

## LICENSING THE START OF THE OCCUPATIONAL RETIREMENT PROVISION ACTIVITY

Pursuant to the provisions in subparagraph aa) of paragraph a) and paragraph 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 of an economic operator or an applicant (client) obliged to apply electronic communication must 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 is 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 application for the licensing of the start of the occupational retirement provision activity should be submitted on the electronic form no. FNYE\_1003 entitled "*Application for the authorisation of the employment, mandate, appointment and election of the senior executive and other manager of the occupational retirement provision institutions*" available under the *Fund market/Occupational retirement provision institution/Licensing* menu item within the *E-administration/Licensing* service.

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 is available under the following menu item:

<https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/szektorok/penztari-piac/foglalkoztatoi-nyugdijszolgaltato-intezmeny/szemelyi-engedelyek>

### 1. SENIOR EXECUTIVES

1. At the occupational retirement provision institutions the following persons qualify as senior executives:

- member of the Board of Directors,
- member of the Supervisory Board,
- managing director exercising the rights of the Board of Directors, and
- the company manager. (*Section 2 (52) of Act CXVII of 2007 on Occupational Retirement Pension and Institutions for Occupational Retirement Provision (Occupational Pension Act)*)

2. Those person may be appointed or elected as senior executives who have been reported by the occupational retirement provision institution to the Supervisory Authority thirty days before the planned date of the election or appointment, and the Supervisory Authority authorised the appointment or election in a resolution. (*Section 10 (1) of the Occupational Pension Act*)

3. No such person shall be appointed and elected as the senior executive of the occupational retirement provision institution who:

- has a criminal record, or is under the effect of being banned from occupation which precludes the filling of a management position,

- has a clean record, but the court has established his or her criminal liability by a non-appealable judgement in relation to any of the criminal offences listed in Section 10 (4)ba) or bb) of the Occupational Pension Act<sup>1</sup> and the time from the effective time of exoneration defined in the Act has not yet elapsed,
- who does not satisfy the professional suitability and business reliability (fit and proper) requirements,
- who does not have at least five years experience in the field of insurance, fund or corporate management, or as an executive in the government sector in the field of finance and economics, with the proviso that the end of the prescribed period of professional experience shall be within ten years of the date of filing the application for the authorisation; this provision does not apply to the members of the Supervisory Board (*Section 10 (5) of the Occupational Pension Act*);
- has no higher education degree, or
- who is engaged in the pursuit of the activities of auditors. (*Section 10 (4) of the Occupational Pension Act*)

The following persons shall not be allowed to hold an executive office:

- who have been indicted by the public prosecutor for any of the criminal offenses specified in Section 10 (4)b) of the Occupational Pension Act), or
- who has been indicted abroad by the competent authority for property or economic offences punishable under Hungarian law.

When the aforementioned circumstances arise in respect of an already appointed or elected senior executive, the fulfilment by him or her the tasks related to the senior executive office shall be suspended until the conclusion of the criminal proceedings by the court's final peremptory decision or definitive non-peremptory ruling, or until such time as the resolution of the public prosecutor's office or the investigating authority is adopted on conditional prosecutorial suspension or for the purpose of referring the case to mediation, and/or for the termination of the proceedings, that is not subject to further remedy. (*Section 10 (6) of the Occupational Pension Act*)

## II. LICENSING CRITERIA

The following documents shall be attached to the application for the authorisation of the appointment or election of senior executives.

1. A certificate of clean record not older than ninety days, which confirms that the person to be authorised (**Candidate**) has a clean record, is not under the effect of being banned from exercising civil rights, or not disqualified from occupation or activity. (*Section 10 (4)a) of the Occupational Pension Act*)
2. A certificate of clean record not older than ninety days, which confirms that the Candidate satisfies the conditions set forth in Section 10 (4)b) of the Occupational Pension Act. (*Section 10 (4)b) of the Occupational Pension Act*)

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Section 10 (4) of the Occupational pension Act: The senior executive of an institution for occupational retirement provision may not be a person, who (...)

b) \* has no prior criminal record, but has been found guilty by a final court verdict:

for any infringement of certain provisions of Act IV of 1978 on the Criminal Code in force until 30 June 2013, specifically, crime against the integrity of public life under Title VII of Chapter XV, any crime against international justice under Title VIII of Chapter XV, an economic crime under Chapter XVII, or for an offense against property under Chapter XVIII,

