

Ordinance No. 36

on Custodian Banks under the Social Security Code

(Issued by the Bulgarian National Bank on 22 January 2004; published in the Darjaven Vestnik, issue 11 of 10 February 2004; amended; issue 58 of 2006; issue 106 of 2007)

Subject

Article 1. This Ordinance shall establish the terms and procedure for including in and excluding banks from the list under Article 123b, paragraph 12 of the Social Security Code (hereinafter referred to as the list), the type of registers kept by custodian banks, the terms and conditions for assigning individual custodian services to a subcontractor, as well as the form and contents of information which custodian banks shall provide to the Financial Supervision Commission (hereinafter referred to as the Commission).

Terms and Conditions for Including in the List the Banks Which May Act as Custodians

Article 2. Banks which may be included in the list shall:

1. have filed an application with documents under Article 3 enclosed;
2. meet the requirements under Article 123a, paragraph 2, items 1–6 of the Social Security Code;
3. have established a special structural unit which shall be responsible for the direct performance of the bank in a capacity as a custodian;
4. have adopted internal rules and procedures for operation of the unit under item 3;
5. have sufficient number of experts with qualifications and professional experience ensuring that the bank will efficiently perform its contractual obligations under the concluded contracts on custodian services;
6. have implemented an adequate information system and have technical facilities operating in a manner ensuring preservation and protection of information, and the exact fulfillment of the custodian bank's responsibilities in compliance with the requirements of Article 123a, paragraph 3 of the Social Security Code.

Application for Including in the List

Article 3. (1) The bank applying for inclusion in the list shall file an application in the BNB accompanied with documents containing the following information:

1. a description of the bank's strategy on the development of custodian services;

2. a description of the structural unit which will directly perform the functions of the bank in a capacity as a custodian – data on this unit's tasks and responsibilities, on the persons who will head and oversee it, on the job descriptions of the employees working in the unit, as well as on its position in the organizational structure of the bank;

3. data on qualifications and professional experience of the employees assigned to perform the responsibilities of a bank under contracts on custodian services;

4. data on the information system and technical facilities of the bank through which the custodian functions will be performed, including also the mean which will be used to protect the information and to keep it in accordance with statutory requirements and the terms and conditions of the contracts on custodian services, the methods of avoiding misuse of the information, unauthorized access or illegal destruction of the information;

5. (amended; Darjaven Vestnik, issue 106 of 2007) special provisions adopted by the bank in its rules under Article 54 of the Law on Credit Institutions in connection with the bank's functions in a capacity as a custodian;

6. internal rules and procedures for operation of the unit under item 2.

(2) The documents under paragraph 1 shall be filed in duplicate.

(3) (amended; Darjaven Vestnik, issue 106 of 2007) Any bank, which has been included in the list, shall inform within seven days the BNB Banking Supervision Department and the Commission on any changes made in the information under paragraph 1.

(4) (new; Darjaven Vestnik, issue 106 of 2007) Any bank, which has been included in the list, shall immediately inform the BNB Banking Supervision Department and the Commission on any circumstances which have resulted or may result in non-compliance with the requirements of Article 2.

Procedure for Including in the List the Banks Which May Act as Custodians

Article 4. (1) Banks applying under Article 3 shall be included in the list by an order issued by the BNB Deputy Governor heading the Banking Supervision Department based on the applications filed and following a review on the compliance with the provisions of Article 2. The inclusion of any bank shall be coordinated with the Commission which shall be sent the documents under Article 3, paragraph 1.

(2) Prior to coordination with the Commission, the BNB shall notify the applicant on the irregularities in the application and documents enclosed to it, and shall fix a term for removing them which may be not longer than seven days.

(3) When coordinating the list offered by the BNB, the Commission may submit a justified objection against inclusion in the list of a particular bank. In these cases the BNB Deputy Governor heading the Banking Supervision Department shall not include the bank indicated in the objection.

(4) (amended; Darjaven Vestnik, issue 106 of 2007) The list under paragraph 1 shall be public and it shall be updated in case of a change and then announced in an appropriate way.

Supplementing the list of banks Which May Act as Custodians

Article 5. (1) The list of banks which may act as custodians shall be supplemented pursuant to the provisions of Article 4 twice a year: on 30 April and 31 October. Banks wishing to be included in the list shall apply within 45 days prior to the respective supplementing date.

(2) The Bulgarian National Bank shall submit for coordination to the Commission the proposal for supplementing the list not later than 30 days prior to the respective supplementing date. The Commission shall coordinate the proposal within 15 days following its receipt.

