

DECREE

No 7/2018

of 5 January 2018

on some conditions of the pursuit of business of payment institutions, payment account information administrators, small-scale payment service providers, electronic money institutions and small-scale electronic money issuers

The Czech National Bank stipulates, pursuant to Article 263 of Act No 370/2017, the Payment System Act (hereinafter the “Act”), in connection with the implementation of Article 16(5), Article 17(3), Article 20(4), Article 46(2), Article 48(4), Article 59(4), Article 74(6), Article 75(3), Article 78(4) and Article 100(4) of the Act:

PART ONE

GENERAL PROVISIONS

Article 1

Subject of regulation

This Decree incorporates the relevant European Union legislation¹⁾ and governs

- a) the manner of complying with requirements for a management and control system of a payment institution, electronic money institution and payment account information administrator, and the manner of complying with requirements for a complaint handling system and a security and operational risk management system of a small-scale payment services provider and small-scale electronic money issuer,
- b) the rules for calculating the amount of capital and the capital adequacy of a payment institution and electronic money institution, including the individual approaches that may be applied when calculating capital adequacy, and
- c) the minimum insurance settlement limit and the minimum amount of comparable collateral for payment institutions, electronic money institutions, and payment account information administrators.

¹⁾ Article 4 point 46, Article 8(2), Article 9, Article 9(1) (part) and Article 9(2) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

Article 5(2), Article 5(3), Article 5(4) and Article 5(6) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as amended.

PART TWO
MANAGEMENT AND CONTROL SYSTEM

Title I

The management and control system of a payment institution

(Re Article 20(4) of the Act)

Prerequisites for sound corporate governance

Article 2

(1) The payment institution shall establish a management and control system in such a way that it covers all its activities. The payment institution that also performs other business activities than the activity for which it is authorised based on authorisation pursuant to the Act (a “hybrid payment institution”) shall establish a management and control system in such a way that it covers the activities for which it is authorised based on authorisation granted pursuant to the Act.

(2) The payment institution shall use, when complying with the requirements determined for a management and control system, appropriate resources, systems and procedures, also taking into account developments in the environment in which it operates.

(3) The payment institution shall ensure that its management and control system is commensurate with the scale, nature and complexity of the activities it performs or intends to perform, and shall always ensure constant compliance with the conditions under which the payment institution was granted authorisation pursuant to the Act, and with other determined requirements and rules, in particular the proper and prudent performance of its activities, including the effective implementation of its business strategy.

Article 3

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

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

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

Article 4

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

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

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

(4) In order to fulfil the conditions for a sound system of governance, the payment institution shall incorporate into the internal rules selected recognised and tested principles and procedures issued by recognised persons and used in analogous activities²⁾ (“recognised principles”), unless their specific provisions would be contrary to the requirements of legislation or would enable its circumvention. Within this scope, the payment institution shall systematically apply and regularly verify whether the recognised standards selected and applied by it are still suitable and proportionate to the nature, scale and complexity of its activities and eliminate any shortcomings detected.

(5) The payment institution shall ensure that powers to approve and sign documents within the activities of the payment institution are clearly defined and all relevant approval and decision-making processes and control activities, including related responsibilities, powers and internal rules, can be recorded, stored and retrieved.

- (6) The payment institution shall ensure that its internal rules include rules for
- a) a system for registering claims and complaints from clients, their settlement, the reporting and monitoring of adopted measures, including claims and complaints relating to security incidents; in its internal rules it shall also always take into account the relevant guidelines of the European supervisory authority (European Banking Authority) and the Joint Committee of European Supervisory Authorities³⁾; and
 - b) the security and operational risk management system; in its internal rules it shall always take into account the relevant issued guidelines of the authority and the committee pursuant to letter (a)⁴⁾.

Article 5

²⁾ For example, the Guidelines on product oversight and governance arrangements for retail banking products of 22 March 2016 (EBA/GL/2015/18), the European Banking Authority.

³⁾ For example, Article 54 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council. For example, the Guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors of 27 May 2014 (JC 2014 43).