bb) for a crime of corruption under Chapter XXVII, violent crime against property under Chapter XXXV, offenses against property under Chapter XXXVI, crime against intellectual property rights under Chapter XXXVII, crime relating to counterfeiting currencies and philatelic forgeries under Chapter XXXVIII, crime against public finances under Chapter XXXIX, money laundering under Chapter XL, economic and business crime under Chapter XLI, crime against consumer rights and any violation of competition laws under Chapter XLII or illicit access to data and crimes against information systems under Chapter XLIII of Act C of 2012 on the Criminal Code, for a period of twelve years from the effective time of exoneration in case of imprisonment of five years or more imposed for an intentional criminal offense, for a period of ten years from the effective time of exoneration from criminal liability in case of imprisonment of less than five years imposed for an intentional criminal offense, for a period of twelve years from the effective time of exoneration in case of imprisonment of five years or more imposed for an intentional criminal offense, for a period of ten years from the effective time of exoneration from criminal liability in case of imprisonment of less than five years imposed for an intentional criminal offense, for a period of five years from the effective time of exoneration in case of community service work or fine imposed for an intentional criminal offense, for a period of eight years from the effective time of exoneration in case of a suspended term of imprisonment imposed for an intentional criminal offense, for a period of three years from the effective time of exoneration in case of a suspended fine imposed for an intentional criminal offence;

3. The filled in and signed questionnaire to confirm the professional suitability and business reliability (fit and proper requirements) of the Candidate. *(Section 10 (4)c) of the Occupational Pension Act)*

The questionnaire form is available on the MNB's website at:

*Supervision /Licensing and institution oversight/ Licensing/General information/ Standard forms/ Good business reputation questionnaires / Personal licences<sup>2</sup>*

Title of the standard form to be applied (in view of the fact that in respect of the fit and proper requirements Section 10 (4) c) of the Occupational Pension Act orders to apply the rules of the Insurance Act): *“Questionnaire for natural persons nominated for a senior executive position at an insurer to establish his or her professional suitability and business reliability specified in Section 4 (1) 90 and Section 69 of the Insurance Act”.*<sup>3</sup>

For further information on professional suitability and business reliability (*“Fit and proper requirements (Insurance Act)”*)<sup>4</sup> see the *“Notice on the criteria of assessing good business reputation and the practical application thereof”*<sup>5</sup> on the MNB’s website under the following menu item:

*Supervision/Licensing and institution oversight/Licensing/General Information/Notices*

4. Instruments to confirm management experience (e.g. employer’s certificate, employment contract, job description, appointment), based on which the start and end date of the management practice can be clearly established, as well as the nature and legal relationship substantiating the practice, and the range of duties performed by the Candidate within that legal relationship. *(Section 10 (4) d) paragraph Occupational Pension Act)*

5. Notarised copy of the degree (diploma) confirming by the Candidate’s higher education. *(Section 10 (4)e) of the Occupational Pension Act)*

6. The Candidate’s declaration that he or she is not engaged in the pursuit of the activities of auditors. *(Section 10 (4)f) of the Occupational Pension Act)*

7. Applicant’s declaration to the effect that it has disclosed to the MNB all important facts, data and information required for the issue of the authorisation. *(May be provided on the application form). (Section 59 of the MNB Act)*

8. Upon authorising the appointment of the **chief executive exercising the rights of the Board of Directors**, in addition to the conditions set forth in subsection II.1-7, the occupational retirement provider institution shall explain – touching upon the volume, nature and complexity of the occupational retirement provision institution and its role in the control of sponsoring employers – why it wishes to appoint a chief executive instead of the Board of Directors. *(Section 10 (2) of the Occupational Pension Act)*

9. When the application is aimed at the authorisation of the **company manager**, in addition to the conditions set forth in subsections II.1-7, the Candidate’s employment within the framework of any employment relationship shall be also confirmed (e.g. employment contract, employer’s certificate issued by the occupational retirement provision institution). *(Section 2 (7) of the Occupational Pension Act)*

### III. RE-ELECTION OF SENIOR EXECUTIVES

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

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<sup>2</sup> [https://alk.mnb.hu/bal\\_menu/formanyomtatvanyok/urlapok\\_kivalasztasa/szerkeszto?id=504&version=0&chid=15](https://alk.mnb.hu/bal_menu/formanyomtatvanyok/urlapok_kivalasztasa/szerkeszto?id=504&version=0&chid=15)

<sup>3</sup> <https://www.mnb.hu/letoltes/tajekoztato-a-formanyomtatvanyokrol.pdf>  
<https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/formanyomtatvanyok>  
[https://alk.mnb.hu/bal\\_menu/formanyomtatvanyok/urlapok\\_kivalasztasa/szerkeszto?id=504&version=0&chid=15](https://alk.mnb.hu/bal_menu/formanyomtatvanyok/urlapok_kivalasztasa/szerkeszto?id=504&version=0&chid=15)

<sup>4</sup> <https://www.mnb.hu/letoltes/szakmai-alkalmassag-es-uzleti-megbizhatosag-3.pdf>

<sup>5</sup> <https://www.mnb.hu/letoltes/tmpc812-tmp-12233381.pdf>

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