



**Centrálny depozitár cenných papierov SR, a. s.**

**The REPORT**  
**providing information enabling to assess whether rules,  
procedures and contracts of CDCP clear, understandable  
and enforceable in all relevant jurisdictions pursuant to  
articles 43(1) and 43(2) of the CSDR Regulation**

21 October 2020

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## Definitions and Abbreviations:

<b>CDCP</b>	Centrálny depozitár cenných papierov SR, a.s.
<b>EU</b>	European Union
<b>FMI</b>	financial market infrastructure
<b>GLEIF</b>	Global Legal Entity Identifier Foundation
<b>GLEIS</b>	Global Legal Entity Identifier System, carried out by the Global Legal Entity Identifier Foundation (GLEIF)
<b>LEI</b>	Identifier of a legal person or natural person – enterpriser, pursuant to the ISO standard 17442
<b>LOU</b>	Accredited Local Operating Unit, authorised and responsible for issuance and assigning of new LEI codes, for collecting of relevant reference data, administration and renewal of these data in compliance with the Governance Principles of the GLEIS
<b>CSDR Regulation</b>	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
<b>OICV - IOSCO</b>	International Organisation of Securities Commissions
<b>Rules of Operation</b>	The Rules of Operation of Centrálny depozitár cenných papierov SR, a.s.
<b>RTS</b>	Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories
<b>SR</b>	Slovak Republic
<b>SRD II</b>	Directive (EU) 2017/828 of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement
<b>settlement system</b>	Securities Settlement System operated by CDCP
<b>T2S</b>	TARGET2-Securities

<b>OICV-IOSCO Principles</b>	Principles for Financial Market Infrastructures issued by OICV-IOSCO in April 2012
<b>ZOCP</b>	Act No. 566/2001 Coll., on Securities and Investment Services and on Amendments and Supplements to Certain Laws, as amended.
<b>ZKR</b>	Act No. 7/2005 Coll., on Bankruptcy and Restructuring and on Amendments to Certain Laws, as amended

## Introduction

**Purpose of this report is to provide all information required to assess whether the rules, procedures and contracts of Centrálny depozitár cenných papierov SR, a.s. are clear and enforceable in all relevant jurisdictions in compliance with the articles 43(1) and 43(2) of CSDR Regulation.**

This document provides further details as regards compliance with the requirements that arose from the CSDR Regulation and related Principle no. 1 of the OICV-IOSCO Principles for FMIs.

### **Requirements according to the article 43(1) and 43(2) of the CSDR - „Legal risks“:**

Under the article 43(1) of CSDR Regulation the central depository for the purpose of its authorisation and supervision, as well as for the information of its clients, a CSD shall have rules, procedures, and contracts that are clear and understandable for all the securities settlement systems that it operates and all other services that it provides.

Under the article 43(2) of the CSDR Regulation the central depository shall design its rules, procedures and contracts so that they are enforceable in all relevant jurisdictions, including in the case of the default of a participant.

As regards compliance with aforesaid requirement, the preamble to the CSDR states:

- Clear rules on governing law applicable to proprietary aspects in relation to the securities held in the accounts maintained by central securities depositories are not governed by the CSDR and this issue could be dealt with in future Union legislative acts. (paragraph 57 of the opening clause of the CSDR)
- Directive 98/26/EC provides that transfer orders entered into securities settlement systems in accordance with the rules of those systems should be legally enforceable and binding on third parties. However, since Directive 98/26/EC does not specifically refer to CSDs that operate securities settlement systems, For clarity it should be required from CSDs to define the moment or moments when transfer orders that entered their systems become irrevocable , and in order to increase legal certainty, CSDs should disclose to their participants the moment when the transfer of securities and cash in a securities settlement system is legally enforceable and binding on third parties in accordance, as the case may be, with national law (paragraph 43 of the opening clause of CSDR).
- In order to provide a sufficient degree of safety and continuity of services provided by CSDs, CSDs should be subject to specific uniform and directly applicable prudential and capital requirements which mitigate their legal, operational and investment risks. (paragraph 53 of the opening clause of CSDR)

**According to the Principle 1 of the OICV-IOSCO Principles the CSD should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.** With respect to this principle the following key factors were determined:

- The legal basis should provide a high degree of certainty for each material aspect of an FMI's activities in all relevant jurisdictions.
- An FMI should have rules, procedures, and contracts that are clear, understandable, and consistent with relevant laws and regulations.
- An FMI should be able to articulate the legal basis for its activities to relevant authorities, participants, and where relevant, participants' customers, in a clear and understandable way.
- An FMI should have rules, procedure, and contracts that are enforceable in all relevant jurisdictions, even in case a participant ends in default or insolvency proceeding. There should be a high degree of certainty that actions taken under such rules and procedures will not be voided, reversed, or subject to stays.
- An FMI conducting business in multiple jurisdictions should identify and mitigate the risks arising from any potential conflict of laws across jurisdictions.

