

## **FMA Communication 2013/07 – guarantee in respect of the proper conduct of business**

Communication on the permanent licensing requirement of the guarantee in respect of the proper conduct of business

Reference:	FMA Communication 2013/07
Addressees:	Banks and investment firms as defined under the Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (Banking Act; BA)  Auditors and lead auditors in accordance with the BA  Financial holding companies and mixed financial holding companies within the meaning of Art. 1(3)(b) of the BA in conjunction with Art. 4(1)20 and 21 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on Supervisory Requirements for Credit Institutions and Investment Firms and on the Amendment to Regulation (EU) No. 646/2012 (ABl. L 176 of 27.06.2013, p. 1); CRR  Persons/entities with a qualifying holding within the meaning of the BA  E-money institutions within the meaning of the Liechtenstein E-Money Act (EMA) of 17 March 2011  Payment services providers within the meaning of the Liechtenstein Payment Services Act (PSA) of 17 September 2009  Management bodies of a mixed financial holding company within the meaning of the Act of 20 September 2007 on the Supplementary Supervision of Entities in a Financial Conglomerate (Financial Conglomerates Act; FCA)
Concerning:	Assessment of the professional and personal skills and knowledge of managers (members of the Board of Directors and Executive Board) and key functions holders
Place of publication:	Website
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### **1. Introduction**

On 26 December 2016, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) published their joint guidelines for assessing the suitability of members of the management bodies and key function holders (EBA/GL/2017/12). These guidelines are implemented in Liechtenstein via FMA Communication 2015/4, in addition to the present Communication.

EBA/GL/2017/12 lays down the criteria which are to be applied by the Liechtenstein Financial Market Authority (FMA) and by the banks and investment firms when assessing members of the Board of Directors and the Executive Board as well as key function holders of banks and investment firms. The proportionality principle laid down in EBA/GL/2017/12 is applicable.

The FMA states that EBA/GL/2017/12 is applicable *mutatis mutandis* to members of the Board of Directors and the Executive Board as well as key function holders of payment service providers, e-money institutions and auditing firms.

When reference is made to institutions below, this encompasses all addressees of this Communication where this is provided for in the specific laws that are to be applied in each individual case.

The present Communication elaborates on EBA/GL/2017/12. It provides an overview of the assessment to determine whether the members of the Board of Directors and the Executive Board as well as key functions holders provide sufficient guarantee to ensure the effective and prudent management of the institution.

The present Communication applies *mutatis mutandis* to the procedure to obtain a license under the BA, EMA and PSA, and the procedure for the regulatory assessment of the acquisition, increase or disposal of qualifying holdings (FMA Guidelines 2017/20).

Please contact the FMA for further information.

## 2. General information

The members of the Board of Directors and the Executive Board as well as key function holders must be able to guarantee proper business operations from a professional and personal standpoint at all times (Art. 19 BA in conjunction with Art. 1(2)(a) Ordinance of 22 February 1994 on Banks and Investment Firms (Banking Ordinance, BO) in conjunction with Art. 74, 88 and Art. 91 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (CRD IV); Art. 7(1)(c) EMA in conjunction with Art. 3(1)(i) E-Money Ordinance (EMO) of 12 April 2011; Art. 10(1)(c) PSA in conjunction with Art. 3(1)(i) Payment Services Ordinance (PSO) of 27 October 2009).

Further, institutions must be organised appropriately according to their field of business (Art. 22(1) BA; Art. 7(1)(c) EMA; Art. 10(1) PSA). This means among other things that besides the formal organisation there must also be an adequate organisation in terms of personnel (on this, for banks and investment firms see also Art. 88 and Art. 91 CRD IV). Therefore, besides the assessment of the individual suitability of members of the Board of Directors and the Executive Board, the collective suitability of the management body (Board of Directors and Executive Board) is also to be examined. The organisation according to the field of business also includes the adequate staffing of key functions.

Key function holders are persons who have a significant influence on the management of the institution, but who are neither members of the Board of Directors nor of the Executive Board. They include the directors of internal control functions<sup>1</sup> and the Chief Financial Officer (CFO), provided they are not members of the management body, and other key function holders who are identified as such by CRD institutions applying a risk-based approach. Other key function holders may include heads of important business branches, of branches in the European Economic Area / European Free Trade Association, or of subsidiaries in third countries, and other internal positions.

