

## **Chapter XXIII**

### **REGULATIONS ON THE PROTECTION OF INVESTORS**

#### ***Section 207\****

#### ***Section 208\****

#### **Protection of Clients' Funds**

#### ***Section 209\****

## **Chapter XXIV**

### **INVESTOR PROTECTION FUND**

#### ***Section 210***

(1)\* An Investor Protection Fund has been established to attend to the duties prescribed in this Act (hereinafter referred to as "Fund") whose members comprise companies (not including private entrepreneurs) licensed to engage in the activities defined under Paragraphs *a)*-*d)* of Subsection (1) of Section 5 of the IRA and Paragraphs *a)* and *b)* of Subsection (2) of Section 5 of the IRA (hereinafter referred to as "insured activities"). These companies shall be hereinafter referred to as "bodies engaged in insured activities".

(2)\* Organizations engaged in insured activities must enroll as members of the Fund prior to receiving authorization for the activities specified in Subsection (1) of this Section.

(3)\* The commodity dealers engaged in the activities defined in Paragraphs *a)*-*c)* of Subsection (1) of Section 5 of the IRA may also join the Fund. Any commodity dealer who did not join the Fund shall clearly indicate in its standard service agreement and in the client account contract that the client's funds placed in a client account are not covered by the Fund's protection.

(4)\* Foreign branches of organizations engaged in insured activities that have their registered office in the territory of Hungary shall be covered by the deposit insurance services provided by the Fund, unless the laws of

the country in which the branch is established do not permit it. The branches of organizations engaged in insured activities that have their registered office in the territory of Hungary in any Member State of the European Union may voluntarily join the deposit insurance scheme of the host country in order to obtain supplementary cover. Upon notifying the Authority concerning their intent to set up a branch, organizations engaged in insured activities shall notify the Fund when joining the deposit insurance scheme of the host country, whether compulsorily or voluntarily, including the conditions for joining, immediately upon gaining knowledge of such or when the application is lodged.

### ***Section 211***

(1)\* The branches of organizations engaged in insured activities established in another Member State of the European Union shall not be required to join the Fund if they are registered under an investor-compensation scheme prescribed in Directive 97/9/EC of the European Parliament and of the Council.

(2)\* Subject to authorization by the Authority, the branch of a third-country organization engaged in insured activities shall not be required to join the Fund if it has its own investor protection system, which is recognized by the Authority as being equivalent to the investor-compensation scheme prescribed in Directive 97/9/EC of the European Parliament and of the Council.

(3) The Authority shall decide whether an investor protection scheme referred to in Subsection (2) above is equivalent, based on the following criteria:

- a) the scope of claims of investors it covers;
- b) the scope of clients to whom protection is offered;
- c) the amount of coverage provided for the claims of clients;
- d) the length of time required for the settlement of claims as specified in the investor protection scheme;
- e) the procedure for handling clients' claims;
- f)\* the opinion of the Investment Protection Fund.

(4)\* If a branch is not required to join the Fund pursuant to Subsections (1) and (2) above, it may voluntarily join the Fund in order to obtain the supplementary cover referred to in Subsection (7) of this Section if it is able to meet the Fund's requirements for membership.

(5)\* The Fund may enter into cooperation agreements with foreign investor protection schemes and with foreign supervisory authorities, and may exchange information from the records on investors covered by the investor protection schemes and on the insured accounts, and for the settlement of compensation claims. The various investment protection schemes shall inform each other of the amount of compensation they are liable to pay to any given investor.

(6)\* Any branch of an organization engaged in insured activities established in another Member State of the European Union that is not covered by an investor-compensation scheme in accordance with Directive 97/9/EC of the European Parliament and of the Council must join the Fund in order to obtain the supplementary cover referred to in Subsection (7) of this Section. If, in the opinion of the Authority, the branch of a third-country organization engaged in insured activities does not have its own investor protection system, which is recognized by the Authority as being equivalent to the investor-compensation scheme prescribed in Directive 97/9/EC of the European Parliament and of the Council, it shall join the Fund in order to obtain full insurance coverage.

