

APPLICATION GUIDELINES – APPOINTMENT OF MEMBERS OF THE MANAGING AND EXECUTIVE BOARDS

GUIDELINES FOR FILING AN APPLICATION WITH THE NATIONAL BANK OF SERBIA FOR PRIOR CONSENT TO THE APPOINTMENT OF MEMBERS OF THE MANAGING AND/OR EXECUTIVE BOARD

Granting prior consent to the appointment of a member of the managing and/or executive board is regulated by Articles 71, 72 and 75 of the *Law on Banks (RS Official Gazette, Nos 107/2005, 91/2010 and 14/2015)* – hereinafter: Law, and Section 4, paragraphs 2 and 3, Sections 31 through 40, Sections 46 and 47 of the *Decision on Implementing the Provisions of the Law on Banks Relating to Granting of a Preliminary Bank Founding Permit, Bank Operating Licence and Consents by the National Bank of Serbia (RS Official Gazette, Nos 82/2015 and 29/2018)* – hereinafter: Decision.

A bank files an application with the National Bank of Serbia (hereinafter: NBS) for prior consent to **each individual appointment** of a member of the bank's managing or executive board (hereinafter: application), ensuring at all times that the composition of these boards, number of members and their structure are in line with the Law and the bank's articles of association. The NBS will decide on the application within 30 days from the submission of the duly completed application, or 60 days in case an investigation is being carried out. If, based on the evidence and documentation pertaining to education and work experience of the nominated person, **it is not possible to assess the ability of such person to efficiently manage risks to the bank** (his knowledge of the bank's risk profile and regulations governing risk management and internal controls systems), the NBS may decide that this fact should be established based on an **interview with that person**.

Pursuant to the Law, the managing board consists of at least five members. Of the total number of members, at least one third must be persons independent of the bank, at least three members must have the necessary work experience in the fields of finance and at least one member of the managing board must be fluent in the Serbian language and have permanent residence in the Republic of Serbia. A member of the bank's managing board may not be a member of the bank's executive board. The executive board of a bank is made up of at least two members, including the president. All members of the executive board must be employed in the bank on a full-time permanent basis. At least one member of the executive board must be fluent in the Serbian language and have permanent residence in the Republic of Serbia, and all members of the executive board must have residence in the Republic of Serbia.

The bank is obliged to promptly inform the NBS about any circumstances which arise after receipt of prior consent of the NBS to the appointment of a member of the managing and/or executive board, which relate to the change of personal details of the person for whose appointment prior consent was granted and/or which may affect the assessment of the fulfilment of conditions for granting such consent.

I. APPLICATION AND DOCUMENTATION

A bank has to submit to the NBS the application for each appointment – **first and repeated** (re-appointment) of persons nominated as members of the managing or executive board.

1. When appointing nominated persons for the first time, along with the application, the bank is required to submit the following documents:

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- 1) proposal of the decision of the bank's competent body on the appointment of the nominated person as member of the managing or executive board¹ (Annex 1.6 to these guidelines and Annex 1.7 to these guidelines);
- 2) photocopy and a scan reading² of a valid identity document of that person (ID card or passport);
- 3) data on the composition of the bank's managing board (number of board members, number of persons independent of the bank, details of the person who is fluent in the Serbian language if the managing board is made up of foreign natural persons only, number of members having appropriate work experience in the field of finance)³ – (Annex 1.8);
- 4) evidence issued by a competent authority that no investigation has been initiated against such person and/or that such person has not been convicted by a final judgement of an offence that would make him/her unfit for discharging the function of a member of the bank's managing or executive board, and/or evidence of not having been convicted of such offence and evidence that no protective measure has been imposed against such person which would prohibit him from performing the activity fully or partly corresponding to the activity of the bank (for domestic citizens – certificate issued by a competent economic, criminal, basic and higher court and statement from criminal records of the ministry in charge of internal affairs and, for foreign citizens – certificate issued by the competent authority of the person's last country of permanent residence);
- 4a) list of associates with their non-conviction certificates;
- 5) completed and certified Questionnaire for a person nominated as a member of the bank's managing and executive board on the form provided in Annex 5 to the Decision;
- 6) letter of reference containing substantiated opinion on the business reputation, expertise, abilities and moral qualities of the nominated person provided by minimum two persons based on their professional contacts with the nominated person. The letter of reference may be written by the nominated person's employer, members of management bodies of a member of the banking group to which the bank belongs and to the managing or executive board of which the person is nominated, by persons who managed or still manage another bank or a financial sector person, by scientific workers, university professors, persons who manage or used to manage authorities in charge of supervising banks or other financial sector persons, as well as by persons who, owing to their successful work in the fields of banking and finance, gained professional and personal reputation, but it may not be written by managers of the bank to whose managing or executive board the person is nominated.
- 7) evidence that the nominated person completed academic or professional career studies of suitable grade level and profile (diploma and/or certificate of completed studies) and, if it is not possible to reliably ascertain whether the evidence is appropriate, the act issued by a domestic higher education institution on recognition of the diploma of a foreign education institution, as well as evidence on professional training of the nominated person, if any;