Exclusion of a Bank from the List of Banks which may act as custodians

Article 6 (amended; Darjaven Vestnik, issue 106 of 2007) (1) The BNB Deputy Governor heading the Banking Supervision Department shall exclude a bank from the list where:

1. it has been established that the bank has been included in it based on documents containing false information;
2. it has been established that the bank has ceased to qualify with the requirements of Article 2;
3. an application has been filed by the bank regarding its exclusion from the list or voluntary liquidation under Article 122 of the Law on Credit Institutions;
4. a grounded application containing the offered date of bank exclusion from the list has been filed by the Commission along with evidence establishing violation of statutory requirements or a breach of contracts on custodian services;
5. the license to conduct bank activity has been revoked.

(2) In the cases under paragraph 1, items 1–3, the BNB Deputy Governor heading the Banking Supervision Department shall within seven days present a proposal to the Commission for coordinating the grounds and the date of the bank's exclu-

sion from the list.

(3) Within seven days upon receipt of the proposal under paragraph 2, the Commission shall issue a decision on coordinating the grounds and the date of the bank's exclusion from the list with a view of initiating measures to terminate the contacts on custodian services concluded by the bank and its replacement by another custodian bank.

(4) The BNB Deputy Governor heading the Banking Supervision Department shall rule on the exclusion of the bank from the list of custodian banks with a decision within the term set in the Administrative Procedure Code.

(5) Upon excluding a bank from the list, the BNB shall immediately inform the bank and the Commission about the decision. The Commission, on its part, shall notify the pension insurance companies which have concluded contracts on custodian services with this bank.

Conclusion of Contracts by the Custodian Bank with Subcontractors Performing Particular Functions under the Contract on Custodian Services

Article 7. (1) (amended; Darjaven Vestnik, issue 58 of 2006) The custodian bank may assign to a subcontractor the performance of one or more functions under the contract on custodian services associated with investment in securities which are not kept in a Bulgarian depository institution upon occurrence of the following conditions:

1. the contract on custodian services provides such an opportunity and under the contract the custodian bank has undertaken the commitment to be liable for subcontractor's actions as for its own actions;

2. the involvement of a subcontractor is required in order to ensure exact performance of bank's liabilities under the contract on custodian services and no additional expenses will be incurred by the pension insurance company;

3. the subcontractor meets the requirements of Article 123b, paragraph 2 of the Social Security Code.

(2) The custodian bank shall notify the Commission and the pension insurance company on any contract concluded with a subcontractor within seven days after the conclusion of the contract.

Registers

Article 8. (1) (amended; Darjaven Vestnik, issue 58 of 2006) The custodian bank shall keep an electronic register on the assets of any fund for additional pension insurance on behalf of which it has concluded a contract on custodian services.

(2) Each register shall be split into subregisters as follows:

1. a subregister of financial assets of a fund;

2. a subregister of nonfinancial assets of a fund.

(3) (amended; Darjaven Vestnik, issue 58 of 2006) The subregister under paragraph 2, item 1 shall contain data on owned:

1. (amended; Darjaven Vestnik, issue 106 of 2007) financial instruments under Article 176, paragraph 1, items 1 to 4 and items 6 to 13 of the Social Security Code and transactions therein, as well as financial instruments under Article 179b of the Social Security Code and transactions therein;

2. bank deposits under Article 176, paragraph 1, items 5 and 14 of the Social Security Code.

(4) (amended; Darjaven Vestnik, issue 58 of 2006) Each subregister under paragraph 2, item 2 shall contain information on investment property owned by the fund and transactions therein.

Entries in Registers

Article 9. (1) (amended; Darjaven Vestnik, issue 58 of 2006, issue 106 of 2007) Data required in accordance with Appendix 1 shall be entered individually in the subregister under Article 8, paragraph 2, item 1 for each financial instrument under Article 176, paragraph 1 of the Social Security Code.

(2) (new; Darjaven Vestnik, issue 58 of 2006, issue 106 of 2007) Data required in accordance with Appendix 1 shall be entered individually in the subregister under Article 8, paragraph 2, item 1 for each financial instrument under Article 179b of the Social Security Code

(3) (former paragraph 2; amended, Darjaven Vestnik, issue 58 of 2006) Data required in accordance with Appendix 2 shall be entered individually in the subregister under Article 8, paragraph 2, item 2 for each non-financial asset.

(4) (former paragraph 3; Darjaven Vestnik, issue 58 of 2006) Transactions in fund assets shall be entered in respective subregisters until the end of the business day on which information on finalization of the said transactions has been received at the bank.

