

# **KELER Ltd. Depository Announcement - No. 9-02**

**on the finality of settlement in payment and securities  
settlement systems**

**Effective from: 17 December 2020**

## 1. Scope of the Depository Announcement

The entry into force of this Depository Announcement repeals Depository Announcement No. 12/2017, entitled "For the implementation of Act XXIII of 2003 on the finality of settlement in payment and securities settlement systems", which was effective from 23 November 2017.

Pursuant to Act XXIII of 2003 on the finality of settlement in payment and securities settlement systems (hereinafter: Tvt.) with regard to securities settlement systems, including the Target2-Securities (hereinafter: T2S)<sup>1</sup> securities settlement platform of Eurosystems KELER Central Securities Depository Ltd. (hereinafter: KELER), under its General Rules of Business and as a key Participant is authorised to initiate insolvency proceedings and perform contact tasks with the court, other competent authorities (hereinafter: Authority, such as the Central Bank of Hungary), the T2S and direct and indirect System participants.

This Depository Announcement ("Announcement") sets out the rules and procedures (which may be) applied by KELER during insolvency proceedings.

The following, in particular, are classified as insolvency proceedings:

- bankruptcy- and liquidation proceedings or the appointment of a temporary administrator under Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings,
- the supervisory measure according to Section 185 Subsection (2) Point c) Subpoint cf), Section 48 Subsection (5) and Section 55 Subsection (2) of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (hereinafter: Hpt.),
- the supervisory measure according to Section 128 Subsection (1) and Section 164 Subsection (1) Points h) and n) of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (hereinafter: Bszt.) and the payment ban according to Section 135 Subsection (1) of the Bszt,
- the supervisory measure according to Section 400 Subsection (1) Points h) and j) and Subsection (4) of Act CXX of 2001 on the Capital Market,

provided that the competent authority specified that its proceeding is an insolvency proceeding according to Section 5 Subsection (1) of the Tvt.

It should be stressed that the provisions of this Depository Announcement should be applied specifically in the event of the insolvency of a participant; however, applied to the appropriate extent they are also suitable for handling other defaults of Participants, for example the revocation of authorisation.

Interested parties concerned by the insolvency of a participant of the settlement system:

- KELER
- External interested parties:
  - supervisory officer, receiver, or liquidator
  - authorities:
    - Central Bank of Hungary, as supervisory authority of financial organisations

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<sup>1</sup> As a supranational securities settlement system T2S was set up for connecting certain central securities depositories and central banks of the European Union by enabling cross-border DVP settlement, which is realised in cash accounts managed by participating central banks and securities accounts managed by participating central securities depositories.

- Central Bank of Hungary, as an institution involved in operating the settlement system
  - Courts
  - competent authority regarding the participant subject to an insolvency proceeding
- participants of the settlement system
  - trading venues
  - central counterparties
  - CSD links
  - participants specified in other legislation or supervisory regulatory tool

### 1.1. Objectives

When designing its processes relating to insolvency proceedings against participants KELER wishes to achieve the following objectives:

- Common, uniform and consistent application of the measures defined in Article 41 of the CSDR<sup>2</sup>
- Efficient information-sharing with the key concerned and involved parties specified in Article 1.
- Minimising the impact on other participants.
- Preventing system-level risks (e.g. reducing the severity of disputes relating to settled transactions).

## 2. Rights and obligations of KELER as a designated participant under Section 3 (1) c) of the Tvt.

### 2.1. Contacts with the court and the competent authority, as part of which

- a) KELER, as designated System Participant notifies in writing the court, the competent authority (Authority), and T2S of the persons designated to receive the notification as per Section 5 (1) of the Tvt., specifying their position and contact details

Person reported to the court, the competent authority (Authority), and T2S, authorised to receive notifications:

**Zsolt Demkó-Szekeres, Chief Executive Officer**

E-mail: [elszamolohazusers@keler.hu](mailto:elszamolohazusers@keler.hu)

[T2S-SettlementManager@keler.hu](mailto:T2S-SettlementManager@keler.hu) (for notifications from the ECB)

**Mailing address:**

KELER Központi Értéktár Zártkörűen Működő Részvénytársaság (KELER Central Securities Depository Ltd.)

