



# **ANNUAL REPORT 2003**

**FINANCIAL ARBITER OF THE CR**



## CONTENTS

# Contents

- Introductory Word by the Financial Arbiter** 5
- Introduction** ..... 8
- 1. Commencement of the Arbiter’s Work** . 11
- 2. Staffing and Administrative Provision of the Performance of the Arbiter’s Work** ..... 13
- 3. Budget** ..... 17
- 4. The Arbiter’s Notification Activities and the Duty of Institutions to Notify** ..... 19
- 5. Material Activities** ..... 22
  - 5.1. Principles of Proceedings before the Financial Arbiter ..... 22
  - 5.2. General Information about Settled Cases ..... 25
  - 5.3. Description of Selected Heard Cases ..... 26
- 6. Selected Information from the Arbiter’s Work** ..... 37
  - 6.1. Issue of Proceedings before the Arbiter ..... 37
  - 6.2. Issues Not in the Arbiter’s Powers ..... 37
- 7. The Arbiter’s International Cooperation** 40
- 8. Proposed Legislative Changes** ..... 42
- Conclusion** ..... 44
- Besides, it does not seem appropriate that the Arbiter’s powers do not cover the transfer of funds stated in the Introduction to this Annual Report (i.e. payment of taxes and charges pursuant to special legal regulation; payment of social security premium and contribution to the state employment policy pursuant to special legal regulation; payment of state medical insurance premium pursuant to special legal . 44
- List of Appendices** ..... 46



INTRODUCTORY WORD BY THE  
FINANCIAL ARBITER

# Introductory Word by the Financial Arbiter



Within the meaning of S. 21(1) of the Financial Arbiter Act (No. 229/2002 Coll.) I present this Annual Report about my activities in the year 2003.

Article 10 of Directive 97/5/EC on cross-border credit transfers required that a body for out-of-court settlement of disputes be established. This institute aims at ensuring suitable and efficient procedures for settling clients' complains in the field governed by this Directive.

Since the powers of the Financial Arbiter are presented in this Report, I would like to say only a few introductory words.

The year 2003 may be seen as a historical step in the modern history of Czech banking since an institute unprecedented in banking until that time was formed in the Czech Republic. There is a person that may make binding decisions about complaints of the clients of banks and other institutions executing transfers of funds and issuers of electronic payment instruments in fields set forth in the Act. Anyone who feels that his/her rights and interests protected or promised by legislation or by an institution have been damaged or limited by the relevant institution (e.g. by a bank or an issuer of an electronic payment instrument) may file a complaint with the Financial Arbiter.

It may be said that there is somebody the client may appeal to for his/her rights and claims. As the proceedings are free of charge, they are thus open to all citizens of the Czech Republic and also foreigners who have concluded a contract with a particular institution or who use an electronic payment instrument.

It has to be stressed that the Financial Arbiter is a natural person. Neither an authority nor a state institution was established, but rather the "institute" of the Financial Arbiter, which is closest to a public official, although the Act does not explicitly stipulate that.

Throughout the year of activities about which this Report informs the Financial Arbiter and his assistants gained much experience and knowledge to make proceedings before the Financial Arbiter more efficient, faster and thus to improve the whole process. The main aim of banks should be – apart from achieving maximum profit – also a fully satisfied client. The main aim of the Financial Arbiter is also a satisfied client, but the client as petitioner.

There is a well-known saying “Who does not do anything does not make any mistake”. And it is true. The Financial Arbiter is here mainly to “remedy” from time to time something that goes wrong every now and then. The remedy should be relatively quick and sufficient for the petitioner. I will be very glad if the role of the Financial Arbiter, who started his work in the year 2003, succeeds in increasing the prestige and confidence in our banking.



JUDr. Ing. Otakar Schlossberger  
finanční arbitř



## INTRODUCTION

# Introduction

On 1 January, 2003 the Financial Arbiter Act (No. 229/2002 Coll.) (hereinafter referred to as the “FA Act”) came into effect. In accordance with this Act the Arbiter settles disputes that have arisen after the aforementioned date, namely:

- between entities that execute transfers of funds (hereinafter referred to as “Transfer Institutions”) and their client when executing transfers of funds pursuant to special legal regulation<sup>1</sup> in the maximum amount of EUR 50,000;
- between entities that issue electronic payment instruments (hereinafter referred to as the “Issuers of Electronic Payment Instruments”) and the holder of electronic payment instruments when issuing and using electronic payment instruments pursuant to special legal regulation<sup>1</sup>.

The Financial Arbiter of the Czech Republic is a special body for out-of-court settlement of disputes that may arise between the providers of payment services and their clients or between the issuers and users of electronic payment instruments.

This fulfils the respective provisions of Act No. 124/2002 Coll., which makes provision with respect to transfers of funds, electronic payment instruments and payment systems (hereinafter referred to as the “Payment System Act”).

The Arbiter was established as part of harmonizing the legislation of the Czech Republic with European Union countries since Directive of the European Communities No. 97/5/EC on cross-border credit transfers requires that disputes between clients and Transfer Institutions be settled in a speedy and efficient way through out-of-court settlement.

An important element of the activities of the Financial Arbiter is his openness towards the public. This ties in with the preventive activities of this institute that may both directly notify the relevant institutions of defects in their activities and notify the supervisory body should shortcomings persist.

The Payment System Act governs among others the execution of transfers of funds on the territory of the Czech Republic in Czech currency, the execution of cross-border transfers and the issuance and use of electronic payment instruments.

Transfer Institutions and Issuers of Electronic Payment Instruments mean banks, branches of foreign banks and other persons (in particular legal entities) that execute or mediate transfers of funds and do their business on the territory of the Czech Republic and also Issuers of Electronic Payment Instruments.

Pursuant to the Payment System Act, transfer means an operation by means of which the payer (e.g. a client of a bank) gives an order to an institution (e.g. to a bank that maintains his/her current account) to transfer funds from his/her account into the account of a beneficiary.

For the purposes of this Act and save a cross-border transfer, transfer does not mean a postal money order pursuant to special legal regulation<sup>2</sup>; payment of taxes

---

<sup>1</sup> Act No. 124/2002 Coll., which makes provision with respect to transfers of funds, electronic payment instruments and payment systems.

<sup>2</sup> Act No. 29/2000 Coll., which makes provision with respect to postal services.

and charges pursuant to special legal regulation<sup>3</sup>; payment of the social security premium and contribution to the state employment policy pursuant to special legal regulation<sup>4</sup> and payment of the state medical insurance premium pursuant to special legal regulation<sup>5</sup>.

Cross-border transfer means a transfer of funds from one EU member state or a state that is part of the European Economic Area (i.e. EU member states together with Lichtenstein, Norway and Island) into another member state in the domestic currency of any EU member state or a state that is part of the European Economic Area (hereinafter referred to as the “EEA”).

Pursuant to the Payment System Act, electronic payment instrument means an instrument of remote access to a monetary value (in particular payment cards and products of electronic or direct banking) and an electronic payment instrument (e.g. electronic wallet).

---

<sup>3</sup> Act No. 337/1992 Coll., which makes provision with respect to the administration of taxes and charges.

<sup>4</sup> Act No. 589/1992 Coll., which makes provision with respect to the social security premium and contribution to the state employment policy.

<sup>5</sup> Act No. 592/1992 Coll., which makes provision with respect to the state medical insurance premium.



# COMMENCEMENT OF THE ARBITER'S WORK

# 1. Commencement of the Arbiter's Work

In order to fulfil the FA Act, JUDr. Ing. Otakar Schlossberger was elected Financial Arbiter on 10 December, 2002 by the Chamber of Deputies of the Parliament of the CR upon proposal of the Czech National Bank (hereinafter referred to as the "CNB"), the Czech Banking Association and the Association for Payment Cards. Mr. Schlossberger's term of office started on 1 January, 2003, i.e. on the date when the aforementioned Act came into effect.

In accordance with the FA Act, JUDr. Petr Scholz was elected Deputy Financial Arbiter on 4 March, 2003 by the Chamber of Deputies of the Parliament of the CR upon proposal of the Economic Chamber of the CR and the Czech Consolidation Agency. The Deputy Arbiter's term of office started on 5 March, 2003.

Before the FA Act became effective, the CNB provided for premises for the performance of the Arbiter's work including material support and information technologies.