The following functions are key functions within the meaning of EBA/GL/2017/12:

- Head of Internal Audit
- Director of domestic or foreign branches
- Head of Compliance/AML (only if there is no corresponding person at executive management level (Executive Board); for CRR institutions)
- Director of Accounting/Finance (only if no CFO at Executive Board level; for CRR institutions)

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<sup>1</sup> The persons who are responsible at the highest hierarchical level for the effective performance of the day-to-day tasks of the independent risk management function and compliance functions as well as the internal audit.

- Director of Risk Management (only if no Chief Risk Officer (CRO) at Executive Board level; for CRR institutions)
- Key function holders who are designated as such by the bank itself

As stated under section 1., the present Communication also applies to assessments in connection with the acquisition of a license in accordance with the BA, EMA and PSA and as part of the procedure pursuant to FMA Guidelines 2017/20 for the assessment of the following natural persons and legal entities:

- Representative (Board of Directors and Executive Board) of a direct or indirect qualifying shareholder (legal entity) of a Liechtenstein-based institution
- Direct or indirect qualifying shareholder within the meaning of the ultimate beneficial owner (natural person) of a Liechtenstein-based institution
- Direct or indirect qualifying shareholder (legal entity) of a Liechtenstein-based institution

### **3. Scope of application**

This Communication is addressed to banks and investment firms pursuant to the BA, auditing firms and lead auditors pursuant to the BA, financial holding companies and mixed financial holding companies within the meaning of Art. 1(3)(b) of the BA in conjunction with Art. 4(1)(20) and 21 CRR and management bodies of a mixed financial holding company within the meaning of the FCA.

To clarify, it is noted that this Communication also applies to (temporarily appointed) natural persons and natural persons or legal entities within the meaning of Art. 33(1) BO.

The present Communication also applies to the assessment of lead auditors of auditing firms and the assessment of auditing firms in accordance with Art. 37(2)(a) BA in conjunction with Art. 40(2)(c) BO.

This Communication applies mutatis mutandis to e-money institutions within the meaning of EMA and payment service providers according to PSA.

This Communication also applies to shareholders who have directly or indirectly acquired a qualifying holding within the meaning of FMA Guidelines 2017/20 (and JC/GL/2016/01), the assurance of whose proper conduct is to be verified as part of a procedure to assess changes in qualifying holdings.

### **4. Guarantee in respect of the proper conduct of business**

According to Art. 19 BA, especially the persons entrusted with the administration and executive management of a bank or investment firm must meet the professional and personal requirements to guarantee sound and proper business operation at all times.

According to Art. 29(1) BO, the persons intended for the Board of Directors, the Executive Board and the management of internal auditing must be appropriately qualified for the intended position on the basis of their education and career history. When assessing the requirements, the FMA takes into account for example the factual and geographical scope of business and the organisation of the bank or investment firm, in accordance with Art. 29(2) BO. According to Art. 29(3) BO the intended persons must also be in a position to duly perform their tasks in the bank when one takes into account their other duties and their place of residence<sup>2</sup>. According to Art. 29(4) BO, when assessing the proposed persons the FMA may refer to their CV, educational and work certificates and references. Art. 30 BO stipulates that the proposed persons must have a good reputation as business professionals.

According to Art. 41(i) BA, persons who actually manage a financial holding company or mixed financial holding company pursuant to Art. 1(2)(b) BO in conjunction with Art. 4(1)(20) or (21) CRR must have a sufficiently good repute and sufficient experience for this task. According to Art. 29 FCA

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<sup>2</sup> In this context, the place where the person is ordinarily resident applies.

the same applies to persons who actually manage the business affairs of a mixed financial holding company.

According to Article 7 EMA, a licence will, for example, be granted to e-money institutions that ensure sound and prudent management (see Art. 7(1)(c) EMA in conjunction with Art. 3(1)(i) EMO).

