

AUTHORISING THE ACQUISITION AND INCREASE OF QUALIFYING HOLDING IN INSURANCE COMPANIES

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 annexes specified by the law and other documents required by the MNB.

In the licensing procedures the applications and notifications shall be submitted on electronic form No. BIZR_1006_v1 entitled “*Application for the authorisation of the acquisition and increase of qualifying holding in insurance companies*” available on the MNB’s website in the ERA interface under the “*Authorisation of acquisition*” menu item within the E-administration/Licensing service, attaching the authentic electronic copies of the annexes. The resolutions, requests for clarification, notices and other communications of the MNB are delivered to the applicant or their legal representatives by sending them to the delivery storage space.

For **natural persons** electronic administration is an optional form of procedure; however, pursuant to Article 58 (2) of the MNB Act, natural persons not subject to mandatory electronic communication may also submit their application, notification or other submission on the electronic form, available in the ERA system, dedicated to the respective application, notification or other submission, or on the ÁNYK (General Form Filling Framework) form, dedicated to the respective application, notification or other submission, available in the storage space within the Central Client Registration database, simultaneously uploading the additional documents prescribed by the MNB. The ÁNYK forms are also available on the website of the MNB at:

<https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/e-ugyintezes/2018-januartol-hatalyos-szabalyok/a-termeszetes-szemelyek-elektronikus-ugyintezese-anyk>

Natural persons continue to be entitled to submit applications in hard copy by using the printed forms available on the website of the MNB, attaching the appendices specified by law. The printed forms are available at

https://alk.mnb.hu/bal_menu/formanyomtatvanyok?mid=570

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 “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:

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

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/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/e-ugyintezes/2018-januartol-hatalyos-szabalyok>

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/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/tajekoztatok>

The licensing guide also contains, in addition to the requirements stipulated in Act LXXXVIII of 2014 on the Business of Insurance (**Insurance Act**), the provisions of the EBA-ESMA-EIOPA “Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector” (**Guidelines**), and **during its procedure the MNB expects the institutions** – as an integral part of its supervisory practice – **to comply** with those Guidelines.

I. QUALIFYING HOLDING

Qualifying holding is a **direct or indirect** relationship entered into with a company by virtue of which the rate

- a) of the holder's ownership interest (share) or of the voting rights it can exercise in the company is at least ten percent,
- b) the holder of the share may appoint or dismiss at least twenty percent of the members of the company's decision-making, management or supervisory bodies, or
- c) pursuant to the article of incorporation or the agreement he or she may exert dominant influence on the operation of the company. (*Section 4 (1)77 of the Insurance Act*)

The acquisition of a qualifying holding in an insurance company, and the increase of the qualifying holding to reach 20, 33 or 50 percent is subject to the MNB's authorisation. (*Section 237 (1)k and 258 (1) of the Insurance Act*)

II. GENERAL RULES APPLICABLE TO THE ACQUISITION OF QUALIFYING HOLDING

The following persons may have a qualifying holding in an insurance or reinsurance company:

- a) the activity or the influence of whom exerted on the insurer or reinsurer does not jeopardise independent, reliable and prudent owner's control;¹
- b) the nature of its business activity and relations or the structure of its direct and indirect ownership share outstanding in other companies do not hinder the supervisory activity. (*Section 258 (7) of the Insurance Act*)

The activity of the applicant and its influence exerted on the insurer or reinsurer jeopardise the independent, reliable and prudent owner's control of the insurer or reinsurer particularly when the competent supervisory authority has suspended – within five years before the submission of the application – the exercise of its voting right. (*Section 258 (8) of the Insurance Act*)

III. RULES OF DETERMINING THE RATE OF QUALIFYING HOLDING

3.1. Rate of the qualifying holding

For the purposes of determining the rate of the qualifying holding the direct and indirect ownership together, as well as the provisions of Section 37/A (2)-(6) of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities should be taken into consideration as appropriate. (*Section 4 (1)77 of the Insurance Act*)

For the purposes of determining the rate of the indirect holding the ownership share in an intermediary company shall be multiplied by the ownership or voting share held by such intermediary company in the original company. It is not necessary to take into consideration an indirect holding through an intermediary company if the sum of the direct and indirect share in the intermediary company does not reach the rate of a qualifying holding. In the case of natural persons ownership shares held or the voting rights exercised together with their close relatives must be added. The voting rights shall be taken into account in the same way as the ownership shares. (*Annex 5 to the Insurance 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.