Address of the Arbiter's seat: Washingtonova 25  
110 00 Praha 1

Contact: Tel.: +420 221 674 660  
Fax: +420 221 674 666  
e-mail: [arbitr@finarbitr.cz](mailto:arbitr@finarbitr.cz)  
<http://www.finarbitr.cz>

In January 2003 the administrative issues of the performance of the Arbiter's work were provided for by two employees performing the jobs of a secretary and the Financial Arbiter's methodology specialist. In February 2003 another employee was admitted as a legal expert and in March the Financial Arbiter's specialist was admitted. All employees of the Financial Arbiter's office have a fixed term employment contract with the CNB, limited to the term of office of the Financial Arbiter.

As of 1 February, 2003 the Arbiter issued Regulations pertaining to the Performance of the Financial Arbiter's Work (see Appendix No. 1 to this Report). The Organisation Chart of the performance of the Arbiter's work, which is an integral part of the Organisational Guidelines, is presented in Appendix No. 2. The Organisational Guidelines, issued by the Arbiter also as of 1 February, 2003, provide details about the organisation of the performance of the Arbiter's work.

Subsequently, the Arbiter granted two employees in the positions of methodology specialist and legal expert permanent authorisation to carry out investigation in accordance with the provision of S. 12(7) of the FA Act.



STAFFING AND ADMINISTRATIVE  
PROVISION OF THE PERFORMANCE OF  
THE ARBITER'S WORK

## 2. Staffing and Administrative Provision of the Performance of the Arbiter's Work

Currently, the fulfilment of the FA Act is provided for by the Arbiter, Deputy Financial Arbiter and also four CNB employees of whom two are directly involved in investigation and settlement of disputes on the basis of filed petitions.

The performance of work of the Financial Arbiter's office is ensured as follows (see the concise overview):

- **Financial Arbiter**  
decides submitted disputes; authorises representatives to permanently and/or temporarily fulfil the agenda relating to expert and/or organisational provision of the performance of the Arbiter's work; throughout the term of office assigns work to employees on behalf of the employer; organizes, manages and controls work; gives instructions to the employees for this purpose and establishes cooperation with similar bodies and institutions in EU member states and candidate countries and in countries that are part of the EEA. The Arbiter also cooperates with EU bodies, informs the public about the Arbiter's activities in a suitable manner, e.g. in the press, radio, TV and through the Internet. Besides, the Arbiter presents the role of the Arbiter through lectures or publications.
- **Deputy Arbiter**  
acts on behalf of the Arbiter; in accordance with the Arbiter's instructions carries out tasks ensuing from the Regulations pertaining to the Performance of the Financial Arbiter's Work; prepares source materials for the performance of the Arbiter's work; ensures the inclusion of the performance of the Arbiter's work into the PHARE project; provides expert assistance to the Arbiter when performing the duty of international cooperation; is answerable to the Arbiter for the technical provision of the performance of the Arbiter's work; ensures the required performance of the Arbiter's work in the field of information technologies; informs the Arbiter about his activities on a regular basis and makes proposals and suggestions on how to improve work. Pursuant to the FA Act, the Deputy Arbiter presents the activities through lectures or publications.
- **Financial Arbiter's Legal Expert**  
carries out investigations in the proceedings before the Arbiter; prepares subject matter and expert source materials for the Arbiter's decision on the merits, on objections against the finding, on the imposition of a penalty and objections against the decision to impose a penalty; assesses filed petitions with regard to their admissibility and prepares source materials for their refusal; upon the request of petitioners provides assistance to them with the writing, filing and/or supplementing the petition to open proceedings; analyses and generalises results of proceedings for the preparation of comprehensive reports and source materials for the activities of the Arbiter including petitions as part of authorisation by the Arbiter; prepares stimuli to amend valid legislation based on the Arbiter's experience and prepares source materials

for informing the public about the particular cases. The legal expert specialises in legal aspects of the Arbiter's decision-making activity and coordinates the procedure of external legal experts if the Arbiter authorises them to prepare expert opinions.

- **Financial Arbiter's Methodology Specialist**  
carries out investigations in the proceedings before the Arbiter; prepares subject matter and expert source materials for the Arbiter's decision on the merits, on objections against the finding, on the imposition of a penalty in particular in the field of transfers of funds; assesses filed petitions with regard to their admissibility and prepares source materials for their refusal; upon the request of petitioners provides assistance to them with the writing, filing and/or supplementing the petition to open proceedings before the Financial Arbiter; prepares the Annual Report about the Arbiter's activities; prepares source materials for informing the public about the particular cases; analyses and generalises results of proceedings for the preparation of comprehensive reports and source materials for the activities of the Financial Arbiter including petitions as part of authorisation by the Arbiter; works out internal work procedures for the performance of the Arbiter's work, specialises in the field of economic crime in the payment system.
- **Secretary**  
organises and independently carries out administrative work, provides for the organisation of the Arbiter's everyday business negotiations e.g. with the petitioners, institutions and third parties; provides basic information relating to the filing of petitions to open proceedings before the Arbiter; maintains a database of central recording of received petitions to open proceedings and suggestions; stands in for the Financial Arbiter's Specialist when s/he is not at work, etc.
- **Financial Arbiter's Specialist**  
receives all correspondence sent to the Arbiter through the Internet; prepares analyses for the media; provides basic information about filing petitions to open proceedings before the Financial Arbiter; updates the Financial Arbiter's web pages; prepares source materials in relation to EU member states and candidate countries including EEA countries for the preparation of interim and final reports about the activities of the Financial Arbiter; provides basic information on web pages about similar bodies and institutions in EU member states and candidate countries and in countries that are part of the EEA and also about EU bodies; ensures communication support with media entities, etc.

The Arbiter makes regular checks of petitions filed by the petitioners that are in process. Authorised persons inform the Arbiter about the stage of processing of the particular opened disputes.

Pursuant to the FA Act authorised persons monitor several times a year whether the duty of institutions to notify is fulfilled.

Office hours for the public have been set.

Monday to Thursday: 8.30 a.m. – 3.30 p.m., Friday: 8.30 a.m. – 2.30 p.m. However, if the complainant comes outside the office hours, s/he is admitted, his/her case heard

and assistance naturally provided. Upon agreement with the petitioner, the Arbiter and authorised persons always aim to meet the client's wishes and alter the meeting time at the Arbiter's seat if necessary.

In accordance with the FA Act, the Arbiter so far authorised three natural persons in writing who are not employees of the CNB to carry out investigations. These persons include a judicial expert in the field of graphology, an expert in the area of issuance and use of electronic payment instruments and an attorney.



## BUDGET

### 3. Budget

As for the operation of the Arbiter's office, an agreement was concluded on 27 January, 2003 between the CNB and the Arbiter concerning the administrative provision of the Arbiter's work including the reimbursement of costs relating to his activities.

The agreement contains the facts that the CNB carries out pursuant to S. 1(2) of the FA Act. The CNB ensures the provision of the performance of the Arbiter's work in the field of salary and other emoluments, staffing, financial, IT and material provision and services. The Act speaks about justified costs and in this respect the Arbiter's position essentially depends on CNB's approach in these areas.

So as to ensure unified communication between the Arbiter and the CNB, the Arbiter has been assigned an administrator, namely the Manager of the Monetary and Payment System Section.

It may be said that over the past year the contractual parties fulfilled the agreement on an ongoing basis and that the Arbiter had to deal with (so far unsuccessfully) several issues relating to staffing and implementation of support in the field of IT, in particular with view to the creation of web pages and auxiliary recording programmes required to monitor mainly the time limits for processing.

It is clear from what has been said above that the presented overview of costs of the performance of the Financial Arbiter's work (presented in Appendix No. 3) does not form a separate chapter of the state budget and thus does not have its usual structure.

In the year 2003, the overall costs of the performance of the work of the Arbiter's office stood at CZK 6.199 mil., of which wages, salaries and other social security costs accounted for CZK 4.2 mil., administrative activity for CZK 0.89 mil. and the operation of buildings and equipment for CZK 1.1 mil. The CNB appointed an employee to monitor costs, who informs the Arbiter on a monthly basis about the utilisation of selected items.