Obligations of the Custodian Bank in Keeping the Registers

Article 10. (1) (amended; Darjaven Vestnik, issue 106 of 2007) Only those bank employees determined by a written order under Article 10, paragraph 1 of the Law on Credit Institutions may have access to the electronic register of a supplementary pension insurance fund.

(2) The rules under Article 2, item 4 shall include:

1. measures to preserve and protect information and restore it in case of collapse in the information system, disaster, *etc.*;

2. a manner and a procedure of preparing duplicates of the database keeping information on the fund assets and the place of their preservation;

3. a procedure of correcting wrong entries.

Obligations of the Custodian Bank in Providing Information

Article 11. (1) (Effective as of 1 July 2004) The custodian bank shall send to the Deputy Chairman of the Commission heading the Insurance Supervision Department and to the pension insurance company it has concluded an agreement on custodian services at the end of each business day:

1. (amended; Darjaven Vestnik, issue 58 of 2006) a statement of concluded transactions, received funds and effected payments, as well as balances on all accounts of the fund as of the close of the respective business day;

2. (amended; Darjaven Vestnik, issue 58 of 2006) an extract from the register of the fund as of the close of the respective business day.

(2) (Effective as of 1 July 2004; amended; Darjaven Vestnik, issue 106 of 2007) The statement and extracts under paragraph 1 shall be prepared according to a sample approved by the Deputy Chairman of the Commission heading the Insurance Supervision Department and shall be signed by the persons under Article 10, paragraph 1 of the Law on Credit Institutions.

(3) Except in the cases under paragraph 1, the custodian bank shall provide at request the Deputy Chairman of the Commission heading the Insurance Supervision Department with any data related to the bank's custodian activity.

Transitional and Final Provisions

§ 1. This Ordinance is adopted on the grounds of Article 123b, paragraph 11 of the Social Security Code by Resolution No. 12 of 22 January 2004 of the Governing Council of the BNB upon coordination with the Financial Supervision Commission by a Protocol No. 3 of 14 January 2004.

§ 2. (1) Banks wishing to be included in the list of banks which may act as custodian banks shall file an application under Article 3 at the BNB, the Banking Supervision Department, within 30 days after the enforcement date of this Ordinance.

(2) The Bulgarian National Bank shall send a proposal for the list to the Financial Supervision Commission within a term not later than 30 days after expiry of the term under paragraph 1. The Commission shall coordinate the proposal within a 15-day term after its receipt.

§ 3. The Bulgarian National Bank and the Financial Supervision Commission may give instructions on enactment of this Ordinance.

§ 4. Article 11, paragraphs. 1 and 2 of this Ordinance shall enter into force on 1 July 2004.

Appendix 1
to Article 9, paragraph 1
(new; Darjaven Vestnik, issue 58 of 2006;
amended; Darjaven Vestnik, issue 106 of 2007)

1. (amended; Darjaven Vestnik, issue 106 of 2007) The following data shall be entered individually in the subregister under Article 8, paragraph 2, item 1 for each financial instrument under Article 176, paragraph 1, items 1 to 4 and items 6 to 13 of the Social Security Code:

- 1.1. type of security;
- 1.2. issuer;
- 1.3. guarantor;
- 1.4. management company;
- 1.5. country in which the regulated market is located, respectively the country where collective investment undertakings/management companies are headquartered;
- 1.6. code (ISIN);
- 1.7. maturity of the issue;
- 1.8. certificate number;
- 1.9. regulated market on which securities are admitted to trading;
- 1.10. index of the regulated market;
- 1.11. investment credit rating;
- 1.12. rating agency;
- 1.13. currency code;
- 1.14. nominal value in the respective foreign currency and in levs;
- 1.15. number of securities held;
- 1.16. for transactions in assets under item 1.1:
 - 1.16.1. type of transaction;
 - 1.16.2. investment intermediary;
 - 1.16.3. investment intermediary's code;
 - 1.16.4. settlement date;
 - 1.16.5. number of securities;
 - 1.16.6. nominal value of the transaction in the respective foreign currency and in levs;
 - 1.16.7. value of the transaction in the respective foreign currency and in levs;
- 1.17. for repurchase agreements and reverse repurchase agreements in assets under item 1.1:
 - 1.17.1. type of agreement (repurchase/reverse repurchase);
 - 1.17.2. counterparty in the transaction;