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 undertaking for the collective investment in transferable securities (hereinafter: UCITS), 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 credit institution or investment firm, if the credit institution or investment firm 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 4 (1)77 of the Insurance Act and Section 37/A (2)-(3) of the Investment Firms Act*)

¹ The activity of the applicant and its influence exerted on the insurer or reinsurer jeopardise the independent, reliable and prudent owner's control of the insurer or reinsurer particularly when the competent supervisory authority has suspended – within five years before the submission of the application – the exercise of its voting right. (*Section 258 (8) of the Insurance 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) is exercised by the applicant in its capacity as a proxy at its discretion in the absence of specific instructions of the principal. *(Section 4 (1)77 of the Insurance Act and Section 37/A (2)-(4) of the Investment Firms Act)*

3.2. Exceptions applicable to determining the rate of qualifying holding

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 – as provided on paper or through electronic means, or
- c) they do not participate in the decisions related to the appointment and dismissal of the members of the institution's decision-making, management or supervisory organisations or bodies. *(Section 4 (1)77 of the Insurance Act and Section 37/A (5) 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
(Section 127 (5) of the Credit Institutions Act).

The law stipulates as an additional exception that upon determining the extent of qualifying holding it is not necessary to take into consideration the voting rights held by any credit institution or investment firm that is controlled by the applicant, if the credit institution or investment firm is authorised to provide portfolio management services, and it is permitted to exercise the voting rights attached to the portfolio it manages

- a) based on instructions received on paper or by electronic means,
- b) independently of the applicant. *(Section 4 (1)77 of the Insurance Act and Section 37/A (3) of the Investment Firms Act)*

IV. AUTHORISATION PROCEDURE

The acquisition of qualifying holding in insurance or reinsurance joint stock companies or cooperative societies is subject to the MNB's authorisation. *(Section 258 (3)k of the Insurance Act)*

Any person who

- (i) wishes to acquire any holding in an insurance or reinsurance joint stock company that will reach the minimum rate of the qualifying holding, or
- (ii) to alter an existing qualifying holding whereby the ownership share or voting right will reach or exceed the 20, 33 or 50 percent limit, or
- (iii) who wishes to exercise controlling interest over an insurance or reinsurance company,

must obtain the MNB's prior authorisation for the conclusion of the contract. An agreement relating to ownership rights or voting rights providing benefits that exceed the ratio of such rights may only be concluded in possession of the MNB's authorisation. *(Section 258 (1) of the Insurance Act)*

The determination of the acquisition of controlling interest shall be governed by the notion specified in Section 6(1) 18 of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises. (*Section 4 (1)26 of the Insurance Act*)

If there is a person among the founders of the insurance or reinsurance company joint stock company or cooperative society who wishes to acquire a qualifying holding in the insurance or reinsurance company to be established, the proof of the conditions prescribed for the authorisation of qualifying holding must be attached to the foundation licence application. (*Section 239 (1) of the Insurance Act*)

4.1. Administration deadline

The MNB shall confirm to the applicant the receipt of the application and the attached documents within two working days from the submission (confirmation of receipt) and at the same time inform it on the administration deadline. The administration deadline applicable to the licence application is 50 working days from the date of the confirmation of receipt. (*Section 260 (1)-(2) of the Insurance Act*)

Upon the submission of incomplete or inadequate information, the MNB may call upon the applicant, within forty-five working days from the date of the confirmation of receipt, to provide additional information or submit the missing document, indicating the information necessary for making the decision. The time allowed for the supplementation shall be twenty working days. (*Section 260 (3)-(4) of the Insurance Act*)

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 Member States on the transposition of Directive 2004/39/EC of the European Parliament and of the Council, Directive 2006/48/EC of the European Parliament and of the Council, Directive 2009/65/EC of the European Parliament and of the Council, Directive 2009/138/EC of the European Parliament and of the Council, Directive 2011/61/EU of the European Parliament and of the Council or Directive 2013/36/EU of the European Parliament and of the Council. (*Section 260 (6) of the Insurance Act*)

The administration deadline shall be suspended until such time as the missing information is provided. The Supervisory Authority shall confirm the receipt of the missing information in writing within two working days, at the latest, to the applicant. (*Section 260 (4) of the Insurance Act*)

Following the fulfilment of the call for supplementation by the applicant, the Supervisory Authority is also entitled to 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 260 (5) of the Insurance Act*)

4.2. Administrative service fee

Pursuant to Section 14(3)-(4) and 20 (1) of MNB Decree 14/2015. (V. 13.) 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, simultaneously with the launch of the licensing procedure an administrative service fee of HUF 300,000 shall be paid for the procedure aimed at the licensing of the acquisition of qualifying holding in insurance or reinsurance joint stock companies and cooperative societies (in the case of acquiring qualifying holding due to a change beyond the control of the applicant – e.g. inheritance or succession – HUF 200,000) and the document confirming this shall be attached as annex to the application for the start of the procedure.