¹ When proposing members of the managing board, the managing board's decision is submitted on specifying the proposal of the assembly decision to appoint that person, whereas when proposing members of the executive board, the managing board's decision is submitted on the appointment of the person in question as a member of the executive board, coming into effect only after receiving prior consent of the NBS.

² Scan reading of a biometric ID card of domestic citizens does not have to be certified, while foreign citizens submit a certified copy of the passport.

³ At least three members of the managing board need to have appropriate work experience in the field of finance – for more details on this requirement, see page 4 of these guidelines.

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8) evidence of work experience which can be used to establish that the nominated person meets the stipulated requirements for this specific nomination;⁴

9) certificate of taxes confirming that tax liabilities have been settled, i.e. for domestic natural persons – certificate of a competent authority – Public Revenue Secretariat, with data on whether the nominated person is a tax obligor and whether he has settled his due liabilities under the local sources of public revenue in the territory of the town of the person's residence and a certificate of a competent authority – Ministry of Finance (tax administration) about settled tax liabilities under other tax obligations; for foreign natural persons – certificate of a competent authority about settled tax liabilities in the country of residence of the nominated person and the country of origin, if the latter is different from the country of residence; If the competent authority in the foreign country does not issue such tax certificates or if there is no obligation to pay taxes – the nominated person shall submit a statement, issued under full financial and criminal liability, certified by a competent certification authority, in which he shall present all the circumstances;

10) Statement of the Credit Bureau or a Statement from the relevant credit registry abroad; If the competent authority of the foreign country does not issue such statements – the nominated person shall submit a statement issued under full financial and criminal liability, certified by a relevant certification authority, in which he shall present all the circumstances;

11) proof of payment of fee for deciding on this application in the amount of RSD 30,000.00 and proof of payment of the republic administrative fee in the amount of RSD 870.00 (Annex 1.13).

By way of exception, if the submitted documents and evidence do not provide all the data required to assess whether the nominated person meets the stipulated requirements,⁵ the NBS may request other documents deemed necessary.

An associate of the nominated person means:

- any natural person who is a member of the management body in a legal person whose beneficial owner, within the meaning of the law governing the prevention of money laundering and terrorism financing, is the bank founder or a prospective acquirer or in which the bank founder, or the prospective acquirer, is a member of the management body;
- any natural person who is the beneficial owner of the legal person in which the founder, or the prospective acquirer, is a member of the management body;
- any natural person who, together with the founder, or the prospective acquirer, holds beneficial ownership over that same legal person.

If, due to reasonable cause, the nominated person is unable to obtain non-conviction certificates for his associates, the bank may instead submit a statement of the nominated person issued under full financial and criminal liability, confirming that his associates have not been convicted. The National Bank of Serbia may ask the bank at any point to submit non-conviction certificates for associates of the nominated person or demand such evidence directly from the competent authority.

⁴ Evidence is considered to be a certificate of the employer who employed the nominated person, which contains data on the name of the position or function performed, along with the description of the position, responsibilities and competences, in particular those relating to making appropriate decisions, and of the time spent on those positions (expressed in months and years).

⁵ For requirements the nominated person must meet, see pages 3 to 5 of these guidelines.