# 1. Legal Basis

Legal basis for regulated activities and provision of services by CDCP consists of the legal framework created by respective Member State and the European legislation, special rules and procedures set by CDCP and respective contracts, namely the agreements with clients and agreements concluded by CDCP with other entities in connection with provision of its services.

To be compliant with the CSDR requirements specified in the introduction to the utmost possible degree, and in order to mitigate legal risks in connection with performance of activities and provision of services, CDCP and its clients follow primarily by regulation given below.

## 1.1 Legal Framework

**CDCP is founded and performs its business activities in jurisdiction of the Slovak Republic and judicial code of the SR, binding legal regulation of EU and international agreements that are binding for the SR are fully applicable to CDCP.**

The legal framework applicable to CDCP operation includes primarily legal regulations governing securities, operation of securities settlement system, insolvency of the central securities depository, regulative requirements and supervision and oversight of the central securities depository, or participants, and legal liability.

Main legal regulations as regards performance of activities of are:

- Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 and relevant delegated and implementation regulations
- Act No. 566/2001 Coll., on Securities and Investment Services and on amendments and supplements to certain laws, as amended
- separate acts governing particular types of securities, namely Act No 530/1990 Coll. on Bonds, as amended; Act No 203/2011 Coll. on Collective Investment, as amended
- Act No 513/1991 Coll. Commercial Code, as amended
- Act No. 7/2005 Coll., on Bankruptcy and Restructuring and on Amendments to Certain Laws, as amended
- Act No 40/1964 Coll. Civil Code, as amended
- Act No 747/2004 Coll. on Financial Market Supervision and amending and supplementing certain laws, as amended
- Act No 371/2014 Coll. on resolution in the financial market an amending certain laws as amended

### **Conflict of laws:**

In connection with the article 23 and article 49 of the CSDR Regulation we state that CDCP issues securities only under the laws of the Slovak Republic. Similarly, CDCP does not

perform its activities in other jurisdiction. The Slovak legal regulation does not include conflict rules referring to the laws of other country in case the securities are issued in the SR, neither in case the issuer is a foreign entity. The issuer shall proceed in compliance with legislation of the Slovak Republic if the issuer decides to issue securities in CDCP.

Under the conflict rule contained in the Slovak legislation, the rights and obligations of participants in the settlement system (who make transactions in securities) are governed by the same laws as the securities settlement system is governed.

In connection with cross-border operations, ZOCP is considered as the relevant regulation with respect to administration of a holder's account. When a participant (an investor central depository as well) has a holder's account administered in CDCP, such account is governed by laws of the Slovak Republic. Data on clients of the holder are kept in a holder's registry under the article 71h (2) of ZOCP, or in similar registry under legislation under which the foreign holder was founded. Hence it may be stated that registration of owners of securities held in a holder's account, collaterals in form of rights to those securities are governed by legal regulations according to location of registered office of the participant.

**CDCP defined the Slovak legislation as the governing law for rules governing its activities, including operation of the securities settlement system, namely the Rules of Operation and also relevant agreements with clients. The Slovak legislation as the governing law is determined for special cases also by ZOCP.** Specific regulations are included in following sections of this document.

When CDCP has an account opened in a foreign country (e.g. in other central depository as a linked depository), which is opened and maintained for the central depository in the other Member State by foreign central depository, foreign bank, or foreign stock broker with registered office in the Member State, than the legal relationships as regards the account are governed by laws of the relevant Member State in territory of which the account is opened and maintained. The books (registers) CDCP maintains on such accounts, on securities held on these accounts, or on owners or holders of securities held on such accounts are governed by laws of the Slovak Republic.

In the year 2019 new regulation transposing provisions of SRD II was approved in the Slovak Republic. The new legal regulation became effective from the day when the Commission Implementing Regulation (EU) 2018/1212 becomes effective, i.e. on 3 September 2020. This regulation is governing shareholder identification, transmission of information and facilitates exercise of shareholder rights. These rules, under the Slovak legal regulation, apply also to intermediaries (i.e. participants, including foreign participants), when they provide services to shareholders, or to other intermediaries in chain of ownership, in connection with shares of joint stock companies in the Slovak Republic, which are admitted to trading in the regulated market in the Slovak Republic, or in other Member State. The rules are applicable also to



intermediaries from a non-Member State, in case they provide services to the shareholders according to the previous sentence.

