

Election/appointment of the financial enterprise's senior executive

Pursuant to the provisions in subpoint aa) of point a) and point b) of Section 9 (1) 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"), on grounds of Section 58 (2) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank ("MNB Act"), the legal representative economic operator or an applicant (client) obliged to apply electronic communication shall submit his application, notification or other petition by using the prescribed form available in the information system ensuring the electronic transactions of the MNB ("ERA System") and introduced for the procedure related to the petition 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 the initiation of the authorisation procedure aimed at the election/appointment of the senior executives of financial enterprises is available – within the *E-administration/Licensing service* – among the forms dedicated to the financial enterprises as specified in the Credit Institutions Act.

The "Good business reputation questionnaire", being a mandatory annex to the application, is available as editable PDF on the MNB's website under the title of "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 https://alk.mnb.hu/bal_menu/formanyomtatvanyok/urlapok_kivalasztasa/szerkeszto?id=1292&version=0&chid=1516

The website of the MNB includes information materials related to the electronic administration and the submission of annexes to be attached in the licensing procedure (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. establishing good business reputation) is available under the following menu item: <https://www.mnb.hu/letoltes/tmpc812-tmp-12233381.pdf> and <https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/altalanos-informaciok>

IMPORTANT NOTICE! FROM 1 JULY 2019, IN THE AUTHORISATION CASES RELATED TO THE SENIOR EXECUTIVE OF FINANCIAL ENTERPRISES WITH BALANCE SHEET TOTAL OVER HUF 5 BILLION, THE PROVISIONS OF THE JOINT GUIDELINES OF THE EUROPEAN BANKING AUTHORITY AND THE EUROPEAN SECURITIES AND MARKETS AUTHORITY NO. EBA/GL/2017/12, CONSIDERING RECOMMENDATION 11/2019 (V. 6.) OF THE MAGYAR NEMZETI BANK (RECOMMENDATION) SHALL BE APPLIED.

In accordance with the provisions of Section 8 of the Recommendation, in the case of financial enterprises the MNB expects the enforcement of the requirements specified in the Recommendation only with regard to the individual assessment of the suitability of the managing director(s), chairman of the Board of Directors and the chairman of the Supervisory Board.

I. SENIOR EXECUTIVES

The senior executive of financial enterprises may be elected or appointed subject to the MNB's preliminary authorisation (*Sections 15 (1) d) and 137 (1) of the Credit Institutions Act*)

1.1 Senior executive

1. In the case of financial enterprises operating as a joint stock company:
 - the chairman of the Board of Directors,

- the chairman of the Supervisory Board,
 - the managing director
2. In the case of financial enterprises operating as a cooperative society:
- the chairman of the Board of Directors,
 - the chairman of the Supervisory Board,
 - the managing director
3. In the case of financial enterprises operating as a foundation:
- the member of the Board of Trustees,
 - the chairman of the Supervisory Board,
 - the managing director

(subpoints c) and e) of point 122 of Section 6 (1) of the Credit Institutions Act)

1.2 Managing Director

The chairman of the financial enterprise, elected by its executive body with governance powers, being in employment relationship with the financial institution, the chief executive – appointed to manage the financial institution – being in employment relationship with the credit institution or financial enterprise, and all deputies of such executive *(point 115 of Section 6 (1) of the Credit Institutions Act)*

The management of the financial enterprise must be performed by at least one managing director in employment relationship. *(Section 156 (1) of the Credit Institutions Act).*

In the Board of Trustees of financial enterprises operating as a foundation there is at least one member who has employment relationship with the foundation *(Section 148 (3) of the Credit Institutions Act).*

1.3 Rules applicable to the financial enterprise's Board of Directors

Pursuant to point 123 of Section 6 (1) of the Credit Institutions Act, management body shall mean the **Board of Directors** and Supervisory Board of the financial institution, the executives and members of those, including also the senior executives of financial institutions operating as branch offices.

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

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

1.4 Rules applicable to the financial enterprise's Supervisory Board

Pursuant to point 123 of Section 6 (1) of the Credit Institutions Act, management body shall mean the Board of Directors and **Supervisory Board** of the financial institution, the executives and members of those, including also the senior executives of financial institutions operating as branch offices.