⁴⁾ For example, the Guidelines on the security of internet payments of 19 December 2014 (EBA/GL/2014/12_rev1), the Guidelines on the security measures for operational and security risks of payment services of 12 December 2017 (EBA/GL/2017/17).

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

(2) The payment institution shall ensure that a functional and effective organisational structure is set, maintained and applied, including the separation of conflicting activities and the prevention of potential conflicts of interests.

(3) The payment institution shall ensure that a functional and effective information system is created, maintained and applied, including a system of internal reports and statistical record-keeping systems so that it provides current, reliable and comprehensive information and that it ensures the adequacy of internal and external communication during the performance of the activities of the payment institution.

Article 6

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

(2) The payment institution shall ensure that clearly formulated ethical principles and assumed models of behavior and actions of employees in line with these principles are set, maintained and applied.

(3) The payment institution shall ensure that all employees have been properly familiarised with their obligations, that they understand their role in the management and control system, and are actively engaged in this system.

(4) The payment institution shall set, maintain and apply such manners and methods of management that will prevent undesirable approaches, in particular prevent

- (a) the prioritisation of short-term results and objectives that are not in line with the fulfilment of the business strategy,
- (b) a remuneration scheme that is overly dependent on short-term performance and other inappropriate stimuli, or that is not sufficiently transparent, or
- (c) other approaches that allow or might allow the misuse of resources or the concealment of poor performance.

(5) The payment institution shall set, maintain and apply

- (a) requirements for the trustworthiness, skills and experience of the persons through whom it ensures the performance of its activities, including the members of bodies and committees, if established, and
- (b) responsibilities and requirements in
 - 1. demonstrating the required skills, experience and trustworthiness,

2. verifying the continuing trustworthiness, and
3. verifying whether the skills and experience of the persons through whom the payment institution ensures the performance of its activities are still up-to-date and proportionate to the nature, scale and complexity of such activities.

(6) The payment institution shall allocate corresponding and sufficient capacity for the performance of activities, and shall consistently apply sound management, administrative, accounting and other procedures, including proper procedures to ensure

- a) the integrity of the accounting and financial reporting systems,
- b) the reliability of the financial and operational control,
- c) the effectiveness of control and security measures during the processing and recording of information,
- d) the reliability of the system for selecting authorised representatives,
- e) the effectiveness of the control of the activities of authorised representatives through whom the payment institution provides payment services or acts during the conclusion of a payment services contract,
- f) the adequacy of internal and external communication during the performance of the activities of the payment institution, and
- g) the smooth performance of activities and the permanent operation of the payment institution on the financial market in conformity with the line of business and plan of its activities.

Article 7

(1) The payment institution shall approve and regularly assess at an appropriate level its internal management of its

- (a) business strategy,
- (b) organisational structure,
- (c) risk management strategy,
- (d) capital and capital adequacy strategy,
- (e) information system development strategy,
- (f) internal control system principles, and
- (g) security principles, including security principles for the information system.

(2) The payment institution shall approve, at the appropriate level of its internal management, new products, activities and systems that are of key importance to the payment institution and the system of limits the payment institution will use to manage risks.

(3) The payment institution shall approve, at the appropriate level of its internal management, the material, organisational, personnel and other aspects of ensuring risk management, compliance pursuant to Article 16 and internal auditing, including the subject and goals of its activities. The management body shall approve the plans for the activities of the internal audit.

(4) The payment institution shall review, in a timely manner and at the appropriate level of its internal management, regular reports and extraordinary findings submitted to it above all by the relevant management levels as part of the performance of risk management, compliance and internal auditing by the statutory auditor or by an auditing company or the competent supervisory authorities. Based on these assessments, the payment institution shall take appropriate measures that shall be implemented without undue delay.

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

Article 8

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

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

(3) The payment institution shall oblige its employees to inform it, in the stipulated manner and without undue delay, of an existing or threatened conflict of interest, in particular where such a conflict concerns or might concern the employee himself/herself.