For further information on the administrative service fee ("*Information on the administrative service fee applied by Magyar Nemzeti Bank in certain licensing and registration procedures*"²) see the following menu item on the MNB's website:

² <http://www.mnb.hu/letoltes/tajekoztatas-a-magyar-nemzeti-bank-altal-egy-es-engedelyezesi-es-nyilvantartasba-veteli-eljarasokban-alkalmazott-igazgatasi-szolgaltatasi-dijrol.pdf>

4.3. Licence application and the annexes thereto

The application, aimed at the authorisation of the acquisition of shareholding or controlling interest, submitted on electronic form or standard form³ – also considering the relevant requirements of the Insurance Act (Section 258 (2)-(5) and Section 261(1) of the Insurance Act) – shall include the data below, and the following documents shall be attached to it:

1. The name of the insurance or reinsurance company, and the definition of the nature of the controlling interest, and the size of the existing holding and of the holding to be acquired. *(May be done on the application form or on the standard form.) (Section 258 (2) of the Insurance Act)*
2. Identification data of the applicant and of the person having qualifying holding or controlling interest in the applicant enterprise. *(May be done on the application form or on the standard form.) (Section 258 (3)a) of the Insurance Act)*
3. When the applicant is a natural person, an extract from the judicial record, not older than ninety days, issued by the criminal records office, or equivalent document under the applicant's personal law (original or notarised copy). (The extract from the judicial record shall confirm that the natural person applicant has clean record, and he or she is not under the effect of being banned from exercising his or her civil rights, and not disqualified from occupation or activity). *(Section 258 (3)b) and Section 261 (1)e) of the Insurance Act)*
4. In the case of natural person applicants, and natural persons with qualifying holding or controlling interest in the applicant company, the declaration of the respective person that the disqualifying reason specified in Section 258 (7) of the Insurance Act does not exist in relation to him or her; *(Section 258 (3)c) of the Insurance Act)*
5. In the case of non-natural person applicants the instrument of incorporation effective at the time of submitting the application. *(Section 258 (3)d) of the Insurance Act)*
6. Documentary confirmation, not older than thirty days, that the applicant has been registered based on its personal law, it is not under bankruptcy, liquidation or dissolution proceeding. *(In the case of Hungarian citizens or non-natural persons with registered office in Hungary it is obtained by the MNB). (Section 258 (3)d) of the Insurance Act)*
7. In the case of non-natural person applicants a declaration that the disqualifying reason specified in the Insurance Act does not apply to its senior executive. *(May be done on the application form or on the standard form.) (Section 258 (3)d) of the Insurance Act)*
8. Documentary confirmation, not older than thirty days, that the applicant has no outstanding debt to the tax authority, customs authority and social insurance fund having competence under its personal law, or that the applicant is included in the database of taxpayers with no outstanding public debt. *(In the case of Hungarian citizens or non-natural persons with registered office in Hungary it is obtained by the MNB). (Section 258 (3)e) of the Insurance Act)*
9. Confirmation of the legal origin of the financial resources necessary for acquiring the qualifying holding or controlling interest. *(Section 258 (3)f) of the Insurance Act) See sub-section 4.4.*
10. A declaration to the effect that the applicant's other ownership interest and activity do not jeopardise the operation of the financial institution. *(May be done on the application form or on the standard form.) (Section 258 (3)g) of the Insurance Act)*
11. Declaration on the contingent and future liabilities– as specified in Act C of 2000 on Accounting. *(Section 258 (3)g) of the Insurance Act)*

³ https://alk.mnb.hu/bal_menu/formanyomtatvanyok/urlapok_kivalasztasa/szerkeszto?id=334&version=1&chid=&jid=

12. The contractual offer made for the acquisition of the controlling interest, or ownership, or for an agreement to secure substantial benefits attached to voting rights. *(Section 258 (3)h) of the Insurance Act)*