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

The members of the financial enterprise's management body with supervisory powers may only be natural persons *(Section 152 (1) of the Credit Institutions Act).*

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

For the supervision of the operation of the Board of Trustees of financial enterprises operating as a foundation a Supervisory Board comprising of at least three members must be established. The operation of the supervisory board shall be governed, mutatis mutandis, by the provisions applicable to the supervisory board of financial institutions. *(Section 153 of the Credit Institutions Act)*

II. LICENSING CRITERIA

2.1 The election or appointment of the managing director and the chairman of the Board of Directors shall be subject to the following conditions:

2.1.1. Disqualifying reasons

Those candidates may be appointed or elected as **Managing Director**, or the **chairman of the Board of Directors or Supervisory Board** in respect of whom the following disqualifying reasons specified in Section 137 (4) of the Credit Institutions Act do not exist. Disqualifying reasons:

- 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 liability for the development of this situation has been established by a non-appealable resolution,
- 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,
- c) has a criminal record,
- d) has no good business reputation *(Section 137 (4) 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.

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

2.1.2. Proof of clean record; pending criminal procedures

In order to prove the clean record specified in Section 137 (4) c) of the Credit Institutions Act, an original or certified copy of the **extract from the judicial record 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.

In the procedure aimed at the authorisation of the election or appointment of a senior executive, the natural person specified in the application shall make a declaration 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 the charge is suitable for undermining trust in the financial institution or public confidence in the financial intermediary system, the MNB shall suspend the procedure aimed at the authorisation of the appointment or election until the conclusion of the criminal proceeding. *(Section 137 (9) of the Credit Institutions Act)* IMPORTANT NOTICE! 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.

In the declaration prescribed by Section 137 (9) of the Credit Institutions Act the senior executive shall make a declaration on all criminal procedures that may be in progress against him or her, and 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 senior executive shall attach to the declaration the instrument on the accusation and the description of the act underlying the accusation.

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 Act C of 2012 on 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 of the person concerned with regard to the criminal procedure specified in Section 137 (6) of the Credit Institutions Act is a mandatory annex to the application (*Section 155 (5) of the Credit Institutions Act*).

2.1.3. Good business reputation

In order to prove good business reputation for the purposes of Section 139 of the Credit Institutions Act, the questionnaire published on the MNB's website shall be submitted. In the case of financial enterprises with a balance sheet total over HUF 5 billion, the senior executives must complete the questionnaire in full; in the case of financial enterprises with a balance sheet total below HUF 5 billion, only specific points of the questionnaire, indicated at the beginning of the questionnaire, must be completed.

The applicant financial enterprise 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. In the same section, in the line entitled "time spent in the job", both the start date and the end date must be specified.

Furthermore, the applicant financial enterprise 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 – in the case of financial enterprises with a balance sheet total over HUF 5 billion – 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*)

2.1.4. Proof of qualification and practice (conditions to be satisfied by managing directors)

In addition to the criteria applicable to senior executives, set forth in Section 137 (*Section 155 (4) a) of the Credit Institutions Act*) the **managing director** shall also have

- higher education degree (*Section 155 (4) c) ca) of the Credit Institutions Act*),
- **professional practice of at least three years** obtained at a financial institution, the MNB, the Hungarian Financial Supervisory Authority or at its legal predecessor, or in public administration, or
- **management practice of at least three years** in other economic fields (*Section 155 (4) c) cb)-cc) of the Credit Institutions Act*).

For information concerning the assessment of the existence of management practice see:

<https://www.mnb.hu/letoltes/tajekoztato-az-egy-es-engedelyezesi-illetve-nyilvantartasba-veteli-eljarasok-soran-leggyakrabban-felmerulo-a-ma-gyar-nemzeti-bank-mnb-gyakorlatat-erinto-kerdesekkel-kapcsolatban-1.pdf>

The notarised copy of the diploma and the curriculum vitae signed by the candidate shall serve as proof of the aforementioned higher education degree and professional practice (*Section 155 (5) of the Credit Institutions Act*).