In accordance with Article 10 PSA, a licence will be granted to payment institutions that ensure, inter alia, sound and prudent management (see Art. 10(1)(c) PSA in conjunction with Art. 3(1)(i) PSO).

Besides the aforesaid requirements, also shareholders who hold a direct or indirect qualifying holding have to meet the standards needed to ensure sound and prudent management of the institution (Art. 17(5) BA; Art. 7(1)(d) EMA; Art. 10(1)(d) PSA; FMA Guidelines 2017/20).

Additionally, lead auditors of auditing firms must also provide a guarantee in respect of the proper conduct of business (see Art. 37(2)(a) BA in conjunction with Art. 40(2)(c) BO; Art. 38 EMA in conjunction with Art. 7 EMO; Art. 38 PSA in conjunction with Article 6 PSO).

## **5. Form for assessment of guarantees in respect of the proper conduct of business**

The FMA provides [forms](#) for the examination of the assessment of guarantees in respect of the proper conduct of business (see section 4.). The use of the forms is mandatory.

## **6. Assessment criteria**

### **6.1 General information**

The FMA and the institutions use EBA/GL/2017/12 for the assessment of individuals as well as collective bodies.

Should there be a circumstance which gives rise to doubt concerning the experience or reliability of a person who is to be assessed under this Communication, the extent of how this limits or could limit the suitability of the said person or collective body must be examined. In doing this, all the important available facts are to be taken into account during the assessment, regardless of where and when they occurred.

Institutions carry out an assessment of the individual person and also, where an activity as part of a collective body is intended, an assessment of the collective body, and submit their assessment to the FMA using a form which is available on the FMA website (see section 5.).

### **6.2 Executive Board, Board of Directors and key function holders**

The assessment of the experience of members of the Board of Directors or the Executive Board and key function holders must take into account the nature, scope and complexity of the business activity of the institution and the responsibilities held by the person concerned. The persons must have sufficient knowledge, skills and experience.

When appointing members of a collective body, attention is to be paid to the composition and balance. The members of the Board of Directors and the Executive Board must have the necessary knowledge, skills and experience in order to be jointly in a position to understand the work of the bank or investment firm including its risks (Art. 22(5) BA; Art. 7(1)(c) EMA in conjunction with Art. 3(1)(i) EMO; Art. 10(1)(c) PSA in conjunction with Art. 3(1)(i) PSO).

Whatever the nature, scope and complexity of the business activity of the institution, the members of the Board of Directors or the Executive Board and key function holders must in any case be reliable.

### **6.3 Lead auditor and auditing firm**

According to Art. 37(2) BA in conjunction with Art. 40(2)(c) BO, in addition to the assessment criteria stated in sections 6.1 and 6.2, a time sheet is to be provided in accordance with the FMA

Communication on the licensing of special-law auditors and their reporting duties (SRM) (FMA Guidelines 2015/06). This also applies to lead auditors and auditing firms of e-money institutions and payment service providers (Art. 7 EMO and Art. 6 PSO).

#### 6.4 (Mixed) financial holding companies, managers of persons who have directly or indirectly acquired a qualifying holding

According to Art. 41(i) BA, persons who actually manage a financial holding company or mixed financial holding company pursuant to Art. 4(1)(20) or (21) CRR must have a sufficiently good repute and sufficient experience for this task.

The present Communication applies *mutatis mutandis* to managers of persons who have directly or indirectly acquired a qualifying holding. Reference is made to FMA Guidelines 2017/20. It is advised to consult the FMA in individual cases.

#### 6.5 Mixed financial holding companies of financial conglomerates within the meaning of the FCA

According to Art. 29 FCA, persons who actually manage the business affairs of a mixed financial holding company must have a good repute and sufficient experience for these tasks.

#### 6.6 Assessment of suitability by the institution or the auditing firm

For the application for a license to operate an institution, and for the ongoing approval of the appointment of new members and re-appointment of existing members of the Board of Directors or the Executive Board and key function holders, the institution must assess the suitability of the proposed persons based on the criteria indicated in Title VII of EBA/GL/2017/12, and in accordance with the principles of prudent business management, and it must document the assessment and the results (see Annex 3).

