

ELECTION/APPOINTMENT OF THE CREDIT INSTITUTION'S SENIOR EXECUTIVES

Pursuant to the provisions of Section 9 (1)a) aa) and b) of Act CCXXII of 2015 on the General rules of trust services and electronic transactions, Sections 17 (1) and 19 (1) of Government Decree 451/2016. (XII. 19.) on the Detailed rules of electronic services, and Section 3 (1) of MNB Decree 36/2017. (XII. 27.) on the Rules of electronic communication in official matters in progress before the Magyar Nemzeti Bank ("Decree"), the legal representative of the enterprise and the applicant (client) obliged, pursuant to Article 58(2) of Act CXXXIX Of 2013 on the Magyar Nemzeti Bank (**MNB Act**), to apply electronic communication, shall submit its application, notification or other petition by using the prescribed form available in the information system supporting the electronic administration of the MNB ("ERA System") and introduced for the procedure related to the submission in question, in the manner and with content specified therein, simultaneously uploading the attachments specified by the law and other documents required by the MNB.

In the licensing procedures, the applications and notifications must be submitted by using the prescribed electronic form available in the *E-administration / Licensing* service on the ERA interface on the MNB's website, attaching the certified electronic copies of the appendices. The resolutions, requests for clarification, notices and other communications of the MNB are delivered to the financial organisations or their legal representatives by sending them to the delivery storage space.

The electronic form necessary for initiating the licensing procedure for the election/appointment of the credit institution's senior executives is available among the forms introduced for credit institutions under the institutions falling within Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (**Credit Institutions Act**), within the *E-administration/Licensing* service.

The "Good business reputation questionnaire", being a mandatory annex to the application, is available as an editable PDF on the MNB's website under the title of "Standard forms for licensing, authorisation and registration procedures and notifications". The filled in and electronically signed questionnaire can be attached to the prescribed electronic form as an annex. The questionnaire is available at:

The website of the MNB includes information materials on electronic administration and the submission of annexes to be attached in licensing procedures (electronic documents) at:

<https://www.mnb.hu/letoltes/tajekoztatas-az-e-ugyintezesrol-az-mnb-elotti-engedelyezesi-eljarasokban-1.pdf>

Further information related to certain aspects of the licensing procedures (e.g. ascertaining the good business reputation) is available at: <https://www.mnb.hu/letoltes/tajekoztato-az-egy-es-engedelyezesi-illetve-nyilvantartasba-veteli-eljarasok-soran-leggyakrabban-felmerulo-a-magyar-nemzeti-bank-mnb-gyakorlatat-erinto-kerdesekkel-kapcsolatban-1.pdf>

I. SENIOR EXECUTIVES

The senior executive of credit institutions may be elected and appointed subject to the MNB's preliminary authorisation. (*Section 14 (1)e) and Section 137 (1) of the Credit Institutions Act (on electronic form)*)

The application for the election/appointment of senior executives shall contain a declaration that the applicant has provided the MNB with all essential facts and data necessary for issuing the authorisation. (*Article 59 (2) of the MNB Act (in point of III/7 of the electronic form)*)

Senior executives of banks and specialised credit institutions operating in the form of joint stock company include:

- the chairman and members of the Board of Directors,
- the chairman and members of the Supervisory Board,
- the managing director.

Senior executives of cooperative society credit institutions operating in the form of cooperative society include:

- the chairman of the Board of Directors,
- the chairman of the Supervisory Board,

- the managing director.

