of the resolution commissioner.

(4a) If the MNB, acting within its capacity of resolution authority, appoints a natural person as resolution commissioner, it is entitled to manage the identifying data of the appointed person specified in Annex 2 of the Hpt. during the term of the appointment in the interest of the smooth fulfilment of its duties. The personal data of the natural person appointed for drawing up the reorganisation plan may only be disclosed to third parties in the case defined in the law.

(5) The resolution commissioner may – with the prior approval of MNB, acting in its capacity of resolution authority – retain a third party provider.

(6) The resolution commissioner may be instructed by the MNB, acting in its capacity of resolution authority, and in the course of his activities supervised by the MNB, acting in its capacity of resolution authority, he is entitled and obliged to take all the actions that are necessary for the realisation of the resolution objectives and resolution actions in line with the decision of the MNB, acting in its capacity of resolution authority, including share capital increase, restructuring of the ownership structure of the institution and application of the resolution tools capacity of resolution authority.

(6a) The MNB, acting in its capacity of resolution authority, may impose limitations and an obligation to obtain preliminary approval concerning the activities of the resolution commissioner.

(6b) The MNB, acting in its capacity of resolution authority, may require the resolution commissioner to report on the economic and financial situation of the institution under resolution as well as on the resolution commissioner's activity at the beginning of the appointment, then regularly, in line with a pre-determined schedule, as well as upon termination of the appointment.

(6c) The resolution commissioner may be appointed for the maximum period of one year; exceptionally, the appointment may be extended, provided that the MNB, acting in its capacity of resolution authority, establishes that the conditions of the appointment continue to exist.

(7) If a supervisory commissioner has already been appointed to the institution earlier on, the Supervisory Authority shall, not later than simultaneously with the appointment of the resolution commissioner, recall the supervisory commissioner, providing that the MNB, acting in its capacity of resolution authority, may even appoint the same business organisation or natural person as resolution commissioner.

(8) A member of the board of directors or the supervisory board may, even during the mandate of the resolution commissioner, apply for legal remedy against the decision whereby the resolution commissioner was appointed or against the decision taken against the institution by the MNB, acting in its capacity of resolution authority and in such remedy proceedings he may represent the institution or he may commission another person to represent the institution.

(9) The professional rules and the regulations on conflict of interests applying to the supervisory commissioner under the MNB Act shall be applied to the resolution commissioner and to the participant retained by the latter pursuant to Subsection (5).

50. Delegation of a natural person as a resolution commissioner

Section 94

(1) Upon the appointment of the resolution commissioner and also throughout the term of the performance of the resolution commissioner's activities the MNB, acting in its capacity of resolution authority, may – based in its assessment of the circumstances of the process to be conducted or of the ongoing process – decide to appoint more than one natural persons to carry out the tasks of the resolution commissioner, specifying the distribution of their tasks. The appointment shall also specify the rules on the exercising of the right for procuration for the institution. The MNB, acting in its capacity of resolution authority, may reduce the number of individuals already assigned to a case if that appears to be justified on the basis of its assessment of all of the circumstances of the process to be conducted or of the ongoing process.

(2) If a natural person is appointed to a credit institution as resolution commissioner the MNB shall appoint at least two individuals simultaneously to carry out the tasks of the resolution commissioner, specifying the distribution of their tasks.

Chapter X

Sanctions

Section 95

(1) In the case of a breach of the provisions of this Act or of statutory regulations adopted in exercise of the power stemming from this Act or in the case of the impeding of the resolution

process the MNB, acting in its capacity of resolution authority, may apply the following sanctions:

- a)* banning from the continuation of the illegal activity;
- b)* suspending persons in managerial positions for a period not exceeding six months;
- c)* charging a fine of a HUF amount the equivalent of up to EUR 5 million to a natural person;
- d)* in case of a legal person, a fine administrative pecuniary sanctions of up to 10 % of the total annual net turnover of that legal person in the preceding business year;
- e)* a fine of an amount up to a maximum of 200 percent of the financial advantage resulting from or the loss avoided as a result of the breach.

(2) Upon applying the sanctions referred to in Subsection (1) the MNB, acting in its capacity of resolution authority, shall take the following into consideration in particular:

- a)* the gravity and the duration of the breach;
- b)* the degree of responsibility of the responsible natural or legal person;
- c)* the financial strength of the responsible natural or legal person, including, in particular, the total turnover of the responsible legal person or the annual income of the responsible natural person;
- d)* the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;
- e)* the losses caused by the breach for third parties, insofar as they can be determined;
- f)* the degree of cooperation of the responsible natural or legal person with the competent supervisory authority;
- g)* previous breaches committed by the responsible natural or legal person;
- h)* any potential systemic consequences of the breach.

Section 96

(1) After notifying the sanctioned natural person or legal entity about the order or decision the MNB, acting in its capacity of resolution authority, immediately publishes on its website the operative parts of the decisions whereby it has imposed its sanction in its capacity as resolution authority.

(2) In the case of a decision that is not yet legally binding, the MNB, acting in its capacity of resolution authority, shall specify the current phase of the legal remedy procedure and the outcome of the same on its website.

(3) The MNB, acting in its capacity of resolution authority, shall disclose the decision without the names of the persons concerned, if

- a)* the sanction is imposed on a natural person and publication of personal data would cause disproportionate disadvantage;

- b) publication would jeopardise the stability of financial markets or some ongoing criminal proceedings; or
- c) publication would, insofar as it can be determined, cause disproportionate damage to the institution concerned.

(4) In the categories of cases referred to in Subsection (3) the MNB may, instead of anonymous disclosure, decide to delay the disclosure – by not more than 60 days – if there is good reason to assume that the reasons for anonymous disclosure will cease to exist during the delay.

(5) The MNB, acting in its capacity of resolution authority, shall make sure that the decision published in accordance with the provisions of this Section and information on the related legal remedy continues to be accessible on its website for at least five years.

Chapter XI

Protection of owners and creditors

51. Protection of owners and creditors in the case of partial transfer and bail-in

Section 97

(1) If in the course of the application of one or more resolution tools the MNB, acting in its capacity of resolution authority, transfers only some of the rights, assets and liabilities of the institution under resolution, those shareholders and creditors whose claims have not been transferred, receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under normal insolvency proceedings immediately before the transfer.

(2) If the MNB acting within the scope of its resolution-related duties applies bail-in, the shareholders and creditors whose receivables have been written off or converted into shareholders' equity, shall not worse off than they would have suffered as a consequence of the winding up of the institution under resolution before writing off or conversion, through regular liquidation.

(3) After the execution of the resolution action it shall be assessed by the independent valuer, how the shareholders and the creditors have been treated as a result of the resolution proceeding,

how they would have been treated if, at the moment when the resolution proceeding was ordered, normal insolvency proceeding had been launched against the institution under resolution, and what difference can be established between the two treatments. That valuation shall be distinct from the independent valuation specified in this Act.

(4) In the course of the assessment referred to in Subsection (3)

a) it shall be assumed that the institution under resolution in connection to which the MNB, acting in its capacity of resolution authority, has applied one or more resolution actions, would have entered into normal insolvency proceeding at the moment when the resolution proceeding was ordered;

b) it shall be assumed that the partial transfer, or transfers, of assets, liabilities, rights and obligations, or the write off or the conversion had not been made;

c) any provision of extraordinary public support to the institution under resolution – including any extraordinary liquidity loan provided by the MNB – shall be disregarded.

(5) The assessment referred to in Subsection (3) shall determine:

a) the treatment that shareholders and creditors would have received if the institution under resolution in connection to which the partial transfer, write off or conversion has been made, had come under liquidation immediately before the transfer, write off or conversion was effected;

b) the actual treatment that shareholders and creditors have received in the resolution of the institution under resolution; and

c) if there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).

(6) The valuation referred to in Subsection (3) shall be approved by MNB, acting in its capacity of resolution authority in a decision.

52. Protection of owners and creditors

Section 98

(1)²⁴ If an assessment carried out as specified in Section 97 (3) determines that any shareholder or creditor referred to in Section 97 (1) or the OBA has incurred greater losses than it would have incurred in the case of liquidation, it shall be entitled to be reimbursed for the difference from the Resolution Fund.

²⁴ Set forth by: Section 180 of Act CCXV of 2015. Effective from: 01/01/2016.

(2) The amount of the reimbursement referred to in Subsection (1) shall be paid by the Resolution Fund within 30 work days of the adoption of the decision referred to in Subsection (6) of Section 97, to the shareholder or creditor concerned or to the OBA.