In case CDCP would be in position of an Investor CSD, as an intermediary it would have to apply rules of relevant country for the shareholder identification, transmission of information and facilitation of exercise of shareholders rights pursuant to SRD II regulation as transposed in a State, where the registered office of respective issuer is located. The rules would be applicable similarly to CDCP participants in position of next intermediaries in the chain of intermediaries.

## 1.2 Rules and procedures

The basic rules and procedures of CDCP are mainly:

- the Rules of Operation, including the Executory Decrees
- Claim Settlement Procedures
- Objection Settlement Procedures
- User Committee Statute
- the Scale of Fees of Centrálny depozitár cenných papierov SR, a.s.

The rules and procedures governing activities and provision of services of CDCP are set in the Rules of Operation pursuant to provisions of article 103(1) of ZOCP.

Under the provisions of the article 103(4) the Rules of Operation are binding upon the central depository, members, securities dealers who keep records in accordance with 71h(2), entity for which a central depository has opened a holder's account in accordance with Article 105a, legal and natural persons for whom a central depository has opened an owner's account in accordance with Article 105 and Article 164 of ZOCP, issuers whose securities are registered at the central depository, issuers whose list of shareholders is maintained by the central depository, the stock exchange, legal persons and natural persons placing instruction to register the creation, change and expiry of the pledge, legal persons and natural persons requesting registration of the pledge in the paper-form security, and upon legal persons and natural persons requesting an extract from the pledge register, and other entities to whom the central depository provides services in connection with execution of its activities.

The Rules of Operation are available to all clients at CDCP website [www.cdcp.sk](http://www.cdcp.sk) and at registered office of CDCP.

The Claim Settlement Procedures and Objection Settlement Procedures are addressed to the clients of CDCP and contain procedures and rules to submit a claim or objection. The documents are part of the Policy for settlement of claims and objections and execution of corrections and additional entries in the registry under article 108 of ZOCP.

The User Committee Statute governs in more detail the selected issues related to the User Committee established pursuant to the article 28 of CSDR Regulation.

Under the article 34 of the CSDR Regulation the central securities depository publishes prices for its services in the Scale of Fees of Centrálny depozitár cenných papierov SR, a.s.; at the same time CDCP thereby provides to its clients also information on fees for specific services provided separately.

The aforesaid rules and procedures are available to all clients on the website of CDCP [www.cdcp.sk](http://www.cdcp.sk), and at the registered office of CDCP.

### 1.3 Relevant agreements

#### Agreement relevant to CDCP activities and operation of a securities settlement system

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- The Framework Agreement concluded among CDCP and the European Central Bank and national central banks in connection with provision of settlement services through the T2S Platform (hereinafter „**T2S Framework Agreement**“).
- The Collective Agreement between the European Central Bank, the national central banks and Central Securities Depositories as regards to use of T2S Platform as a common settlement infrastructure (hereinafter „**Collective Agreement**“).

CDCP provides for settlement of transactions in securities via T2S (as participating central depository). T2S is single technical platform of the Eurosystem, enabling the central security depositories and the central banks to provide for basic, cross-border and neutral services of securities settlement in the central bank money.

Operational requirements applicable to T2S are governed by legal regulations of the European Central Bank, primarily by directions, as well as by contractual arrangements with the central depositories. In addition, T2S is subject to supervision by the Eurosystem and with respect to T2S supervision, the Eurosystem cooperates with relevant authorities responsible for supervising the central securities depositories.

The T2S Framework Agreement and the Collective Agreement are governed by the laws of Germany, and in connection with enforceability of law and obligation the T2S Framework Agreement sets in its provisions following:

- article 42 – Dispute resolution in following steps:
  1. negotiations involving the Eurosystem, the Contracting CSD and, as the case may be, the involved Participating CSDs
  2. in case negotiations pursuant to section 1 were not successful, it is possible to escalate the dispute for negotiations at CSD Steering Group (CSG)
  3. if dispute cannot be resolved by the CSG, the dispute may be escalated to T2S Board (the Market Infrastructure Board)
  4. if parties in the dispute do not agree with resolution, the dispute shall be escalated to the competence of Governing Council

+ competence of the Advisory Group or the Non-euro Currencies Steering Group (NECSG) applies

- article 43 – Arbitration – preferred is a disputes resolving procedure under the article 42, and subsequent is escalation to the Court of Justice of the EU
- article 47(3) – Amendments - in case of amendment of the legal act or instrument forming an element of the overall legal framework for T2S, the parties agree to negotiate to amend this Agreement for the avoidance of any doubt (**prevention of risk of unforeseeable law application**)
- article 54 – Choice of law – the Agreement shall be governed by the Laws of Germany.