(7)\* If the maximum amount guaranteed by the investor protection scheme provided by the Fund, the scope of investments covered or the extent of coverage exceeds the maximum amount guaranteed, the scope of investments covered and the extent of coverage afforded by an investor protection scheme that covers the branch of an organization engaged in insured activities, the Fund shall, at the request of the branch, provide supplementary cover if the branch meets the Fund's requirements concerning membership. Supplementary compensation may be claimed if the competent supervisory authority of the country in which the head office of the branch is located notifies the Fund about the occurrence of events warranting compensation. Other aspects of supplementary

compensation claims shall be governed by the provisions of Sections 216-220.

(8)\* Settlement for a claim shall be provided once; apart from supplementary compensation, no additional compensation may be demanded from the Fund on top of the compensation received by a branch from the investor protection scheme of its home country.

### **The Fund's Legal Background**

#### *Section 212*

(1) The Fund is vested with legal personality.

(2) The Fund has its seat in Budapest.

(3) The Fund shall be exempt from corporate and local taxes and duties on its own funds, revenues and income.

(4) The Fund's liquid assets may not be extended, nor used for payments to any member of the Fund on any grounds. The Fund's liquid assets may be used only for the purposes laid down in this Act.

(5) The Fund's equity capital cannot be diversified.

(6)\* The Fund shall be represented against third parties in the court and before the authorities by the chairman of the management body or by the managing director.

### **Duties of the Fund**

#### *Section 213*

(1) The Fund shall be responsible to compensate investors for losses in the amount defined in Subsection (2) of Section 217.

(1a)\* In the application of this Chapter, the client referred to in Point 66 of Subsection (2) of Section 4 of the IRA shall also be construed investor.

(2)\* Compensation shall be paid only if the underlying claim is based on a commitment secured by a contract concluded by and between an investor and a member of the Fund following 1 July 1997 pertaining to an insured activity, and it concerns the settlement of assets (securities, moneys) that were entrusted to the Fund member and are recorded in the

investor's name (insured claim). The insurance provided by the Fund shall cover only the agreements concluded during the period of membership.

(3)\* The scope of coverage specified in Subsection (2) above also applies to claims lodged against a foreign branch of a Fund member that is registered in Hungary, unless it is not allowed under the laws of the country in which the branch is located.

(4)\*

#### *Section 214*

(1)\* For administration purposes the Fund may request its members to supply information to the extent required for carrying out its activities, and may inspect members' compliance with the obligations arising from their membership on location. To this end, the Authority shall furnish information to the Fund from their respective records. The Fund shall forthwith notify the Authority of any unlawful conduct it detects in its official capacity.

(2) When authorized by the investors entitled to receive compensation, the Fund shall represent such investors in composition negotiations and during any liquidation proceeding.

(3)\* Members of the Fund shall be required to provide investors with readily intelligible information in Hungarian concerning the extent of protection offered by the Fund and the conditions of settlement.

(4)\* It is prohibited to use any information relating to investor protection or to the Fund for the purpose of soliciting more investments holdings, in particular for advertisements.

#### *Section 215*

(1) Coverage provided by the Fund is not available to

a) the state;

b) budgetary agencies;

c)\*

d) local authorities;

e) institutional investors;

f)\* compulsory or voluntary deposit insurance, institution and investor protection funds, Pension Guarantee Funds;  
g) extra-budgetary funds;  
h)\* investment companies, members of the stock exchange and commodity dealers;  
i) financial institutions falling within the scope of the CIFE;  
j) the MNB;  
k)\* the executive employees of Fund members and their close relatives;  
l)\* any company or natural person having a direct or indirect holding of five per cent or more in the capital of a Fund member carrying voting rights, and any company they control, as well as the close relatives of natural persons;  
m)\* auditors of Fund members;  
and the foreign equivalents of such investments.\*

(2)\* For the purposes of Paragraphs k)-m) of Subsection (1), no compensation shall be paid if it applies to a Fund member in connection with which the settlement procedure is in progress in any extent for the period between the date on which the contract underlying the claim was executed and the date on which the claim for compensation is lodged.