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

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

Article 9

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

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

- (3) The payment institution shall ensure that the members of the management body and other relevant persons within the payment institution have continuous access to information
- (a) on compliance with the requirements laid down in legislation and internal rules, including compliance with the capital adequacy rules and investment restriction rules, and
 - (b) on any significant differences found in the payment institution's processes compared to the requirements laid down in legislation and the internal rules.

Article 10

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

Article 11

(1) The management and control system of the payment institution shall include internal control mechanisms ensuring the correctness and completeness of all calculations, data, statements and other information submitted to the Czech National Bank.

(2) The processes applied to the creation, checking and transmission of information to the Czech National Bank, including the submission of statements, shall be traceable and reconstructable for at least 5 years, unless determined otherwise.

(3) The payment institution shall ensure the prerequisites for the provision, traceability and reconstruction of the information referred to in paragraph (2) even after the payment institution has ceased to be authorised to pursue its activity on the financial market, including through any legal successor of the payment institution.

Risk management system

Article 12

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

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

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

(4) The management and control system of the payment institution shall take into account and ensure the systematic management of all significant risks to which the payment

institution is or may be exposed with regard to the nature, scope and complexity of its activities.

(5) The management of risks shall take into account internal and external factors, including the payment institution's future business strategy.

(6) The payment institution shall consistently manage security and operational risks by

- a) establishing and maintaining principles and procedures for evaluating and influencing the level of security and operational risk undertaken, including taking into account less frequent significant events, and
- b) establishing and maintaining contingency plans for extraordinary situations, including breakdown and crisis situations, and for the recovery of activities, to guarantee the payment institution's ability to perform its activities on a continuous basis, and to limit losses in the event of a significant disruption of activities.

(7) The payment institution's security and operational risk management system shall include

- (a) the recognition and evaluation of security and operational risks,
- (b) control and security measures to minimise security and operational risks, including the securing and verification of means of information transfer, the minimisation of data corruption risk, fraud risk, unauthorised access risks and the risk of leakage or unauthorised use of personal data and other sensitive information regarding clients and payments, and
- c) addressing security incidents and their reporting.

Article 13

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

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

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

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

Article 14

(1) The strategy and processes for risk management and the strategy and processes for maintenance of capital to cover risks shall be integrated and interconnected.

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

Internal control system

Article 15

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

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

Article 16

The management and control system of the payment institution shall include comprehensive and interconnected compliance function principles and processes aimed above all at ensuring

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

Article 17

(1) The management and control system of the payment institution shall be configured so as to ensure that the internal audit systematically focuses on identifying deficiencies in the management and control system as a whole and its components.

- (2) The internal audit shall always include independent examination of
- a) compliance with the requirements and rules stipulated in legislation and internal rules,
 - b) financial management, risk management, capital management and liquidity management,
 - c) the completeness, conclusiveness, accuracy and reliability of the accounting,
 - d) the sufficiency and reliability of the system of internal reports, information provided to the payment institution's bodies, accounting and statistical information, and information

- for clients,
- e) the functionality and security of the information system, including the reliability of the system of creation, checking and submitting reports and other information to the Czech National Bank, and
 - f) the sufficiency and reliability of internal control mechanisms.

(3) The payment institution shall ensure that, during the performance of internal audit, the following activities are always performed:

- a) a risk analysis is prepared, at least once a year,
- b) a strategic internal audit plan and a periodic internal audit plan are prepared,
- c) a system is created and maintained to monitor the remedial measures imposed in response to the internal audit findings, and
- d) the functionality and effectiveness of the management and control system is evaluated at least once a year.

(4) The internal audit shall inform the payment institution's management body and supervisory body, where the payment institution has such a body, of its findings. In the event of a finding that could significantly and negatively impact the financial situation of the payment institution, it must call an extraordinary session of the supervisory body, if the payment institution has such a body.

Article 18

(1) The management and control system of the payment institution shall be configured so that the monitoring and evaluation of its functionality and effectiveness is performed at all management and organisational levels.