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<sup>2</sup>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

1074 Budapest, Rákóczi út 70-72.

Central phone number: +36-1-483-6100

Central fax number: +36-1-342-3539

- b) KELER, as designated System Participant shall notify the court and the competent authority within 15 days of the certified receipt specified in Article 6.1. (the Authority is notified of the data of indirect and direct System Participants specified in Article 3 (1) cb) of the Tvt. and Article 4.1. a) of this Depository Announcement and of changes to such data).

2.2. For the purposes of compliance with the Tvt., during contact with direct and indirect System Participants KELER may request and register the data and information specified in Article 4.1. a) of this Depository Announcement. If KELER deems it necessary, it may also request the submission of supporting documents for data.

2.3. KELER shall keep records from which the content and time of entry of notifications of insolvency proceedings sent to the competent court or authority (Authority) or T2S can be clearly identified subsequently, as well, and which records must be kept for 10 years.

### **3. Obligations of KELER as settling party**

Upon receiving a notification of insolvency proceedings against a direct or indirect System Participant member KELER shall follow Articles 5 and 6.

### **4. Obligations of direct and indirect System Participants**

For connecting to the system the standard authorisation prescribed by the General Rules of Business of KELER (*Annex 1*) must be signed.

#### **4.1. Direct and indirect system participants must provide in writing**

- a) the following data listed in the General Rules of Business of KELER, using the standard KELER form (*Annex 2*), simultaneously with signing the authorisation:
- name,
  - registered seat,
  - company registration number,
  - tax number,
  - name of the authorised contact person entitled to take steps and their substitute(s),
  - position, department
  - telephone- and fax number.
  - postal and e-mail address,
  - BIC code,
  - LEI code (if available).
- b) KELER must be informed of changes to the data listed in the above a) item within 5 days of the change. Documents not older than 30 days which support

these data (extract from the register of companies, deed of foundation) must also be sent to KELER by this deadline.

## **5. Procedural rules in the event of a notification on insolvency proceeding**

### **5.1. Entry time of the notification on insolvency proceeding**

KELER and the direct and indirect System Participants agree that they shall consider and accept as the certified time of entry of a notification according to Section 5 Subsection (1) of the Tvt. the time when the KELER department designated to receive notifications or a person designated to receive notifications sent to the central e-mail address verifiably received (irrespective of the method of communication) the first officially signed notification or appropriate electronic notification sent by the competent court or authority, authority with competence over the participant subject to insolvency proceeding (Authority), or T2S on an insolvency proceeding against a direct or indirect System Participant.

Any other party who becomes aware of the participant being subject to insolvency proceedings, for example, the central counterparty, trading venue, linked CSDs or the operator of the common settlement infrastructure used by the CSD is also obliged to inform KELER of this fact, which KELER shall check against official sources.

### **5.2. Notification of T2S about the initiation of an insolvency proceeding**

If the notification on an insolvency proceeding was sent by an entity other than the ECB, then after receiving the notification on insolvency proceeding as per Article 5.1 and if it concerns T2S, KELER, as a participant according to Section 3 Subsection (1) Point c) of the Tvt. immediately informs via telephone or electronically the T2S Service Desk about the launching of the proceeding, the content of the notification and the time of its receipt.

The T2S Service Desk notifies the participants of the T2S system with the assistance of the ECB.