(3)\* Coverage provided by the Fund shall not apply to claims in connection with any transaction that was financed by funds of criminal origin, as declared by final peremptory court decision.

(4)\* Coverage provided by the Fund shall not apply to claims in connection with any transaction that is denominated in a currency other than euro or the legal tender of a Member State of the European Union or the OECD.

### **Settlements Paid by the Fund**

#### *Section 216\**

(1) The Fund's liability of indemnification shall occur:

a) if the Authority initiates the opening of liquidation proceedings against a Fund member in accordance with Paragraph a) of Subsection (1) of Section 133 of the IRA,

b) upon a court order for the liquidation of a Fund member.

(2) If either of the events described in Subsection (1) occur, the Fund member concerned shall notify the Fund thereof without delay. The Fund member shall compile all data and information required for processing and evaluating potential claims, and supply said data and information to the Fund in the prescribed form and manner without delay. The Fund shall be entitled to demand direct access to any data held by a Fund member affected that it deems necessary for the assessment of potential claims for compensation.

(3) The Fund is required to post a notice on the Authority's website, and also on its own website within fifteen days from the time when the event described in Subsection (1) was published, notifying the investors concerned on the conditions to seek compensation. The Fund shall specify the date from which claims are accepted, the form in which claims are to be lodged, and the name of the paying agent. The first day specified for filing the claims must fall within a thirty-day period from the date when the event described in Subsection (1) was published.

(4)\* By way of derogation from Subsection (3), if the name of the paying agent is not available to the Fund within fifteen days, the Fund shall make it public within three days when it becomes available in the form of additional communication.

#### *Section 217*

(1) Compensation to eligible investors shall be paid upon application. The Fund may specify formal requirements for the applications. Investors may submit an application within one year from the first day specified for filing the claims. If an investor was unable to lodge his claim for some excusable reason, he may submit the application within thirty days when such reason is eliminated.

(2)\* The Fund shall compensate investors entitled to compensation for claims up to a maximum amount of one hundred thousand euro per person and per Fund member on the aggregate. The amount of compensation paid by the Fund is one hundred per cent up to one million forints, and for

amounts over the one-million forint limit, one million forints and ninety per cent of the amount over one million forints.

(3)\* Where any securities account maintained by Fund member shows more of a specific bonds than the amount shown in the records of the central securities depository of the same bonds, the Fund shall pay compensation for those bonds shown in the securities accounts, which, however, are not shown in the records of the central securities depository. In that case, the amount of compensation shall be determined by multiplying the book value of the bonds shown in the client's securities account by the fraction reflecting the portion those surplus bonds represent in all bonds shown in the securities accounts of clients.

(4)\* For the purposes of determining the extent of indemnification, all of the insured claims of an investor and the claims not released by the Fund member are to be consolidated.

(5) If an insured claim pertains to a security entitlement, the amount of compensation shall be determined based on the average price achieved during the one-hundred-and-eighty-day period immediately before the liquidation proceedings on the stock exchange or over-the-counter trading. If the securities in question had not been traded in the reference period, the Fund's directors shall determine a price based on which to calculate the amount of compensation. The price shall be established to permit a situation as if the investor had sold the securities at the time of commencement of the liquidation proceedings.

(6)\* In respect of the amount limit referred to in Subsection (2) and of claims, the amount of compensation to be paid in a foreign currency and the amount limit specific in Subsection (2) shall be calculated, regardless of the date of payment, at the official MNB rate of exchange in effect on the starting date of the liquidation proceedings.

(7) Where a Fund member has any claim from a client in connection with investment services that is overdue or is scheduled to expire before payment of indemnification, it shall be deducted from the investor's claim when determining the amount of compensation.

(8) The Fund provides compensation only in money.



(9)\* The indemnification limit specified in Subsection (2) above shall apply separately to all of the persons contained in the records of the Fund member who are eligible for compensation in connection with securities owned by several persons. The amount of compensation shall be divided equally among the investors, unless there is a contract clause to the contrary. The amount of compensation paid on jointly owned securities shall be added to the compensation payable for the claimant's other claims.