- 1.17.3. date of agreement;
 - 1.17.4. settlement date;
 - 1.17.5. number of securities sold/purchased;
 - 1.17.6. nominal value in the respective foreign currency and in levs;
 - 1.17.7. value of the sale (repurchase)/purchase (reverse repurchase) in the respective foreign currency and in levs;
 - 1.17.8. value of the reverse repurchase (repurchase)/sale (reverse repurchase) in the respective foreign currency and in levs;
 - 1.17.9. value date of the reverse repurchase (repurchase)/sale (reverse repurchase).
2. (new; Darjaven Vestnik, issue 106 of 2007) The following data shall be entered individually in the subregister under Article 8, paragraph 2, item 1 for each financial instrument under Article 179b of the Social Security Code:
- 2.1. type of the financial instrument: futures, option (put or call), forward currency contract, interest rate swap contract;
 - 2.2. financial instrument position: short/long;
 - 2.3. counterparty;
 - 2.4. date of concluding the contract;
 - 2.5. date of expiry of the contract term (date of delivering the underlying asset);
 - 2.6. underlying asset (with an indication of respective individualizing data);
 - 2.7. value of the underlying asset/exercise price of the option;
 - 2.8. currency pair;
 - 2.9. base currency;
 - 2.10. forward contract delivery rate;
 - 2.11. number of interim payments until the end of the contract;
 - 2.12. payment period;
 - 2.13. contract volume;
 - 2.14. number of contracts;
 - 2.15. fixed interest rate under the contract;
 - 2.16. reference interest rate plus a floating rate spread;
 - 2.17. guarantee deposit;
 - 2.18. for transactions in financial instruments under item 2.1, in addition to the information under item 2.1 to 2.17, the following data shall also be recorded:
 - 2.18.1. country where the regulated market, on which the transaction is concluded, is located, respectively the registered office of the counterparty under the contract;
 - 2.18.2. regulated market on which the transaction is concluded;
 - 2.18.3. exchange code;
 - 2.18.4. investment credit rating;

2.18.5. rating agency;

2.18.6. transaction value;

3. (previous item 2, amended; Darjaven Vestnik, issue 106 of 2007) The following data shall be entered individually in the subregister under Article 8, paragraph 2, item 1 for each financial instrument under Article 176, paragraph 1, items 5 and 14 of the Social Security Code:

3.1. bank;

3.2. country in which the bank has been authorised to carry out bank activities in compliance with the legislation of a Member State or of a country specified by the Commission in an ordinance;

2.3. Bank Identifier Code (BIC);

3.4. credit rating;

3.5. rating agency;

3.6. date of concluding the contract and number of contract/annex;

3.7. initial date of accruing interest rate;

3.8. currency code;

3.9. maturity date;

3.10. deposit amount in the respective foreign currency and in levs.

Appendix 2
to Article 9, paragraph 3
(new; Darjaven Vestnik, issue 58 of 2006)

The following data shall be entered individually in the subregister under Article 8, paragraph 2, item 2 for each investment property and for the transactions under Article 8, paragraph 4:

1. type of investment property and property identification: surface; borders; notional shares, respectively type and description of the real right;

2. country and location of the property: address;

3. date of acquisition;

4. ownership certificate;

5. currency code;

6. acquisition price in the respective foreign currency and in levs;

7. for subsequent investment property transactions:

7.1. type and date of investment property transaction;

7.2. counterparty in the transaction;

7.3. value in the respective foreign currency and in levs.

Ordinance on Amendment

**of Ordinance No. 36 of 2003 on Custodian Banks under the
Social Security Code**

(Published in the Darjaven Vestnik, issue 58 of 18 July 2006)

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Transitional and Final Provisions

§ 7. Custodian banks which have concluded contracts on custodian services shall bring their electronic registers into compliance with this Ordinance within one month after publishing this Ordinance.

§ 8. This Ordinance is issued on the grounds of Article 123b, paragraph 11 of the Social Security Code and is adopted by Resolution No. 97 of 29 June 2006 of the Governing Council of the Bulgarian National Bank in coordination with the Financial Supervision Commission.

Ordinance on Amendment

**of Ordinance No. 36 of 2003 on Custodian Banks under the
Social Security Code**

(Published in the Darjaven Vestnik, issue 106 of 14 December 2007)

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Final Provisions

§ 9. This Ordinance is adopted on the grounds of Article 16, item 5 of the Law on the Bulgarian National Bank and Article 123b, paragraph 11 of the Social Security Code by Resolution No. 131 of 29 November 2007 of the Governing Council of the Bulgarian National Bank in coordination with the Financial Supervision Commission.