### **5.3. Notification of System Participants about the insolvency proceeding**

After receiving the notification on insolvency proceeding as per Article 5.1, KELER, as a participant according to Section 3(1) c) of the Tvt. immediately informs via electronic means the persons authorised by the direct and indirect System Participants according to Article 4.1. a) to receive such notification and take action

- a) of the initiation of the proceeding and the content and time of receipt of the related notification,
- b) of the exact time when the System suspended the admission of instructions from direct or indirect System Participants subject to the proceeding according to Article 5.1. a)
- c) in the case of T2S partners activate in the T2S system the Case 2 and Case 4 restrictions necessary for the suspension.

#### 5.4. Notification of the MNB about the insolvency proceeding

In the event that on the basis of available information an insolvency proceeding needs to be initiated KELER contacts the Central Bank of Hungary (MNB) in order to

- transmit the available information, their details and source according to its relevant internal regulation
- obtain all information which concern and impact the settlement system (where not done yet),
- obtain additional information about the situation
- agree on sharing information generated during the insolvency proceeding and related processes.

#### 5.5. Notification of other participants about the insolvency proceeding and measures

KELER shall immediately inform the following persons and organisations about measures taken after the launch of the insolvency proceeding:

- a) the authorities concerned;
- b) ESMA;
- c) participants not subject to the insolvency proceeding;
- d) trading venues and central counterparties served by the CSD;
- e) the operator of the common settlement infrastructure used by the CSD;
- f) linked CSDs.

If the recipients of the notification are persons/organisations listed in items c) to f), the notification is sent without the personal data specified in Section 3 Subsection (2) of Act CXII of 2011 on Informational Self-Determination and Freedom of Information.

### **6. Procedural rules for insolvency proceedings against a direct System Participant**

6.1. Following the receipt of a notification of insolvency proceedings KELER, as settling party

- a) immediately, within 30 minutes at the latest suspends the admission of instructions from the System Participant subject to the insolvency proceeding. Further instructions may only be admitted according to the procedural rules for insolvency proceedings specified in other legislative provisions (e.g. with the approval of the liquidator, administrator or their agents),
- b) suspends the clearing right of the direct or indirect System Participant clearing member or non-clearing member trading on an exchange.

6.2. Instructions that were admitted pursuant to Article 4 (1) of the Tvt. in the way and by the time limit specified in Article 5.3 b) of the same, and as specified in the General Rules of Business of KELER and the up-to-date Depository Announcement on the entry, settlement and cancellation deadlines of instructions (hereinafter: Depository Announcement) will be settled by KELER as settling party, unless said instructions are cancelled by the direct System Participant subject to the proceeding in the way and by the time limit specified in the General Rules of Business of KELER

and the Depository Announcement.

Following the time limit specified in Article 5.3 b), that is following the time of notification of an insolvency proceeding **KELER shall consider as admitted the following instructions:**

- **with regard to transfer instructions settled outside the T2S system (that is, in KELER) and not in T2S currency KELER shall consider as admitted on the given day instructions for the given value date, whether submitted electronically or as a document, if the instruction**
  - was submitted in the way and with the content defined in the GRB, is correct in terms of form and content, and as such it was admitted by KELER (that is, it was not rejected due to reasons of logic, form, or content)
  - **is a successfully matched and secured transfer instruction**
  - if a notification of insolvency proceeding against the Participant is received, KELER shall consider unmatched and unsecured transactions as not admitted, and shall delete them from the settlement process.
- **with regard to transfer instructions settled in the T2S system and in T2S currency KELER shall consider as admitted on the given day instructions for the given value date, whether submitted electronically or as a document, if the instruction**
  - was submitted in the way and with the content defined in the GRB, is correct in terms of form and content, and as such it was admitted by KELER (that is, it was not rejected due to reasons of logic, form, or content)
  - **is a matched transfer instruction, which KELER shall attempt to settle until the end of the given settlement day. If settlement fails, at the end of the settlement cycle the instruction is deleted.**
- transactions that credit the partner subject to the insolvency proceeding will be settled after the start of the insolvency proceeding, as well.