13. In the case of a non-natural person applicant, the detailed description of its ownership structure, supported by instruments, including – if possible – the presentation of the beneficial owners. *(Section 258 (3)i) of the Insurance Act)*

14. In the case of insurance or reinsurance companies subject to group or supplementary supervision, the following declarations:

(i) presentation of the rules applicable to the transfer of information related to group or supplementary supervision, the declaration of the person being in close relationship with the insurer or reinsurer to the effect that the insurance or reinsurance company provides the MNB with all data, facts and information necessary for the group or supplementary supervision *(Section 258 (3)j and Section 238 g) of the Insurance Act);*

As part of this, the legal entities wishing to acquire ownership share shall provide the MNB with the analysis of the scope of the group supervision of the group they would belong to following the contemplated acquisition. Such analysis shall contain the information as to which members of the group would belong to the scope of the group supervision requirements following the contemplated acquisition of shareholding, and within the group at which levels the requirement would apply on a consolidated or sub-consolidated basis. In addition, the applicant shall also submit to the MNB an analysis of the impact that the contemplated acquisition of shareholding exerts on the target company's ability to continue to provide the supervisory authority with timely and accurate information, including the effects of the close links of the person wishing to acquire a share with the insurance company.

(ii) the declaration of the natural person being in close relationship with the insurance or reinsurance company to the effect that he or she consents to the forwarding of his or her personal data transferred to the insurance or reinsurance company for the purpose of processing and forwarding such data to carry out the group and supplementary supervision. *(Section 258 (3)j) and Section 238 h) of the Insurance Act)*

15. Applicant's statement executed in a private document providing full evidence, consenting to the verification of the authenticity of the content of the documents attached to the licence application by the administrative bodies commissioned by the MNB. *(May be done on the application form or on the standard form.) (Section 258 (3)k) of the Insurance Act)*

16. Upon acquiring direct shareholding, proof that the applicant has placed the monetary part of the capital necessary for the acquisition of the holding with a credit institution registered in one of the Member States. *(Section 258 (4) of the Insurance Act)*

17. If the applicant is an insurer, reinsurer, credit institution or investment firm registered in a third country, the confirmation and declaration of the competent supervisory authority of the state of the registered office to the effect that the company operates in compliance with the rules applicable to the pursuance of the activity. *(Section 258 (5) of the Insurance Act)*

18. The filled in and signed questionnaire to confirm the professional suitability and business reliability (fit and proper requirements). *(Section 261 (1)e) of the Insurance Act)*

With a view to proving the satisfaction of the fit and proper requirements, the applicant shall submit the fully completed questionnaire – in accordance with the provisions included in the notice published on this subject – published on the MNB's website to prove the **professional suitability and business reliability** of the applicant, and – in the case of non-natural person applicants – of the applicant and its senior executives.

Setting out from the information specified in the questionnaire, the MNB may also prescribe the submission of documents of broader range and other type and the confirmation of the facts if it finds that the information provided in the questionnaire is not sufficient to prove good business reputation.

19. In connection with the applicant's acquisition of shareholding, the **strategy** for the foreseeable future related to the qualifying holding to be acquired, in order to present that the applicant is able to ensure the insurer's independent, reliable and prudent owner's governance and control. *(Section 258 (6) of the Insurance Act)*

The strategy should include the applicant's express intention whether he or she plans the investment for a shorter or longer period, the potential plans to raise, reduce or maintain his or her influence within the foreseeable future, information whether the person wishing to acquire ownership interest is a strategic (professional) or financial investor, including whether it is a private equity fund or hedge fund. In addition, the strategy should contain information on the applicant's willingness to support the insurance company with additional equity if it is necessary for the development of its activities or in the event of financial difficulties. The strategy – in view of the size of the holding to be acquired – should provide details on the influence planned to be exerted based on the present financial situation of the insurance company including – among other things – the dividend policy to be followed, the strategic development and the distribution of funds.