The income side comprises only income from imposed penalties (see below). Penalties in the amount of CZK 0.5 mil. were imposed and paid in the period in question.



**THE ARBITER'S NOTIFICATION ACTIVITIES**  
**AND THE DUTY OF INSTITUCIONS TO**  
**NOTIFY**

## 4. The Arbiter's Notification Activities and the Duty of Institutions to Notify

The Arbiter carries out the duty to notify upon the FA Act.

On 12 November, 2003, upon requirement posed by the Standing Commission for Banking of the Chamber of Deputies, the Arbiter presented information about his activities covering the period between 1 January and 31 October, 2003, which the Commission acknowledged.

The Arbiter's web pages contain basic information about the Arbiter's role and powers together with conditions for opening proceedings including the possibility of filing a petition to open proceedings before the Financial Arbiter in electronic form. The web pages also contain examples of disputes that are within the Arbiter's powers and which are not as well as legislation relating to the Arbiter's activities. Besides, information is published on the web pages about central banks in EU member states, in countries that are part of the EEA including the new EU member states and also information about similar institutes in EU countries.

The Arbiter's findings and decisions are also published on the web pages.

On 21 May, 2003 the Arbiter's press conference took place. Representatives of the media were thus acquainted with the Arbiter in person and also with his Deputy, their position and powers.

During the aforementioned period of time, the media showed interest in the provision of expert consultations or presentations about the Arbiter's work (through TV appearances and radio or press interviews). The Arbiter also answered clients' questions in several on-line interviews. News and information about the Arbiter's work appeared in the press on an irregular basis, some of which were based on information provided by the Arbiter. The overall overview of news and information is monitored and filed by the Arbiter's office.

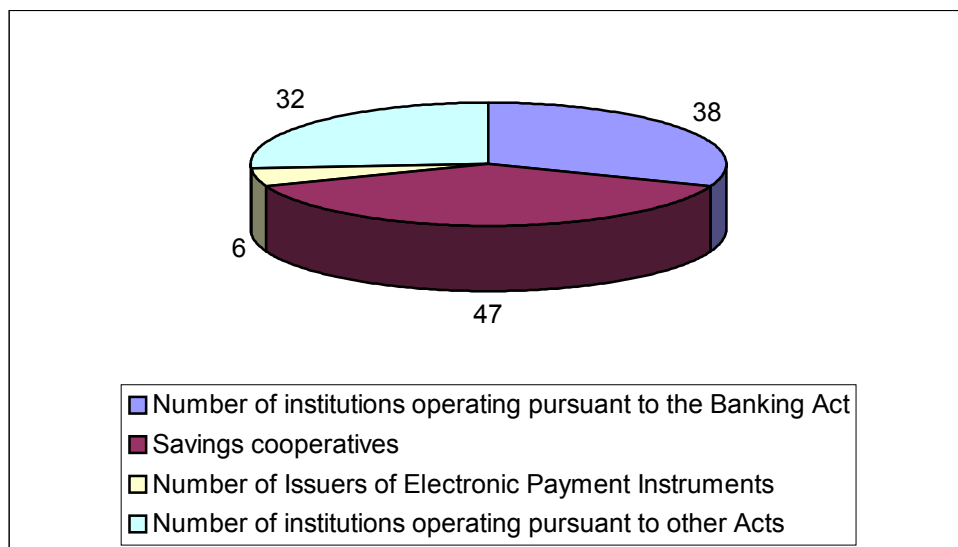
However, it has to be said that some news published in the media without prior cooperation with the Arbiter often presented distorted information about the Arbiter's role.

The Arbiter took part in a number of conferences and workshops organised by the CNB, the Consumer Protection Association of the CR, the Association for Banking Cards, renowned education agencies or directly institutions upon their own request. Both the Arbiter and his Deputy presented their activities several times through lectures at various conferences both home and abroad and also published articles or gave interviews to professional journals.

During the aforementioned period of time, the Arbiter notified bodies that perform supervision over the institutions about ascertained facts about which he learned when performing his work, e.g. representatives of the CNB and the Authority for the Supervision over Savings Cooperatives. In justified cases the Arbiter notified directly the relevant institution.

The FA Act sets forth the duty of institutions (i.e. Transfer Institutions and Issuers of Electronic Payment Instruments) to notify. A list of these institutions including a model fulfilment of the duty to notify is updated on a regular basis and presented on the Arbiter's web pages.

Diagram No. 1 – Structure and number of institutions that operate in the CR and had the duty to notify as of 31/12/2003



A total of five final and effective penalties were imposed for failure to fulfil the duty to notify. As of 31/12/2003, the penalties were paid in the overall amount of CZK 500,000. The penalties are collected and recovered by the CNB upon the Arbiter's decision to impose a penalty.

When monitoring the fulfilment of the duty of institutions to notify pursuant to the FA Act, it was discovered from the viewpoint of the structure of institutions that:

- a) as for institutions that operate pursuant to the Banking Act (No. 21/1992 Coll.) and the Payment System Act (No. 124/2002 Coll.), their objects of business may be verified in conjunction with the CNB and subsequently checked whether they have fulfilled the duty to notify. Institutions operating pursuant to the Savings Cooperatives Act (No. 87/1995 Coll.) are recorded by the Authority for the Supervision over Savings Cooperatives, which sends their list to the Financial Arbiter's office.
- b) as for institutions generally formed in accordance with the Commercial Code that among others issue electronic payment instruments and that do not have to have any licence or CNB's consent, they cannot be identified unambiguously according to the entry in the Commercial Register. Their activities may be hidden e.g. under the objects of business "services in the field of administration and services of organisational and economic nature for natural persons and legal entities". The aforementioned institutions cannot be identified unambiguously according to the entry in the Commercial Register and a penalty cannot be imposed in accordance with the Act for failing to fulfil the duty to notify.



## MATERIAL ACTIVITIES

# 5. Material Activities

## 5.1. Principles of Proceedings before the Financial Arbiter

The principles of proceedings before the Arbiter follow besides the FA Act the Code of Administrative Justice (the Administrative Procedure Act (No. 71/1967 Coll.)). The methodology of processing filed petitions to open proceedings before the Financial Arbiter was amended and supplemented in particular in the course of the first months in order to improve the whole proceedings.

### Opening of proceedings

It follows from what has been said above that the proceedings are opened on the day when the petition to open proceedings is delivered to the Arbiter's office (either sent in written form or via e-mail). Petitioners, wanting to give the fullest picture of their problem, often provide a far too detailed description of the facts. Paradoxically, absolutely irrelevant information is given, which however has to be duly studied and evaluated both separately and in context. This information poses increased demand on the study of not just the petition as such, but subsequently also has an impact on the whole proceedings.

Both the petitioner and the institution are notified of the opening of the proceedings. Besides, the institution is asked to make a statement within the statutory time limit of 30 days. In accordance with the FA Act, the institution may ask for this time limit to be extended by another 30 days.

### Course of proceedings

After the statement concerning the petition is received, the position of the institution is studied. In justified cases, the institution is asked to cooperate and provide further information with view to the gravity of the case.

Besides, in some cases the petitioner is asked to provide oral explanation. Based on the ascertained facts the Arbiter may ask both the institution and in some cases also the petitioner to submit other documentary evidence (usually originals). The institutions may be asked to submit e.g. a video recording that records the use of a particular electronic payment instrument.

Provided oral proceedings are held, a voice recording is made with the consent of either the petitioner or the institution. In some disputes the Arbiter may upon authorisation ask for an expert report to be prepared by a judicial expert in the field of graphology or by an expert in the area of issuance and use of an electronic payment instrument.

It has to be stressed that in the course of the proceedings the Arbiter is not bound by the petitioner's petition only, but may on the basis of his findings decide that a higher performance be granted to the petitioner by the institution. In practice, damages may be awarded to the petitioner if it is ascertained in the course of the proceedings that the petitioner was indeed damaged by the institution, even though the s/he did not seek damages (e.g. because s/he forgot to do so or did not know it was possible, etc.)

Often, other institution that is not involved in the dispute with the petitioner is an indirect participant in the proceedings. This institution may be e.g. the owner of a cash machine (ATM) where a payment card was used or a bank of a trader with

whom it has a contract on the processing of card transactions and where the petitioner's payment card was used. The present wording of the FA Act does not apply to these institutions and it frequently happens that they refuse to cooperate with the Arbiter, referring to the duty to keep the bank secret.