CDCP is bound by the T2S Framework Agreement, the Collective Agreement and T2S Documentation. Despite the fact that German law is set as the governing law, enforceability of law is declared primarily by methods for dispute resolutions (preferred are negotiations among contracting parties), and obligatory informing of contracting parties on amendment of legal act relevant to the T2S legal framework.

As regards utilisation of the settlement services, the participants and other market infrastructures with granted access to the settlement system are obliged to adhere to procedures set by the T2S Documentation in part relevant to them. This obligation is set for them in the Rules of Operation (article 1(4), Part VI). The T2S Documentation consists of set of documents governing T2S functioning, and includes the General Functional Specifications, the User Detailed Functional Specifications, the Business Process Description, the User Handbook and the User Requirements. CDCP publishes the documentation, or link to the official wording, on its website.

### **Agreements related to CDCP activities and LEI allocation**

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- **Non-Disclosure Agreement** between the GLEIF and CDCP as LOU (signed on 04 October 2016)
- **Master Agreement** between the GLEIF and CDCP as LOU (signed on 05 September 2017)

The Non-Disclosure Agreement creates the Appendix 1 to the Master Agreement; however, it is prepared as a separate document, i.e. as document signed by CDCP independently from the Master Agreement. The hereinafter stated provisions of the Master Agreement apply fully also to the Non-Disclosure Agreement, as the Non-Disclosure Agreement refers to the Master Agreement multiple times.

CDCP as the Local Operating Unit - LOU (accredited entity to assign Legal Entity Identifier (LEI) to subjects with registered office in the Slovak and Czech Republic) is operating in compliance with provisions of the Master Agreement and the Non-Disclosure Agreement. The operations consist primarily of creation and issuance of new LEIs to the applicant,

collection of corresponding Legal Entity Reference Data, maintaining and renewing such data, or transmission of LEI to other LOUs.

- According to the paragraph 168 of the Master Agreement – this Agreement shall in all respects be governed by, and interpreted in accordance with the substantive laws of Switzerland, without regard to Switzerland’s conflict of laws rules.
- According to the paragraph 169 of the Master Agreement – Notwithstanding the above choice of Law, both Parties acknowledge that certain areas and issues may be mandatorily governed by a different law, such as by the local law at the LOU’s domicile, and national trademark law regarding GLEIF’s or LOU’s trademarks.
- According to paragraph 11 of the Non-Disclosure Agreement – This Non-Disclosure Agreement is subject to the law and the jurisdiction agreed in the Master Agreement.

CDCP is bound by aforesaid agreements, therefore as a LOU is bound by the substantive laws of Switzerland and by jurisdiction of Switzerland as regards activities performed as a LOU. However, the contractually declared dispute resolution procedures are also closely linked to the law enforceability. In terms of the Master Agreement among such instruments belong:

- article XVI. - **Appeals and Complaints** – remedial measure aiming to resolve issues between GLEIF and the LOU amicably.
- article XVII. letter B - **Mediation** – if the Parties are unable to resolve the matter themselves, either Party may submit the matter to mediation; the place of the mediation shall be Basel/Switzerland, except if both Parties agree in a written and signed instrument on a different place.
- article XVII. letter C – **Arbitration** – all disputes arising out of or in connection with this Agreement shall be exclusively and finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators; the place of the mediation shall be Basel/Switzerland, except if both Parties agree in a written and signed instrument on a different place.

The contractual obligations of CDCP towards GLEIF emphasise a „culture of conversation“, which includes a culture of trust and cooperation, aiming at reducing confrontation and formal steps. Hence, the Master Agreement stipulates that before taking resort to steps like lodging an appeal or complaint or mediation or arbitration, the affected Party shall whenever possible take the issue up openly and in good faith with the other Party, giving a mutual opportunity to understand and to remove misunderstandings, to cure amicably, and to resolve the issue in mutual trust and co-operation.