53. Protection of counterparties in partial transfers

Section 99

(1) If MNB, acting in its capacity of resolution authority

a) transfers some but not all of the assets, liabilities, rights or obligations of an institution under resolution to another entity; or

b) exercises the powers specified in Section 85 (1) f),
the in relation to the agreements referred to in Subsection (2) and the parties thereto the MNB shall proceed as prescribed in Sections 100-103.

(2) The procedure referred to in Subsection (1) shall be followed in the case of the following contractual relationships:

a) security arrangements, under which a person has by way of security an actual or contingent interest in the property or rights that are subject to transfer, irrespective of whether that interest is secured by specific property or rights or pledge on pledged assets identified in terms of type, quantity or other description suitable for the identification of the pledged asset, or by some similar arrangement;

b) financial collateral arrangements entailing transfer of title of ownership under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;

c) set-off arrangements under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;

d) netting arrangements under which a number of claims or obligations can be converted into a single claim, including close-out netting arrangements under which, on the occurrence of an enforcement event the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single claim;

e) mortgage bonds and covered bonds;

f) structured finance arrangements, including, in particular, securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or an asset management vehicle, agent or nominee.

(3) The requirement under Subsection (1) applies irrespective of the number of parties involved in the arrangements listed in Subsection (2) and of whether the arrangements:

- a)* are created by contract, trusts or other means, or arise by operation of law;
- b)* are fully or in part, regulated on the basis of some other jurisdiction.

Section 100

(1) In relation to the arrangements referred to in Section 99 (2) b)-d) the MNB, acting in its capacity of resolution authority, has no power to

- a)* transfer part of the rights and obligations between the institution under resolution and another person, and
- b)* to modify or terminate rights and obligations by applying ancillary powers.

(2) For the purposes of the Subsection 1, rights and obligations shall to be treated as protected under such an arrangement if the parties to the arrangement are entitled to set-off or net those rights and liabilities.

(3) In contrast to as provided in Subsection (1) if it is necessary from the aspect of accessing deposits below the coverage level, the MNB, acting in its capacity of resolution authority

- a)* may transfer the deposit portfolio below the coverage level, comprised in the agreements referred to in Subsection (1), without transferring other assets, rights or obligations comprised in the same agreement, or
- b)* may transfer, modify or terminate assets, rights and obligations without transferring the covered deposit portfolio below the coverage level.

Section 101

(1) In relation to the arrangements referred to Section 99 (2) a) the MNB, acting in its capacity of resolution authority, shall not be authorised to

- a)* transfer assets against which liability is secured unless that liability and returns on the security are also transferred;
- b)* transfer a secured liability unless the benefit of the security is also transferred;
- c)* transfer returns on the security unless the secured liability is also transferred;
- d)* modify or terminate a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

(2) The protections specified in Subsection (1) shall not apply in respect of the transfer, modification or termination of assets, liabilities, rights and obligations that relate to covered deposits.

(3) In contrast to as provided in Subsection (1) if it is necessary from the aspect of accessing deposits below the coverage level, the MNB, acting in its capacity of resolution authority

a) may transfer the deposit portfolio below the coverage level, comprised in the agreements referred to in Subsection (1), without transferring other assets, rights or obligations comprised in the same agreement, or

b) may transfer, modify or terminate assets, rights and obligations without transferring the covered deposit portfolio below the coverage level.

Section 102

(1) In relation to the arrangements referred to in Section 99 (2) f) the MNB, acting in its capacity of resolution authority, shall not be authorised to

a) transfer of some, but not all, of the assets, liabilities, rights and obligations which constitute or form part of a structured finance arrangement to which the institution under resolution is a party;

b) to terminate or modify, through the use of ancillary powers, assets, liabilities, rights and obligations that constitute or form part of a structured finance arrangement to which the institution under resolution is a party.

(2) The provisions set out in Subsection (1) shall also apply to the agreement referred to in Section 99 (2) e).

(3) In contrast to as provided in Subsection (1) if it is necessary from the aspect of accessing deposits below the coverage level, the MNB, acting in its capacity of resolution authority

a) may transfer the deposit portfolio below the coverage level, comprised in the agreements referred to in Subsection (1), without transferring other assets, rights or obligations comprised in the same agreement, or

b) may transfer, modify or terminate assets, rights and obligations without transferring the covered deposit portfolio.

54. Protection of the trading, clearing and settlement systems

Section 103

(1) The following resolution actions of the MNB, acting in its capacity of resolution authority, shall not restrict the functioning of the systems covered by the Tvt. or the operation of their rules:

a) transfers some of the assets, liabilities, rights or obligations of an institution under resolution to another entity;

b) ²⁵cancels or amends the terms of or cancels the contract to which the institution under resolution is a party or in which the institution under resolution substitutes any of the recipients in its capacity as a party.

(2) The resolution action applied by the MNB, acting in its capacity of resolution authority

a) shall not result in a withdrawal of the money transfer or transfer orders in a way breaching Section 3 of the Tvt.

b) and shall not modify or invalidate

ba) the enforceability by law of money transfer or transfer orders as specified in Sections 3-4 of the Tvt.

bb) the use of assets, securities or credit instruments as specified in Section 8 (2) of the Tvt., or

bc) the protection of the securities that have been provided, as specified in Section 8 (1) and (2a) of the Tvt.

Chapter XII

Procedural rules

55. Procedural rules governing resolution

Section 104

(1) In making decisions specified herein the MNB acting in its capacity of resolution authority shall proceed as an authority.

²⁵ Set forth by: Section 181 of Act CCXV of 2015. Effective from: 01/01/2016.

(1a)²⁶ In decisions made by the MNB acting in its capacity of resolution authority, the senior officers responsible for the fulfilment of the tasks included in Article 4 (9) of the MNB Act do not have a voting right.

(2) As part of its activities specified herein the MNB acting in its capacity of resolution authority shall conduct

- a) procedure to assess the possibility of resolution,
- b) procedure aimed at eliminating obstacles to resolution,
- c) procedure aiming at executing resolution,
- d) procedure aiming at conducting a valuation,
- e) procedure aiming at writing off or conversion of capital elements.

(3) In the official procedures conducted by the MNB, acting in its capacity of resolution authority, the customer is

- a) the entity for which the MNB prescribes a right or obligation as specified in this Act,
- b) the entity brought under control by the MNB acting in its capacity of resolution authority in the course of the assessment of the possibility of resolution,
- c) an entity having filed a request for authorisation to the MNB, acting in its capacity of resolution authority, or
- d) an entity who is the subject of any data contained in official record kept by the MNB acting in its capacity of resolution authority.

(4) The customer shall not request suspension of the procedure referred to in Subsection (2).

Section 105

(1) The MNB acting in its capacity of resolution authority shall carry out its tasks set out herein by verifying and analysing data and documents transmitted at its request by the Supervisory Authority, resulting from the Supervisory Authority's supervisory activities, along with officially known facts.

²⁶ Enacted by: Section 182 of Act CCXV of 2015. Effective from: 01/01/2016.

(2) The MNB shall work out its internal procedural regime pertaining to the flow of information as referred to in Subsection (1).

(3) In addition to as provided for in Subsection (1) the MNB acting in its capacity of resolution authority may prescribe for the organisation referred to in Section 1 (1) an obligation to supply data on a regular or one-off basis, and it may carry out on-site audit at the organisation.

(4) Upon the instruction of the MNB, acting in its capacity of resolution authority, the organisation referred to in Section 1 (1) shall

a) provide the information pertaining to its operations as required for the performance of the tasks of resolution,

b) hand over all data, reports, business documents, investigation records, accounting records, regulations, policies and documentations relating to specific transactions, in relation to the subject matter of the procedure conducted by the authority,

c) hand over the proposals of its supreme body, managing and controlling bodies and the minutes of the meetings of such bodies,

d) hand over the auditor's written comments, the auditor's reports, the internal audit reports and minutes, and

e) prepare and make available other statements not listed above, in particular a detailed records of all the identification data of contracts to which it is a party in the form prescribed by the MNB acting in its capacity of resolution authority .

(5) In the course of its official procedures the MNB acting in its capacity of resolution authority may prescribe the mode of the fulfilment of the data supply obligation in ways other than as prescribed by the rules of the Ket. pertaining to electronic communication qualifying as written communication.

Section 106

(1) In the course of its official procedures the MNB acting in its capacity of resolution authority may – in the absence of a customer having contrary interests – decline to use the Hungarian language on a mandatory basis and to demand that documents be submitted in Hungarian. In this case the MNB acting in its capacity of resolution authority may prescribe an obligation to prepare a Hungarian language summary of the documents concerned.