Due to these facts the time limit for issuing the finding by the Arbiter is usually extended in such cases by 30 days and possibly by another 30 days, i.e. to a total of 60 to 90 days from the day on which the proceedings before the Arbiter were opened.

#### Discontinuance of proceedings

The Arbiter discontinues the proceedings, as has already been mentioned, only upon a request to withdraw the petition submitted by the petitioner due to other settlement with the institution.

Besides, the Arbiter may discontinue the proceedings if the petitioner fails to cooperate or if a petition was filed in court in the same case. The Arbiter was not yet forced to discontinue the proceedings on the aforementioned grounds.

#### Issuance of a finding

Pursuant to the FA Act, the Arbiter makes a decision on the merits, i.e. issues a finding containing a statement, reasoning and advice on objections. The statement usually contains a time limit within which actions leading to a financial settlement with the petitioner are to be made or damages are to be granted to the petitioner for damage incurred. The preparation of a finding is a very complex and demanding activity. The finding has to contain statutory elements and has to describe all facts in a way comprehensible to the petitioner and acceptable for the institution. It has to be based on reliable ascertained facts and has to be issued in accordance with legislation and other legal regulations. The Arbiter states in the reasoning on what ascertained facts the issuance of the finding relies, how he assessed the evidence and upon what legal regulations he made his decision. In this phase, close cooperation between a directly authorised employee and the Arbiter is necessary.

#### Objections

Provided the institution appeals within the set time limit, i.e. makes objections, such objections have a suspensive effect. The Arbiter reviews the contested finding and issues a decision on objections by which he either confirms the finding or changes it. The decision on objections is final. After the decision on objections becomes legally effective and the time limit for performance passes, the finding is enforceable pursuant to the Civil Procedure Act.

As has already been stated, the principles of proceedings before the Arbiter follow besides the FA Act the Code of Administrative Justice, which however in some cases makes the proceedings before the Financial Arbiter rigid. Hence, the methodology of processing filed petitions to open proceedings before the Financial Arbiter is changed from time to time based on experience from previous disputes.

A considerably smaller number of sent petitions (compared with the previous period) does not meet the relevant conditions to open the proceedings.

The overall average time required for the issuance of a decision by the Arbiter is thus almost 100 days.

Drawing on experience gained from the work of other European arbiters this time limit is unreasonably long (see Chapter 7 of this Report).

Of a total of 11 findings issued in the period in question in two cases the institution filed an appeal within the set time limit (i.e. filed objections).

However, in both these cases the Arbiter, having reviewed the objections, issued a decision on objections by which he confirmed his previous finding.

### Penalties

The FA Act defines three types of penalties. The first type of penalty relates to the settling of the dispute. Pursuant to S. 23(2) the Arbiter has to impose a penalty in this case provided the final and conclusive finding states that the institution breached a duty pursuant to special legal regulation. The amount of the penalty is set forth in the Act and it is a minimum of 10% of the disputed amount, but at least CZK 10,000.

A total of two penalties in the overall amount of CZK 20,0000 were imposed in the period in question relating to disputes in accordance with the FA Act.

The second type of penalty also relates to the settling of the dispute, but involves the breach of a duty set to the institution in relation to the dispute. The Arbiter may impose this penalty to the institution according to the nature and gravity of the breaking of the law up to the amount of CZK 1,000,000. Pursuant to the Act, the Arbiter may impose the penalty repeatedly provided the breach of a duty continues.

This duty is as follows:

- pursuant to S. 11 of the FA Act a duty to make a statement concerning the petition within the set time limit;
- pursuant to S. 12(6) of the FA Act a duty to appear before the Arbiter upon a request and submit the required documents, meet the Arbiter's request to provide explanation and request to submit documentation relating to the subject matter of the dispute and allow the Arbiter to look into the files and electronic records relating to the dispute;
- pursuant to S. 12(7) of the FA Act a duty of the institution to fulfil its duties pursuant to paragraph 6 also towards authorised persons.

Throughout the year 2003 the Arbiter did not impose any penalty for failure to fulfil a duty imposed on an institution in relation to the dispute.

The third type of penalty is related to a failure to fulfil the duty of an institution to notify pursuant to S. 19 of the FA Act. The conditions governing the imposition of this penalty are the same as those governing the imposition of the second type of penalty.

It may be expected (based on present experience) that after the accession of the CR into the EU the number of complaints will rise also in the field of cross-border transfers. As of 1 May, 2004 the Arbiter's powers will be extended pursuant to the Payment System Act<sup>6</sup> to include this area as well.

Since the currently valid definition of the Arbiter's powers fully covered the working capacity of the present number of employees, it is therefore necessary to increase the number of specialists by one more person.

---

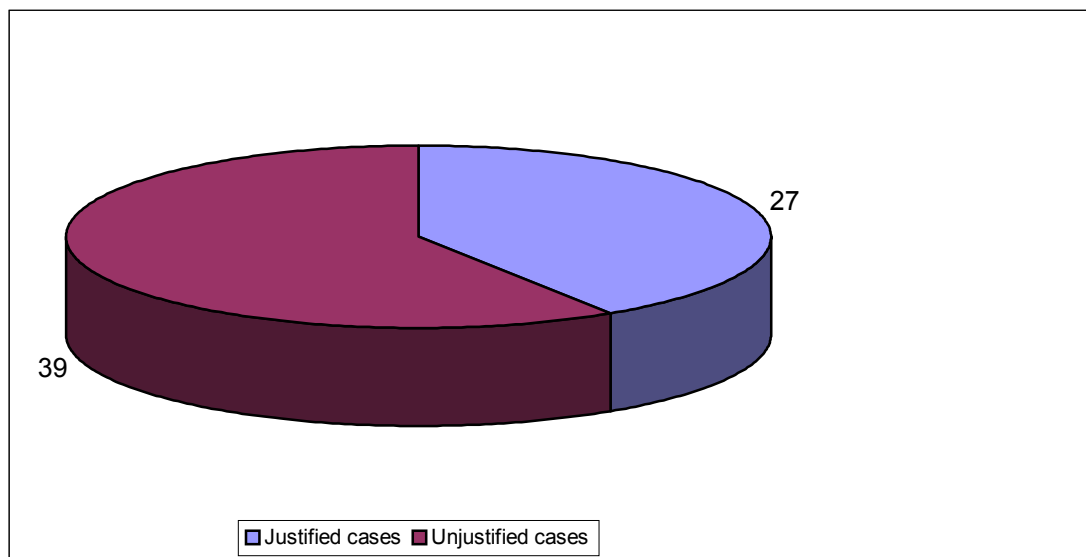
<sup>6</sup> Act No. 124/2002 Coll.

## 5.2. General Information about Settled Cases

As of 31 December, 2003 the Arbiter settled 66 cases of the overall 170 sent suggestions and petitions.

Approx. 10 telephone questions were answered a day together with several questions sent by e-mail. Approx. 15 clients visited the Arbiter's seat a month, asking for advice concerning the possibility of proceedings before the Arbiter. Although most of the visits related to disputes not in the Arbiter's powers, the client received at least advice or opinion of the office experts. It may be said that the number of visits or questions multiplied always after the Arbiter's presentation in the media.

Diagram No. 2 – Number of settled cases

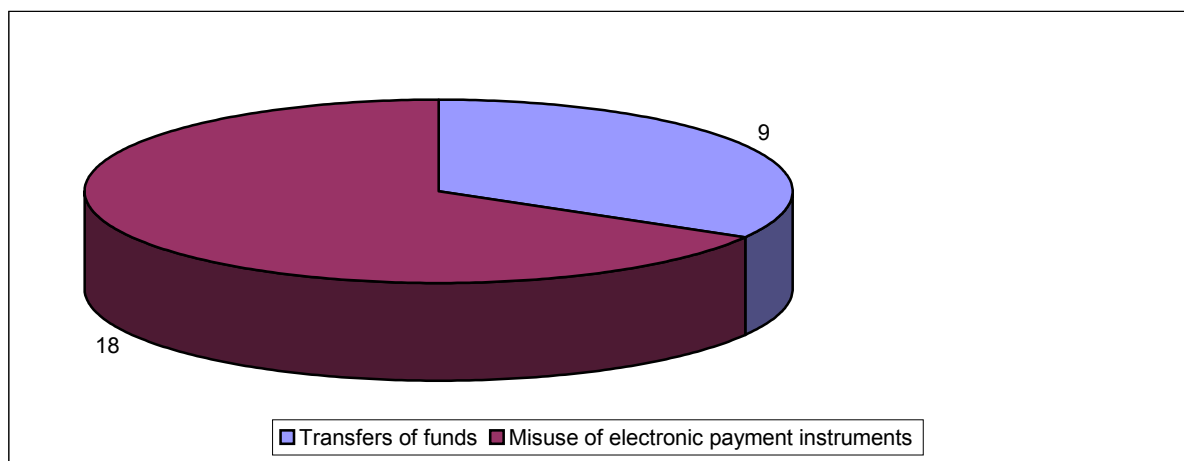


Most of the petitions received were filed by natural persons and approx. one third by legal entities.