The curriculum vitae shall contain the jobs and positions in chronological order, indicating the name and address of the employer, the title of the positions filled, the time spent in each employment indicating the key duties. If the existence of management practice cannot be clearly established from the curriculum vitae, the MNB may ask for a document certifying the existence of management practice issued by the previous employer. The candidate may also indicate in the questionnaire persons for reference and attach letters of recommendation.

3. Application for the authorisation of the election/appointment of senior executives

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

in Sections 3.1-3.3 below shall be attached to the application, depending on the position to be filled by the person subject to authorisation.

The application shall contain the following data:

- precise title of the candidate's position, detailed description of his or her 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);

In addition to the foregoing, in the case of financial enterprises with a balance sheet total over HUF 5 billion, the following declarations shall be made and documents shall be attached:

- whether the candidate has also been assessed as to whether, based on previous experiences, he or she complies with the requirements listed in these guidelines with regard to former experiences, 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)
- a declaration whether or not the financial enterprise 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)
- the protocol containing the assessment of the candidate, approved by the Board of Directors, management body with supervisory powers, the nominating committee and other committee or organisational unit with internal control functions, and the report or document on the assessment of suitability;
- when elected or appointed for the first time, the letter of appointment, contract, offer of employment or the related drafts

3.1. The authentic electronic copies of the following documents shall be attached to the application for the authorisation of the election or appointment of the managing director:

- the candidate's declarations related to the disqualifying reasons stipulated in Section 137 (4) of the Credit Institutions Act, and the declarations prescribed in Section 137 (9) of the Credit Institutions Act (*to confirm Section 137 (4) (6) and (9) of the Credit Institutions Act*),
- original, or certified copy of the certificate of clean record – issued in relation 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 days, issued by the authority of the country of citizenship or, in the absence thereof, of the country of abode (*to confirm Section 137 (4) c) of the Credit Institutions Act*),
- for non-resident citizens the authentic Hungarian translation of the certificate of clean record must be also attached to the application (*to confirm Section 137 (4) c) of the Credit Institutions Act*)
- curriculum vitae signed by the candidate (*to confirm Section 155 (4) c) cb)-cc) of the Credit Institutions Act*),
- notarised copy of the diploma (*to confirm Section 155 (4) c) ca) of the Credit Institutions Act*),
- the datasheet completed by the candidate, confirming good business reputation (*Section 137 (4) d) and Section 139 (1) of the Credit Institutions Act*).

If any doubt arises in respect of the authenticity or the content of the public instrument issued abroad, the MNB calls upon the client to present the legalised public instrument issued abroad.

For the good business reputation questionnaire see:

https://alk.mnb.hu/bal_menu/formanyomatvanyok/urlapok_kivalasztasa/szerkeszto?id=1292&version=0&chid=1516

3.2. The following documents shall be attached to the application for the authorisation of the election or appointment of the chairman of the Board of Directors:

- the candidate's declarations related to the disqualifying reasons stipulated in Section 137 (4) of the Credit Institutions Act, and the declarations prescribed in *Section 137 (9) of the Credit Institutions Act (to confirm Section 137 (4) (6) and (9) of the Credit Institutions Act)*,
- original, or certified copy of the certificate of clean record – issued in relation 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 days, issued by the authority of the country of citizenship or, in the absence thereof, of the country of abode (*to confirm Section 137 (4) c) of the Credit Institutions Act*),
- for non-resident citizens the authentic translation of the certificate of clean record must be also attached to the application (*to confirm Section 137 (4) c) of the Credit Institutions Act*)
- the datasheet completed by the candidate, confirming good business reputation (*Section 137 (4) d) and Section 139 (1) of the Credit Institutions Act*).

If any doubt arises in respect of the authenticity or the content of the public instrument issued abroad, the MNB calls upon the client to present the legalised public instrument issued abroad.