The strategic development plan should include, in general, the key objectives of the contemplated acquisition and the main ways to achieve them, including the following:

- (a) general purpose of the planned acquisition;
- (b) medium-term financial objectives, which may be provided in the form of return on equity, profit/cost ratio, earnings per share, or other form, as applicable,
- (c) potential redirection of activity, products, target customers and potential redistribution of liquid assets or resources expected to influence the target company;
- (d) general processes related to the involvement and integration of the person wishing to acquire a holding in the group structure of the target company, including the description of key interactions to be carried out with other companies in the group and of the policies regulating the intra-group relations. *(GL Annex, Section 12, subsection 2)*

20. In the case of controlling interest, the **medium-term business plan** related to the future operation of the insurance company, to demonstrate that the applicant is able to ensure the independent, reliable and prudent governance and control of the insurance company by the owner. *(Section 258 (6) d) of the Insurance Act) See section 4.6*

21. The applicant's declaration on the persons who will actually manage the business activity of the insurance company in the future (due to the fact that the election and appointment of senior executives is subject to prior authorisation, it is not necessary to provide other information since those will be assessed in the personnel authorisation procedure). If the applicant does not intend to change the persons who actually manage the insurance company, a declaration to this effect shall be made. *(Section 258 (6) of the Insurance Act)*

22. Confirming the payment of the administrative service fee. *(See 4.2)*

23. Applicant's declaration to the effect that it has disclosed to the MNB all important facts, data and information required for the issuance of the authorisation. (It may be done on the application form.) *(Article 59 (2) of the MNB Act)*

4.4. Confirming the availability and legal origin of the financial resources

The confirmation of the legal origin of the financial resources necessary for the acquisition of the qualifying holding, listed in Section 4.3.j) includes the **proof of the legal origin** and the **continuous availability**.

The applicant should attach a **declaration** detailing the components of the financial resources necessary for the acquisition of the qualifying holding, and a detailed explanation of financial resources used for the acquisition, including the following:

- a) detailed information related to the use of **private financial resources**, and the origin and availability of the financial funds, including all relevant documents to prove for the competent authority that no attempt for money laundering is made through the contemplated acquisition;
- b) detailed information related to the **method of paying** for the contemplated acquisition and to the network used for the transfer of funds;
- c) detailed information related to the access to the sources of capital and financial markets, including **the detailed information related to the financial instruments to be issued**;
- d) detailed information **related to borrowing**, including the name of lenders and the provided credit instruments including the maturity dates, tenors, collaterals and guarantees, the sources of income to be used for the repayment of such borrowings, and – if the lender is not a supervised financial institution – information related to the origin of the loans;
- e) information related to the **financial agreements** concluded with other shareholders of the insurance company;

f) **information related to those assets** of the person or insurance company, intending to carry out the acquisition, that they **wish to sell to foster the funding of the contemplated acquisition**, as well as the conditions of sales, including the price, the valuation, the details related to the characteristics of the instruments, as well as the date and manner of acquiring those instruments.

The applicant must support the lawfulness of the items stated in the declaration and in the detailed explanation by instruments.

4.4.1. Legal origin

The financial resources may be provided from own funds or from debt capital.

When the applicant is a private individual, **own funds** may be proved primarily by an income certificate issued by NTCA, which also contains the incomes subject to separate taxation. Incomes taxed separately include, among others, dividends, income from property lease or foreign exchange gains.

The amounts reasonably necessary for covering the normal living costs and the taxes specified in the income certificate shall be deducted from the consolidated income stated in the income certificate. **The tax certificate alone is not sufficient to prove the own funds.**

Companies may prove own funds by their balance sheet data and audited annual accounts, when on the liability side the balance sheet profit and retained earnings correspond to or are higher than the amount to be used for the acquisition.

If at the time of initiating the authorisation procedure the audited balance sheet cannot be deemed current due to the lapse of time, an unaudited interim balance sheet, supported by the current trial balance, should be submitted. In addition to the liability side of the annual accounts, the assets side is also examined to ascertain whether the applicant has sufficient liquid assets for the financial resources and whether they will provide the applicant with sufficient liquidity even after the acquisition.

It is advisable to indicate which balance sheet row of the annual accounts contain the financial resources necessary for the acquisition.

Debt capital may comprise of funds originating from a loan contract, where the lawful origin of the loan amount must be assessed.

Loan contract from a financial institution may be accepted, if the purpose thereof is in line with the acquisition of the qualifying holding.

If the lender is a private individual, it is also necessary to examine the lawful origin of the funds provided by him or her.

When the lender is a company or other non-natural person, it must be examined whether the lender has any profit, retained earnings and liquid assets that may be used for lending and whether it has not used it for other purposes. In the authorisation procedure it is also necessary to attach the loan contract, other documents specifying the conditions of the loan and it must be rendered probable that the applicant is able to repay the loan. If the repayment of the loan will take place from the profit of the supervised institution, it also may be necessary to submit the business plan of the insurer – irrespective of the rate of the shareholding – to assess the probability of the repayment.