Senior executives of branch offices include:

- the person appointed by the foreign financial institution to manage the branch office and the immediate deputy of him or her. *(Section 6 (122) of the Credit Institutions Act)*

Managing director: The chairman of the financial institution, elected by its executive body with governance powers, being in employment relationship with the financial institution, the chief executive being in employment relationship with the credit institution, and all deputies of such manager. *(Section 6 (115) of the Credit Institutions Act)*

II. RULES APPLICABLE TO THE MANAGEMENT BODY OF THE CREDIT INSTITUTION WITH GOVERNANCE POWERS

The management body with governance powers shall be the management body stipulated in the Memorandum of Association or statutes, authorised to make decisions. *(Section 6 (1)46 of the Credit Institutions Act)*

The members of the management body of the credit institution with governance powers may only be natural persons. *(Section 148 (1) of the Credit Institutions Act)*

The credit institution's management body with governance powers shall have at least two members who are in employment relationship with the credit institution (hereinafter: internal member). *(Section 148 (2) of the Credit Institutions Act)*

The credit institution's management body with governance powers shall have at least two members who, based on the foreign currency laws, qualify as residents – including also the persons with the right of free movement and residence – and have permanent residence in Hungary for at least one year. *(Section 149 (1) of the Credit Institutions Act)*

(Section 17/K (4) of Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and on the Amendment of Certain Laws on the Economy (**Integration Act**)).

Only the managing directors of the credit institution may be elected as the internal members of the credit institution's management body with governance powers. The membership of the member – being in employment relationship with the credit institution – in the credit institution's management body with governance powers shall be terminated – unless provided otherwise by the law – simultaneously with the termination of his or her employment.

Disqualification: any person who has been the auditor at the credit institution or at a financial institution closely related to the credit institution in the previous three years may not be a member. *(Section 149 (2) and (3) of the Credit Institutions Act)*

III. RULES APPLICABLE TO THE MANAGEMENT BODY OF THE CREDIT INSTITUTIONS WITH SUPERVISORY POWERS

The management body with supervisory powers shall be the management body stipulated in the Memorandum of Association or statutes, which supervises the decision-making of the management body with governance powers. *(Section 6 (1)25 of the Credit Institutions Act)*

The members of the management body of the credit institution with supervisory powers may only be natural persons. The management body with supervisory powers is a body consisting of not less than three and not more than nine members, and they – with the exception of the staff representatives – shall not be in employment relationship with the credit institution. *(Section 152 (1) and (2) of the Credit Institutions Act)*

IV. LICENSING CRITERIA

4.1 Rules pertaining to the authorisation of the election and appointment of the senior executives of a credit institution

4.1.1. Those candidates may be appointed or elected as senior executives in respect of whom the **disqualifying reasons** specified in Section 137 (4) and (5) of the Credit Institutions Act do not exist.

4.1.1.1. Pursuant to Section 137 (4) of the Credit Institutions Act, the following persons may not fill a senior executive position:

- a) a person who has (or used to have) qualifying holding or is (or used to be) a senior executive in a financial institution
 - where insolvency could be avoided only through the exceptional measures applied by the MNB, or
 - which had to be liquidated due to the withdrawal of the activity licence, and whose personal responsibility for the development of this situation has been established by a non-appealable or final resolution (*Section 137 (4)a) of the Credit Institutions Act*),
- b) severely or regularly breached the provisions of the Credit Institutions Act or other laws applicable to banking or the management of financial institution, and this has been established by the final resolution of the MNB or other authority, or by a non-appealable court judgement not earlier than within the previous five years (*Section 137 (4)b) of the Credit Institutions Act*),
- c) has a criminal record (*Section 137 (4)c) of the Credit Institutions Act*)
- d) does not have good business reputation (*Section 137 (4)d) of the Credit Institutions Act*),

4.1.1.2. Pursuant to Section 137 (5) of the Credit Institutions Act, the following person may not fill senior executive position either:

- a) who does not have minimum three years' management experience in bank or corporate management, or in financial or economic area (*Section 137 (5)a) of the Credit Institutions Act*)
- b) acts as an auditor at another financial institution (*Section 137 (5)b) of the Credit Institutions Act*)
- c) fills a position, which may hinder him or her in fulfilling his or her professional duties (*Section 137 (5)c) of the Credit Institutions Act*)

To confirm the absence of the aforementioned disqualifying reasons the candidate shall submit a declaration, which may be worded as follows:

- detailed copying of the wording of the Act and the denial of those items,
- only indicating the respective sections and listing the paragraph numbers of the Act, and denying what is stated there.