*Section 218\**

Compensation for claims by clients of branches of third-country investment firms, credit institutions and investment fund management companies may be paid only up to the amount insured by the Fund.

*Section 219*

(1) Upon the claimant supplying the contract underlying the insured claim along with all information required to verify his eligibility, and if the records maintained by the respective Fund member are also available, the Fund shall be required to process the investor's application for compensation within ninety days from the date when the application was submitted.

(2) If the contract supplied by the investor underlying his claim for compensation and the records maintained by the relevant Fund member are in harmony, the Fund shall verify compensation to the extent substantiated by such documents and shall proceed to pay the compensation at the earliest possible time within a ninety-day period. In justified cases the settlement date may be extended - subject to prior approval by the Authority - once, by maximum ninety days. The date of payment of settlement shall be the first day when the investor actually had access to the funds provided in compensation.

(3)\* Under the conditions set out in this Act, the Fund shall be liable to pay compensation if an investor's eligibility cannot be verified under Subsection (2), however, accompanied by a final court ruling in which the investor has been awarded the claim in question. In this case the investor

may file his application within ninety days from the operative date of the court's decision, with the final court ruling in question attached.

(4)\*

### **Reimbursement of Settlements**

#### *Section 220*

(1) Any Fund member, or the successor of a Fund member on whose account the Fund has paid any compensation shall be liable to reimburse the Fund in the amount of settlement paid out along with all related costs and expenses. This obligation shall also apply in respect of the members whose membership in the Fund has terminated in the meantime.

(2) Up to the extent of settlement paid by the Fund a client's claim shall devolve upon the Fund.

(3) The Fund shall seek satisfaction of its claim described in Subsections (1) and (2) above in the liquidation proceedings. As to the sequence of satisfaction in the liquidation proceedings, the Fund shall assume the position of the investor whose claim it has appropriated.

### **Joining the Fund**

#### *Section 221*

(1)\* Prior to applying for authorization to engage in an insured activity, the applicant company shall submit to the Authority a statement filed to the Fund's executive board proclaiming its intent to join the Fund and shall submit payment of affiliation fees (intent of affiliation).

(2) The statement of affiliation shall be filed in the form prescribed and published by the Fund. The Fund shall not render membership conditional.

(3)\* Membership shall commence on the operative date of the authorization issued by the Authority to engage in an insured activity. In connection with voluntary affiliation (commodity dealers, branches), membership shall commence upon the day when the statement of affiliation is submitted and the affiliation fees are paid. The Fund shall

publish a notice concerning the effective date of affiliation on the Authority's official website, and on its own website as well.

## **Membership Fees**

### *Section 222*

(1)\* Before admission new Fund members must pay the prescribed affiliation fee. The affiliation fee shall be one-half per cent of the joining company's subscribed capital, however, it may not be less than five hundred thousand forints and may not be more than three million forints.

(2)\* Members of the Fund shall be liable to pay annual membership dues to the Fund for each calendar year. The Fund's executive board shall determine the date on which the membership dues are payable.

(3)\* Annual membership dues shall be calculated on the basis of the average value of all funds deposited by investors with the Fund member during the previous calendar year, in the form of liquid assets or securities, to which the Fund's protection applies. Membership dues with respect to liquid assets and securities deposited by an investor shall be paid by the Fund member that is liable to release the deposits on the basis of a contract concluded with the investor for performing insured activities.

(4)\* The Fund's executive board shall determine the amount of annual dues relative to the above-specified base, taking into account the total value of the investors' liquid assets and securities portfolio below the indemnification limit. The Fund's executive board may alter the amount of the annual dues calculated relative to the base amount based on the level of risk the member's activities represent to the Fund, however, the change implemented on such grounds may not exceed fifty per cent of the membership dues calculated on the base amount. When providing supplementary cover, the investments for which supplementary cover is provided shall be taken into consideration when determining the annual fee, along with the cover afforded by the investor protection scheme of the country in which the branch's home office is located.