(2) After the application of the provisions set out in Subsection (1) the MNB acting in its capacity of resolution authority shall transfer the documents available for it, to the participants of the procedure – except for the customer's representative – and other authorities in the language of the procedure and – unless otherwise declared – in Hungarian language translations. The costs of translation shall be borne by the MNB acting in its capacity of resolution authority.

Section 107

(1) The MNB acting in its capacity of resolution authority shall notify the organisation referred to in Section 1 (1) of the conducting of its procedure – at least 15 days in advance-- in writing, unless the prior notification would jeopardise the effectiveness of the resolution procedure.

(2) In a procedure involving on-site audit as well, the notification concerning the planned on-site audit shall be governed by Subsection (1).

(3) The MNB acting in its capacity of resolution authority shall provide the person carrying out the on-site audit with a letter of commission and such person shall qualify as an official person while proceeding in this capacity.

(4) The person carrying out on-site audit shall present his or her letter of commission upon the commencement of the on-site audit and provide credible proof of identity.

(5) The on-site audit may be carried out at any place where evidence required for the clarification of the facts may be found. In exercising his or her powers the person carrying out the audit may enter premises and rooms required for the conducting of the audit, inspect any document, data carrier, object and work process relating to the object of the audit and may request or produce information or declarations from the customer, the customer's representative or any other person found in the site of the audit.

(6) To clarify the facts any person or organisation must provide the necessary information in a written form as well and/or send documents relating to the audit to the MNB acting in its capacity of resolution authority.

(7) The MNB acting in its capacity of resolution authority is entitled to produce physical mirror copy of any data carrier and to review data contained in the data carrier by using the mirror copy.

(8) The customer's right to view documents may – in addition to as specified in Section 69 (1) of the Ket. – be restricted if there is sound reason to assume that the customer's learning of the contents of the documents would jeopardise the effectiveness of the procedure or it would result in unauthorised access to third persons' data ordered to be protected by law.

Section 108

(1) The MNB acting in its capacity of resolution authority shall record its findings made in the course of its audit procedure in an audit report and shall communicate them to the organisation brought under the procedure. If a group audit is carried out in the course of the procedure, the MNB acting in its capacity of resolution authority records its findings made in the course of the group audit in the group audit report which it communicates to all of the group members through the group member controlling the financial group. The timeframe available for the preparation and communication of the audit report and the group audit report may be extended in a justified case once, by not more than six months.

(2) The audit report and the group audit report shall contain

a) the name of the authority, the name of the auditor-in-chief, the subject matter of the audit and the document number,

b) the name and address of the person or the name and registered office of the organisation being audited, the procedural status and – if communicated to the authority – other access routes of the person or organisation being audited,

c) advice concerning the rights and obligations of the person or organisation involved in the procedural act,

d) the findings made by the MNB acting in its capacity of resolution authority and the supporting documents, and

e) evaluation of such findings.

(3) The group audit report comprises the findings of the MNB acting in its capacity of resolution authority concerning the group as a whole and concerning the individual audits of each of the group members separately.

(4) The person or organisation covered by the procedure may make written comments on the audit report and the group audit report, within twenty days of receipt of the report. If such timeframe would jeopardise the effectiveness of the action the MNB acting in its capacity of resolution authority may set a shorter – but at least 8-day – timeframe.

(5) The MNB acting in its capacity of resolution authority makes its decision within sixty days of receipt of the comments referred to in Subsection (4) or of the expiry of the deadline without receipt of comments. This timeframe may be extended once, in a justified case, by not more than thirty days. The MNB acting in its capacity of resolution authority adopts its decision closing the audit on the basis of the findings comprised in the audit report along with other evidence and facts known officially as well as those in the public domain.

(6) In its decision the MNB acting in its capacity of resolution authority shall justify its declining to make the notification referred to in Subsection (1) and/or its prescribing of a timeframe shorter than that referred to in Subsection (4).

Section 109

If the MNB acting in its capacity of resolution authority acquires new data, facts or information that has material impacts on the actual investigation of the case after the posting of the audit report and the group audit report, that call for a revision or supplementation of the audit report and the group audit report, the MNB acting in its capacity of resolution authority may send the whole or the modified or supplemented part of the audit report and the group audit report to have it commented on before adopting its decision referred to in Section 108 (5), once again to the person or organisation covered by the audit procedure. The timeframe for the repeated commenting on the part of the person or organisation covered by the audit procedure shall be governed by Section 108 (4), while the procedural timeframe applying to the decision to be made by the MNB acting in its capacity of resolution authority shall run from the time of receipt of the comments made in the repeated commenting procedure or from the expiry of its timeframe without receipt of comments.

Section 110

(1) In its procedure the MNB acting in its capacity of resolution authority may prohibit the continuation of the infringing conduct for the duration extending up to the adoption of its decision, in a ruling that is enforceable without regard to any request for the suspension of

enforcement, and it may order termination of the infringing state if it is immediately necessary in view of any major or irrecoverable damage that may accompany any delay.

(2) The MNB shall adopt its ruling referred to in Subsection (1) immediately.

Section 111

The provisions of the Ket. on enforcement shall not be applied in the course of the procedures of the MNB, apart from the payment of any fine charged by the MNB acting in its capacity of resolution authority.

Section 112

(1) In the official procedure conducted by the MNB acting in its capacity of resolution authority Sections 29 (3)-(12), Sections 70, 93, 94 and 94/A of the Ket. shall not need to be applied.

(2) At the customer's request the MNB shall not conduct procedures falling in its scope of duties under this Act.

(3) In the official procedure conducted by the MNB acting in its capacity of resolution authority Sections 10 (2), 29 (3)-(12), 33-33/B and 49 of the Ket. shall not to be applied.

56. Notification and publication obligations

Section 113

(1) An institution shall immediately notify the Supervisory Authority if it finds that it is insolvent or is, according to available information, expected to become insolvent for the purposes of Section 17 (2), in the near future, or within a maximum of 12 months.

(2) If the conditions set out in Section 17 (1) are met in relation to an institution, it shall immediately (before adopting its decision ordering resolution) be communicated by the MNB acting in its capacity of resolution authority to

- a)* the supervisory authority having competence over the institution, the financial undertaking referred to in Section 1 (1) or branch of the institution;
- b)* the deposit insurance system, including the National Deposit Insurance Fund of Hungary (OBA), if this is required for the performance of its deposit insurance tasks;
- c)* the investment protection system, including the Investor Protection Fund (BEVA), if this is required for the performance of its investor reimbursement tasks;
- d)* the resolution financing system, including the Resolution Fund;
- e)* the group level resolution authority, if necessary;
- f)* the supervisory authority in charge of consolidated supervision;
- g)* the resolution authorities of the branch;
- h)* the competent ministries;
- i)* the minister in charge of the regulation of the money, capital and insurance market;
- j)* in the case of a cooperative credit institution, the Integration Organisation;
- k)* the European Systemic Risk Board

Section 114

(1) The MNB, acting in its capacity of resolution authority, shall immediately notify its resolution action once the decision has been made, to the bodies and persons specified in Section 113, and the European Commission, the European Central Bank, the EBA, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority.

(2) The notification referred to in Subsection (1) shall include, at least the following:

- a)* the copy of the decision of the authority based on which the powers are exercised
- and
- b)* the date from which the resolution action is to be effective.

(3) The MNB, acting in its capacity of resolution authority, provides for the publishing of a copy of resolution action or of a communication summing up the effects – particularly those on retail customers – of the resolution action.

- a)* on its official website;
- b)* on the website of the institution under resolution;
- c)* where the shareholdings of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the institution under resolution.

(4) If MNB, acting in its capacity of resolution authority, has adopted a resolution action and exercises:

- a)* the power under Section 89 to suspend payment or delivery obligations;
- b)* the power under Section 90 to restrict the enforcement of security interests, or
- c)* the power under Section 91 to suspend termination rights,

it shall, in addition to complying with the requirements of Subsection (3), publish a notice specifying the terms and period of suspension or restriction in accordance with its action specified in Subsection (3).

(5) The MNB, acting in its capacity of resolution authority, may also decide to delay – by not more than 60 days – the disclosure of the decision adopted and prescribed to be published under this Act if there is sound reason to assume that the disclosure may threaten the stability of the financial intermediary system stability and the accomplishment of the resolution objectives.