## **Agreements related to CDCP activities in capacity of the National Numbering Agency and to assigning of ISIN, FISN and CFI codes**

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- Application Form for ANNA Membership.
- The Articles of Incorporation of the Association of National Numbering Agencies (“The Articles of Incorporation”)
- Letter of Understanding Regarding Service Level on ISIN and Other Standards

CDCP as a National Numbering Agency and member of the Association of the National Numbering Agencies (ANNA) is assigning ISIN, FISN and CFI identifiers. When providing specified activities, CDCP meets its contractual obligations towards ANNA, set primarily in above mentioned legal documents.

The governing law and dispute resolution procedures directly related to enforceability of law are set in The Articles of Incorporation in article 33. Thereby set the governing law and dispute resolution procedures apply also to rights, obligations and regulation pursuant to the document The Letter of Understanding.

All disputes between CDCP and ANNA relating to validity, construction, performance or alleged violation of stated legal documents shall be submitted to the Belgian Law, including Article 1871 of the Civil Code, and shall be resolved solely by arbitration. In case of dispute following procedure applies:

- Upon delivery and receipt of an Arbitration Notice by any of the contractual party, the parties shall commence negotiations to select an arbitrator. If at the end of 30 days following the date of the receipt of an Arbitration Notice, the parties have not reached consensus on which single arbitrator is to be selected, each party shall select one arbitrator. Then these arbitrators shall jointly name a third arbitrator to assist in such arbitration and preside over the arbitration tribunal. If they are unable to select a third arbitrator, the Belgium Arbitrator shall be used.
- The Arbitration shall be held in Brussels, Belgium
- Except specified rules (as stated above), the arbitration shall be conducted in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce
- The award rendered by the arbitrator(s) shall be final, and shall be subject to forced execution in any court of competent jurisdiction.

## **Agreements with clients of CDCP**

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The agreements with clients are primarily the agreements with participants, other market infrastructure, linked central securities depositories, issuers and other clients.

The Rules of Operation are fully applicable to agreements concluded between CDCP and its clients, as the provisions of the Rules of Operation (Part I. Introductory Provisions, article

1(9)) refer to laws of the Slovak Republic with respect to all clients. In the more general aspect, **in relation to all clients**, we have to mention that the article 1(9) of Part I of the Rules of Operation of CDCP states that: „Unless CDCP and client agree otherwise, or unless stipulated otherwise in the Rules of Operation, the laws of the Slovak Republic shall govern the relations between them.“

**Individual agreements with the clients include provision according to which the rights and obligations of the contractual parties are governed by laws of the Slovak Republic, therefore their enforceability is guaranteed in the Slovak jurisdiction.** Similarly, the binding effect of the Rules of Operation is declared in the agreements. The competent court to settle disputes arising from the agreements shall be a competent court of the Slovak Republic – as regulated in the agreements with the participants and issuers, for example.

In addition, we would like to state, that reference to the laws of the Slovak Republic is included also in ZOCP (article 105(5), article 105a (6) and article 106(5)). The legal relationships in case of participants/members, whose accounts (owner’s account, holder’s account and client’s account) are opened in CDCP, are governed by the Commercial Code.

At present, the special case when CDCP in relation to the clients applies laws of other country is protection of personal data of legal persons in connection with provision of LEI administration services. Namely, the rules for legal entities personal data protection pursuant to Swiss Federal Act No 235.1 on Data Protection of 19 June 1992 (DPA) as amended and related Ordinance 235.11 to DPA of 14 June 1993 (DPO) as amended are applied. Above stated is justified by the fact that the Slovak legal regulation and the European legal regulation (under GDPR) govern solely the personal data protection with respect to natural persons, whereas CDCP committed itself to protect the personal data also in respect to legal persons.

## **2. Nature of legal claims**

### **2.1 Operation of securities settlement system**

According to valid ZOCP and relevant provisions of the Rules of Operation, the laws of the SR are applicable to the operation of CDCP settlement system, as well as to the rights and obligations of participants and other persons with respect to a collateral, so protection of participant’s position, and of the collateral which can be provided in connection with participation in the settlement system is ensured in adequate lawful way. Aforesaid is applicable also in case bankruptcy, restructuring permit, or other procedure falling under participants default was declared on property of CDCP, or a participant.

Complex regulation of CDCP rules in connection with operation of the securities settlement system is included in the Rules of Operation.