When the applicant is a closed-end capital fund or other similar fund – since the capital fund includes collective assets – in the authorisation procedure it is necessary to inspect the financial resources in respect of the capital fund, and the compliance with other conditions (good business reputation, clean record and disqualification declaration of senior executives) in respect of the manager of the capital fund. When a capital fund acquires a holding, not only the capital fund will qualify as applicant, but also the capital fund manager – due to the exercise of voting rights – and thus it shall be also subject to the provisions of this licensing guide.

If the fund is active, the annual report of the fund should be submitted. If it is a newly established fund, the amounts provided to the fund by the investors contributing to the fund will be examined.

4.4.2. Assessment of the availability

It must be proved that the funds of legal origin are continuously available to the applicant from the date of the origination until the acquisition of the holding, i.e. the “legality” thereof is maintained.

Availability also means that if there is a longer time between raising and using the funds, i.e. the acquisition of the qualifying holding, it must be also proved that the funds are still available for the purposes of the procedure in question and have not been used for other purposes meanwhile. The availability of the funds may be proved primarily by a bank confirmation or confirmation issued by the securities account-keeping institution.

The acquisition of direct shareholding is conditional upon the applicant's placing the monetary part of the capital necessary for the acquisition of the holding with a credit institution registered in one of the Member States. (*Section 258 (4) of the Insurance Act*)

When the acquisition is funded from a loan, the applicant must also prove the movement of the funds from the disbursement until the utilisation. The transfer may be proved by the bank transfer document or the confirmation of the banks involved in the transfer of funds. If the debt capital is not from a bank loan, the loan contract must also specify the purpose of the loan and the target account where it is transferred to.

Depending on the type of the acquirer of the holding, a bank certificate or an escrow confirmation issued by a lawyer or notary public is required, if the amount used for the acquisition of the holding after obtaining the licence has been blocked or reserved on the account of the acquirer of the holding or on the escrow account. If the funds come from securities, a declaration should be made to the effect that the source of the cash will be the sales of the existing liquid securities (e.g. can be sold in the market within 2 days).

4.5. Assessment of the applicant's financial and economic standing

Sections 12 and 13 of the Guideline prescribe, for the event of the planned acquisition of shareholding, the financial reliability of the applicant and the future maintenance of the prudent operation of the financial organisation as separate evaluation criteria.

The MNB will refuse to issue the licence if the applicant's financial and business situation is unstable, when its financial and economic standing compared to the size of the acquisition being the subject matter of the bid cannot be deemed adequate or in the three years preceding the submission of the application its financial result is insufficient. (*Section 261 (1)c) and f) of the Insurance Act*)

The financial standing of the applicant may be deemed adequate if it is not only capable of financing the planned acquisition – i.e. the financial resources necessary for the acquisition are available – but it is also able to maintain the insurance company's stable financial structure in the foreseeable future (usually three years).

During the procedure, the assessment criteria include the general economic condition of the applicant, whether it will face financial difficulties during the acquisition or in the foreseeable future, whether it will be able to provide new capital that may be necessary for the future activity and development of the insurance company, or implement other suitable solution to satisfy the insurance company's additional equity requirements.

For the purposes of assessing the financial and economic standing, the applicant's commitment declaration to the effect that the acquirer is able to ensure the prudent operation of the insurance company must be attached to the application.

The applicant's ability to maintain the insurance company's prudent operation is also closely related to the applicant financial organisation's plans with regard to its future operation. If the applicant's financial and economic standing cannot be regarded clearly stable, it can prove its capability of ensuring prudent operation only within certain limits or it has raised the financial resources from a loan, the future operation of the insurance company must be planned in a conservative manner.

The applicant shall support the content of the declaration with other documents as well, which may include, particularly, the following:

- **information related to the current financial standing** of the natural person wishing to acquire a holding, including the details related to the sources of income, assets and liabilities, collateral and guarantees granted or received;
- the description of the **business activities** of the person wishing to acquire a holding;
- **financial information**, including the credit ratings and publicly available reports related to the undertakings controlled or governed by the person intending to acquire a holding and, where applicable, to the person intending to acquire a holding; and approved consolidated group annual accounts for the previous three years; where such

financial statement are audited by an external auditor, the person intending to acquire a holding shall submit statements approved by the external auditor.

o the balance sheet;

o the profit and loss account or the income statement;

o the annual accounts and notes to financial statements, as well as all other documents relevant to the person intending to acquire a holding, registered by court of registration or other authority having competence in the respective territory.