(6) MNB, acting in its capacity of resolution authority, shall publish on its website a list of the resolution authorities with which it has concluded cooperation agreements.

57. Confidentiality

Section 115

(1) The following persons and organisations shall be bound by the rules of secrecy:

- a)* MNB, acting in its capacity of resolution authority;
- b)* the minister headed by the minister in charge of the regulation of the money, capital and insurance market and the ministry headed by the minister in charge of the general government system;
- c)* possible receiver contacted or invited by the resolution authorities regardless of whether such contacting or invitation;
 - ca)* was part of the preparation of the application of the sale of business tool, or
 - cb)* the contact or invitation resulted in take-over;
- d)* the Supervisory Authority;
- e)* auditors, accountants, legal and professional advisers, valuation and other experts commissioned by the minister in charge of the regulation of the money, capital and insurance market or the possible receivers referred to in item c);
- f)* ²⁷the OBA and the Resolution Fund;
- g)* the BEVA;
- h)* the management appointed to a bridge institution or asset management vehicle before, during and after their appointment;
- i)* any other person or organisation that is providing services at present or that provided services in the past for the MNB, acting in its capacity of resolution authority;
- j)* the resolution commissioner;
- k)* the employees of the bodies and organisations referred to in points a)-j) even after the discontinuation of their legal relationships.

²⁷ Set forth by: Section 183 (1) of Act CCXV of 2015. Effective from: 01/01/2016.

(2) The secrecy requirement referred to in Subsection (1) shall not be breached

a) by transfer of information, by the person or organisation referred to in Subsection (1), in a summary or aggregated form from which it is not possible to identify the institution, or

b) the disclosure (transmission) of information if the person or organisation concerned has express and prior consent, to the transfer of information, of the authority providing the information or the institution.

(3) The limitation referred to in Subsection (1) shall not apply to

a) sharing of information between and among employees and experts of the bodies or organisations referred to in Subsection (1) – including the flows of information between and among employees and experts of the Supervisory Authority, the MNB acting in its scope of macro-prudential duties or the MNB acting in its capacity of resolution authority – if this is necessary for the performance of their tasks, or

b) ²⁸sharing of information for the designing or execution of the resolving action by the MNB, acting in its capacity of resolution authority, with

ba) resolution authorities of other EEA states,

bb) other competent supervisory authorities of other EEA states, their competent ministries, central banks, deposit guarantee and investment protection schemes, authorities in charge of insolvency proceedings,

bc) the European Banking Authority,

bd) the European Commission,

be) third country authorities performing duties consistent with those of the resolution authorities, or

bf) a potential receiver.

(4) The MNB shall work out its internal procedural regime pertaining to the flow of information as referred to in Subsection (3).

(5) The secrecy obligation prescribed in this Section shall not apply in relation to the following:

a) the MNB, acting in its scope of duties

aa) the State Audit Office,

ab) governmental controlling body,

²⁸ Set forth by: Section 183 (2) of Act CCXV of 2015. Effective from: 01/01/2016.

ac) anti-terrorist bodies, internal bodies in charge of crime prevention and criminal investigation functions as specified in the act on the police, and

b) in relation to the case that is the basis of the proceedings, the following, acting in their respective scopes of duties:

ba) investigating authority, prosecutor's office, in the framework of ongoing criminal proceedings or the supplementation of criminal charges,

bb) the court, in the case of criminal proceedings or civil proceedings relating to heritage, bankruptcy or liquidation proceedings or local governmental debt settlement proceedings,

bc) where the statutory criteria and conditions are met, the body authorised to apply instruments of secret services and/or to carry out intelligence information gathering.

(6) For the purposes of this act secrets include banking secrets, securities secrets, payment secrets and business secrets.

Chapter XIII

Legal remedy

58. Court review of decisions

Section 116

(1) The court review of the decisions specified herein, adopted by the MNB acting in its capacity of resolution authority shall be governed by the rules set out in Chapter XX of the Act on Civil proceedings (Pp.) with the differences set out in this Chapter.

(2) The Budapest Administrative and Labour Court shall have exclusive competence in regard to the court review of the decisions specified herein, adopted by the MNB acting in its capacity of resolution authority.

(3) The following shall apply to a decision ordering resolution or applying a resolution action:

a) it cannot be modified,

b) a council comprising three professional judges shall conduct the administrative procedure reviewing it, and

c) no appeal shall be filed and no procedure for revision of judgement shall be started in the administrative lawsuit instituted with the aim of reviewing it.

(4) In addition to as provided for in Subsection (3) the following types of decisions shall not

be modified by the court in administrative lawsuits:

- a) decision terminating a resolution procedure [Section 21]
 - b) decision approving temporary valuation [Section 25 (3)],
 - c) decision approving ex-post, final valuation [Section 26],
 - d) decision ordering the re-transfer of assets, liabilities, rights or obligations transferred in the context of the sale of assets or the separation of instruments [Sections 38 and 55],
 - e) decision ordering the provision of requisites for the application of bail-in [Sections 59-61, 69-70 and 72-73],
 - f) decision approving reorganisation plan [Sections 71 (6)]
 - g) decision prescribing the provision of service or facility [Section 81],
 - h) decision on ruling out certain contractual terms and conditions in the course of resolution [Section 88],
 - i) decision on the suspension of certain obligations [Section 89],
 - j) decision on the restriction of enforcement of credit collaterals [Section 90],
 - k) decision on the temporary suspension of the right to cancel a contract [Section 91],
- and
- l) decision on the appointment of a resolution commissioner [Section 93].

(5) Appeal may be filed and procedure for revision of judgement may be initiated in the administrative lawsuit instituted with the aim of reviewing decisions of the authority referred to in Subsection (4).

(6) In administrative lawsuits instituted for the review of administrative decisions not referred to in Subsections (3) and (4), adopted by the MNB acting in its capacity of resolution authority – not including those that can be contested by application for legal remedy against the decision ordering resolution – the court may alter the decision adopted by the MNB acting in its capacity of resolution authority. (5) In this case appeal may be filed and procedure for revision of judgement may be initiated.

(7) The following shall not be allowed in such lawsuits

- a) altering the claim,
- b) filing request for certification and
- c) suspending the procedure.

(8)²⁹ The claim statement must be submitted to the MNB acting in its capacity of resolution authority within 8 days of receipt of the decision. Legal representation is required on a

²⁹ Amended by: Section 188 d) of Act CCXV of 2015.

mandatory basis in the review procedure.

(9) The MNB shall transfer the claim statement it has received – together with documents pertaining to the case and its declaration concerning the contents of the claim statement – to the court within 5 days. The declaration issued by MNB acting in its capacity of resolution authority shall contain the names and contact data of the persons known to the MNB acting in its capacity of resolution authority, that have interests relating to the decision taken by the MNB acting in its capacity of resolution authority.

(10) The court shall proceed out of turn.

(11) The court shall adopt its decision on the merits of the case without holding a hearing but if necessary or if it is requested by any one of the parties, it shall hold a hearing. The holding of a hearing may only be requested in the claim statement or in a declaration relating to the contents of the claim statement. When a hearing is held, its date shall be set not later than the fifteenth day following the receipt of the claim statement.

(12) Filing a request for a review shall have no delaying effect on the execution of the decision adopted by the MNB acting in its capacity of resolution authority. In the course of the review the court may – at request – exceptionally suspend the execution of the contested decision, if
a) this is justified, on the basis of the available data, by public interest referred to in Section 17 (3), and

b) the suspension of the execution of the decision

ba) does not lead to a situation that could jeopardise the stability of the financial intermediary system, or

bb) it does not jeopardise the attainment of the objectives of resolution.

(13) The court shall make its decision within 45 days of the date on which the claim statement is posted to the court by MNB acting in its capacity of resolution authority and shall lay out its decision in writing, not later than by the day of its announcement.

(14) In the course of adopting its decision the court shall evaluate the economic and financial analyses worked out by the MNB acting in its capacity of resolution authority in the course of the preparation of the contested decision, as part of the body of evidence.

(15) The court shall have fifteen days after adopting its decision to provide for its delivery to the parties.

(16) Request for a review of the binding court decision may be filed within fifteen days of the entry into force of the decision, providing that the request for review must be received by the court within the timeframe open for the filing of requests for review. The Curia shall act promptly, reviewing and making its decision on the request within 30 days and shall lay down its decision within this timeframe.

(17) Decision in an appeal procedure based on an appeal filed against the court's verdict that can be contested by an appeal shall be made by the court of the second instance promptly, within 15 days of receipt of the documents of the case. Section 270 (3) of the Pp. shall not be applied.