Most of the filed petitions came from the younger generation and the middle-aged. Two petitions of the overall number of petitions were filed by a petitioner who had his domicile or registered office outside the territory of the CR.

Six petitions were sent through legal representatives including attorneys. In this context, it has to be said that in general these petitions surprisingly contained legal defects and concerned issues completely outside the Arbiter's powers.

Diagram No. 3 – Fields of settled justified cases according to the Arbiter’s powers



Of the total number of 27 justified and opened disputes five disputes were discontinued on the basis of the petitioner’s request to withdraw the petition. Besides, eight justified disputes were suspended due to the declaration of bankruptcy over the institution.

A clear conclusion can be made from what has been said above: the existence of the Financial Arbiter in the CR has an impact on the decision-making of institutions when settling disputes with a client. The institution aims at settling the dispute with the client rather than face a conviction by a final and conclusive finding of the Arbiter to remedy the damage incurred by the petitioner. Recently, one of the reasons why banks aim at making a settlement with a client has also been the payment of a penalty for breaching duties in accordance with the FA Act.

### 5.3. Description of Selected Heard Cases

In accordance with S. 21(1) of the FA Act the Arbiter provides a description of selected heard disputes that are within his powers.

#### Transfers of Funds:

##### **Registration Nos. 15/2003, 21-25/2003, 27/2003 and 31/2003**

The petitioners sought an immediate execution of transfers of funds in CZK by institution Q. The reasoning of the petition was such that on day D they gave the institution orders to transfer funds with the maturity being day D+1. However, the institution did not execute the transfers. The Arbiter asked the institution to cooperate, but subsequently cancelled it since the banking licence was withdrawn on day L.

The institution filed a written statement concerning the case in which it said that it recorded the orders, but did not execute them since the maturity of the orders set by the clients was after day L.

The Arbiter subsequently told the petitioners that due to the declaration of bankruptcy over institution Q and referring to the provision of S. 14(1)(c) of the Bankruptcy and Composition Act (No. 328/1991 Coll.) the proceedings before the Financial Arbiter concerning the failure to execute the transfers of funds were suspended. Besides, the petitioners were informed that they could enter their claim into the bankruptcy proceedings for property of institution Q.

## **Electronic Payment Instruments:**

### **Sending payments through electronic banking**

#### **Registration No. 36/2003**

The petitioner sought that a security defect when sending payments through electronic banking be repaired.

The reasoning of the petition was such that on the day when the petitioner used an Internet electronic key (a certificate) to log in the system of the institution, entered the payment, signed it with the certificate and subsequently changed the number of the debit account, the payment was executed (sent) from the changed account, not from the account for which the petitioner authorised the payment. It was a transfer from account No. AA/XXXX to account No. BB/XXXX. However, the payment was made from account No. CC/XXXX, which the petitioner changed after signing. The petitioner made an oral claim about the potentially wrong procedure when sending payments at the client line of the institution two months prior to the execution of the payment, but the institution did not make the mistake.

The institution made a written statement concerning the case saying that its client system showed an error that made it possible for the petitioner to make the payment and after signing the payment change the payer's account number. The claim was negotiated with the petitioner through telephone calls with the Client Support Centre of the institution; the error was subsequently passed on day D to an employee in charge of the centre and the petitioner was informed about the procedure in writing on the same day. The signature error was removed by the institution at the next upgrade of the client system on day D and became active for clients on day D+1.

Besides, it was clear from the statement made by institution that the payment system of the institution offered the petitioner only the payer accounts to which the petitioner had access and thus no risk of misuse occurred apart from the fact that the petitioner could sign the payment from one account and subsequently change the number to the number of another account and send it to be processed, but only within the range of accounts to which he was authorised. Also, no damage was incurred by the client due to the fact that the petitioner did indeed want to send the transferred amount and the second payment, again in the amount of CZK TTT, was cancelled upon his request, i.e. the transfer took place only once.

During the evidencing the Financial Arbiter ascertained from the petitioner's written statement that the error made by the institution had been removed. In this context, the Financial Arbiter could only state that the grounds on which the proceedings had been based were removed after the proceedings were opened.

The Arbiter therefore dismissed the petition.

Refund of withdrawn funds in the case of a cash withdrawal from a cash machine by using a payment card

**Registration No. 42/2003**

The petitioner sought a refund of withdrawn funds in the case of a cash withdrawal from a cash machine by using a payment card.

The petitioner claimed that the institution refund withdrawn funds in the overall amount of CZK T from the petitioner's account UU/XXXX. The reasoning of the petition was such that on day D the petitioner came to a branch of the institution in the CR, where he told the employee of the institution that when he had paid with the VISA payment card in month M at trader O in town M the cashier found out that the card did not function (it was a new card not yet used), and hence asked the employee of the institution to send the payment card for a function check. The employee asked the petitioner to try and withdraw money from a cash machine located at the branch. The petitioner made two attempts at withdrawing money, but both failed. The cash machine returned the card, but gave neither money, nor a receipt. The petitioner told this to the employee of the institution who found out that a total of CZK T was withdrawn from the petitioner's account and on the basis of that wrote a claim report. Subsequently the institution asked the petitioner to return the payment card in order to investigate the claim, which the petitioner did on day DX. Afterwards, the petitioner requested several times that the complaint be dealt with and objected in writing to the account statement where the amount of CZK T/2 was debited twice. The institution dismissed the petitioner's claim.

In its statement the institution considered the petition unjustified since the disputed withdrawals from the cash machine were carried out successfully according to records from the cash machine and the authorising centre, i.e. the cash machine produced the amount of CZK T/2 twice; the transactions were executed when the petitioner's payment card was physically present and the personal identification number (PIN) was entered correctly. The institution evidenced this with a record from the cash machine, which precisely enters what operations the cash machine executes in real time. It was clear from the record that the cash machine did not signal any error. Another piece of evidence submitted by the institution was a videocassette from a camera monitoring the petitioner's withdrawals from the cash machine.

It became obvious from the statement made by the institution that when the actual stock-taking of cash took place at the cash machine no surplus relating to the disputed transactions was ascertained in the period in question. Besides, no error was discovered during a check of the magnetic strap of the petitioner's payment card.

During the evidencing the Financial Arbiter found out in the course of the oral explanation made by the petitioner that the petitioner made a total of three attempts at withdrawing cash from the cash machine. Allegedly, he entered a wrong PIN for the first time and in between the second and third attempt at a cash withdrawal the cash machine was approached by another person. The Financial Arbiter also found out that it was not clear from the video recording made by the camera monitoring the petitioner's withdrawals from the cash machine whether the petitioner took the money or not since the camera was not suitably located for this purpose.

Besides, when the petitioner made the oral explanation, he drew attention to the fact that during his negotiation with the employee of the institution on day D he heard that during his attempts at withdrawals another employee of the institution manipulated with the cash machine.



During the evidencing the Financial Arbiter found out that the right to charge the money difference ascertained after returning the hired car was a standard part of the car hire terms and conditions. Since the petitioner's partner did not conclude an appendix to the car hire contract with the company relating to a settlement for the hired cars and damages for unreturned personal property, the present contract remained valid including the conditions governing a financial settlement. Hence the Financial Arbiter did not deal with the dispute concerning the amount of CZK T1 any more.

