

AUTHORISATION OF THE ACQUISITION OF QUALIFYING HOLDING IN UCITS FUND MANAGERS

Pursuant to MNB Decree No. 4/2016 (III. 1.) on the Standard forms to be used in certain licensing, approval and registration procedures and notifications before the Magyar Nemzeti Bank (**Decree**), applications or notifications in licensing, approval and registration or deregistration procedures shall be submitted on standard forms, when the Decree specifies a standard form for the respective procedure or notification obligation. In the absence of such standard form, the application or notification may be submitted in free format and manner to the MNB.

The standard form entitled “Application for the authorisation of acquiring and increasing qualifying holding in investment firms and UCITS fund managers” is available at:

https://alk.mnb.hu/bal_menu/formanyomtatvanyok/urlapok_kivalasztasa/szerkeszto?id=365&version=0&chid=&jid

For the information related to the standard forms (“Notice on standard forms”) see the following menu item: <https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/tajekoztatok>

The good business reputation datasheets are available at:

https://alk.mnb.hu/bal_menu/formanyomtatvanyok?mid=871

I. NOTION OF QUALIFYING HOLDING

Qualifying holding is direct or indirect relationship entered into with an investment fund manager by virtue of which

- the rate of the holder’s membership share or of the voting rights it can exercise in the investment fund manager is at least 10 percent,
- the holder may appoint or dismiss at least 20 percent of the members of the investment fund manager’s decision-making, management or supervisory bodies, or
- based on the Memorandum of Association or on an agreement it can exercise significant influence on the operation of the investment fund (Section 4 (1)75 of Act XVI of 2014 on Collective Investment Trusts and Their Managers, and on the Amendment of Financial Regulations (**Collective Investment Trust Act**)).

II. ACQUISITION OF QUALIFYING HOLDING IN INVESTMENT FUND MANAGERS

The acquisition of qualifying holding in an UCITS fund manager shall be governed by the provisions of Chapter IX of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (**Investment Firms Act**) with the proviso that were the law mentions investment firm, it shall be construed as an UCITS fund manager. (Section 20 of the Collective Investment Trust Act) Accordingly, the acquisition of qualifying holding in an investment fund manager shall be subject to the MNB’s prior authorisation. (Section 37 (1) of the Investment Firms Act)

III. MANDATORY ANNEXES TO THE LICENCE APPLICATION

The mandatory annexes to the application for authorising the acquisition of a qualifying holding shall include:

- the data of the applicant natural person (*on the standard form*),
- the confirmation of the legal origin of the financial resources necessary for acquiring the qualifying holding,
- a documentary confirmation, not older than thirty days, that it has no outstanding debt to the tax authority, customs authority or social insurance organisation having competence based on its personal law,
- a declaration (*to be made on the standard form*) that its other ownership interest and activity does not jeopardise the functioning of the financial institution,
- applicant’s declaration (*to be made on the standard form*) that it complies with the conditions set out in Section 37 (4) and (5) of the Investment Firms Act,
- in the case of non-natural person applicants, the articles of association effective at the time of submitting the application and a documentary confirmation, not older than thirty days, that it has been registered based on its personal law, it is not under bankruptcy, liquidation or dissolution, and there is no statutory disqualifying reason against its senior executive,
- the applicant’s declaration (*to be made on the standard form*) to the effect that the acquisition of qualifying holding does not jeopardise the control of the investment fund manager from its head office located in the territory of Hungary,
- in the case of non-natural person applicants, the detailed description of the applicant’s ownership structure,

- i) the declarations specified in Section 28 (1)t) and u) of the Investment Firms Act,
- j) the consent of the natural person getting into close links with the investment fund manager as a result of the acquisition of qualifying holding to the management of his or her personal data for the purposes of consolidated or supplementary supervision.

Natural person applicants shall prove to the MNB, simultaneously with submitting the application for the authorisation in accordance with the foregoing, the fact that they have no prior criminal record with respect to the criminal offences specified in Section 22(5) of the Investment Firms Act. (Section 37 (2)-(2a) of the Investment Firms Act)

In addition, a declaration (*to be made on the standard form*) shall be attached to the application stating that the applicant has disclosed to the MNB all material facts and data necessary for the issuance of the authorisation. (*Article 59 (2) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank*)

Pursuant to Section 28 (1)t) of the Investment Firms Act, in respect of subsection of i) of the legal provision referred to, the applicant shall present the rules applicable to the transfer of information related to consolidated or supplementary supervision and submit the declaration of the persons having close links with the investment fund manager to the effect that they provide the MNB with all data, facts and information necessary for the consolidated or supplementary supervision of the investment fund manager. In addition, pursuant to Section 28 (1)u) of the Investment Firms Act the applicant shall also submit the declaration of the natural person being in close links with the investment fund manager to the effect that he or she consents to the processing and forwarding of his or her personal data provided to the investment fund manager for the purposes of performing the consolidated or supplementary supervision in accordance with the Act.