(18) The appellate proceedings lodged against court rulings open to appeal shall be adjudged by the court of appeal on a priority basis, within 45 days from the receipt of the case documents.

Section 117

(1) The court review of the corporate decisions adopted by MNB acting in its capacity of resolution authority or the resolution commissioner in exercising the rights of ownership or management concerning the institution under resolution shall be governed by the rules in Chapter XI of Book Three of the Ptk. and the general procedural rules of the Pp., with the following differences.

(2) The lawsuit referred to in Subsection (1) may be instituted, in addition to those referred to in Section 3:35 of the Ptk., by the owner concerned as well. The lawsuit shall be dealt with by the Tribunal. In such lawsuits the court shall proceed promptly.

(3) In reviewing decisions referred to in Subsection (1) the court may – at request – exceptionally suspend the execution of the contested decision, if

a) this is justified, on the basis of the available data, by public interest referred to in Section 17 (3), and

b) the suspension of the execution of the decision

ba) does not lead to a situation that could jeopardise the stability of the financial intermediary system, or

bb) it does not jeopardise the attainment of the objectives of resolution.

Section 118

(1) The invalidation of a decision adopted by the MNB, acting in its capacity of resolution authority or the corporate decision of the resolution commissioner while exercising the powers of the owners or the management relating to the institution under resolution, shall not affect the validity of transactions effected on or before the day of the communication of the court's decision on the basis of the decision that has been invalidated, if this would affect rights acquired in good faith by third parties obtaining shareholdings, assets, liabilities, rights or obligations in the institution under resolution, in exchange for consideration.

(2) If the decision adopted by the MNB, acting in its capacity of resolution authority, is contrary to the law according to the court's decision, it shall compensate for any loss or damage caused by its decision.

59. Restrictions concerning other proceedings

Section 119

(1) If it is required for the effective application of resolution tools and powers, the MNB acting in its capacity of resolution authority may, in accordance with the objectives of resolution request – without prejudice to the restrictions pertaining to the enforcement of loan collaterals as specified in Section 90 – the suspending of the ongoing court procedures until the completion of the resolution procedure where one of the parties is the institution under resolution.

(2) Decision on the request of the MNB acting in its capacity of resolution authority referred to in Subsection (1) shall be made within 3 working days of receipt.

PART FOUR

COOPERATION WITH OTHER ORGANISATIONS

CHAPTER XIV

Cooperation agreement and information exchange within the European Union

Section 120

(1) MNB, acting in its capacity of resolution authority, shall be authorised to conclude cooperation agreements with resolution authorities of other EEA states.

(2) In the framework of such international cooperation the MNB, acting in its capacity of resolution authority, may share banking secrets, business secrets and other data and information available for the MNB, with the following organisations of other EEA states:

- a)* resolution authorities and
- b)* competent ministries of other member states, if the information relates to a decision or matter which requires notification to, consultation with or consent of the competent ministry or which may have implications for public funds, if

the agreement ensures that the body receiving data may only use the data transferred to it for the purposes it had specified and cannot transmit them to third persons.

(3) In the course of information exchange as referred to in Subsection (2) the MNB, acting in its capacity of resolution authority, shall not share information received from third country resolution authorities, unless such third country resolution authority has consented to the sharing of the information concerned.

(4) The MNB acting in its capacity of resolution authority — as not the competent authority of a participating Member State pursuant to Council Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions — shall cooperate with the ECB in performing the supervisory duties defined in Union law.

CHAPTER XV

Relations with third countries

60. Recognition and enforcement of third country resolution proceedings

Section 121

(1)³⁰ The MNB, acting in its capacity of resolution authority, recognises – with the exception as per Section 122 – third country resolution proceedings relating to third country institutions and shall execute actions resulting from such proceedings in Hungary, as long as the institution concerned has a subsidiary institution, a parent institution or a branch in Hungary; and has assets, liabilities, rights and obligations that are to be found in Hungary or that are governed by the Hungarian law.

(2) MNB, acting in its capacity of resolution authority

a) may exercise the resolution power in relation to the following:

aa) assets of a third country institution that are located in Hungary or governed by the law of Hungary;

ab) rights or liabilities of a third country institution that are booked by the domestic branch in Hungary or governed by the law of their Hungary, or where claims in relation to such rights and liabilities are enforceable in their Hungary;

b) prescribing the transferring of the shares or shareholdings of the subsidiary of the EU-level parent company institution, including – if transfer requires consent or cooperation of a third person – its obligation to do so;

c) the exercise of the powers in Sections 89-91 in relation to the rights of any party to a contract with an entity referred to in Subsection (1), if such powers are necessary in order to enforce third country resolution proceedings.

³⁰ Amended by: Section 188 e) of Act CCXV of 2015.

(3) The recognition and enforcement of third country resolution proceedings shall be without prejudice to the Hungarian law and shall be without prejudice to the insolvency proceedings started under the Hungarian law.

61. Right to refuse recognition or enforcement of third country resolution proceedings

Section 122

(1) The MNB, acting in its capacity of resolution authority, may refuse to recognise or to enforce, pursuant to Section 121, third country resolution proceedings if it considers:

a) the third country resolution proceedings would have an adverse effect on the stability of Hungary's financial intermediary system or it considers that the proceedings would have an adverse effect on the stability of the financial intermediary system of another EEA state;

b) that independent resolution action under Section 123 in relation to a branch in Hungary is necessary to achieve one or more of the resolution objectives;

c) that creditors, including in particular depositors having their registered office or place of residence in Hungary, would not receive equal treatment with third country creditors and depositors under the third country resolution proceedings; or

d) that recognition or enforcement of the third country resolution proceedings would have significant fiscal implications for Hungary; or

e) that the effects of such recognition or enforcement would be contrary to public interest.

(2) The MNB acting in its capacity of resolution authority, shall, in regard to issues referred to in Subsection (1) d), elicit the opinion of the minister in charge of the regulation of the money, capital and insurance market.

62. Resolution of branch units of third country institutions in Hungary

Section 123

(1) The MNB, acting in its capacity of resolution authority, has the power to take resolution actions in relation to branches in Hungary of third country institutions

a) not in resolution proceedings in a third country, or

b) under resolution proceedings in a third country where any of the conditions specified in Section 122 is or are met.

(2) The MNB, acting in its capacity of resolution authority, may exercise the powers specified in Subsection (1) if

a) it declares that the action needs to be taken in the interest of the public and

b) one or more of the following conditions is or are met:

ba) the branch in Hungary no longer meets, or is likely not to meet, the conditions imposed by the Hungarian law for its authorisation and operation and there is no prospect that any private sector, supervisory or relevant third country action would restore the branch to compliance or prevent insolvency in a reasonable time frame;

bb) the third country institution is, in the opinion of the MNB, acting in its capacity of resolution authority, unable or unwilling, or is likely to be unable in the future, to pay its obligations to Hungarian creditors, or the undisputed obligations that have been created through or stated in the books of the branch, as they fall due and the MNB, acting in its capacity of resolution authority, is satisfied that no third country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third country institution in a reasonable time frame;

c) any of the following circumstances prevail

ca) the relevant third country authority has initiated third country resolution proceedings in relation to the third country institution, or

cb) the relevant third country authority has notified the resolution authority of its intention to initiate such third country resolution proceedings; and any of the circumstances referred to in Section 122 prevail.

(3) If the MNB, acting in its capacity of resolution authority, takes an independent action in relation to the branch of a third country institution in Hungary, it shall have regard to the resolution objectives and take the resolution action in accordance with the principles set out in Section 20 (1).

63. Cooperation with third country authorities

Section 124

(1) The MNB, acting in its capacity of resolution authority, may conclude cooperation agreements concerning resolutions with the resolution authorities of a third country, if such third country has legislation in place meeting the data management and data protection requirements set out in the relevant Hungarian statutory regulations.

(2) The following shall be regulated in such a cooperation agreement:

a) the exchange of information necessary for the preparation and maintenance of resolution plan;

b) consultation and cooperation in the development of resolution plan, including principles for the exercise of powers under Sections 121 and 123 and similar powers under the law of the relevant third countries;

c) the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;

d) early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this Act or relevant third country law affecting the institution or group to which the arrangement relates;

e) the coordination of public communication in case of joint resolution actions;

f) procedures and arrangements for the exchange of information and cooperation under points (a) to (e), including, where appropriate, through the establishment and operation of crisis management groups.

(3) On its website the MNB, acting in its capacity of resolution authority, shall disclose a list of the countries with whose resolution authorities it has concluded agreements on resolution affairs.