(2) Deficiencies in the management and control system, whether identified by top level review, by the internal audit or on the basis of other internal controls, by a statutory auditor, auditing company or in some other way, must be reported without undue delay to the appropriate management level, and addressed swiftly.

(3) Significant deficiencies in the management and control system must be reported to the management body and the supervisory body without undue delay, where the payment institution has such a body.

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

Title II

Management and control system of an electronic money institution

(Re Article 78(4) of the Act)

Article 19

Prerequisites for sound corporate governance

(1) The management and control system of the electronic money institution shall cover all its activities. The electronic money issuer that also performs other business activities than the activity for which it is authorised based on authorisation pursuant to the Act (a “hybrid electronic money issuer”) shall establish a management and control system in such a way that it covers the activities for which it is authorised based on authorisation granted pursuant to the Act.

(2) The electronic money issuer shall use, when complying with the requirements determined for a management and control system, appropriate resources, systems and procedures, also taking into account developments in the environment in which it operates.

(3) To meet the other prerequisites for a sound system of governance, the electronic money institution shall follow the procedures set out in Articles 2 to 11.

Article 20

Risk management system

The management and control system of the electronic money institution shall be configured so as to enable systematic management of risks. To meet the other requirements for the risk management system and processes, the electronic money institution shall follow the procedures set out in Articles 12 to 14.

Article 21

Internal control system

The electronic money institution shall create, maintain and apply principles and processes for internal control, which shall form part of its routine, usually day-to-day, activities. To meet the other requirements for the internal control system, the electronic money institution shall follow the procedures set out in Articles 15 to 18.

Title III

Management and control system of a payment account information administrator

(Re Article 48(4) of the Act)

Article 22

Prerequisites for sound corporate governance

(1) The management and control system of a payment account information administrator shall cover all its activities pursuant to the Act.

(2) The payment account information administrator shall use, when complying with the requirements determined for a management and control system, appropriate resources, systems and procedures, also taking into account developments in the environment in which it operates.

(3) In order to fulfil the other requirements of good governance, the payment account information administrator shall proceed in accordance with Articles 2 to 11 to an extent reasonable considering the scope, nature and complexity of the activities it performs or intends to perform.

Article 23

Risk management system

The management and control system of the payment account information administrator shall be configured so as to enable the systematic management of risks. In order to fulfil the other requirements of good governance, the payment account information administrator shall proceed in accordance with Articles 12 to 14 to an extent reasonable considering the scope, nature and complexity of the activities it performs or intends to perform.

Article 24

Internal control system

The payment account information administrator shall create, maintain and apply principles and processes for internal control, which shall form part of its routine, usually day-to-day, activities. In order to fulfil the other requirements of an internal control system, the payment account information administrator shall proceed in accordance with Articles 15 to 18 to an extent reasonable considering the scope, nature and complexity of the activities it performs or intends to perform.

Title IV

Some activities of a small-scale payment service provider

(Re Article 59(4) of the Act)

Article 25

(1) In order to fulfil the requirements of a complaint settlement system, the small-scale payment service provider shall proceed in accordance with Articles 4(1) to (5), and Article 4(6)(a) to an extent reasonable considering the scope, nature and complexity of the activities it performs or intends to perform.

(2) In order to fulfil the requirements of a security and operational risks management system, the small-scale payment service provider shall proceed in accordance with Articles 4(1) to (5), Article 4(6)(b), and Article 12 to an extent reasonable considering the scope, nature and complexity of the activities it performs or intends to perform.

Title V
Some activities of a small-scale electronic money issuer
(Re Article 100(4) of the Act)

Article 26

(1) In order to fulfil the requirements of a complaint settlement system, the small-scale electronic money issuer shall proceed in accordance with Articles 4(1) to (5), and Article 4(6)(a) to an extent reasonable considering the scope, nature and complexity of the activities it performs or intends to perform.

(2) In order to fulfil the requirements of a security and operational risks management system, the small-scale electronic money issuer shall proceed in accordance with Articles 4(1) to (5), Article 4(6)(b), and Article 12 to an extent reasonable considering the scope, nature and complexity of the activities it performs or intends to perform.