6.3. The insolvency proceeding does not affect the settlement of T+2 exchange transactions cleared by KELER CCP Ltd.

6.4. The revocability of instructions is regulated in the General Rules of Business of KELER and the Depository Announcement on the entry, settlement and cancellation deadlines of instructions.

6.5. KELER defines the criteria it considers when choosing the measures listed in rules relating to insolvency proceedings in an internal regulation.

6.6. Settlement from security deposits

Cash and securities registered in the settlement account of the customer on the business day on which the insolvency proceeding is initiated cannot be diverted until lawfully admitted transfer instructions are settled, but may be diverted thereafter. These include:

- a) the balances of the cash- and securities accounts of the Participant subject to the insolvency proceeding
- b) the balances registered in their security deposit sub-accounts on the business day on which the insolvency proceeding is initiated,
- c) the balance resulting from credits posted on the day on which the insolvency proceeding is initiated,

which serve for settling the liability of the Participant to the System and the related system on the business day on which the insolvency proceeding is initiated.

## **7. Periodic testing and review of the rules relating to insolvency proceedings**

In order to test the efficiency and practicality of the procedure detailed in this Depository Announcement KELER performs testing and review with system participants and other parties involved at least annually, or carries out new tests requested specifically by the Central Bank of Hungary or in the event of a substantive change in rules relating to insolvency proceedings.

KELER shall designate external parties involved in testing and request their cooperation. Parties involved in testing shall always be sent prior notice of the planned time, exact goal, and expected procedure of the test and other relevant information. The parameters and process of testing are set out in internal regulatory documents of KELER.

KELER performs testing for each securities settlement system it operates, on an appropriate sample of:

- the participants,
- the market infrastructure involved (CSDs, organisations which settle the cash side of securities transactions settled by the CSD, central counterparties, and trading venues),
- and in certain cases, other organisations (such as the operator of the common settlement infrastructure used by the CSD, third parties to whom provision of the service was outsourced, etc.), according to parameters specified in the relevant internal regulation.

If KELER identifies any deficiency in the process during testing, it shall take the necessary steps.

KELER shares the summary of the tests performed with the participants of the test (via their provided contact details) and the Central Bank of Hungary.

In all cases KELER shall inform participants of planned changes to the rules of insolvency proceedings in an announcement and via the KID system.

Budapest, 17 December 2020

KELER Ltd.



## Annex 1

**Authorisation**

The undersigned

**Name:** .....

**Address:**

and

**Name:** .....

**Address:**

representing

**Company name:** .....

**Registered seat:**.....

**Company registration number:** .....

**Tax number:**.....

**BIC code:** .....

**LEI code:** .....

**Mailing Address:**

**Central e-mail address:**

**Central phone number:** .....

**Central fax number:** .....

pursuant to Section 3 (1) d) of Act XXIII of 2003 on the *finality of settlement in payment and securities settlement systems* authorise KELER Central Securities Depository Ltd. (H-1074 Budapest, Rákóczi út 70-72.), to perform the tasks specified in Section 3 (1) c) of the abovementioned act.

The rules and detailed provisions pertaining to the performance of this task are defined in the General Rules of Business of KELER Central Securities Depository Ltd.

.....  
(Place, Date)

.....  
(Authorised signature)

Annex 2

Data Sheet

For implementing the provisions of Act XXIII of 2003 on the finality of settlement in payment and securities settlement systems

For Participants in the securities settlement system

1. Data of the System Participant:

Company name:	
Registered seat:	
Company registration number:	
Tax number:	
BIC code:	
LEI code:	
Mailing address:	
Central e-mail address:	
Central phone number:	
Central fax number:	

2. Data of the contact persons of the System Participant (persons designated to receive the notification and their substitutes):

Name:	
Position:	
Organisational unit:	
Phone number:	
E-mail address:	

Name:	
Position:	
Organisational unit:	
Phone number:	
E-mail address:	

Name:	
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Position:	
Organisational unit:	
Phone number:	
E-mail address:	

.....

(Place, Date)

.....

(Authorised signature)