– where available, information related to the comprehensive credit rating of the person wishing to acquire a holding and its group.

– for newly established institutions preliminary balance sheet and profit and loss account for the first three financial years;

– if the person intending to acquire a holding forms part of a group as a subsidiary or parent company, the detailed organisational chart of the entire corporate structure, and information related to the activities pursued by the group members;

– in the case of natural persons, the tax certificate related to the previous three years, presentation of other potential incomes (equity stake in a company, real estate) and current wealth position (including the potential liabilities outstanding)

– information related to other ownership interests or activities of the person intending to acquire a holding, which may conflict with the interests or activities of the financial organisation, and possible solutions for addressing the respective conflict of interest.

4.6. Business plan

A medium-term business plan shall be also attached to the application related to the authorisation of acquisition of controlling interest.

The medium-term plan related to the operation of the insurance company (containing the balance sheet, profit and loss account, cash flow and liquidity projection, capital projection, income and cost analysis, profitability projection at least for three years) must be submitted in tabular format. The business plan shall also include an analysis in words and the assumptions applied for the purposes of the projection, and it may also contain the strategy specified in Section 4.3.19.

The business plan shall include the anticipated effect of the acquisition, based on the applicant's plans, on the insurance company's organisational and operational rules, IT and control system, corporate governance and group structure.

The business plan shall present the effect of the acquisition on the corporate governance of the insurance company and on its general organisational structure, with special regard to the following areas:

a) composition and tasks of the administrative, management or supervisory body, and the main committees set up by the respective decision-making body, including the information related to the persons to be entrusted with the management of the credit institution;

b) administrative and accounting procedures and internal controls, including the changes in procedures and systems related to accounting, internal audit and compliance – an particularly the prevention of money laundering and risk management, as well as the appointments belonging to the key duties of the internal auditor, the compliance officer and the risk manager;

c) the general IT infrastructure, including the changes affecting the outsourcing policy, the dataflow diagrams, the internal and external software in use and the basic data and system security procedures and tools, including – among other things – the security backup, business continuity plans and audit trails;

d) the guidelines related to outsourcing, including the information on the selection of the service providers, the rights and obligations of the main contracting parties in accordance with the provisions of the contracts, as well as the information on the service quality expected from the service providers;

e) all other important information related to the effect of the acquisition on the corporate governance and general organisational structure of the insurance company.

In the capital projection, forming part of the business plan, it is necessary to assess the current situation of the insurance company and based on that to present how the applicant will ensure in the short and long run the financial support necessary for the continuous maintenance of the insurer's capital adequacy. If the applicant plans to expand the business activity, the capital projection should also describe how the applicant will provide the funds necessary for the anticipated expansion.

The applicant shall prepare the business plan taking into consideration the provisions of Section 12 of Annex 1 to the Guidelines.

Please note that although the information specified in Sections 4.4-4.6 are of informative nature, they reflect the principles and key assessment criteria of the licensing procedure. Setting out from the information included in the respective licence application, the MNB may prescribe the submission of a broader range and other type of documents and the confirmation of facts, if it finds that the already submitted documents are not sufficient to prove the legal origin and availability of the financial resources or the adequate financial and economic standing of the applicant. On the other hand, if it appears from the specific application that the matter is of simpler judgement, lower transaction value or aimed at the acquisition of lower share or the applicant is a supervised organisation licensed in the EU, the MNB may waive the submission of certain documents.

4.7. If the registered office of the person wishing to acquire qualifying holding is an a third country, in addition to the foregoing it shall submit the following information as well:

- a) the declaration of the respective competent authorities to the effect that nothing hinders or limits the provision of information necessary for the supervision of the target insurance company;
- b) general information related to the regulatory scheme of the respective third country applicable to the person intending to acquire a holding. *(Sections 125 and 131 of the Credit Institutions Act)*

4.8. If the person wishing to acquire holding is a sovereign investment fund, in addition to the foregoing it shall submit the following information as well:

- a) the name of the ministry or state organisation in charge of defining the investment policy of the fund;
- b) the details of the investment policy and the restrictions applicable to the investments;
- c) the name and position of the persons in charge of taking the fund's investment decisions, and the details of any influence, as specified in Section 11(2), exerted on the daily operation of the fund and the target company by the acquisition of qualifying holding or the identified ministry or state organisation.