PART THREE
CAPITAL ADEQUACY AND INSURANCE

Title I

Capital adequacy of a payment institution
(Re Article 16(5) of the Act)

Article 27

Capital

(1) Capital is calculated similarly to own funds as indicated in Article 4(1) point 118 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (the “Regulation”).

(2) At least 75% of Tier 1 capital shall have the form of Common Equity Tier 1 capital pursuant to Article 50 of the Regulation, and Tier 2 capital is equal to at most one third of Tier 1 capital.

(3) In order to prevent the multiple use of elements eligible for the calculation of capital, a payment institution which is a member of a group of which another payment institution, foreign payment institution, credit institution, investment firm, asset management company or insurance undertaking is also a member, may not include in capital determined pursuant to paragraph (1) those items or parts thereof that are included in capital for the purpose of compliance with any other capital requirements. For the purpose of this Decree, a credit institution, investment firm and asset management company means these entities as defined in the Regulation.

(4) Hybrid payment institutions shall not include in capital determined pursuant to paragraph 1 items or parts thereof that are used for the purpose of other activities than the

activities for which they are authorised based on authorisation granted pursuant to the Act.

Article 28

Methods for calculating the capital requirement

(1) Methods for calculating the capital requirement:

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

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

Article 29

Method A

(1) The capital requirement determined using Method A shall equal 10% of the sum of the overheads for the immediately preceding accounting period; “overheads” shall mean

- (a) costs of depreciation and amortisation of tangible and intangible assets and
- (b) administrative costs⁵⁾ or consumption from operations, personnel costs and taxes and fees⁶⁾.

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

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

Article 30

Method B

(1) The capital requirement determined using Method B shall equal the product of the scaling factor defined in Article 32 and the amount designated as the sum of

- a) 4% of the slice of payment volume up to the equivalent of EUR 5 million,
- b) 2.5% of the slice of payment volume above the equivalent of EUR 5 million and up to the equivalent of EUR 10 million,
- c) 1% of the slice of payment volume above the equivalent of EUR 10 million and up to the

⁵⁾ Decree No 501/2002, implementing certain provisions of Act No 563/1991, on accounting, as amended, for accounting units that are banks and other financial institutions, as amended.

⁶⁾ Decree No. 500/2002, implementing certain provisions of Act No 563/1991, on accounting, as amended, for accounting units that are entrepreneurs keeping accounts in a double-entry bookkeeping system, as amended.

- equivalent of EUR 100 million,
- d) 0.5% of the slice of payment volume above the equivalent of EUR 100 million and up to the equivalent of EUR 250 million, and
 - e) 0.25% of the slice of payment volume above the equivalent of EUR 250 million.

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

(3) The payment volume pursuant to paragraph (1) shall represent one twelfth of the total amount of payment transactions executed by the payment institution in the immediately preceding accounting period.

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

Article 31 Method C

(1) The capital requirement determined using Method C shall equal the product of the scaling factor defined in Article 32 and the amount designated as the sum of

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

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

- (a) the relevant indicator shall be calculated on the basis of the twelve-monthly observations from data as of the end of the last accounting period,
- (b) each item shall be taken into account in the corresponding positive or negative value,
- (c) extraordinary and irregular income shall not be included in the calculation of the relevant indicator, and
- (d) expenditure on outsourcing rendered by an person subject to comparable supervision by a competent supervisory authority may be subtracted from the relevant indicator.

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

(4) If the value of the relevant indicator pursuant to paragraph (2) is lower than 80% of the average of the relevant indicator values for the past 3 accounting periods, 80% of the average of the relevant indicator values for the past 3 accounting periods shall be used as the value of the relevant indicator for the purposes of determining the capital requirement pursuant to paragraph (1).

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

Article 32 **Scaling factor**

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

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

Title II **Capital adequacy of an electronic money institution** (Re Article 74(6) of the Act)

Article 33 **Calculation of capital adequacy**

For the calculation of the capital adequacy of an electronic money institution, the capital requirement to cover risks shall be determined as the sum of the capital requirements pursuant to Article 34 and 35.