The assessment must be carried out before the person is selected by the competent body and takes up his/her position. For the assessment the criteria in Annex 2 and, where applicable, those in Annex 1, are to be applied.

Institutions must continually assess the suitability of a member of the Board of Directors or the Executive Board, especially if events occur that require a reassessment, in order to ensure the continued suitability of a person. This reassessment may be limited to the examination as to whether the person remains suitable in view of the relevant incident. The same applies to key function holders.

#### 6.7 Regulations of the institutions

The institutions shall issue regulations which ensure an effective and prudent management of the institution. This ensures that the institution's regulations concerning assessment of suitability are adapted to the overall corporate governance framework of the institution, the corporate culture and risk tolerance, and that the procedures function completely as planned within the framework of the regulations. Moreover, the regulations ensure that the Board of Directors and the Executive Board of the institution – notwithstanding the required approvals from shareholders – issue and maintain regulations concerning the assessment of the suitability of members of the Board of Directors and the Executive Board.

The regulations for the assessment of suitability must at least contain principles for selection, monitoring and succession planning, and for re-election, and in any case regulate:

- The procedure for selection, appointment, re-appointment and succession planning of members of the Board of Directors and the Executive Board, and the applicable internal method for assessing the suitability of a member of these bodies, including the internal function which is responsible for supporting the assessment (e.g. personnel function)
- The criteria to be used in the assessment, which include the eligibility criteria set out in the present Communication (see Annex 2)

- The mode/type of procedure designed to ensure that during the selection process the aspect of diversity is given considerable importance in respect of members of the Board of Directors and the Executive Board of an institution
- The channel of communication with the competent authorities
- Details of how the assessment is to be documented

The regulations for the assessment of suitability must take into account the fact that a different range of experience is required for different positions in the Executive Board and in the Board of Directors.

Furthermore, the institutions must have regulations for the assessment of key function holders which regulate the type, scope and complexity of the business transactions of the institution and cover at least the following points:

- The job position or persons responsible for carrying out the assessment of suitability
- The criteria for reliability and experience based on which the assessment is made
- The specific key functions in the institution

The institution's regulations must be issued in written and binding form. They may also result from the totality of several written and binding individual provisions (in particular regulations, written instructions and binding descriptions of processes), in which case the institution must ensure that the individual provisions are mutually consistent and without contradictions.

If a nomination committee or equivalent body has been set up within the institution, it should contribute to the introduction and further development of the regulations in accordance with this Communication.

#### 6.8 Corrective measures of the institutions

If an institution comes to the conclusion that a person is not suitable for appointment as a member of the Board of Directors or the Executive Board or a key function holder, that person must not be appointed. If the person has already been appointed, the institution shall take appropriate measures to replace him/her, unless the institution takes appropriate measures to ensure the suitability of the member in a timely manner.

If an institution, following a reassessment, comes to the conclusion that a member of the Board of Directors or the Executive Board or a key function holder is no longer suitable, the institution shall take appropriate measures to remedy the situation, and in any case inform the FMA accordingly.

If the institution takes certain measures, it must take into account the particular situation and the shortcomings of the member of the Board of Directors, Executive Board or key function holder. The following measures, among others, may be suitable:

- Adjusting the responsibilities between members of the Board of the Board of Directors or the Executive Board
- Replacement of certain members; recruitment of additional members; possible measures to reduce conflicts
- Training of individual persons or training of the Board of Directors or the Executive Board as a whole to ensure their individual and collective suitability

If an institution finds during the assessment that a holder of a key function is unsuitable, the institution must also take appropriate measures.

#### 6.9 Assessment by the FMA

For the application for a license to operate an institution, and for the appointment of new members and re-appointment of existing members of the Board of Directors or the Executive Board and key function holders, all the information and documents necessary for the assessment (as listed in Annex 3) are to be submitted to the FMA as enclosures along with the form (see section 5.). In the case of re-appointment, any important changes are to be reported.

The FMA may request additional information and documents, or waive the submission of certain information and documents. The institution and the person concerned must confirm in writing the correctness of the information and documents submitted, in the document recording the institution's assessment of the person concerned, or in the form provided by the FMA.