### **Governing law according to ZOCP**

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Pursuant to provisions of the article 107b(1) of ZOCP, when the settlement system is governed by the law of the Slovak Republic, **the law of the Slovak Republic shall be the governing law also for all rights and obligations of a central depository, or a participant in the settlement system, that arose in connection with their participation in the settlement system, including rights of other persons to the collateral provided by the participant in the settlement system in connection with its participation in the settlement system**; this applies equally in the event of bankruptcy or restructuring of the central depository or the participant in the settlement system, or the suspension of payments of the central depository or participant in the settlement system, or the suspension of bankruptcy proceedings, or the termination of bankruptcy owing to insufficient value of property of the central depository or the participant in the settlement system. This provision shall equally apply to the linked system and participants in a settlement system of a linked system (article 107b (1) of ZOCP)

Legal relationships connected to collateral (general regulation for collateral is stipulated in the Act no. 40/164 Coll. Civil Code, as amended) are governed by the law of a state, in which collateral is registered, provided in a form of financial instruments or securities other than financial instruments, including collateral provided in a form of rights arising from financial instruments or securities other than financial instruments, while this collateral is:

- a) provided to secure rights of
  1. a participant in a securities settlement system, or
  2. the National Bank of Slovakia, the European Central Bank, a national central bank of any other member state, and
- b) registered in favour of any person under section (a) or in favour of a third person acting on account of the person under section (a), while this collateral is duly registered in the relevant register or other similar records in the Slovak Republic or in the relevant register or other similar records in another member state. (article 107b (2) of ZOCP).

Choice of other governing law for aforesaid legal relationships is excluded (article 107b (3) of ZOCP).

**Collateral provided in a form of rights arising from securities registered in accounts opened in CDCP, or registered in foreign accounts of the settlement system in which CDCP holds securities for participants in the securities settlement system, is governed by the laws of the Slovak Republic.**

As regards operation of the settlement system the provisions of article 99(20) of ZOCP stipulate that **operation of a settlement system is governed by the law of the Slovak Republic**, unless otherwise agreed by the participants in the settlement system and providing that at least one of the participants has its registered office in the Slovak Republic. Participants in the settlement system may opt for the governing law of another member state only if one of them has its registered office in that state. **The specification of the governing law in the Rules of Operation is also considered as an agreement of the settlement system's participants on the governing law.**



## Choice of governing law stipulated in the Rules of Operation

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The article 1(2) of Part VI The Rules for the Settlement System of the Rules of Operation stipulates that:

**“Operation of the settlement system is governed by the laws of the Slovak Republic.** By the laws of the Slovak Republic are governed also all rights and obligations of CDCP as an operator of the settlement system, all rights and obligations of the participants and other market infrastructures in connection with their access to the settlement system, unless defined in these Rules of Operation or ZOCP otherwise, or unless an agreement by which CDCP is bound in connection with provision of the settlement services through the T2S Platform specifies otherwise“.

In the Article 1(3) of Part VI. Rules of the settlement system of the Rules of Operation is also declared that according to article 107a of ZOCP, by the laws of the Slovak Republic are governed all rights and obligations of CDCP or a participant in the settlement system in connection with its participation in the settlement system.

When providing the settlement services through the T2S platform, CDCP is governed by applicable provisions of the Collective Agreement. The central depository is bound by the Collective Agreement according to this provision and by T2S documentation which forms part of the Collective Agreement. The legal relations set in the Collective Agreement shall be governed by laws applicable to these contractual relationships. With respect to the use of settlement services, the participants and other market infrastructures with granted access to the settlement system shall comply with the procedures defined in the T2S documentation in applicable part (article 1(4), Part VI. of the Rules of Operation).

In case of a participant with registered office located in other Member State, the Slovak jurisdiction is stipulated as the governing law also in an agreement with respective participant, concluded by the participant with CDCP for the purpose of access to the CDCP settlement system.

## Settlement Finality

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Consequently to **requirements according to article 39 of the CSDR Regulation (settlement finality)** the central depository in the Rules of Operations explicitly regulates:

- when the settlement is final (article 2, Part VI. of the Rules of Operation)
- the moment of entry of a settlement instruction to the settlement system (article 10, Part VI. of the Rules of Operation)
- the moment of irrevocability of a settlement instruction (article 10, Part VI. of the Rules of Operation)

Setting of the moment of entry of a settlement instruction to the settlement system, and setting of the moment of irrevocability arise from the legal regulation ZOCP (which transposes provisions of articles 3 and 5 of the Directive 98/26/EC of the European Parliament and of the



Council on settlement finality in payment and securities settlement systems) and from the Collective Agreement (T2S).

Under the article 107a of ZOCP applies that from the moment set in the Rules of Operation the participant in the settlement system, or any other third party, may not validly revoke or cancel instruction for registration of transfer accepted in the settlement system, neither prevent to execution of such instruction in any other way.