The declaration should include Section 137 (4)-(5) of the Credit Institutions Act in full.

In addition to the aforementioned declaration, to prove the minimum three years of management experience gained in bank or corporate management, or public administration financial or economic area – prescribed in Section 137 (5)a) of the Credit Institutions Act – the curriculum vitae, signed by the senior executive, must be also submitted. For further information related to the content of the curriculum vitae and the proof of management experience see Section 4.1.6.

4.1.2. The candidate shall also make a declaration in respect of the provisions of Section 137(9) of the Credit Institutions Act. In the declaration prescribed by Section 137(9) of the Credit Institutions Act the candidate shall state whether or not **a criminal procedure is being conducted against him or her**, and if yes whether he or she has been charged with committing the criminal offence specified in Section 137 (6) of the Credit Institutions Act.

If there has been an accusation, the candidate shall attach to the declaration the instrument on the accusation and the description of the act underlying the accusatio.

Pursuant to Section 137 (6) of the Credit Institutions Act these include indictment by the public prosecutor due to criminal offence specified in Titles VII and VIII of Chapter XV and Chapters XVII and XVIII of Act IV of 1978 in

force until 30 June 2013, or Chapters XXVII or XXXV-XLIII of the Criminal Code and when the competent authority abroad has brought a charge due to crimes against property or due to economic crime. *(Section 137 (6) of the Credit Institutions Act)*.

The declaration prescribed in Section 137 (9) of the Credit Institutions Act – with negative clearance – shall be made also in the event if there is no criminal procedure in progress against the senior executive.

4.1.3. In order to prove the clean records specified in Section 137 (4)c) of the Credit Institutions Act, an **extract from the judicial record** – issued in relation to the entirety of the data included in the criminal records – **with enhanced content** (no criminal record, is not banned from exercising civil rights, not disqualified from occupation or activity), **not older than 90 (ninety) days** shall be submitted.

4.1.4. In order to prove the good business reputation for the purposes of Section 139 of the Credit Institutions Act, the questionnaire published on the MNB's website, fully filled in by the candidate shall be submitted. The applicant credit institution is kindly reminded that Section 5 of the questionnaire should include the positions filled by the candidate at any company and organisation, not only at those operating in the field of financial markets.

Furthermore, the applicant credit institution should note that with a view to ascertaining the existence of good business reputation, the MNB may contact the competent foreign authority directly as well, and it may also make an enquiry in the database kept by the European Banking Authority of the measures taken by EEA states. In connection with this, the candidate shall make a declaration in Section 13 of the questionnaire whether an assessment of his or her reputation has already been prepared by another competent authority before, including the name of the competent authority, the date of the assessment and the proof of the result. *(Section 139 (4) of the Credit Institutions Act)*

4.1.5. In the case of credit institutions with a market share of not less than 5 percent based on the balance sheet total, the declaration proving the fulfilment of the **condition set forth in Section 145 (1) of the Credit Institutions Act** shall form an additional annex to the application. Pursuant to the statutory provision mentioned above, the managing directors and members of the management body of these credit institutions may fill the following positions simultaneously:

- one managing position and two non-managing positions in a management body, or
- four non-managing positions in management bodies.

For the purposes of the legal provision above, the following positions shall qualify as a managing position

- managing director position or non-managing director position in a management body within the same group,
- non-managing director position filled simultaneously in the management and executive body,
 - of a credit institution member of the institutional protection scheme, or
 - in a company in which the credit institution with a market share of not less than 5 percent based on the balance sheet total has a qualifying holding.