(5)\* The annual fees payable by a Fund member may not exceed three thousandths of the base amount; they may not, however, be less than five

hundred thousand forints (minimum fee). The Fund's executive board may set the amount of the minimum fee above five hundred thousand forints; however, the minimum fee must not exceed two million forints under any circumstances. A Fund member whose investors did not file any claims for compensation during the subject year and during the preceding calendar year cannot be charged more than the legal minimum.

(6)\*

(7)\* The Fund's executive board may order payment of extraordinary dues if the Fund's assets are insufficient to cover current or potential claims for compensation. Extraordinary payment of dues may be ordered also if the Fund is unable to meet its loan repayment liabilities when due, whether it concerns principal or interest payments, or if unable to effect redemption of bonds of its own issue in due time. Extraordinary payments are to be remitted in the manner and in the time prescribed by the Fund's executive board. Extraordinary payments shall be calculated on the same basis as annual dues, however, the extraordinary payments demanded in the course of a calendar year must not exceed the amount of annual dues last established.

(8) If the Authority has suspended all insured activities of a Fund member, and if the length of suspension covers the entire period remaining from the authorization granted by the Authority, the Fund member in question shall not be charged any fees for the period of suspension. If the Fund member's license is not revoked, the fees applicable for the period of suspension shall be due and payable after the suspension is lifted.

(9) Affiliation fees, annual dues and extraordinary payments paid by Fund members to the Fund shall be recorded under other operating charges.

(10)\* Where a Fund member falls in default in terms of payment of membership fees required under the regulations that the Fund's executive board has adopted within the framework of this Act, the Fund may request the Authority to take action.

### **Organizational Structure of the Fund**

*Section 223\**

(1)\* The Fund is governed by a nine-member executive board.

(2)\* The executive board shall be comprised of:

a) two persons delegated by the minister in charge of the money, capital and insurance markets;

b) one member delegated each by the stock exchange and the central depository;

c)\* two persons appointed by the Governor of the MNB, one for carrying out the tasks specified in Subsection (7) of Section 4 of the MNB Act and the other for carrying out the tasks specified in Subsection (9) of Section 4 of the MNB Act in the capacity of deputy chair or designated manager;

d) two persons delegated by the relevant trade organizations on behalf of Fund members;

e)\* the managing director of the Fund.

(2a)\* Executive board members - with the approval of the executive board - may appoint a permanent proxy who shall attend the meetings of the board in the absence of the member with full rights of making decisions.

(3) The term of delegation shall be three years.

(4) If filling a vacant spot falls within the right of several organizations and they fail to reach an agreement concerning the appointment of the new member of the executive board, it shall be filled by way of drawing a name from a pool of candidates for which each eligible organization shall be entitled to delegate one person.

(5) When the term of a member of the executive board is terminated, the appropriate organization shall delegate a new member within thirty days.

(6)\* Membership in the executive board shall terminate:

a) upon expiry of the term referred to in Subsection (3);

b)\* upon being recalled, or in the case of the managing director upon dismissal from the office of managing director;

c) upon death; or

d)\* upon resignation, with the exception of the managing director.

(7)\* The board of directors shall elect a chairman and at least one deputy from among its members on a yearly basis. The managing director may not be elected for the office of chairman.

(8) The executive board shall convene at least quarterly. An executive session shall be called in the event of any imminent situation entailing settlements payable by the Fund, or if ordered by the Authority. Meetings of the executive board are called by the chairperson.

(9)\* A meeting of the executive board shall have a quorum if at least seven members are present. The executive body shall adopt its resolutions by simple majority. In the event of a tie, the chairperson shall have the casting vote.

(10)-(12)\*

### **Duties of the Executive Board**

#### *Section 224*

(1) The executive board shall have powers:

a) to adopt the Fund's rules and regulations;

b)\* to appoint and discharge the Fund's managing director, and to determine his duties and remuneration;

c)\* to decide on measures relating to the implementation of the Fund's functions, and to direct and oversee the execution of the responsibilities delegated under this Act under the supervision of the managing director;

d) to prescribe the contents of reports to be filed by the Fund's members so as to satisfy their obligations arising from membership, and the frequency in which they are to be filed;

e) to establish the Fund's annual budget, and shall approve the Fund's annual report;

f) to control and monitor the Fund's financial management and other activities;

g) to convey quarterly reports to Fund members and to the Authority concerning the current status and appropriation of the Fund's finances;

h) to draw up a yearly report on its operations by 31 May of the following year, and shall send it to its members and to the Authority;

*i)* to carry out other duties prescribed in this Act.