According to the MNB's practice, as part of proving the legal origin of the financial resources necessary for the acquisition it is also necessary to prove the continuous availability of the financial resources during the period between the emergence of the financial resource until the acquisition. In the case of companies it is essentially the balance sheet that may be accepted as a proof of the legal origin of the financial resources.

When the acquirer is a non-resident legal entity, unincorporated enterprise or natural person, it is the instruments issued by authorities of the respective state that may be accepted as a proof that the acquirer has not outstanding debt to the state tax authority, customs authority and social insurance organisation.

Concerning the fact that the applicant's other ownership interest and business activity do not jeopardise the safe operation of the investment fund manager and the supervisory activity, the respective natural person or the senior executive of the legal entity or unincorporated enterprise shall make a declaration in documentary form.

In order to prove that the applicant has been registered in accordance with its personal law, and it is not under liquidation or dissolution proceeding a certificate of incorporation, not older than thirty days, while in respect of the absence of bankruptcy proceedings the declaration of the investment fund manager's senior executive shall be submitted.

It shall be deemed equivalent to the tax certificate issued by the state tax authority when the taxpayer is included in the database of taxpayers with no outstanding public debt.

The applicant shall also submit the declaration related to Section 21 (1) a) and b) of the Collective Investment Trust Act.

IV. GOOD BUSINESS REPUTATION

The owner of the investment fund manager with qualifying holding may only be a person,

- a) who is independent of any influence jeopardising the prudent, careful and reliable (prudent) operation of the investment fund manager, has good business reputation, and is able to ensure reliable and prudent owner's governance and control of the investment fund manager, and
- b) the business relations and ownership structure of whom (which) are transparent, and thus they do not prevent the exercise of efficient oversight of the investment fund manager.

The senior executives of the investment fund manager and the person controlling the entire activity, the person controlling the investment management and the trading of investment instrument and stock exchange products, as well as the persons controlling the business activity must have good business reputation. The good business reputation shall be proved by the applicant or the person who has vested interest in the MNB's accepting it. The applicant may choose the method of proving good business reputation, but the MNB may prescribe the submission of other, precisely specified documents (instruments). In order to ascertain the existence of good business reputation, the MNB may contact the competent foreign authority directly. The failure to prove good business reputation shall be stated by the MNB in a resolution (Section 21 of the Collective Investment Trust Act)

The applicant, its activity or impact exerted on the investment fund manager jeopardises the independent, reliable and prudent owner's governance of the investment fund manager particularly when

- a) the exercise of its voting right has been suspended by the competent supervisory authority within five years preceding the submission of the application,
- b) he has (or had) qualifying holding or is (was) a senior executive in an investment fund manager, financial institution or insurance company,
- ba) in the case of which the insolvency could be avoided solely through the measure applied by the competent supervisory authority, and whose personal liability for the development of this situation has been established by a non-appealable court judgement or administrative resolution, or
- bb) which had to be liquidated, and whose personal liability has been established by a non-appealable court judgement or administrative resolution,
- c) severely or regularly breached the provisions of this Act or other laws applicable to business management of the investment fund manager, and this has been established by the final resolution of the competent supervisory authority or other authority, or by a non-appealable court judgement dated within five years. (Section 37 (5) of the Investment Firms Act)

V. REJECTION OF THE AUTHORISATION

The MNB shall reject the authorisation of the acquisition of qualifying holding or the increasing of the rate of the qualifying holding, if the applicant or the owner of qualifying holding does not satisfy the conditions stipulated above.

VI. DETERMINING THE RATE OF QUALIFYING HOLDING

For the purposes of determining rate of the qualifying holding, the voting rights shall be calculated – irrespective of any provisions related to the restriction of the exercise of the voting right – on the basis of all shares to which voting rights are attached, as provided for in the investment fund manager's instrument of incorporation. (Section 37/A (1) of the Investment Firms Act)

When determining the rate of the qualifying holding, in addition to the applicant's share, the voting right as specified below shall be also taken into consideration (Section 37/A (2) of the Investment Firms Act).