The institution acknowledged that it had wrongly charged an interest on late payment in the amount of CZK T2. It also acknowledged as justified the amount of CZK T3 claimed by the petitioner for the reimbursement of telephone and fax costs. The institution said that it had credited the amount of CZK T2 to the petitioner's payment card account. The institution also credited the amount of CZK T3 including the required P% interest on late payment to the relevant payment card account and apologised to the client in writing.

Besides, the Financial Arbiter found out that in the course of the proceedings the institution paid the required amount at the petitioner's payment card account.

The Arbiter therefore dismissed the petition.

*Refund of withdrawn funds in the case of a cash withdrawal from a cash machine by using a payment card*

**Registration No. 44/2003**

The petitioner sought a refund of withdrawn funds in the case of a cash withdrawal from a cash machine by using a payment card.

The petitioner demanded that the institution refund withdrawn funds in the overall amount of CZK T from the petitioner's account UU/XXXX. The reasoning of the petition was such that on day D and on subsequent days D2 the petitioner did not make any cash withdrawals from a cash machine.

The institution considered the claim unjustified since the disputed withdrawals from the cash machine took place according to records from the cash machine and that the petitioner's payment card was physically present and the personal identification number (PIN) was entered correctly.

From the institution that owned the cash machine where the withdrawals took place the Arbiter obtained video recordings made by a camera monitoring the petitioner's withdrawals from the cash machine.

During the evidencing the Financial Arbiter found out in the course of the petitioner's oral explanation that the withdrawals were made by a member of the petitioner's family.

Based on the ascertained facts the petitioner filed a request to withdraw the petition to open the proceedings.

The Arbiter decided that the proceedings be discontinued.

### Issuance of a good payment card with indent print

#### **Registration No. 45/2003**

The petitioner sought the issuance of a good payment card and the reimbursement of costs of telephone calls in unspecified amount.

The reasoning of the petition was such that when using the payment card PKPK the petitioner started having difficulties with this type of payment card being accepted by traders since the data stated on the front of the payment card were very poorly legible.

All payment cards PKPK issued by the institution were personalised by indent print.

In the petition the petitioner stated that he had asked the institution to issue the payment card PKPK, which he duly received in month M1. Subsequently he asked that another payment card be issued since the data stated on the front of the payment card were illegible due to inferior card print. The institution issued a new card, whose receipt the petitioner duly confirmed.

Since the problems with the illegibility of data and the subsequent acceptance difficulties with the payment card repeated, the petitioner again asked the institution to issue a new payment card. The petitioner received the new payment card in month M2.

Having held the payment card for a very short time, the petitioner found out that a problem with the data stated on the card occurred again, as the data were again becoming blurred. In the case of this payment card, the information about the validity of the payment card was illegible. Hence, the petitioner asked the institution on the same day to issue another payment card PKPK, again personalised by indent print. The institution again promised to issue a new payment card to the petitioner.

It became clear from what has been said above that the petitioner always agreed to the issuance of a payment card PKPK personalised only by indent print.

In its statement, the institution regarded the petition as unjustified, saying that it was only a matter of the petitioner's complaint about the institution but not the petitioner's dispute with the institution. Nevertheless, the institution provided a statement concerning the case.

The institution is a member of the KA1 and KA2 card associations and, being a member, it has to follow the rules set by these associations. The institution carries out the personalisation of payment cards according to valid standards of the card associations. Before the individual types of cards are introduced on the market, the personalisation outcomes are duly certified by the card associations. The institution also stated that the technical and technological parameters are checked regularly and maintained by professional servicing companies authorised by the producer to carry out this activity.

The institution held that a lower richness of colour of the indent print should not give rise to the cards being refused by traders. Provided the paint is removed completely due to excessive use, the crucial signs remain engraved approx. 0.05-0.15 mm deep in the plastics and the payment card can still function.

The institution also stated that cards provided with indent print are designed solely for transactions through electronic terminals and the printed identification signs are used only for the purposes of checks.

The institution recorded three successful transactions at traders carried out with the petitioner's payment card PKPK personalised by indent print.

Upon the institution's request oral explanation took place. The institution explained to the Financial Arbiter how indent print is carried out and submitted samples of approx. twenty payment cards also from other payment cards issuers, which showed the same wear signs as the petitioner's payment cards.

It was not proven during the proceedings that the behaviour of the institution had breached any of the duties set forth in the Payment System Act (No. 124/2002 Coll.). The petitioner failed to prove that the access to his account was limited through the payment card PKPK personalised only by the indent print or that he suffered damage due to a claim relating to inferior card print; hence he was not entitled to the reimbursement of any costs relating to his claim. Besides, the petitioner did not sufficiently specify his claims.

The Arbiter therefore dismissed the petition.

*Unauthorised use of a stolen payment card in the case of a purchase of goods at a trader*

**Registration No. 47/2003**

The petitioner sought a refund of money withdrawn in an unauthorised way from his account when his misused payment cards were used at trader O.

The reasoning of the petition was such that the petitioner's card was stolen on day D between 4 and 5 p.m.

Having noticed the theft, the petitioner blocked the card immediately at 6.31 and also withdrew the credit balance on the giro account, wanting to prevent potential unauthorised withdrawal of funds with the stolen payment card.

On day D+ the petitioner learned that the amount of CZK T1 had been debited from his account for a transaction made with the stolen payment card on day D at the trading partner of institution O1. Apart from this he learned that the amount of CZK T2 had been debited from his account through a transaction made by the stolen payment card on the same day at a trader O2. The overall amount of the withdrawn funds was thus CZK TC.

The petitioner also stated that he claimed the transactions in persons at the branch of the institution in the CR and on day D+ reported the theft of the payment card at the Police of the CR. Even the petitioner's personal negotiations with the institution regarding the claim concerning the payments were to no avail when the petitioner drew attention to the fact that the signatures on the trader's receipts relating to these payments were not in accordance with the signature on the payment card.

The institution said in its statement that the petitioner had concluded a contract S with the institution, part of which were Business Terms and Conditions. As the institution stated, it was clear from these terms that the petitioner was liable for all transactions, losses and costs incurred by him if his payment card was stolen until the end of the calendar day on which the institution was notified of the theft. The institution stated that the disputed transactions made by the payment card took place before the card was blocked, i.e. on day D at 6.31.

The first disputed transaction in the amount of CZK T1 was executed at 5.26 at a contractual partner of institution Q2. On the basis of the original of the sales receipt received from institution Q2 institution Q compared the signature with the signature on the signature strap and stated that the signatures were not visibly different, the

payment card was not on the list of blocked cards when the transaction was executed, there was enough money on the account, i.e. there was no reason to refuse the transaction. The institution could therefore not continue the claim proceedings and evaluated the claim as unsuccessful.

The institution also stated that for the protection of the petitioner's funds it sent as a non-standard procedure on day D++ to institution Q2 a PC claim, although according to international rules of the card association KA this option was no longer possible, but to no avail. According to the binding rules of the card association KA the trader has to check the signature to ascertain whether the card holder is authorised. The institution stated that it cannot be claimed that the trader is bound to check the signature and cannot accept the transaction when the signatures do not agree and that s/he has to withhold the card since the trader only uses the signature to check whether the holder is lawful and not to authorise the transaction as such.

The institution stated that the rules of the card association KA make it possible to open a claim procedure with regard to signatures that do not agree provided the institution submits all the following documents:

- the holder's letter refusing the authorisation and participation in the transaction;
- a certificate of the issuing bank (filled-in exhibit 2G) saying that the signature strap on the withheld card was not damaged and describing the circumstances of withholding the card;
- sales receipt of the transaction;
- a copy of the front and rear side of the withheld card.

The institution also stated that in the case of the second disputed transaction in the amount of CZK T2 executed at 6.04 at its trading partner, it compared the signature on the sales receipt with the same result as in the case of the first disputed transaction. The petitioner kept disputing the signature on the sales receipt and so the institution wrote a letter to its trading partner asking it to provide a statement, but the trading partner did not respond even when asked repeatedly. According to the institution's statement the trader is not bound to provide an answer not even when asked to do so in writing.

It became obvious from the institution's statement that the employees of the trading partners of the institution do not undergo graphological trainings and are not professionals in the field of comparing whether signatures agree. Provided there are no obvious differences, the entered transaction is authorised and the person submitting the payment card does not behave in a suspicious way, the trader has no reason to refuse such a transaction.