(4) The provisions of the cooperation agreement shall apply to information exchange with a third country resolution authority.

64. Secrecy in relation to third countries

Section 125

(1) The MNB, acting in its capacity of resolution authority, and the ministry in charge of the regulation of the money, capital and insurance market, may share confidential information with the relevant third country authorities if the following conditions are met:

a) the said third country authority is – according to all relevant resolution and supervisory authorities – subject to requirements and standards of professional secrecy at least equivalent to those imposed by Section 115;

b) the information is necessary for the performance by the relevant third country authority of its resolution functions under national law that are comparable to those under this Act and, subject to point (a), is not used for any other purposes.

(2) Where confidential information originates in another EEA state, the MNB, acting in its capacity of resolution authority, may not disclose that information to relevant third country authorities unless the following conditions are met:

a) the relevant authority of the EEA state, where the information originated (the originating authority) agrees to that disclosure;

b) the information is disclosed only for the purposes permitted by the originating authority.

(3) For the purposes of this Section, information is deemed confidential if it is subject to confidentiality requirements under Hungarian law.

PART FIVE

THE FINANCING OF A RESOLUTION PROCEDURE

CHAPTER XVI

Resolution Fund

65. Basic provisions applying to the Resolution Fund

Section 126

(1) Simultaneously with the entry into force of this act the Resolution Fund (hereinafter: Fund) shall be established, a fund to be financed from payments made by the institutions to cover funding requirements directly related to resolution as specified in Subsections (3) and (4).

(2) Every institution must join the Fund.

(3) Assets of the Fund may be used for the following purposes:

- a)* to guarantee the assets or the liabilities of institutions under resolution, their subsidiaries, bridge institutions and trustees in resolution;
- b)* to provide loans to institutions under resolution, their subsidiaries, bridge institutions and trustees in resolution;
- c)* to purchase assets of the institution under resolution;
- d)* capital contribution to a bridge institution or an asset management vehicle;
- e)* contribution to the institution under resolution for the purposes specified in Sections 59-60;
- f)* the reimbursement to be paid to the OBA in accordance with Section 143 (5);
- g)* compensation payable to shareholders or creditors in accordance with Section 98;
- h)* ensuring that the principle of fiscal neutrality as set out in Section 128 is observed;
- i)* any combination of the actions referred to in items a)-h),
- j)* direct costs in relation to the operation of the Fund.

(4) In the course of the application of the instrument of sale of business the Fund may also be used in relation to the recipient as well for the purposes of the actions specified in Subsection (3) a)-d).

Section 127³¹

Amounts from the Fund shall not be used directly to cover losses of or to recapitalise an institution, financial enterprise, financial holding company, mixed financial holding company or holding company of miscellaneous operations. If the use of the Fund's assets for the purposes specified in Section 126 (3) indirectly results in a case where the Fund incurs some of the losses of the institution or the organisation defined in Section 1 (1) b)-d), the use of the Fund's assets shall be governed by the principles defined in Section 60.

66. The principle of fiscal neutrality

Section 128

(1) Funds made available for resolution purposes by the state shall be refunded from the Resolution Fund within a maximum of ten years from the date on which such amounts were made available by state.

(2) The amount to be refunded as referred to in Subsection (1) shall be increased by the annual 10-year HUF reference yield rate – established by the Government Debt Management Agency – on government securities calculated for the period concerned.

(3) From after the end of the fifth year following its acquisition of ownership as specified in Section 81 (3) a) or b) the state shall have five years during which to sell the shareholdings acquired pursuant this Act to the Resolution Fund at a price that is in line with the principle of fiscal neutrality.

CHAPTER XVII

The legal status and organisation of the Resolution Fund

67. Legal status of the Fund

Section 129

³¹ Set forth by: Section 184 of Act CCXV of 2015. Effective from: 31/12/2015.

(1) The Fund is a legal entity.

(2) The Fund's registered office is in Budapest.

(3) The liquid assets of the Fund shall not be diverted and shall not be used for purposes other than those specified in this Act.

(4) The Fund's equity shall not be divided.

Section 130

The Fund shall be under the State Audit Office's financial and accounting control.

Section 131

(1) The Fund shall retain an auditor.

(2) The Fund's auditor shall be selected by the board of directors from among those authorised to audit financial institutions.

(3) The mandate of the natural person appointed as auditor shall not exceed five years and at least three years shall elapse after the end of the auditor's mandate before a service contract can be concluded with the same auditor. An auditor employed by an auditor firm (as employee, senior officer or member under obligation to perform work) may carry out the tasks of the auditor for the Fund for a period not exceeding five years and he or she may perform the auditor's tasks again from after the passage of three years following the end of the previous assignment.

(4) The auditor's tasks shall include reviewing the Fund's accounting records and books and its annual report, and issuing opinions on the credibility of the proposals of the board of directors concerning the Fund's financial management, asset management and utilisation. The auditor of the Fund may be a person who performs, at the same time, the tasks of the auditor of the OBA.

68. Legal organisation structure of the Fund

Section 132

(1) The Fund's managing body is the board of directors making its decisions concerning the Fund in a body comprising:

- a)* the individual designated by the minister in charge of the regulation of the money, capital and insurance market;
- b)* two individuals designated by the Governor of the MNB acting in its capacity of resolution authority, one of whom is the Deputy Governor supervising the task specified in Article 4 (8) of the Act on the MNB (MNB Act), the other is the Deputy Governor supervising the task specified in Article 4 (9) of the MNB Act, or senior officers performing these tasks,
- c)* the managing director of the OBA.

(1a) The member of the board of directors is entitled to appoint – with the approval of the board – permanent substitute in written form who attends on the meetings of the board of directors having full authority to take part in the decision making in absence of the member.

(1b)³² The Deputy Governor supervising the task specified in Section 4 (9) of the MNB Act, the senior officer performing the task and the permanent substitute of the senior officer may not vote during any decision of the Board of Directors that affects the authorisation task of the Supervisory Authority.

(2) The rights of the chair in the board of directors shall be exercised by the individual designated by the minister in charge of the regulation of the money, capital and insurance market.

(3) The Deputy Director of the OBA shall participate in the meetings of the board of directors as an invitee, with a consulting right.

(4) The board of directors of the Fund shall keep records of its decisions.

(5) The tasks of the board of directors shall include the following:

- a)* directing and controlling the Fund's financial management and other activities,
- b)* adopting the Funds regulations,
- c)* making decisions on the composition of special ad hoc committees set up for specific tasks,
- d)* determining the regime for the payments to be made by the Fund under this Act,

³² Enacted by: Section 185 (1) of Act CCXV of 2015. Effective from: 01/01/2016.

- e) making decisions on the Fund's budget, including its operating costs,
- f) adopting, once a year, not later than 30 May of the year after the end of the business year concerned, the Fund's annual report and its audit report, establishing the Fund's equity position and filing its report on these to the State Audit Office,
- g) ³³working out the Fund's fee policy once a year on the basis of the MNB's proposal and communicating it to the institutions,
- h) making decision to prescribe increased or extraordinary fee payment obligations,
- i) performing other tasks set out in this Act, and
- j) making decisions – on the basis of the proposals made by the MNB acting in its capacity of resolution authority – concerning the use of amounts in the Fund for the purposes of resolution.

(6) In the course of the performance of its tasks relating to the Fund the board of directors may use services of OBA and – in a way that is not in breach of the prohibition of monetary financing – services provided by the MNB.

(7)³⁴ The Fund shall have no working organisation of its own, the operational tasks shall be carried out separately by the OBA's working organisation under the direction of the OBA's managing director.

Chapter XVIII

The Fund's financial management and joining the Fund

69. The resources of the Fund

Section 133

(1) The resources of the Fund:

- a) the following items paid by the members of the Fund
 - aa) fee payable upon joining the fund,
 - ab) regular annual payments,
 - ac) extraordinary payments,
- b) amounts borrowed by the Fund,
- c) debt securities issued by the Fund,

³³ Set forth by: Section 185 (2) of Act CCXV of 2015. Effective from: 01/01/2016.

³⁴ Set forth by: Section 185 (3) of Act CCXV of 2015. Effective from: 01/01/2016.

d) other revenues.

(2) To achieve the goals set out in Section 126 (3) the Fund may borrow:

a) from credit institutions,

b) from other legal entities (including other countries resolution financing tools or funds).

(3) The MNB shall provide the Fund with no funding in any form whatsoever.