(2)\* The Fund's operations are directed by the managing director. Employer's rights over the managing director shall be exercised by the chairperson of the executive board in all matters other than what is described in Paragraph *b)* of Subsection (1).

#### *Section 225*

(1)\* The Fund's executive board shall adopt regulations in which to lay down the rules:

*a)* pertaining to fees charged to members, in particular to the method and formulas for determining the base amount and the amount of fees payable, the procedure for determining the level of risk inherent in the members' activities and for revising the membership fees calculated on the base amount, including the procedures for payment methods and orders and payment dates;

*b)* pertaining to the Fund's administration;

*c)* governing payments made by the Fund; and

*d)* to define the executive board's order of business.

(2)\* The Fund's bylaws shall not contain any provisions to impose any obligation upon its members, with the exception specified in Paragraph *a)* of Subsection (1). They may not contain any provisions to violate the principle of equal treatment among Fund members, and must not jeopardize the prudent and efficient management of the Fund.

(3)\* The Fund shall publish its bylaws, rules and regulations, and the board's resolutions that are classified public on the Authority's official website, and on its own website as well. The Fund may forego the publication of the regulations referred to in Paragraph *d)* of Subsection (1).

(4)\* The Fund's executive board shall request the opinion of the MNB relating to the rules for determining the level of risk inherent in the members' activities and for adjusting the amount of fees payable based on such risk level.

### **Revenues of the Fund**

#### *Section 226\**

(1) The Fund's resources are comprised of:

- a) affiliation fees;
- b) annual dues;
- c) extraordinary payments;
- d) yields from the Fund's assets;
- e) moneys borrowed by the Fund;
- f) bonds issued by the Fund;
- g) other income.

(2) The Fund may borrow:

a) from the MNB with a view to fulfilling its function provided for in Subsection (1) of Section 213, and/or

b) from credit institutions with a view to fulfilling its function provided for in Subsection (1) of Section 213 and for the purpose of repayment of the loan under Paragraph a).

(3) In the interest of fulfilling its function provided for in Subsection (1) of Section 213 and for the purpose of repayment of the loan under Subsection (2) the Fund may issue bonds.

(4) The State shall provide surety facilities for the loans taken out and bonds issued by the Fund - in the amount approved by the minister in charge of public finances - with a view to fulfilling its obligations provided for in Subsection (2). Apart from the State surety facilities, the creditor shall not be required to demand additional security for the liabilities of the Fund. The Fund shall not be charged a fee for the State guarantee.

### **Accounts and Financial Management of the Fund**

#### *Section 227*

(1)\*

(2)\* The Fund's monetary assets - with the exception of petty cash, the liquidity reserve kept on the current account and the amounts transferred to a payment service provider for effecting payments or for other purposes necessary for the Fund's operation - shall be kept in government securities or in deposits placed in the MNB.

(3)\*



(4) The Fund may obtain loans.

(5) The Fund shall pay settlements from its accumulated assets, and from the balance remaining from the Fund's annual revenues following deduction of the yearly operating expenses approved by the executive board.

### **Termination of Membership in the Fund**

#### *Section 228*

(1)\* Membership in the Fund is terminated when the Authority's authorization for all insured activity in which the member is engaged is withdrawn. Regarding voluntary affiliation (commodity dealers, branches) membership in the Fund may be cancelled at any time, in which case it shall terminate on the day when the member in question submits a statement for the termination of membership to the Fund, in the format prescribed by the Fund. When membership of any Fund member is terminated, the Fund shall publish the effective date of termination on the Authority's official website, and on its own website as well.

(2)\*

(3)\* Termination of membership shall have no effect on the obligation of the payment of fees applicable to the company in question. The fees paid under the period of membership shall not be refunded, whether in part or in full, on the grounds of termination.