The restriction under Section 145 (1) of the Credit Institutions Act shall not apply to managing director positions in an organisation that pursues no business activity. *(Section 145 (3) of the Credit Institutions Act)*

In the opinion of the MNB, for the purposes of Section 145 (3) of the Credit Institutions Act, the following organisations may be regarded as ones not pursuing any business activity:

- a) foundation,
- b) other non-profit organisation, including – amongst others – the institutional protection funds and business federation organisations of financial organisations,
- c) enterprises pursuing solely educational activity,
- d) enterprises managing the ownership interests of the member of management body and of his family members, provided that the member of the management body does not participate in the daily activity thereof.

For the purposes of Section 145 of the Credit Institutions Act, the following shall qualify as a group: the entirety of the enterprises comprising of a parent company, the subsidiaries thereof and all other enterprises in which the parent company or its subsidiary has controlling interest or participation. *(Section 6(1)10 of the Credit Institutions Act)*

For the purposes of applying the regulation under Section 145 of the Credit Institutions Act:

- one managing director and two management body (Board of Directors, Supervisory Board) positions; or four management body (Board of Directors, Supervisory Board) positions may be filled simultaneously
- within a group it is also possible to fill several managing director and other management body positions, as within the group these positions are to be considered as a single managing director position,
- when calculating the number of management positions filled, the positions filled in a financial institution and in any other organisation not qualifying as financial institution shall be also taken into consideration,
- for the purposes of assessing the conflict of interest, the management positions at non-profit organisations and foundations shall not be taken into consideration.

The MNB shall verify the content of the declaration made under Section 145 of the Credit Institutions Act based on its own records and the records of the company register.

The MNB may permit the member of the management body of a credit institution specified in Section 145 (1) of the Credit Institutions Act to fill one more non-managing director position in excess of the limit. *(Section 145 (4) of the Credit Institutions Act)*

4.1.6. Qualification and management experience

The managing director or internal member shall have, as specified in Section 155 (1)c) of the Credit Institutions Act

- ca) higher education degree in the relevant field and management experience of not less than four years obtained in a credit institution,
- cb) higher education degree in the relevant field and management experience of not less than five years gained at the Supervisory Authority, the Hungarian Financial Supervisory Authority or the legal predecessor of that, at the National Deposit Insurance Fund or voluntary deposit insurance or institutional protection fund, or in equivalent foreign institutions,
- cc) higher education degree in the relevant field and professional experience of not less than six years obtained in an enterprise or in public administration,
- cd) higher education degree not in the relevant field, with professional experience of not less than six year obtained in a financial institution or investment firm of the same type or similar size. *(Section 155 (1)c) of the Credit Institutions Act)*

Higher education degree in the relevant field:

- in accordance with Act LXXX of 1993 on Higher Education, university or college degree in higher education in economics, or in accordance with Act CCIV of 2011 on National Higher Education a BA or MSc degree in economics,
- lawyer's qualification
- auditor's qualification, or
- advanced or postgraduate banking qualification. *(Section 155 (3) of the Credit Institutions Act)*

The notarised copy of the diploma and the curriculum vitae signed by the candidate shall serve as proof of the aforementioned specialised or non-specialised qualification and management experience. The curriculum vitae shall contain the educational level and other relevant qualifications, the jobs and positions in chronological order, indicating the name, address and type of the employer, the title of the positions filled, the time – preferably broken down into years/months – spent in each employment indicating the key duties. The curriculum vitae shall contain, particularly the information related to the activities (bank and/or management experience) falling with the scope of the position to be filled by the candidate.

If the existence of the management experience cannot be established based on the curriculum vitae beyond doubt, the MNB may request the applicant that it should submit additional documents (e.g. employer's confirmation, organisational structure of the employer, etc.).