In its statement the institution also said that the petitioner worded his petition to open the proceedings solely on the grounds that his claim was not recognised by the institution and stated that the traders were liable for damage. The institution said that the petitioner had breached the contractual provisions with the institution, whose breach had caused him damage in effect, for which he himself had to be liable. The institution therefore regarded the petition to open proceedings before the Financial Arbiter as unjustified and the part concerning the claim for damages in relation to the traders as inadmissible.

The Financial Arbiter is not bound to investigate whether damage was incurred by the petitioner or not, but has to investigate whether the institution breached the

provisions of the Payment System Act (No. 124/2002 Coll.) or not in accordance with S. 1 of Act No. 229/2002 Coll. as one of the crucial issues of the relationship between entities stated in S. 3 of Act No. 229/2002 Coll. It is not important whether damage had been incurred by the petitioner as a result of the action of the institution or not, but the breach of the provisions of the Payment System Act may in general give rise to the occurrence of damage or damage does occur, which was in this case unambiguously proven by statements from the petitioner's accounts, from which it was clear that the funds in the amount of CZK TC were debited due to the breach of the quoted provision of the Payment System Act. The aforementioned objections of the institution were hence irrelevant.

In its objections the institution stated when a PC claim may be launched with view to a difference in signatures. Thus it was not clear which of the quoted conditions was not admissible during the claim procedure since the institution had at its disposal:

- a) the petitioner's letter refusing the authorisation and participation in the transaction;
- b) sales receipts of the transactions;
- c) copies of both sides of the stolen card;
- d) filled-in certificate Exhibit 2D, which it held.

When making a decision on a breach of the duties of institutions the Financial Arbiter is bound by the provisions of Act No. 229/2002 Coll. and Act No. 124/2002 Coll., and so the internal guidelines of the card association KA are immaterial, as they are binding only among the members of the association, but in no case apply to third parties, i.e. potential petitioners.

The Financial Arbiter arrived at a conclusion that the electronic payment instrument was used contrary to the provision of the Act. The institution failed to prove that the petitioner had used the payment instrument himself since on the basis of the result of the comparison of the petitioner's signature on the electronic payment instrument and the signatures on the documents upon which the traders directly debited the account it is absolutely clear that the signatures are different. The traders were therefore not authorised to carry out the direct debiting of funds and the institution was liable to acknowledge the petitioner's claim and subsequently take steps against the traders in accordance with internal guidelines of the card association KA.

On the basis of an expert report prepared upon the Financial Arbiter's request by a judicial expert the Financial Arbiter found out that the disputed signatures on the receipts from day D in the amounts of CZK T1 and CZK T2 were not the petitioner's genuine signatures.

From the contract on the acceptance of payment cards concluded between the institution and trader O the Financial Arbiter found out that a sales receipt issued by the trader has to contain among other elements a legible signature of the employee of the trading point/trading partner and a signature of the card holder, which has to be identical to the signature on the signature strap of the payment card. If that is not the case, the trader has a right to refuse such a transaction. Besides, it was ascertained that the trading partner, when asked by the institution to do so, is bound to provide all information including a potential statement made by the trading partner concerning the transaction process within X business days from the delivery of the request.

When the Financial Arbiter checked the elements of the submitted original of the sales receipt issued by trader O, he found out that the receipt did not contain a legible signature of the employee of the trading point/trading partner.

The Financial Arbiter holds that the institution made a mistake, as it did not in the interest of the client draw the trading partner's attention to the failure to comply with the contractual terms and conditions as concerns among others the duty to provide a statement about a disputed transaction that is reasonably suspected to have been fraudulent through the use of a stolen payment card, and to negotiate that.

On the basis of the evidencing the Financial Arbiter arrived at a conclusion that the petition filed by the petitioner was justified. The Arbiter decided that institution Q shall be bound to refund the withdrawn funds in the amount of CZK TC with a P% annual interest on late payment commencing on day D until payment to the petitioner, within N days from the date on which the finding becomes legally effective.



**SELECTED INFORMATION FROM THE**  
**ARBITER'S WORK**

## 6. Selected Information from the Arbiter's Work

### 6.1. Issue of Proceedings before the Arbiter

As has already been mentioned, other institutions often need to be involved in the proceedings (see above), which may refuse to cooperate with the Arbiter, referring to the FA Act or other Acts (e.g. the Banking Act<sup>7</sup>). Even though the institution is invited to oral negotiations pursuant to the Code of Administrative Justice, it refers to keeping the bank secret ensuing from the Banking Act or Act that stipulates certain provisions against the legalisation of yields from criminal activity<sup>8</sup>. These legal regulations do not explicitly specify the Arbiter as a body towards which the bank secret or duty not to disclose may be breached. In that case the Arbiter does not have a chance to obtain other necessary information and *issues a finding based on ascertained facts available to him* or asks the petitioner in writing to provide a written agreement that another institution may provide the required information to the Arbiter. In effect, the proceedings are extended by another approx. 30 days. Therefore, an amendment of some legislation is considered necessary (see the part "Proposed Legislative Changes"). The present state of legislation decreases and challenges the efficiency of the role of the Arbiter as an out-of-court settlement of disputes between a petitioner and an institution both with view to the possibility of settling the disputes and with regard to the length of the proceedings.

The performance of the Arbiter's work does not make it possible to provide legal assistance to the petitioners apart from the issues in the Arbiter's powers, which is the case of e.g. a public protector of rights. This is due to capacity reasons and due to specialisation solely in the field of the payment system.

Owing to an incorrect interpretation of the FA Act and mainly its applicability by the public the Arbiter's office received and still keeps receiving petitions to open proceedings or requests that the Arbiter investigate or make good in fields that are not in his powers.

Due to an incorrect interpretation of the FA Act by experts, the performance of the Arbiter's work is often referred to as e.g. the "authority of the Financial Arbiter", "CNB section", "financial court" or a "component under CNB's direct supervision" or a "public protector of rights in the field of finance".

### 6.2. Issues Not in the Arbiter's Powers

An overview of issues that clients addressed to the Arbiter, but which **are not** in his powers:

- all cases that had occurred before the FA Act came into effect (approx. 30 petitions);
- transfers of funds to tax offices and customs offices;
- transfers outside the territory of the CR;

---

<sup>7</sup> Act No. 21/1992 Coll.

<sup>8</sup> Act No. 61/1996 Coll.

- charging of “covert charges” when using payment cards;
- terms and conditions of maintaining current accounts (approx. 20 petitions);
- cases concerning Union Banka occurring after 21/2/2003 (approx. 50 petitions);
- settlement as part of contracts on savings for building purposes;
- awarding of state contributions as part of private pension schemes;
- provision of the beneficiary’s identification data by the beneficiary’s bank in the case of unjust enrichment;
- ensuring of security when using an electronic payment instrument;
- provision of credit by banks;
- procedures taken by tax offices;
- setting of interest on deposit accounts;
- use of safe-deposits;
- false advertising of banks – a promise of funds when certain conditions are met and a one-sided cancellation of this promise by the bank;
- termination of contracts on financial advisory services;
- disposal of deposited funds in the case of a declaration of bankruptcy over the account holder or issuance of a decision on compulsory debiting from the obliged person’s account.



# THE ARBITER'S INTERNATIONAL COOPERATION

## 7. The Arbiter's International Cooperation

In April 2003 the Financial Arbiter addressed ombudsmen from EU countries, whom he informed through a letter about the establishment of his position and asked them to subsequently cooperate.

In December 2003 the Financial Arbiter met a representative of the Financial Ombudsman Service (FOS), Mr. David Thomas, Principal Ombudsman (Banking and Loans) so as to obtain information about the activities of the ombudsman in Great Britain.

The meeting was informative. The Financial Arbiter was provided with information about the structure of the FOS and with the system of handling clients' complaints: individual cases are processed by authorised persons who issue a recommendation (first stage of decision-making). Provided the petitioner does not agree with the result of the settlement, the Principal Ombudsman settles the dispute (second stage of decision-making).

With regard to the existence of Act No. 229/2002 Coll., this way of settling disputes seems impracticable in the Czech Republic. The Financial Arbiter was also told about a planned meeting of European arbiters-ombudsmen, which should be held in March 2004.