For the purposes of determining the rate of the qualifying holding, it is necessary to take into consideration

- a) the voting rights of any investment fund management company or UCITS management company, if the investment fund management company or the company engaged in the management of UCITS is controlled by the applicant and if able to exercise the voting rights attached to the securities portfolio it manages,
- b) the voting rights of any investment fund manager or credit institution, if the investment fund manager or credit institution is able to exercise the voting rights attached to the portfolio it manages based on the direct or indirect instructions of the applicant or another controlled company of the applicant, or in any other way. (Section 37/A (3) of the Investment Firms Act)

For the purposes of determining the rate of the qualifying holding, voting rights attached to shares shall be recognised as the voting right of the applicant in any of the following cases, where the voting right

- a) is exercised by the applicant and a third party under an agreement, which permits the concerted exercise of the voting rights for the parties to the agreement,
- b) is exercised by the applicant under an agreement providing for the temporary transfer of the voting right,
- c) may be exercised by the applicant, based on an agreement, in relation to shares placed with it as collateral,
- d) is exercised by the applicant under the right of beneficial interest in the shareholding,
- e) is exercised by the applicant's controlled company within the meaning of subsection a)-d);
- f) is exercised by the applicant in its capacity as custodian, at its discretion in the absence of specific instructions of the depositor,

g) is exercised by a third party in its own name to the benefit of the applicant, based on an agreement with the applicant, or

h) may be exercised by the applicant in its capacity as a proxy at its discretion in the absence of specific instructions of the principal (Section 37/A (4) of the Investment Firms Act).

For the purposes of determining the rate of qualifying holding, it is not necessary to take into consideration the voting rights of the applicant's controlled company, if the applicant and its controlled company make a written declaration upon acquiring the qualifying holding to the effect that

a) they do not exercise the voting right or it may be exercised by a third party independently of the applicant and its controlled company, and that they will alienate the share within one year of the acquisition,

b) they may exercise the voting right in accordance with the specific instruction of a third party – independent of the applicant and of its controlled company – provided on paper or through electronic means,

c) they do not participate in the decisions related to the appointment or dismissal of the members of the investment fund manager's decision-making, management or supervisory bodies or boards (Section 37/A (5) of the Investment Firms Act).

When determining the rate of the qualifying holding it is not necessary to take into consideration the voting right of the investment fund manager or credit institution operating as the controlled company of the applicant, if the investment fund manager or credit institution has a portfolio management licence, and may exercise the voting right attached to the portfolio managed by it

a) based on instructions received on paper or by electronic means,

b) independently of the applicant. (Section 37/A (6) of the Investment Firms Act)

VII. AMENDING THE RATE OF AN EXISTING QUALIFYING HOLDING

If the applicant wishes to amend its qualifying holding in such a way that after the amendment it would exceed the rate of twenty, thirty-three or fifty percent, it shall submit an application to the MNB, indicating

a) the rate of the existing qualifying holding at the time of submitting the application,

b) the rate of the qualifying holding to be acquired, and

c) the data stipulated in Section 37 (2) of the Investment Firms Act.

The owner of the qualifying holding shall submit a notification to the MNB with the same content, if it wishes to reduce its existing qualifying holding below any of the rates stipulated above, with the proviso that in the notification it shall indicate the rate of the contemplated reduction.

The MNB shall confirm the receipt of the application specified above in writing within two working days to the applicant or the owner of the qualifying holding (**acknowledgement of receipt**) and at the same time inform it on the administration deadline specified in Section 38(1). This provision shall be applied mutatis mutandis also to the supplementation specified in Section 38 (2) (Section 37/B of the Investment Firms Act).

VIII. AUTHORISATION PROCEDURE CONDUCTED BY THE MNB

Within sixty working days from the issuance of the acknowledgment of receipt (**administration deadline**), the MNB shall assess the intended acquisition to decide whether after the realisation thereof it will be possible to comply with the law.

If the information specified in Section 37/B (2) of the Investment Firms Act is submitted incompletely or inadequately, the MNB may call upon the applicant, within fifty working days from the date of the acknowledgment of receipt, to provide additional information or submit the missing document, indicating the information necessary for completing the assessment (**supplementation**).

The time allowed for the supplementation shall be twenty working days. However, the time allowed for the supplementation shall be thirty working days, if

a) the applicant's registered office is located in a third country, or

b) the applicant is not subject to supervision according to the national laws of the EEA state transposing Directive 85/611/EEC and Directive 92/49/EEC of the Council and Directives 2002/83/EC, 2005/68/EC and 2006/48/EC of the European Parliament and of the Council.