(4) To achieve the goals set out in Section 126 (3) the Fund may issue bonds.

(5) The state bears liability, as a joint and several guarantee provider, for the Fund's payment obligations stemming from the credits and loans borrowed and the bonds issued – in amounts approved by the Government – with the aim of fulfilling its obligations set out in Section 126 (3). The creditor shall not be obliged to prescribe collateral security other than the state's joint and several guarantee to secure the Fund's liabilities. The Fund shall pay a guarantee fee for the state's joint and several guarantee.

70. The Fund's other revenues

Section 134

The amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings from the resolution shall benefit the Fund.

71. The Fund's account keeping and cash management

Section 135

(1) The Fund's bank account shall – with the difference set out in Subsection (3) – be kept with the MNB.

(2) All of the Fund's revenues – including those generated by its operations – shall be credited to the Fund's bank account and at the same time the cash outlays relating to its operation, the financing of resolution and the payments relating to the reimbursement, if any, of the shareholders and creditors of the institution under resolution shall be debited to the same account.

(3) The Fund's liquid assets shall – except for petty cash, liquidity reserve on the bank account and other amounts transferred to a credit institution for financing the resolution or for other purposes required for the operation of the Fund – be kept in government securities or in deposits held with the MNB.

(4) Any profit shall be used by the Fund exclusively for increasing its own equity.

72. Joining the Fund

Section 136

(1) Simultaneously with submitting its application for its operating licence an institution shall send to the Fund its declaration on joining the Fund, a copy of which shall be attached to its application for its operating licence.

(2) The declaration of joining the Fund shall be made out in the form published by the Fund.

73. The fee payable upon joining the fund,

Section 137

Within thirty days of receipt of its operating licence the institution joining the Fund must pay to the Fund an amount equalling 0,05 per cent of its registered capital in the way of a one of fee for joining the Fund.

74. Annual fee payment obligation

Section 138

(1)³⁵ The members of the Fund shall pay an annual membership fee, which is determined, in accordance with the institution's risk profile, on the basis of the criteria defined in Section 139 (2).

(2) A member of the Fund shall pay the annual fee each year in quarterly instalments, by the fifteenth day of the month following the quarter concerned, to the Fund's bank account.

(3)

Section 139

(1)³⁶ The basic fee payable by the institutions shall be pro rata to the amount of their liabilities (excluding own funds) less covered deposits with respect to the aggregate liabilities of the institution concerned (excluding own funds) less covered deposits of all institutions with registered offices in Hungary.

(2) In calculating the risk-based variable fee, the following shall be taken into account:

a) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;

b) the stability and diversification of the institution's sources of funding and its unencumbered, highly liquid assets;

c) the financial position of the institution;

d) the probability of the institution being brought under resolution;

e) the extent to which the institution has previously benefited from state support;

f) the complexity of the institution's structure and its suitability for resolution;

g) the importance of the institution to the stability of the financial system or the economy or one or more EEA states; and

h) the institution's membership in the institution protection system specified in Section 113 (7) of Regulation (EU) 575/2013.

(3) In the year in which an institution's winding up or liquidation is commenced, the institution concerned shall pay annual fee proportionate to the period in that year before the commencement of the winding up or liquidation procedure, in accordance with the rules set out in this Section. Such fee shall be based on the fee base taken into account pursuant to Subsection (1) in the case of the last fee payment made before the ordering of its winding up or liquidation.

Section 140

³⁵ Set forth by: Section 186 of Act CCXV of 2015. Effective from: 01/01/2016.

³⁶ Set forth by: Section 187 of Act CCXV of 2015. Effective from: 01/01/2016.

If a member of the Fund is engaged in operations entailing risks warranting – according to the regulation – an increase, then the Fund may raise the amount of the fee payable by the institution for the year concerned, providing that before the increase the Fund

- a) requests opinion from the MNB, acting in its capacity of resolution authority, and from the Supervisory Authority;
- b) allows the institution concerned to make its comments.

75. Ordering extraordinary payments

Section 141

(1) To enable repayment of loans borrowed by the Fund pursuant to Section 133 (2) or bonds issued pursuant to Section 133 (4) the Fund may order institutions to make extraordinary payments of amounts established on the basis of standard principles, the amount and scheduling of which shall be aligned to the terms of the repayment of the loan. The extraordinary payment obligation may not exceed triple the amount of the annual fee.

(2) If in relation to the event that necessitated borrowing the Fund earns income, such income shall be used primarily for reducing the outstanding principal debt and thereafter for reducing the amounts of the institutions' extraordinary payment obligations or for refunding such payments.

(3) If in the case of an institution the ordering of an extraordinary contribution would jeopardise its solvency or liquidity, the MNB acting in its capacity of resolution authority may, partly or fully postpone the ordering of the extraordinary payment obligation for the institution. An extraordinary payment may be delayed by not more than 6 months, providing that at the institution's request it may be delayed once more, by a maximum of another 6 months.

76. Accounting treatment of the fees paid

Section 142

The institution shall recognise the amount paid to the Fund (including the fee paid upon joining the Fund) as 'other expenditure'.

77. Use of the funds of the National Deposit Insurance Fund for resolution

Section 143

(1) OBA shall – concurrently, in total up to a maximum of 0.4 percent of the deposit portfolio covered by the reimbursement obligation – contribute to the financing of resolution if the resolution action to be applied by the MNB, acting in its capacity of resolution authority, in relation to the institution concerned ensures deposit holders' continuous access to their own covered deposits.

(2) The amount of OBA's contribution as specified in Subsection (1) shall equal

a) the amount by which the claim would have been reduced in regard to the deposit portfolio covered by the reimbursement obligation had bail-in been applied in the case of the institution subject to Section 61 (1) a), if the bail-in had also applied to the deposit portfolio covered by the coverage level and if they were to be reduced by the same extent as the receivables of creditors in the same position in the ranking order of settlement in liquidation; or

b) in the case of the application of a resolution tool other than bail-in by the sum of the losses that would have been to the debit of the deposit portfolio covered by the reimbursement obligation, had the deposit portfolio under the coverage level were to suffer a loss of the same ratio as those borne by creditors in the same position in the ranking order of settlement in liquidation.

(3) Unlike as provided for in point (a) of Subsection (2) the OBA shall not contribute to bail-in if its aim is to raise the institution's own funds to the level specified in Section 61 (1) b).

(4) The OBA's mandatory contribution shall never exceed the amount of the loss that it would have had to bear if the institution had been liquidated and the OBA would be obliged to pay reimbursement.

(5) If it is concluded from the valuation specified in Section 98 (1) that OBA contributed a larger amount to resolution than it would have had to in case of reimbursement in the case of liquidation, then the surplus shall be refunded to by the Resolution Fund to the OBA subsequently, in an amount increased by default interest, within the timeframe specified in Section 98 (2).

(6) The contribution payable by the OBA for the purposes of Subsection (1) shall be made in cash.

Section 144

In the case of the involvement of the sale of business tool or a bridge institution if the secured deposit portfolio is transferred to another institution, the deposit holder shall – in relation to the part of the deposit that is not transferred – not claim reimbursement by the OBA if the amount of the transferred part of the deposit equals or exceeds the coverage level.

PART SIX

MISCELLANEOUS AND CLOSING PROVISIONS

78. Authorising provisions

Section 145

(1) The Government is authorised to adopt decrees setting out

a) detailed rules applying to the costs that can be booked by the MNB, acting in its capacity of resolution authority and by the Resolution Fund, in relation to the application of the resolution tools and the exercising of resolution powers,

b) detailed rules on the reorganisation plan,

c) detailed rules on the burdens to be borne by the Resolution Fund in the course of bail-in.

d) detailed rules on the selection of independent valuers, the detailed rules of the application scheme, the conditions and procedural regime of getting registered in the list of individuals.

(2) The Governor of the MNB is authorised to adopt decrees setting out

a) detailed rules on the obligation to supply data as required for the preparation of the resolution plan and for resolution.

c) detailed rules of the restrictions applying in relation to institutions referred to in Section 4 (1), to the institutions' own funds and investments in the liabilities that can be written off or converted,

d) in the case of Section 17 (2) a)-b) the criteria for the determination of the quantifiability of the breaching of the requirements (capital adequacy, profitability and portfolio quality),

e) in the case of Section 17 (2) *c)* the criteria for the determination of the quantifiability of the breaching of the requirements (deposit coverage ratio, asset coverage ratio and FX financing ratio),

f) the methodology for the determination of Section 17 (5) *b)*.