Article 34 **Capital and the capital requirement to cover risks connected with issuing electronic money**

(1) The capital requirement to cover risks connected with issuing electronic money shall equal 2% of the average amount of electronic money in circulation.

(2) In order to prevent the multiple use of elements eligible for the calculation of capital, an electronic money issuer which is a member of a group of which another payment institution, foreign payment institution, credit institution, investment firm, asset management company or insurance undertaking is also a member, may not include in capital determined pursuant to paragraph (1) those items or parts thereof that are included in capital for the purpose of compliance with any other capital requirements.

(3) Hybrid electronic money institutions shall not include in capital determined pursuant to paragraph (1) items or parts thereof that are used for the performance of other activities than activities for which authorisation pursuant to the Act is required.

(4) Where it is not possible to establish what portion of funds submitted by the holder to the electronic money institution is designated for activities pursuant to Article 67(1)(b) of the Act, the determination of the average amount of electronic money in circulation shall be based on such an amount of these funds that corresponds to a reliable estimate on the basis of data from the previous periods.

(5) If the electronic money institution has issued electronic money for a period of less than 6 calendar months, this capital requirement shall equal at least 2% of the average amount of electronic money in circulation determined on the basis of its business plan, or adjusted pursuant to the requirements of the Czech National Bank.

Article 35

Calculation of the capital requirement to cover risks connected with the provision of payment services that do not relate to electronic money

Articles 29 to 32 apply analogously for the calculation of the capital requirement to cover risks connected with the provision of payment services that do not relate to electronic money.

Title III

Minimum insurance settlement limit from insurance and minimum level of comparable collateral

(Re Article 17(3), Article 46(2) and Article 75(3) of the Act)

Article 36

Minimum monetary amount of performance

The minimum insurance settlement limit from insurance and the minimum level of comparable collateral are determined for the preceding calendar year and equal the minimum cash amount of the settlement calculated using the formula

$$MMA = RP + TA + SA,$$

where:

MMA denotes the minimum monetary amount of settlement, expressed in euros,
RP denotes the value of the risk profile indicator, expressed in euros,
TA denotes the value of the type of activity indicator, expressed in euros,
SA denotes the value of the scope of activity indicator, expressed in euros.

Article 37

Risk profile indicator

The value of the risk profile indicator is calculated according using the formula

$$RP = CR + NT + NA,$$

where:

- RP denotes the value of the risk profile indicator, expressed in euros,
- CR denotes the total value of all claims arising under Article 17(1) or (2), Article 46(1), or Article 75(1) or (2) of the Act applied by users or providers of a payment service who keep a payment account, against the provider of the indirect payment order payment service or provider of the payment account information service in the previous calendar year; the value is expressed in euros;
the value of claims denominated in a currency other than the euro shall be converted into an amount in euros at the rate the Czech National Bank announces as the last in October of the previous calendar year;
if the services were not provided in the given calendar year, the CR shall correspond to the estimated amount of the claims, however at least EUR 50,000;
- NT denotes the indicator of the number of all payment transactions for which the payment order was issued indirectly, and is calculated according to the formula:
$$NT = 0.4 \cdot N_a + 0.25 \cdot N_b + 0.1 \cdot N_c + 0.05 \cdot N_d + 0.00025 \cdot N_e,$$

where:
$$N_a = \min \{10,000; N\}$$

$$N_b = \max \{0; \min \{90,000; N - 10,000\}\}$$

$$N_c = \max \{0; \min \{900,000; N - 100,000\}\}$$

$$N_d = \max \{0; \min \{9,000,000; N - 1,000,000\}\}$$

$$N_e = \max \{0; N - 10,000,000\}$$

N is the total number of payment transactions for which the payment order was issued indirectly in the preceding calendar year, and equals the sum of $N_a + N_b + N_c + N_d + N_e$;
if indirect payment order services were not provided in the given calendar year, the NT shall correspond to the estimated amount of the payment transactions for which the payment order will be issued indirectly, however at least 50,000;
- NA denotes the indicator of the number of individual payment accounts to which the payment account information service provider has access, and is calculated according to the formula:
$$NA = 0.4 \cdot N_a + 0.25 \cdot N_b + 0.1 \cdot N_c + 0.05 \cdot N_d + 0.00025 \cdot N_e,$$