After the completion of the supplementation by the applicant, the MNB may also ask for other information from the applicant. However, the deadline provided for the fulfilment of such request for information must be taken into consideration for the purposes of calculating the administration deadline (Section 38 of the Investment Firms Act).

IX. CONSULTATION WITH THE PEER SUPERVISORY AUTHORITY

If the applicant,

- a) is an investment fund manager holding a licence for pursuing activity in EEA states,
- b) is a credit institution holding a licence for pursuing activity in EEA states,
- c) is an insurance company holding a licence for pursuing activity in EEA states,
- d) is a reinsurance company holding a licence for pursuing activity in EEA states,
- e) is an UCITS management company holding a licence for pursuing activity in EEA states,
- f) is the parent company of the enterprises specified in subsections a)-e),
- g) the enterprise specified in subsections a)-e) is its controlled company,

the MNB shall conduct consultations, as specified in Section 171, with the supervisory authority having competence based on the registered office of the investment fund manager, credit institution, insurance company, reinsurance company or the UCITS management company. (Section 38/A of the Investment Firms Act)

X. AZ MNB HALLGATÁSA: AZ MNB BELEEGYZÉSE

If within the period specified above the MNB does not reject the acquisition of the qualifying holding or the increase of the rate of the qualifying holding, the authorisation shall be considered to have been granted. (Section 39 (1) of the Investment Firms Act)

XI. DEADLINE FOR COMPLETING THE AUTHORISED TRANSACTION

Upon the authorisation of the acquisition of the qualifying holding or the increasing of the rate of the qualifying holding, the applicant shall complete the transaction within six months (Section 39 (2) of the Investment Firms Act)

If the condition of authorising the acquisition of the qualifying holding no longer exists, the MNB shall suspend the exercise of the voting right of entity with qualifying holding until such time as the unlawful status is terminated or the fulfilment of the authorisation condition is proved (Section 39 (3) of the Investment Firms Act).

XII. NOTIFICATION OBLIGATION OF THE INVESTMENT FUND MANAGER WHOSE OWNERSHIP STRUCTURE CHANGES DUE TO THE ACQUISITION OR AMENDMENT OF THE QUALIFYING HOLDING

The investment fund manager shall, within two working days from obtaining knowledge, notify the MNB of the personal identification data of the person having qualifying holding in the investment fund manager, the rate of his share and the change therein (Section 39 (4) of the Investment Firms Act)

XIII. NOTIFICATION OBLIGATION RELATED TO THE ACQUISITION OR REDUCTION OF QUALIFYING HOLDING

Any person who acquired qualifying holding in an investment fund manager or amended the rate of his existing holding in accordance with the provisions of Section 37/B (1) and (3), shall notify the MNB accordingly in writing within two working days from the acquisition of the qualifying holding (Section 39 (5) of the Investment Firms Act).

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

"Information on questions most frequently arising in certain licensing and registration procedures affecting the practice of the MNB".

XIV. ADMINISTRATIVE SERVICE FEE

Pursuant to Section 10(2) of MNB order 14/2015. (V. 13.) of the Governor of the Magyar Nemzeti Bank on the Administrative service fee charged for certain licensing and registration proceedings carried out by the Magyar Nemzeti Bank within the framework of the supervision of the financial intermediary system and in respect of fiduciary

companies, the conduct of the authorisation procedure is subject to the payment of an administrative service fee of HUF 400,000¹.

For further information about the administrative service fee see:

Tajekoztatas-a-magyar-nemzeti-bank-altal-egy-es-engedelyezesi-es-nyilvantartasba-veteli-eljarasokban-alkalmazott-igazgatasi-szolgaltatasi-dijrol.pdf

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>

Should, after carefully reading this guide, any further question – related to the respective, individual case, not possible to answer in the form of consultation over the phone or in writing – arise, the MNB provides the applicant with the possibility of personal consultation. For the possibility of personal consultation, contact the secretariat of the Money and Capital Markets Licensing Department (Telephone number: +361-489-9731; Email: ptef@mnb.hu).

Last amendment: November 2019

¹ The administrative service fee payable for the procedure aimed at the authorisation of acquisition of qualifying holding in an UCITS fund manager due to a change beyond the applicant's control (e.g. inheritance, legal succession) shall be HUF 270,000.