4.1.7. Furthermore, the application for the appointment/election of the credit institution's senior executive shall contain the declaration of the applicant credit institution with regard to the following:

- precise title of the candidate's position, key duties and obligations (in section I/2 of the application form);
- anticipated start date and duration of the mandate (in section I/2 of the application form);
- if the candidate is to replace another senior executive, the name of that person (in section I/2 of the application form);
- whether the candidate has also been assessed as to whether, based on previous experiences, he or she complies with the requirements listed in Recommendation No. 11/2019 (V.6.) of the MNB on the assessment of the eligibility of the members of executive bodies and persons in key position, and if not that the credit institution prescribed a mandatory training plan, indicating the service provider and the planned end date of the training (in section III/1 of the application form)
- whether or not the credit institution has identified any conflict of interest in respect of the candidate (in section III/2 of the application form)
- presentation that the candidate has sufficient time for fulfilling the mandate (in section III/3 of the application form)
- information whether the candidate has been proposed on behalf of a major shareholder (in section III/4 of the application form)

4.1.8. Furthermore, the application for the appointment/election of the credit institution's senior executive shall contain

- the document containing the result of suitability assessment of the candidate, conducted by the applicant institution and approved by the Board of Directors/Supervisory Board/other body¹;
- when elected or appointed for the first time, the letter of appointment, contract, offer of employment or the related drafts.

Depending on the content of the application, the MNB may prescribe the submission of additional documents: organisational and operational rules, organisation chart of previous employers, job description of previous positions, employer's certificate, etc.

4.2. The application for the authorisation of the election or appointment of a **managing director** (in the case of credit institutions operating as a joint stock company or cooperative society) and of **an internal member of management body with governing powers (internal member)** (in the case of credit institutions operating as a joint stock company or cooperative society) shall be submitted on the electronic form available within the forms dedicated to credit institutions within the institutions falling within the Credit Institutions Act, in the *E-administration/Licensing* service.

The application shall be accompanied by the declarations and documents proving compliance with the conditions stipulated in Sections 4.1.1–4.1.8.

Pursuant to Section 17/K (1a) in the case of cooperative society credit institutions the application for the authorisation of the election or appointment of senior executives shall be accompanied by the declaration containing the prior consent of the Board of Directors of the Integration Organisation of Cooperative Credit Institutions (**Integration Organisation**). (The cooperative credit institution shall make a declaration on the existence of the prior consent in section III/6 of the application form.)

¹The expectations related to the suitability assessment of the candidate by the credit institutions are included in Recommendation No. 11/2019 (V.6.) of the Magyar Nemzeti Bank on the assessment of the eligibility of the members of executive bodies and persons in key position. The recommendation is available on the MNB's website at: <https://www.mnb.hu/letoltes/11-2019-alkalmassagi.pdf>

4.3. The application for the authorisation of the election or appointment of the **chairman of the management body with supervisory powers**, the chairman of the management body with governance powers, and the **external member of the management body with governance powers** of banks operating in the form of joint stock company and of specialised credit institutions shall be submitted on the electronic form available within the forms dedicated to credit institutions within the institutions falling within the Credit Institutions Act, in the *E-administration/Licensing* service.

The application shall be accompanied by the declarations and documents proving compliance with the conditions stipulated in Sections 4.1.1., 4.1.2., 4.1.3., 4.1.4., 4.1.5. 4.1.7. and 4.1.8.

Pursuant to Section 17/K (1a), in the case of cooperative society credit institutions the application for the authorisation of the election or appointment of senior executives shall be accompanied by the declaration containing the prior consent of the Board of Directors of the Integration Organisation. (The cooperative credit institution shall make a declaration on the existence of the prior consent in section III/6 of the application form.)

4.4. The application for the authorisation of the election or appointment of the **member of the management body with supervisory powers** of banks and specialised credit institutions operating in the form of a joint stock company shall be submitted on the electronic form available within the forms dedicated to credit institutions within the institutions falling within the Credit Institutions Act, in the *E-administration/Licensing* service.

The application shall be accompanied by the declarations and documents proving compliance with the conditions stipulated in Sections 4.1.1.1, 4.1.2., 4.1.3., 4.1.4., 4.1.5. 4.1.7. and 4.1.8.