4.9. If the person wishing to acquire holding is a private investment fund or hedge fund, in addition to the foregoing it shall submit the following information as well:

- a) detailed description of the performance of the qualifying holdings acquired earlier by the applicant in financial institutions
- b) detailed description of the applicant's investment policy, any restriction that may apply to the investment, including the details generating changes in the monitoring of investments, the factors underlying the applicant's investment decisions related to the insurance company and the exit strategy of the person wishing to acquire a holding,
- c) the decision-making framework of the applicant related to investment decisions, including the name and position of the person in charge of the investment decisions,
- d) detailed description of the applicant's procedures related to the prevention of money laundering and the applicable AML framework.

V. CONSULTING WITH FOREIGN SUPERVISORY AUTHORITIES

If the applicant,

- a) is an investment firm, credit institution, insurance company, reinsurance company, or a company managing AIF or UCITS holding an activity licence in another Member State,
 - b) is the parent company of the undertaking specified in subsection a), or
 - c) the undertaking specified in subsection a) is its controlled company,
- the Supervisory Authority will ask for the opinion of the competent supervisory authority based on the registered office of the investment firm, credit institution, insurance company, reinsurance company, or a company managing AIF or UCITS .

(2) For the purposes of confirming or verifying the conditions necessary for the licensing, the Supervisory Authority may contact the authority having competence based on the applicant's registered office or place of residence. *(Section 259 (1) and (2) of the Insurance Act)*

VI. REPORTING OBLIGATIONS RELATED TO THE ACQUISITION OF QUALIFYING HOLDING

Entities that in an insurance or reinsurance joint stock company

- a) acquired qualifying holding,
- b) terminated their qualifying holding,
- c) amended their qualifying holding in such a way that
- ca) their ownership share or voting right reaches the limit of 20, 33 or 50 percent, or
- cb) their ownership share or voting right no longer reaches the limit of 20, 33 or 50 percent, or
- d) concluded an agreement providing benefits attached to the ownership share or voting rights, or modified such

agreement,

shall inform the MNB accordingly in writing within thirty days. *(Section 274 (1) of the Insurance Act)*

Within thirty days from the ceasing of the controlling interest the MNB must be also informed by the person whose controlling interest in the operation of an insurance or reinsurance company has ceased. *(Section 274 (2) of the Insurance Act)*

The insurance or reinsurance company shall inform the MNB in writing within fifteen working days if it obtains knowledge on the acquisition, alienation or amendment of a shareholding or voting right of 10, 20, 33 or 50 percent. *(Section 274 (3) of the Insurance Act)*

If a person with qualifying holding in an insurance or reinsurance joint stock company,

- a) wishes to terminate its qualifying holding in full , or
- b) wishes to amend its ownership share, voting right or contract providing benefits to reduce its ownership share or voting right below the limit of 20, 33 or 50 percent,

it shall report this to the MNB fifteen working days before terminating its interest. *(Section 273 (1) of the Insurance Act)*

Any person who intends terminate his or her interest in an insurance or reinsurance company shall also notify the Supervisory Authority fifteen working days prior to the termination of the interest. *(Section 273 (2) of the Insurance Act)*

VII. REJECTION OF THE LICENCE APPLICATION

IV. The MNB will reject the application if the applicant('s) (including its member of senior executive)

- (a) has no clean record (in the case of natural persons);
- (b) legal status and ownership structure is unclear or cannot be determined;
- (c) financial standing and business is unstable;
- (d) severely or repeatedly breached the provisions of the Insurance Act or other law applicable to the business of insurance, and due to this the MNB, in its non-appealable resolution not older than five years, applied the highest amount of penalty, or in its non-appealable judgement, dated not earlier than five years ago, the court established its liability;
- (e) does not satisfy the professional suitability and business reliability (fit and proper) requirements;
- (f) financial and economic standing compared to the size of the acquisition being the subject matter of the bid cannot be deemed adequate or in the three years preceding the submission of the application its financial result is insufficient;
- (g) in relation to the acquisition of holding or controlling interest there are reasonable grounds to suspect that, based on the relevant laws, money laundering or terrorist financing is being or has been committed or attempted, or that the contemplated acquisition of holding or controlling interest could increase the risk thereof.
- (h) has no agent for service of process (in the case of non-resident applicants). *(Section 261 (1) of the Insurance Act)*

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 Insurance and Pension Funds Licensing and Legal Enforcement Department (telephone number: +361-489-9491; email: bpeo@mnf.hu).

Updated: May 2019