79. Closing provisions

Section 146

(1) This act shall – with the exception set out in Subsections (2) and (3) – enter into force on the third day following its promulgation.

(2) Sections 4–21, 23–125, 133–134, 136(1), 137–144, 149–157, 160 (2)–(9), 161 (1)–(7) and (9)–23) shall enter into force on the 60th day after promulgation.

Section 147

Section 160 (1) qualifies as implementing act pursuant to Section 41 (6) of the Fundamental Law of Hungary.

Section 148

(1) If at the time of the entry into force of this Act an institution already has an operating licence or if the process aimed at obtaining one is already afoot, the institution shall

a) deliver to the Fund the declaration on its joining of the Fund within 30 days of the entry into force of this Act, and

b) shall pay a fee for joining, in an amount equalling one ten thousandth of its registered capital to the Fund not later than within 45 days of the entry into force of this Act, providing that the remaining four ten thousandth of the fee for joining will be paid within 90 days of the effective date of this Act.

(2) The fees referred to in Subsection (1) of Section 138 shall be so established that the resources of the Fund equal, within 10 years – evenly distributed over that period – of the effective date of this Act, at least 1.0 % of the coverage level of the insured deposit portfolio of the credit institutions licensed in Hungary.

(3)

(4) The MNB, acting in its capacity of resolution authority, shall publish an invitation for proposals from independent valuers as specified in Section 22 (3) of this Act within 60 days of the effective date of this act and it shall publish the list of the applicants meeting the statutory requirements within 120 days of the effective date hereof.

(5) Until the compilation of the list of independent valuers referred to in Subsection (4) persons meeting the professional and conflict of interest related criteria pertaining to independent valuer may act as value appraisers as specified in Section 24.

Section 149

(1) Cooperative credit institutions falling in the universal liability category according to the Szhítv. shall not be categorised as insolvent or expected to become insolvent pursuant to this Act.

(2) If the criteria and conditions for resolution are met in regard to a member of the Integration Organisation that does not qualify as a credit institution falling to the Szhítv., the Governor of the MNB shall notify the President of the Integration Organisation. The President of the Integration Organisation shall inform the President of the MNB within 5 days about whether

a) the conditions (the reasons underlying the resolution) for resolution can be eliminated through the actions it can apply and through extraordinary actions, or

b) there is a need for the resolution procedure.

(3) The Integration Organisation shall attach detailed explanation to its declaration containing the action plan including completion dates as specified in Subsection (2) a). The Integration Organisation shall report on the results of its actions to MNB acting in its capacity of resolution authority within 3 working days of the completion of the action.

Section 150

The provisions set out in Section 72 (7) shall be applied to securities and liabilities issued or generated after the effective date of this Act.

Section 150/A

The provisions set out in Section

a) 43 of this Act amended by Section 265 of Act LXXXV of 2015 on the amendment of certain acts to promote the development of the system of financial intermediation (hereinafter: Módtv.), and

b) Section 53/A established by Section 266 of the Módtv.

shall also be applied to procedures underway at the time of entry into force of the Módtv.

Section 151

This Act has been adopted in order to ensure conformity to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.

Section 152

The preliminary consultation of this draft Act pursuant to Section 2 (1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions has been done.

81. Amending provisions

Section 153 – 157.³⁷

Section 158 – 159.³⁸

Section 160 (1) ²

(2)-(9)¹

(10)-(11)²

Section 161(1)-(7)¹

(8)²

(9)- (23)¹

(24)- (25)²

82. Repealed provisions

Section 162³⁹

³⁷ Repealed by Section 12. of Act CXXX of 2010. No longer in force as of 17.09.2014.

³⁸ Repealed by Section 12. of Act CXXX of 2010. No longer in force as of 22. 07.2014.

³⁹ Enter into force on 15 June 2015.

The minimum content elements of an individual or group level resolution plan

A) An individual resolution plan shall include at least the following content elements:

1. a summary of the key elements of the plan;
2. a summary of the material changes to the institution that have occurred after the latest resolution information was filed;
3. a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;
4. an estimation of the time frame for executing each material aspect of the plan;
5. detailed description of the assessment of the possibility of resolution;
6. a description of any measures prescribed for the institution for addressing of impediments to resolvability;
7. a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
8. a detailed description of the arrangements for ensuring that the information required for the resolution plans is up to date and at the disposal of the MNB, acting in its capacity of resolution authority, at all times;
9. an explanation by the resolution authority as to how the resolution options could be financed, permitting the use of the resolution fund but without the assumption of any extraordinary public financial support, apart from the capital increase by the state;
10. a detailed description of the different resolution strategies that could be applied according to the different possible scenarios;
11. a description of critical interdependencies;
12. an analysis of the impact of the plan on other institutions within the group;
13. a description of options for preserving access to payments and clearing services and other infrastructures and an assessment of the portability of client positions
14. a plan for communicating with the media and the public in the case of resolution;

15. a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;

16 a description of the impact on employees of implementing the plan, including an assessment of any associated costs, and a description of envisaged procedures to consult the employees during the resolution process.

17. the impacts of the resolution actions on the stability of the financial intermediary system in the EEA states concerned;

18. the minimum requirement for own funds and eligible liabilities and a deadline to reach that level, where applicable;

19. where applicable, the minimum requirement for own funds and contractual bail-in instruments and a deadline to reach that level, where applicable;

20. where applicable, any opinion expressed by the institution in relation to the resolution plan.

B) The group resolution plan shall:

1. set out the resolution actions and coordinated resolution actions to be taken in relation to all group entities, in the case of the various scenarios;

2. examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to group entities located in the European Union, such tools and powers including measures to facilitate the purchase by a third party of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities, and identify any potential impediments to a coordinated resolution;

3. where a group includes entities incorporated in third countries, identify arrangements for cooperation and coordination with the relevant authorities of those third countries;

4. identify measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met;

5. identify how the group resolution actions could be financed and, where appropriate, proposal shall be worked out for the principles for sharing responsibility for that financing between sources of funding in different EEA states.

6. no access to extraordinary financial support from the state may be assumed, other than drawing funding from the resolution fund;

7. the impacts of the resolution actions on the stability of the financial intermediary system in the EEA states concerned shall be taken into account.

**The criteria to be taken into account in the assessment of resolvability by the MNB,
acting in its capacity of resolution authority**

In assessing the resolvability of an institution or group the MNB, acting in its capacity of resolution authority, shall take the following into consideration:

1. the extent to which the institution is able to map core business lines and critical functions to legal entities;
2. the extent to which legal and corporate structures are aligned with core business lines and critical functions;
3. the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
4. the extent to which the service agreements that the institution maintains are fully enforceable in the event of resolution of the institution;
5. the extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the institution's internal policies with respect to its service level agreements;
6. the extent to which the institution has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
7. the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;
8. the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
9. the capacity of the management information systems to provide the information essential for the effective resolution of the institution at all times even under rapidly changing conditions;
10. the extent to which the institution has tested its management information systems under stress scenarios defined by the resolution authority;
11. the extent to which the institution can ensure the continuity of its management information systems both for the affected institution and the new institution in the case that the critical

operations and core business lines are separated from the rest of the operations and business lines;

12. the extent to which the institution has established adequate processes to ensure that it provides the resolution authorities the information necessary to identify depositors and the amounts covered by the deposit guarantee schemes;

13. where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;

14. where the group engages in risk transfer transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;

15. the extent to which the use of intra-group guarantees or risk transfer transactions increases contagion across the group;

16. the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal entities, the complexity of the group structure or the difficulty in aligning business lines to group entities;

17. the amount and type of eligible liabilities of the institution;

18. where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;

19. the existence and robustness of service level agreements;

20. whether third country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for co-ordinated action between Union and third country authorities;

21. the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution's structure;

22. the extent to which the group structure allows the resolution authority to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse impact on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;

23. the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;

24. the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third country authorities may take;

- 25. the extent to which the impact of the institution's resolution on the financial system and on financial market's confidence can be adequately evaluated;
- 26. the extent to which the resolution of the institution could have a significant direct or indirect adverse impact on the financial system, market confidence or the economy;
- 27. the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers;
- 28. the extent to which the resolution of the institution could have a significant effect in the operation of payment and settlement systems.

Annex 3 to Act ... of 2014

Annex 5 to the Corporate Tax Act is supplemented by the following point 16:

[Organisation is not qualifying as corporate taxable persons]

“16. The National Deposit Insurance Fund and the Resolution Fund defined in the act on the further development of the institution system strengthening the safety and security of certain participants of the financial intermediary system.”