Pursuant to Section 17/K (1a), in the case of cooperative society credit institutions the application for the authorisation of the election or appointment of senior executives shall be accompanied by the declaration containing the prior consent of the Board of Directors of the Integration Organisation. (The cooperative credit institution shall make a declaration on the existence of the prior consent in section III/6 of the application form.)

4.5 The application for the authorisation of the election or appointment of the **senior executive of the branch office a third-country credit institution** shall be submitted on the electronic form available within the forms dedicated to credit institutions within the institutions falling within the Credit Institutions Act, in the *E-administration/Licensing* service.

Based on the rules specified for the managing director, the authorisation of the senior executive of the branch office of third-country credit institution shall be governed – in respect of the range of documents to be submitted and the content of the declaration and curriculum vitae – by the provisions of Sections 4.1.1., 4.1.2., 4.1.3., 4.1.4., 4.1.5., 4.1.6. 4.1.7. and 4.1.8.

In the case of branch offices, senior executives shall include the person appointed by the foreign financial institution (with registered office in a third country) to manage the branch office and the immediate deputy of him or her.

The management of the branch office of a third-country credit institution shall consist of not less than two senior executives at least one of whom shall be a Hungarian citizen resident with permanent residence in Hungary for at least 1 year. (*Section 156 (1) and (2) of the Credit Institutions Act*)

V. RE-ELECTION OF SENIOR EXECUTIVES

The re-election of senior executives also qualifies as election, and thus it is subject to authorisation without exception.

The application for the authorisation of the re-election or reappointment of the senior executive shall be submitted on the electronic form available within the forms dedicated to credit institutions within the institutions falling within the Credit Institutions Act, in the *E-administration/Licensing* service.

For the authorisation of the re-election or reappointment of the senior executive for the same credit institution the following documents shall be attached to the application:

- a) the declaration related to Section 137 (4)-(5) and (9) of the Credit Institutions Act (in the case of Supervisory Board members, related to Section 137 (4) and (9) of the Credit Institutions Act),
- b) the questionnaire confirming the candidate's good business reputation, or if it has been submitted within 90 (ninety) days, a declaration as to what extent the data included in the previously submitted questionnaire have changed,
- c) the document containing the result of the suitability assessment of the candidate, conducted by the applicant institution and approved by the Board of Directors/Supervisory Board/other body, and
- d) an extract from the judicial record – issued in relation the entirety of the data included in the criminal records – with enhanced content not older than 90 (ninety) days.

If the credit institution has a market share of not less than 5 percent based on the balance sheet total, the declarations related to the provisions of Section 145 (1) of the Credit Institutions Act shall be submitted also upon the re-election of the senior executives.

The content of the documents to be submitted shall be governed by the provisions of subsections 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, 4.1.7 and 4.1.8.

Pursuant to Section 17/K (1a) in the case of cooperative society credit institutions the application for the authorisation of the re-election of senior executives shall be accompanied by the declaration containing the prior consent of the Board of Directors of the Integration Organisation. (The cooperative credit institution shall make a declaration on the existence of the prior consent in section III/6 of the application form.)

VI. MISCELLANEOUS PROVISIONS

If there is a criminal proceeding in progress specified in Section 137 (6) of the Credit Institutions Act against the senior executive, the MNB will suspend the procedure related to the assessment of the application until the closing of the criminal procedure. *(Section 137 (2) of the Banking Act)*

The MNB may reject the application aimed at the authorisation of the election or appointment of the natural person if any of the disqualifying reasons specified in Section 137 (4) and (5) of the Credit Institutions Act holds true of the person proposed to be appointed (elected), or in the case of managing directors, if the proposed person does not satisfy the conditions set forth in Section 155 of the Credit Institutions Act. *(Section 137 (3) of the Banking Act).*

Last amendment: November 2019