The FMA assesses the suitability of a member of the Board of Directors or the Executive Board or a key function holder based on the form provided and the documents accompanying the form, which present the evaluation of suitability applying the relevant parameters pursuant to EBA/GL/2017/12.

Additionally, the FMA may interview persons by way of a risk-based approach. The questioning may also serve to re-evaluate the suitability of a member of the Board of Directors or the Executive Board or a key function holder if facts or circumstances give rise to doubt as to the suitability of the person concerned. The questioning procedure may serve to obtain additional information about the qualifications of a person proposed by an institution – either as part of the overall composition of the respective management body or at an individual level – and to assess his/her personal and professional integrity.

During the assessment of suitability, the FMA may take into account the assessment of other competent authorities within the framework of its supervisory activities. To this end, the FMA may share information with other authorities in Liechtenstein and abroad.

In making its assessment, the FMA is not bound by factual or legal assessments of facts by third parties, including those of government authorities and courts.

The assessment by the FMA will certainly include the assessment criteria in Annex 2, and in the case of collective bodies also those in Annex 1.

## **7. Procedure**

The institutions examine the person who is to be appointed as a member of the Board of Directors, the Executive Board or as a key function holder before their appointment to the designated position (*ex ante* examination). The appointment or re-appointment is to be notified to the FMA, enclosing the form duly filled in (see section 5.) and the enclosures. This notification must be made without delay, in any event within five working days from the passing of the resolution.

The FMA shall complete its assessment of suitability as quickly as possible, not later than three months after all the required information and documents have been submitted, and inform the institution of its decision.

If insufficient information and documents are submitted for the assessment of the individual, or if they are not submitted within an extension period set by the FMA, the FMA will object to the appointment of the person concerned. The FMA will also lodge an objection to the appointment if, after a detailed examination of the documents, it has the impression that the person concerned is not suitable for the proposed position.

## **8. Data protection**

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) as well as in line with the Liechtenstein data protection law.

Information regarding the processing of personal data, as well as details about the processing purpose, the data controller and the rights of data subjects can be found in the FMA Privacy Policy: <https://www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html>.

## **9. Entry into force**

This Communication comes into effect on 1 July 2018.

**Annex 1 – Assessment Criteria for Collective Bodies (corresponds to Annex 1 of EBA/GL/2017/12)**

**Annex 2 – Knowledge and skills (corresponds to Annex 2 of EBA/GL/2017/12)**

**Annex 3 – Documentation required for the respective position (corresponds largely to Annex 3 of EBA/GL/2017/12)**



**Annex 1 – Assessment Criteria for Collective Bodies (corresponds to Annex 1 of EBA/GL/2017/12)**

*The following information and/or accompanying documents must be forwarded to the FMA for every request for a suitability assessment concerning a collective body.*



GL\_2017\_12 Annex I  
- Matrix zur Beurteilung

## **Annex 2 – Knowledge and skills (corresponds to Annex 2 of EBA/GL/2017/12)**

*In order to properly assess the capacities of the members of the Board of Directors and the Executive Board, institutions should consider using the following non-exhaustive list of relevant skills while considering the role and tasks of the position held by the member of the Board of Directors or the Executive Board:*