## 2.2 Enforceability of law in case of default of a participant

### Legal Framework under ZOCP

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**Special procedures are applied in case of default of a participant**, which are regulated mainly in article 107a (2) and (3) of ZOCP.

A declaration of bankruptcy or restructuring permit on the property of a participant in the settlement system, or a participant in interconnected system (hereinafter „participant“) shall not affect the right to use funds and securities on the account of the participant for the fulfilment of obligations of a participant on the settlement system business day which is the date of the declarations of bankruptcy or restructuring permit. A business day is time period for execution of all activities during one operation cycle of the settlement system (article 107a (2) ZOCP).

The obligation to process and settle instructions of a participant, and validity and enforceability of such instructions against third parties in case of declaration of bankruptcy or restructuring permit on the property of a participant is regulated separately. As regards instructions for registration of transfer which became irrevocable at the moment set by the Rules of Operation, aforesaid obligations and rights remain preserved:

- a) prior to the moment of a declaration of bankruptcy or restructuring permit,
- b) at the moment of the declaration or restructuring permit and following that moment if the instructions for registration of transfer were accepted by the settlement system on a business day on which a bankruptcy or restructuring permit were declared, and provided that the central depository was not aware of the declaration of bankruptcy or restructuring permit <sup>1</sup>.

Further rules and procedures governing default of a participant are set in the Rules of Operation, namely the article 17 of Part II, and the article 7 of Part VI. CDCP regulations (including internal rules) comply with the requirements of CSDR Regulation and relevant ESMA Guidelines, and to rules set by the Collective Agreement (T2S).

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<sup>1</sup> §107a(3) ZOCP – last amended wording submitted to the National Council of the SR in May 2017.

**Separate legal regulation in case of default of a participant is included in the act no. 7/2005 Coll. on Bankruptcy and Restructuring as subsequently amended (if insolvency of a participant is governed by the Slovak laws):**

- The article 176 and following of ZKR set separate provisions with respect to bankruptcy of financial institutions and final settlement of profits and losses. Only the competent supervisory body, or official receiver after previous consent from relevant supervisory body, are authorised to submit a motion for declaration of bankruptcy, in case it is under receivership under special regulation. The Resolution Council is authorised to place a motion for declaration of bankruptcy for institution under special regulation on resolution. Restructuring of the Slovak financial institution or of a branch of foreign financial institution is performed under receivership.
- The article 179 of ZKR separately specifies the effect of declaration of a bankruptcy or permit for restructuring on property of participants or operator (CDCP) of the settlement system. This regulation transposes requirements of the Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems and the Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements. Special legal effects, namely protection is provided in connection with collateral provided in connection with the settlement system and right to use securities on the account of the participant in the settlement system administered in the central depository to fulfil obligations of a participant in the settlement system resulting from its participation in the settlement system.
- Under the article 191 of ZRK exercise of rights in financial instruments which must be registered in a register, in an account, in a central deposit system, or in another similar system shall be governed by law of the Member State on whose territory the respective register, account, central depository system, or other similar system is maintained.

To different types of financial institutions (mainly banks, security brokers) applies also separate provisions regulating activity of respective type of financial institution.

Furthermore, it is possible to state that special protection as regards instructions in the settlement system is provided also in connection with resolution of a participant under the Act No 371/2014 Coll. on resolution in the financial market (transposed rules of BRRD Regulation).

### **2.3 Aspects of ownership in connection with securities held in accounts opened in CDCP**

Nature of legal title to assets held in accounts opened in CDCP arises from legal regulation in ZOCP (article 105, article 105a, and article 106).

**Omnibus Client Segregation – Holder’s Account:** The Holder for whom the Holder’s Account has been opened is not beneficiary/owner of securities registered in the account.

Beneficiaries/owners of securities are persons registered as owners in the holder's registry pursuant to article 71h(2) of ZOCP, or in similar registry pursuant to legislation based on which the foreign holder has been established.

**Individual Client Segregation – Client's Account:** The Member for whom the Client's account is maintained is not beneficiary/owner of securities registered in this account; hence neither of securities registered in related Member's Registry (on owner accounts – clients of a member registered in the client's account). Person for whom the owner's account is administered within the client's account is considered to be the beneficiary/owner of securities registered in such account. For that reason only securities of one owner can be registered in the owner's account.

**Owner's Account opened and maintained in CDCP:** Person for whom the owner's account is administered is considered to be the beneficiary/owner of securities registered in such account. For that reason only securities of one owner can be registered in the owner's account.