For the good business reputation questionnaire to be completed see: https://alk.mnb.hu/bal_menu/formanyomtatvanyok/urlapok_kivalasztasa/szerkeszto?id=1292&version=0&chid=1516

3.3. The following documents shall be attached to the application for the authorisation of the election appointment of the chairman of Supervisory Board:

- the candidate's declarations related to the disqualifying reasons stipulated in Section 137 (4) of the Credit Institutions Act, and the declarations prescribed in Section 137 (9) of the Credit Institutions Act (the content of the declaration shall be governed by the provisions related to the election of the managing director and the chairman of the Board of Directors) (*to confirm Section 137 (4) (6) and (9) of the Credit Institutions Act*),,
- original, or certified copy of the certificate of clean record – with enhanced content (no criminal record, is not banned from exercising civil rights, not disqualified from occupation or activity), not older than 90 days – issued by the authority of the country of citizenship or, in the absence thereof, of the country of abode (*to confirm Section 137 (4) c) of the Credit Institutions Act*),
- for non-resident citizens the authentic translation of the of clean record (*to confirm Section 137 (4) c) of the Credit Institutions Act*)
- the datasheet completed by the candidate, confirming good business reputation (*Section 137 (4) d) and Section 139 (1) of the Credit Institutions Act*).

If any doubt arises in respect of the authenticity or the content of the public instrument issued abroad, the MNB calls upon the client to present the legalised public instrument issued abroad.

For the good business reputation questionnaire to be completed see:

https://alk.mnb.hu/bal_menu/formanyomtatvanyok/urlapok_kivalasztasa/szerkeszto?id=1292&version=0&chid=1516

IV. RE-ELECTION OF SENIOR EXECUTIVES

If the senior executive has been elected or appointed before 1 January 1997 – i.e. prior to the entry into force of Act CXII of 1996 on Credit Institutions and Financial Enterprises (old Credit Institutions Act) – the authorisation procedure shall be governed by provisions above.

If the senior executive has been elected or appointed after 1 January 1997, for the authorisation of his or her re-election at the same financial enterprise for the same position, only his or her declarations related to the provisions of Section 137 (4) and Section 137 (9) of the Credit Institutions Act, the questionnaire confirming the existence of his or her good business reputation – or if it has been submitted not earlier than 90 (ninety) days before (e.g. in another authorisation procedure) – a declaration to the effect that the data specified in the questionnaire submitted earlier have not changed, and the original, or certified copy of the certificate of clean record 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, must be attached.

V. MISCELLANEOUS PROVISIONS

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*)

If the senior executive has been charged with committing the criminal offence specified in Section 137 (6) of the Credit Institutions Act, and the charge is suitable for undermining trust in the financial institution or public confidence in the financial intermediary system, the MNB shall suspend the procedure aimed at the authorisation of the appointment or election. (*Section 137 (9) of the Credit Institutions Act*).

The MNB rejects 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) 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 Credit Institutions Act*).

In addition to the foregoing, applicants shall also take into consideration the following notices published on the MNB's website:

"Information on questions most frequently arising in certain licensing and registration procedures affecting the practice of the Magyar Nemzeti Bank (MNB)".

<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>

"Establishing good business reputation in procedures for the authorisation of the election/appointment of senior executives (paragraph 51 of Section 6 (1) and Section 139 of Act CCXXXVII of 2013 on credit institutions and financial enterprises)" <https://www.mnb.hu/letoltes/tmpc812-tmp-12233381.pdf>

VI. REPORTING THE ELECTION, APPOINTMENT, RE-ELECTION OF SENIOR EXECUTIVES AND THE TERMINATION OF THEIR LEGAL RELATIONSHIP IN THE ERA SYSTEM

6.1. Pursuant to MNB Decree No. 58/2015 (XII. 22.) MNB on the Static Data Reporting Obligation of Persons and Organisations Falling under the Supervision of the Financial Intermediary System), after receiving the resolution related to the authorisation/appointment/re-election of senior executives, the changes in static data shall be reported to the MNB as part of the data supply, on electronic form KTA2, through the ERA system, as follows:

- if the senior executive has been elected/appointed/re-elected on a provisional basis, pending the MNB's authorisation, within 5 (five) working days from the authorisation resolution's becoming legally binding,
- if the election/appointment/re-election takes place after receiving the MNB's authorisation resolution, within 5 (five) working days after the election/appointment/re-election.

Please note that the MNB registers the senior executives based on the aforementioned reporting. The registration is conditional upon the authorisation resolution.

6.2. You are kindly reminded that financial enterprises are also obliged to report the termination of the legal relationship of senior executives through the ERA system on the KTA2 electronic form.

Last amendment: November 2019