- a. Authenticity: is consistent in word and deed and behaves in accordance with own stated values and beliefs. Openly communicates his or her intentions, ideas and feelings, encourages an environment of openness and honesty, and correctly informs the supervisor about the actual situation, at the same time acknowledging risks and problems.
- b. Language: is able to communicate orally in a structured and conventional way and write in the national language or the working language of the institution's location.
- c. Decisiveness: takes timely and well-informed decisions by acting promptly or by committing to a particular course of action, for example by expressing his or her views and not procrastinating.
- d. Communication: is capable of conveying a message in an understandable and acceptable manner, and in an appropriate form. Focuses on providing and obtaining clarity and transparency and encourages active feedback.
- e. Judgement: is capable of weighing up data and different courses of action and coming to a logical conclusion. Examines, recognises and understands the essential elements and issues. Has the breadth of vision to look beyond his or her own area of responsibility, especially when dealing with problems that may jeopardise the continuity of the undertaking.
- f. Customer and quality-oriented: focuses on providing quality and, wherever possible, finding ways of improving this. Specifically, this means withholding consent from the development and marketing of products and services and to capital expenditure, e.g. on products, office buildings or holdings, in circumstances where he or she is unable to gauge the risks properly owing to a lack of understanding of the architecture, principles or basic assumptions. Identifies and studies the wishes and needs of customers, ensures that customers run no unnecessary risks and arranges for the provision of correct, complete and balanced information to customers.
- g. Leadership: provides direction and guidance to a group, develops and maintains teamwork, motivates and encourages the available human resources and ensures that members of staff have the professional competence to achieve a particular goal. Is receptive to criticism and provides scope for critical debate.
- h. Loyalty: identifies with the undertaking and has a sense of involvement. Shows that he or she can devote sufficient time to the job and can discharge his or her duties properly, defends the interests of the undertaking and operates objectively and critically. Recognises and anticipates potential conflicts of personal and business interest.
- i. External awareness: monitors developments, power bases and attitudes within the undertaking. Is well-informed on relevant financial, economic, social and other developments at national and international level that may affect the undertaking and also on the interests of stakeholders and is able to put this information to effective use.
- j. Negotiating: identifies and reveals common interests in a manner designed to build consensus, while pursuing the negotiation objectives.
- k. Persuasive: is capable of influencing the views of others by exercising persuasive powers and using natural authority and tact. Is a strong personality and capable of standing firm.
- l. Teamwork: is aware of the group interest and makes a contribution to the common result; able to function as part of a team.

- m. Strategic acumen: is capable of developing a realistic vision of future developments and translating this into long-term objectives, for example by applying scenario analysis. In doing so, takes proper account of risks that the undertaking is exposed to and takes appropriate measures to control them.
- n. Stress resistance: is resilient and able to perform consistently even when under great pressure and in times of uncertainty.
- o. Sense of responsibility: understands internal and external interests, evaluates them carefully and renders account for them. Has the capacity to learn and realises that his or her actions affect the interests of stakeholders.
- p. Chairing meetings: is capable of chairing meetings efficiently and effectively and creating an open atmosphere that encourages everyone to participate on an equal footing; is aware of other people's duties and responsibilities.

### **Annex 3 – Documentation required for the respective position (corresponds largely to Annex 3 of EBA/GL/2017/12)**

*The following information and/or accompanying documents are required to be submitted to the FMA for each requested suitability assessment.*

#### **1. Personal details and details on the institution and the function concerned**

- 1.1 Personal individual details including full name, name at birth if different, gender, place and date of birth, address and contact details, nationality, and personal identification number or copy of ID card or equivalent.
- 1.2 Details of the position for which the assessment is sought, whether or not the management body position is executive or non-executive, or if the position is for a key function holder. This should also include the following details:
  - a. the letter of appointment, contract, offer of employment or drafts thereof, as applicable;
  - b. any associated board minutes or suitability assessment report/document;
  - c. the planned start date and duration of mandate;
  - d. description of the individual's key duties and responsibilities;
  - e. if the person is replacing someone, the name of this person.
- 1.3 A list of reference persons including contact information, preferably for employers in the banking or financial sector, including full name, institution, position, telephone number, email address, nature of the professional relationship and any whether or not any non-professional relationship exists or existed with this individual.

#### **2. Suitability assessment by institution**

- 2.1 The following details should be provided:
  - a. details of the result of any assessment of the suitability of the individual performed by the institution, such as relevant board minutes or suitability assessment report/document;
  - b. whether or not the institution is significant as defined in the Guidelines; and
  - c. the contact person within the institution.

#### **3. Knowledge, skills and experience**

- 3.1 Signed and dated CV with the information indicated in 1.1 and 1.3 of this Annex, and details of education and professional experience (including work experience, academic qualifications and other relevant education, also knowledge of languages), including the name and type of all organisation for which the person has worked, and the nature and duration of the positions held, with special note of activities within the framework of the position applied for (experience in banking and/or management);
- 3.2 The information to be provided should include a statement from the institution of whether or not the individual has been assessed as having the requisite experience as enumerated in these Guidelines and, if not, details of the training plan imposed, including the content, the provider and the date by which the training plan will be completed.