Further information with respect to account segregation is in the document *Segregation of accounts in Centrálny depozitár cenných papierov SR, a.s.*<sup>2</sup>.

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<sup>2</sup> published on the website of CDCP - [www.cdcp.sk](http://www.cdcp.sk)

### 3. Insolvency proceedings as regards CDCP property

CDCP is a company with the registered office in territory of the Slovak Republic, and in connection with insolvency proceedings mainly laws of the Slovak Republic are applicable to CDCP.

In addition we would like to refer also to the European legal regulation (namely Regulation (EU) 2015/848 on Insolvency Proceedings), applicable to insolvency proceedings that are compliant with conditions stipulated in the mentioned regulation. The regulation enables to open main insolvency proceedings in the Member State where the debtor has the centre of its main interests, whereas in case of CDCP exactly the Slovak Republic may be considered for the centre of its main interests.

CDCP adheres to prudential requirements set by the CSDR Regulation (and relevant delegated regulation) in order to ensure that it is secure and reliable and always meets the capital requirements. These capital requirements ensure that CDCP is always sufficiently capitalised against risks it is exposed to, and is able to perform orderly wind-down or restructuring of its activities if required. Calculation of minimal capital required to cover major risks CDCP is exposed to, and also other legally binding requirements are internally regulated, monitored and documented by CDCP.

#### **Application of insolvency proceeding in connection with assets of CDCP clients**

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The fact that property is not part of an account provider (CDCP) in case of its insolvency is one of main aims of the asset protection. For that purpose the regime applicable in case of insolvency of an account provider has to be considered.

Legal title of the clients as regards securities that are registered for them in accounts maintained in CDCP shall not be affected by insolvency of CDCP (insolvency proceedings), irrespective whether the securities are registered in a holder's account, client's account, or owner's account.

#### **In case of insolvency of CDCP the insolvency proceeding shall be governed by laws of the Slovak Republic.**

Under the laws of the Slovak Republic, securities registered in accounts opened in CDCP are not part of CDCP property, so they are not part of property that is subject to the insolvency proceedings. In case of application of insolvency proceedings the creditors of CDCP are not entitled to cover their claim by acquiring a title to securities registered in accounts maintained by CDCP (except securities owned by CDCP), hence transfer of securities of CDCP clients is not possible for this purpose. The title to securities registered in accounts maintained by CDCP remains preserved and protected, and this property (securities) is segregated from CDCP property.

The securities registered in accounts maintained by CDCP remain in ownership of CDCP clients also in case of application of insolvency proceedings, so their transfer is possible

solely in compliance with the disposal rights of CDCP clients (ownership interests of securities owner, authorised participant/member as a securities holder). Aforesaid also means, that according to laws of the Slovak Republic the clients of CDCP do not have to claim their title to securities in case of insolvency of CDCP (as it is in case of CDCP creditors), as their title to securities (holding or ownership) is maintained and guaranteed.

### **Relevant legal regulation**

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- **Act No 7/2005 Coll. on bankruptcy and restructuring and amending and supplementing certain acts (ZKR)**

Separate provisions of article 176 and following of ZKR, described in more detail in connection with participant default on pages 17 and 18 of this document are applicable to the central depository (as a financial institution).

The property creating assets in bankruptcy is qualified in ZKR positively and negatively. According to the article 67 of ZKR it is created mainly by property in ownership of bankrupt, property covering obligations of the bankrupt, and other property if stipulated in ZKR. Negative qualification is contained in article 72 of ZKR. That means that bankruptcy assets are not created by assets of CDCP clients.

- **Act No 566/2001 Coll. on Securities and Investment Services and amending and supplementing certain acts (ZOCP)**

Under the article 159 of ZOCP the property entrusted by clients to a central depository, items, property rights and other assets related to the operation of the central depository shall not be subject to the execution of a decision pursuant to separate legislation, hence neither to execution of a decision in insolvency proceedings.

If the National Bank of Slovakia finds any shortcomings in the operation of CDCP, according to article 144(2) of ZOCP, it is entitled to impose a receivership on the central depository (reorganisation and restructuring measure, which may affect existing right of third persons) for the reasons under article 147 of ZOCP. Furthermore, also protection of financial instruments deposited with, administered, managed or held by the central depository are among purposes of the receivership.

In addition, the regulation under the article 107b of ZOCP as regards to operation of the settlement system in connection with declaration of bankruptcy or restructuring permit to property of CDCP applies. (*further details in part 2.*)

In Bratislava, on 21 October 2020