

Who owns the investment transferred to the investment service providers?

Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (“Investment Enterprises Act”) includes special provisions for the case of liquidation of investment firms. Under Section 136 of the Investment Enterprises Act, financial instruments deposited by clients with, and registered by, investment firms, the instruments owned by, or due to, the clients, as well as instruments forming the object of commodity market services, kept on the accounts maintained for the clients **do not form part of the assets under liquidation**, during the course of liquidation of investment firms. **The investment firm is obliged to take prompt measures to provide the instruments to the clients regardless of the liquidation proceedings**, if no circumstance arises that would hinder the settlement of accounts with the clients on the basis of the records kept by the investment firm and the concordance of the claims of the investors.

At the same time the Investment Enterprises Act also provides as to **how the liquidator is obliged to act if it is not possible to act** on behalf of all clients at the same time as, whether due to the absence of records and of concordance of the claims of the investors or due to other barriers. Under the relevant statutory provisions, primarily in this case, if the holder or depositor of a financial instrument can be identified beyond reasonable doubt, these instruments must be provided to the client. Secondly, if the holder or the depositor of the financial instruments cannot be identified in such a way, such instruments must be divided into homogenous groups (by homogenous group, we mean a group of instruments with identical properties in each individual characteristic, or a group comprising instruments replacing them following the commencement date of liquidation ; we also mean currency-by-currency classification of financial instruments) and be provided to the clients on the basis of the ratio of provision specified in compliance with the regulations of the Investment Enterprises Act.

Finally, regarding instruments which cannot be provided to the client whether in primary or in secondary form, by way of derogation from the priority order specified in Section 57 of Bankruptcy Act, the liquidator is required to satisfy or provide at first these claims from the assets of the investment firm following the payment of the liquidation costs, also taking into



account the provisions applicable to the creation of homogenous groups. A position paper recently published by the National Bank of Hungary, as financial supervisory authority makes significant statements regarding the last category of cases. **The question arises whether the claims of the client in question are regarded as claims of proprietary or contractual nature, if the claim of the client needs to be satisfied from the assets under liquidation.**

Answering this question is also significant because while property claims do not lapse, claims of contractual nature are subject to a five-year limitation period as a general rule.

According to the position of the National Bank of Hungary, if a claim of the client must be satisfied from the assets under liquidation according to the provisions of the Investment Enterprises Act, this claim will automatically turn into claim of contractual nature.

Considering that the object of the property claim is not available, therefore it will be satisfied from the assets under liquidation. The position paper of the National Bank of Hungary in its justification refers to the judicial practice described in the decision of the Supreme Court No. Pfv. II.20.097/2002. It is stated in the referenced decision of the Supreme Court in connection with the property claim within the framework of succession that if the object of the property claim – namely a real estate in this legal case of specific facts - cannot be handed over to the heir because it is no longer available, the heir may claim the purchase price in lieu of the real property; however, this claim is already deemed as a claim of contractual nature rather than property claim, in this manner the rules of limitation also apply to it.

In addition to the aforesaid, the National Bank of Hungary has stood for a position **that if the situation referred to above arises – namely the claim of the client must be satisfied from the assets under liquidation – thus the claim of the client automatically turns into creditor's claim, and the client does not need to register its claim as separate creditor's claim in compliance with the provisions of the Bankruptcy Act.**

On the basis of the above, it should be emphasised that as also stated in the position paper of the National Bank of Hungary, the opinion of the National Bank of Hungary cannot be regarded as legally binding, and its content is not legally binding on other authorities or courts, and the interpretation of the Bankruptcy Act falls outside the field of competence of the National Bank of Hungary.