#### **4. Reputation, honesty, integrity**

- 4.1 Criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director, bankruptcy, insolvency and similar procedures) especially through an official certificate or any reliable source of information concerning the absence of criminal conviction, investigations and proceedings (e.g. third-party investigation, testimony made by a lawyer or a notary established in the EU).

4.2 Statement of whether or not criminal proceedings are pending or whether or not the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding.

4.3 Information concerning the following:

- a. investigations, enforcement proceedings, or sanctions by a supervisory authority in which the individual has been directly or indirectly involved;
- b. refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
- c. dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position (excluding redundancies);
- d. whether or not an assessment of reputation of the individual as an acquirer or a person who directs the business of an institution has already been conducted by another competent authority (including the identity of that authority, the date of the assessment, and evidence of the outcome of this assessment) and the consent of the individual where required to seek such information to be able to process and use the provided information for the suitability assessment; and
- e. whether or not any previous assessment of the individual by an authority from another, non-financial, sector has already been conducted (including the identity of that authority and evidence of the outcome of this assessment).

## **5. Financial and non-financial interests**

5.1 All financial and non-financial interests that could create potential conflicts of interest, should be disclosed, including but not limited to:

- a. description of any financial (e.g. loans, shareholdings) and non-financial interests or relationships (e.g. close relations such as a spouse, registered partner, cohabitant, child, parent or other relation with whom the person shares living accommodations) between the individual and his/her close relatives (or any company that the individual is closely connected with) and the institution, its parent or subsidiaries, or any person holding a qualifying holding in such an institution, including any members of those institutions or key function holders;
- b. whether or not the individual conducts any business or has any commercial relationship (or has had over the past 2 years) with any of the above listed institutions or persons or is involved in any legal proceedings with those institutions or persons;
- c. whether or not the individual and his/her close relatives have any competing interests with the institution, its parent or subsidiaries;
- d. whether or not the individual is being proposed on behalf of any one significant shareholder;
- e. any financial obligations to the institution, its parent or its subsidiaries (excluding performing mortgages negotiated at arm's length); and
- f. any positions of political influence (nationally or locally) held over the past 2 years.

5.2 If a material conflict of interest is identified, the institution should provide a statement on how this conflict has been satisfactorily mitigated or remedied including a reference to the relevant parts of the institution's conflicts of interest policy or any bespoke conflict management or mitigation arrangements.

## **6. Time commitment**

6.1 All relevant and necessary details should be provided to show that the individual has sufficient time to commit to the mandate including:

- a. Information about the minimum time that will be devoted to the performance of the person's functions within the institution (annual and monthly indications);
- b. a list of the predominantly commercial mandates that the individual holds including whether or not the privileged counting rules<sup>3</sup> in Article 91(4) of CRD IV apply;
- c. where the privileged counting rules apply an explanation of any synergies that exist between the companies;
- d. a list of those mandates which are pursuing predominantly non-commercial activities or are set up for the sole purposes of managing the economic interests of the individual;
- e. the size of the companies or organisations where those mandates are held including for example, total assets, whether or not the company is listed, and number of employees;
- f. a list of any additional responsibilities associated with those mandates (such as the chair of a committee);
- g. estimated time in days per year dedicated to each mandate; and
- h. number of meetings per year dedicated to each mandate.

#### **7. Collective knowledge, skills and experience**

- 7.1 The institution should provide a list of the names of the members of the management body and their respective roles and functions in brief.
- 7.2 The institution should provide a statement regarding its overall assessment of the collective suitability of the management body as a whole, including a statement on how the individual is to be situated in the overall suitability of the management body (i.e. following an assessment using the suitability matrix in Annex I or another method chosen by the institution or required by the relevant competent authority). This should include the identification of any gaps or weaknesses and the measures imposed to address these.

#### **8. Any and all other relevant information should be submitted as part of the application.**

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<sup>3</sup> This is where the individual avails of the possibility that several mandates that are part of the same group, or within undertakings where the institution holds a qualifying holding or in institutions that are part of the same institutional protection schemes.