where:
$$N_a = \min \{10,000; N\}$$

$$N_b = \max \{0; \min \{90,000; N - 10,000\}\}$$

$$N_c = \max \{0; \min \{900,000; N - 100,000\}\}$$

$$N_d = \max \{0; \min \{9,000,000; N - 1,000,000\}\}$$

$$N_e = \max \{0; N - 10,000,000\}$$

N is the total number of payment accounts to which the payment account information service provider had access in the preceding calendar year, and equals the sum of $N_a + N_b + N_c + N_d + N_e$;

if services were not provided in the given calendar year, the NA shall correspond to the estimated number of payment accounts to which the payment account information service provider had access, however at least 50,000.

Article 38

Type of activity indicator

(1) The value of the type of activity indicator equals zero in the event of the exclusive provision of payment services.

(2) Where a different activity/activities is/are performed than a payment service, the value of the type of activity indicator is EUR 50,000 unless the activity other than a payment service does not affect the provision of the indirect payment order service or the payment account information service because there is a guarantee covering liabilities arising from this activity or other legislation provides determines an obligation to establish a separate entity for payment services business if such other activity impairs or could impair the financial health of the given service provider.

Article 39

Scope of activity indicator

(1) The value of the scope of activity indicator of an indirect payment order service is calculated using the formula:

$$SA = 0.4 \cdot N_a + 0.25 \cdot N_b + 0.1 \cdot N_c + 0.05 \cdot N_d + 0.00025 \cdot N_e,$$

where:

$$N_a = \min \{500,000; N\}$$

$$N_b = \max \{0; \min \{500,000; N - 500,000\}\}$$

$$N_c = \max \{0; \min \{4,000,000; N - 1,000,000\}\}$$

$$N_d = \max \{0; \min \{5,000,000; N - 5,000,000\}\}$$

$$N_e = \max \{0; N - 10,000,000\}$$

N is the total amount of payment transactions for which the payment order was issued indirectly in the preceding calendar year; this amount is expressed in euros and equals the sum of $N_a + N_b + N_c + N_d + N_e$;

if the services were not provided in the given calendar year, the estimated amount of all payment transactions for which the payment order will be issued indirectly shall be used, however at least EUR 50,000.

The value of payment transactions denominated in a currency other than the euro shall be converted into an amount in euros at the rate the Czech National Bank announces as the last in October of the previous calendar year.

(2) The value of the scope of activity indicator of a payment account information service provider is calculated using the formula:

$$SA = 0.4 \cdot N_a + 0.25 \cdot N_b + 0.1 \cdot N_c + 0.05 \cdot N_d + 0.00025 \cdot N_e,$$

where:

$$N_a = \min \{ 100; N \}$$

$$N_b = \max \{ 0; \min \{ 9,900; N - 100 \} \}$$

$$N_c = \max \{ 0; \min \{ 90,000; N - 10,000 \} \}$$

$$N_d = \max \{ 0; \min \{ 900,000; N - 100,000 \} \}$$

$$N_e = \max \{ 0; N - 1,000,000 \}$$

N is the total number of payment account information service users in the preceding calendar year, and equals the sum of $N_a + N_b + N_c + N_d + N_e$;

if these services were not provided in the calendar year in question, the estimated number of users is used, however at east 50,000.

(3) In the event of the provision of the indirect payment order service and concurrently the payment account information service, the value of the scope of activity indicator shall equal the sum of the value of the scope of activity indicator for the indirect payment order service provider and the scope of activity indicator for the payment account information service provider.

PART FOUR EFFECT

Article 40

This Decree shall come into effect on 13 January 2018.

Governor:

per pro. Hampl