The Arbiter informed the representatives of FOS about the preparation of the inclusion of the Financial Arbiter's office into the PHARE programme. As part of the project, a selected expert should cooperate for approx. 18 months with the Financial Arbiter and provide him with information about activities in a particular region throughout the whole period.



## PROPOSED LEGISLATIVE CHANGES

## 8. Proposed Legislative Changes

The Arbiter's experience until present day has shown a need to amend some valid legislation (in particular with view to speeding up the proceedings). The changes involve breach of the bank secret or duty not to disclose in order to provide the Arbiter with information in the course of the proceedings. Apart from this, the amendments are aimed at increasing the rationality of the proceedings mainly in the field of the principles of proceedings and the imposition of penalties. The amendments concern the following legislation:

1. **Amendment of Act No. 61/1996 Coll., which makes provision with respect to certain measures against the legalisation of yields from criminal activity**

*The proposed change concerns breach of the bank secret and possibility of providing the Arbiter with information even if the institution is bound by the duty not to disclose.*

2. **Amendment of the FA Act (No. 229/2002 Coll.)**

*The proposal discusses higher rationality of imposition of penalties by the Arbiter.*

3. **Amendment of the FA Act (No. 229/2002 Coll.)**

*The proposal tackles a more speedy procedure when settling disputes. The currently valid legislation requires the Arbiter and persons authorised by him to turn to institutions that are not participants in the proceedings.*



## CONCLUSION

# Conclusion

This Report contains initial pieces of knowledge from the activities of the newly established role of Arbiter covering the first year of his five-year term of office.

It is clear that the public gradually acknowledges the existence of the Arbiter, although the notion of his powers is often distorted. Therefore, cooperation with the media will still be necessary so as to promote, and acquaint the public with, the Arbiter's person including publishing of further information about the Arbiter's activities in the field of consumer protection.

It may be presumed that after the accession of the CR into the EU when the extended powers of the Arbiter become effective pursuant to the Payment System Act<sup>9</sup> to include cross-border transfers, complaints in this field will rise.

It is also obvious that experts do not welcome the fact that the Arbiter has powers only in a certain part of the payment system, i.e. in the field of settlements. Extension of the applicability of the FA Act was thus discussed with the author of this Act (the CNB) and this proposal was accepted by the CNB.

Besides, it does not seem appropriate that the Arbiter's powers do not cover the transfer of funds stated in the Introduction to this Annual Report (i.e. payment of taxes and charges pursuant to special legal regulation<sup>10</sup>; payment of social security premium and contribution to the state employment policy pursuant to special legal regulation<sup>11</sup>; payment of state medical insurance premium pursuant to special legal regulation<sup>12</sup>).

It follows from the aforementioned reasons that it would be suitable to amend the Arbiter's powers in legislation and in other legal regulations, thus making it possible for his activities to be even more beneficial to the general public in the field of transfer of funds and electronic payment instruments.

Prague, 1 June, 2004

JUDr. Ing. Otakar Schlossberger

---

<sup>9</sup> Act No. 124/2002 Coll.

<sup>10</sup> Act No. 337/1992 Coll., which makes provision with respect to the administration of taxes and charges.

<sup>11</sup> Act No. 589/1992 Coll., which makes provision with respect to the social security premium and contribution to the state employment policy.

<sup>12</sup> Act No. 592/1992 Coll., which makes provision with respect to the state medical insurance premium.



## LIST OF APPENDICES

# List of Appendices

No. 1 – Regulations pertaining to the Performance of the Financial Arbiter's Work

No. 2 – Organisation Chart

No. 3 – Overview of Costs of the Performance of the Arbiter's Work

# Regulations pertaining to the Performance of the Financial Arbiter's Work

Upon the Financial Arbiter Act (No. 229/2002 Coll.), the Financial Arbiter issues the following regulations:

## Article 1

1. The Financial Arbiter shall decide on the merits of cases pursuant to Act No. 229/2002 Coll. S/he shall ensure that the agenda relating to expert and organisational provision of the performance of the Financial Arbiter's work is fulfilled.
2. The Czech National Bank shall administratively provide for the performance of the Financial Arbiter's work at its own costs.
3. The Financial Arbiter shall be seated in Prague, Washingtonova 25.

## Article 2

1. The Financial Arbiter shall make decisions in his/her own name.
2. The Deputy Financial Arbiter shall make decisions in the name of the Financial Arbiter when the Financial Arbiter is absent long-term. The Financial Arbiter may authorise the Deputy permanently or short-term to fulfil the agenda relating to expert and/or organisational provision of the performance of the Financial Arbiter's work.
3. For the performance of his/her work, the Financial Arbiter has been temporarily assigned employees of the Czech National Bank. Persons assigned to the Financial Arbiter for the performance of work are employees of the Czech National Bank pursuant to Act No. 65/1965 Coll., the Labour Code.
4. The Financial Arbiter may authorise in writing the employees of the Czech National Bank to carry out investigation concerning proceedings before the Arbiter pursuant to S. 12 of Act No. 229/2002 Coll. Investigation relating to the case may be carried out also by other natural persons upon written authorisation and concluded contract pursuant to special legal regulations.

## Article 3

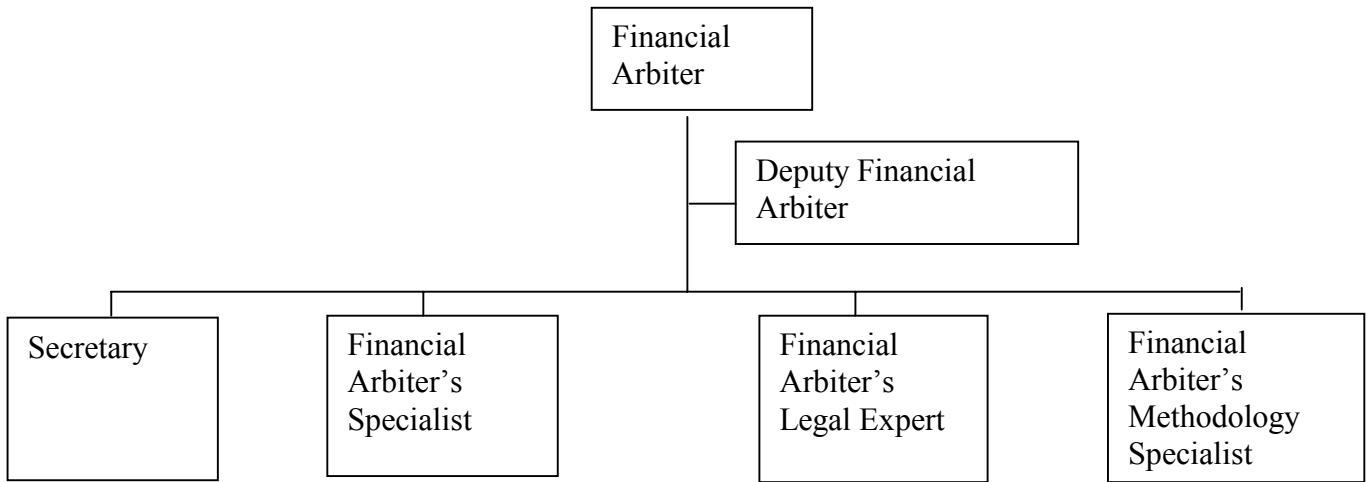
Details concerning the organisation of the performance of the Financial Arbiter's work shall be governed by the Organisational Guidelines.

## Article 4

These regulations shall become effective on 1 February, 2003.

Prague, 1 February, 2003  
JUDr. Ing. Otakar Schlossberger  
Financial Arbiter

# Organisation Chart of the Performance of the Arbiter's Work



## OVERVIEW OF THE UTILISATION OF FUNDS IN THE YEAR 2003

<b>Item name</b>	<b>Amount in CZK '000</b>
<b>Overall annual costs</b>	<b>6,199.5</b>
<b>Personnel costs</b> e.g. wages, social security costs, education costs	<b>4,200.2</b>
<b>Administrative activity</b> e.g. telecommunications charges, travel expenses, advisory services, expert opinions and reports, consultation and advisory activity, translation services	<b>892.5</b>
<b>Operation of buildings and equipment</b> e.g. rent, repair and maintenance, repair and maintenance of office equipment	<b>1,106.7</b>