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2. When re-appointing nominated persons, the application (which the bank is obligated to submit 30 days before the end of the term of a member who is being re-appointed) is submitted along with the following documents:

- 1) proposal of the decision⁶ of the bank's competent body on re-appointment of a member of the bank's managing or executive board;
- 2) information about the total number of meetings of the bank's managing board in the year preceding the year in which the application is submitted, the total number of those meetings held until the day of submission of the application referred to in this paragraph, the number of meetings which the nominated person attended and the manner in which he/she voted in those meetings, along with copies of minutes from those meetings (only when re-appointing a member of the managing board);
- 3) statement submitted for the re-appointment of the person nominated as member of the managing or executive board (Annex – Statement Form);
- 4) proof of payment of fee for deciding on this application in the amount of RSD 30,000.00 and proof of payment of the republic administrative fee in the amount of RSD 870.00 (Annex 1.13).

If the submitted documents and evidence do not provide all the data required to make a decision regarding the application, the NBS may request other documents deemed necessary.

All documents submitted to the NBS must be original or certified copies (the authenticity of the copy must be certified by the competent body in the country of origin). Certificates issued by competent bodies on non-conviction and/or certificates that no criminal, misdemeanour or economic offence proceedings have been instituted against these persons must not be older than six months. The submitted documents must be in the Serbian language; if they are in a foreign language – a translation into Serbian certified by a court interpreter must be submitted along with the original or certified copy. If the original document is in a foreign language in respect to which it is impossible to obtain a translation by a certified court interpreter in the Republic of Serbia, translations into the English language and into the Serbian language, certified by a court interpreter, will be submitted (the document has to be translated into English by a certified court interpreter in the country of origin and its authenticity also needs to be confirmed by an authority in the country of origin in charge of certification, while the translation from English into Serbian has to be done by a court interpreter in the Republic of Serbia).

After receiving prior consent, the bank is obliged to submit to the NBS the decision of the bank's assembly on the appointment or re-appointment of a person as a member of the bank's managing board – within five days from the day the decision was made.

After obtaining prior consent, the bank is obliged to submit to the NBS the employment contract under which the person appointed as a member of the executive board entered into permanent employment, along with a certificate of residence in the Republic of Serbia for foreign nationals, within 5 days from the date of entering into employment and/or obtaining a certificate of residence.

The bank must notify the National Bank of Serbia of the dismissal or resignation of the member of the bank's managing or executive board within ten days from the date of dismissal or resignation, stating the reasons for this action.

⁶ See footnote 1.

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II. ASSESSMENT OF THE FULFILMENT OF REQUIREMENTS WHEN DECIDING ON THE APPLICATION

The nominated persons must fulfil the stipulated requirements as regards:

1) **business reputation** – which is assessed in relation to total work experience and engagements, and/or management of other legal persons or supervision of those persons, as well as the achieved business results of legal persons managed by that person, in addition to the prescribed non-conviction certificates of competent authorities and other facts (a certificate of the interior ministry, competent basic court, higher court – special divisions, competent commercial or misdemeanour court, or certificate of a competent authority for foreign natural and legal persons), the circumstances stated in the Questionnaire⁷ (evidence of the regular settlement of tax liabilities on all accounts, as well as other liabilities) will also be taken into account. The business reputation of the nominated person also depends on the business reputation of its associates, meaning that they must not have been convicted of criminal offences against the economy, property, legal procedures, public order, the judiciary or malfeasance, or of criminal offences of money laundering or terrorism financing, or of criminal offences for which unconditional prison sentence is pronounced, or of similar or comparable criminal offences in accordance with the regulations of a foreign country, and that in the past ten years the nominated person has not committed a severe violation or a repeated violation of regulations governing the prevention of money laundering and terrorism financing;

2) **appropriate qualifications** – which entail such education and/or work experience that enables the nominated person to perform its function in a professional manner and to efficiently manage operational risks of the bank, i.e. that:

(1) in fields relevant to bank operations, the nominated person has finished at least first level of university education in **basic academic courses lasting at least four years** within the meaning of the law governing higher education, and has the **necessary work experience, as follows:**

- person nominated as a member of the managing board as a person with experience in the field of finance (at least three members of the managing board must fulfil this requirement) – minimum **three years** of work experience in a financial sector legal person, specifically within its management bodies, in management positions relevant for the performance of core activity of such legal person, in jobs related to advisory services to management bodies of such legal person, and/or jobs requiring involvement in designing the legal person's business policy or strategy, or minimum **six years** of work experience in the fields of finance and banking, during which period the nominated person distinguished him/herself as an expert or scientific worker in the fields (e.g. by active participation in special projects or professional gatherings and/or in the capacity of a member of scientific or research staff at a university or scientific institute),
- other persons nominated as members of the managing board – at least **six years** of experience in a management position of a company;

⁷ **Questionnaire** for the person nominated as member of the managing and executive board of the bank (questions in the questionnaire are answered under full criminal and financial liability)

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- persons nominated as members of the executive board, in addition to the required work experience stipulated for members of the executive board, appropriate work experience means minimum **three years** of work experience in managing activities of a financial sector legal person which are not directly related to its core activity, but have an impact on it⁸ – if the person is appointed to the bank's executive board with minimum three members, if the bank's articles of association envisage that the person is responsible for such activities and if the National Bank of Serbia has assessed that such work experience is relevant considering the type and scope of the activities in question and of the organisational unit and number of employees which the person managed; or,
- (2) the person nominated as a member of the bank's managing or executive board has completed **the first level of academic or professional career studies (lasting three years)** and has minimum ten years of **work experience** in the field of financial markets, management of operating risks of legal persons in the financial sector, strategic planning, corporate governance, design of business policy or strategy of the person, etc. – which the NBS assessed as corresponding to managerial jobs in a bank, member of a banking group or another legal person in the financial sector.

If, based on the evidence and documents pertaining to education and experience of the nominated person, **it is not possible to assess the ability of such person to efficiently manage risks to the bank** (his knowledge of the bank's risk profile and regulations governing risk management and internal controls systems), this fact may also be established based on **an interview with that person on the premises of the NBS**, records of which will be prepared.

3) requirements of the person nominated as member of the managing board in the capacity of a person independent from the bank (one third of members of the managing board must fulfil these requirements) are as follows:

- (1) that the person holds no direct or indirect ownership in the bank, in a member of the bank's banking group, nor in a legal person which is the bank's shareholder, nor has it held such ownership in the last year before the date of submission of the application;
- (2) that the person is not employed at the bank, at a member of the bank's banking group, nor at a bank's shareholder, nor has it been employed at any of these persons in the last year before the submission of the bank's application;
- (3) that the person is not a member of the bank's management body (except in the case of the re-appointment of a person who performs the function of a member of the managing board as a person independent from the bank) or of another member of the bank's banking group, nor has it been a member of such body in the last year before the submission of the bank's application;
- (4) that the person is not a member of the management body of a person associated with the bank;
- (5) that the person does not have debt liabilities in excess of RSD 100,000 to the bank and/or member of the bank's banking group.

⁸ E.g. human resource management operations.

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NOTE:

The NBS will reject the application if the person nominated as a member of the bank's managing or executive board:

1) is a person who, on the day of revocation of the bank's operating licence or six months before that, and/or on the day of introduction of temporary administration or special management in the bank, was authorised to represent the bank and to act on behalf of the bank, and/or was a member of the bank's management body, except in the case that such person's acts and/or omissions did not or could not lead to the meeting of requirements for the revocation of the bank's operating licence, and/or to the introduction of temporary administration or special management in the bank;⁹

2) is a member of any management body of another bank, and/or is an employee of the bank;

3) has been convicted of a criminal offence by final judgment and pronounced unconditional prison sentence or has been convicted by final judgement of a criminal offence which makes him/her unsuitable for exercising that function.

The NBS will also reject the application based on its discretionary evaluation of good business reputation and appropriate qualifications of the nominated person and the fulfilment of requirements for the nominated person to be considered a person independent from the bank.

⁹ If, on the day of revocation of the bank's operating licence or six months before that, and/or on the day of introduction of temporary administration or special management in the bank, the person was a member of the bank's management body and/or was authorised to represent the bank and to act on behalf of the bank, and claims that he/she did not affect or could not have affected the fulfilment of requirements for the revocation of the bank's operating licence or temporary administration or special management in the bank, a proof substantiating his claim must be also be submitted.