Authorisation to acquire and increase qualifying holding in a financial enterprises

Pursuant to the provisions of Section 9 (1)a) aa) an 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 Section 58 (2) of Act CXXXIX Of 2013 on the Magyar Nemzeti Bank ("**MNB Act**"), to apply electronic communication, shall submit its application, notification or other petition by using the prescribed form available in the information system supporting the electronic administration of the MNB ("ERA System") and introduced for the procedure related to the submission in question, in the manner and with content specified therein, simultaneously uploading the attachments specified by the law and other documents required by the MNB.

For **natural persons**, electronic transactions are an optional procedural form, however, Section 58 (2) of the MNB Act provides that natural persons who are not obliged to apply electronic communication may submit their application, notification or other petition by using the prescribed electronic form introduced for the purpose of the application, notification or other petition concerned that is available in the ERA System or the ÁNYK form introduced for the purpose of the application, notification or other petition concerned available on the dedicated storage space in the Central Client Registration Database, simultaneously uploading any other documents required by the MNB. The ÁNYK forms are also available on the website of the MNB at the following link: https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/e-ugyintezes/2018-januartol-hatalyos-szabalyok/a-termeszetes-szemelyek-elektronikus-ugyintezese-anyk

Natural persons are still entitled to submit their application on paper using the form available on the MNB's website, accompanied by the annexes specified in the legislation. The forms are available – without registration and login – on the following ERA interface [Public Services/Forms/Select Forms/Authorisation, approval, registration procedures and notifications (MNB Decree No 4/2016 (III.1.)], and can be filled in, saved and validated as a pdf file. https://era.mnb.hu/ERA.WEB/PublicServices/Current?code=eraformanyomtatvany

In the authorisation 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 applicants or their legal representatives by sending them to the delivery storage space.

The electronic form required for initiating the procedure for the authorisation of the acquisition of a qualifying holding or increase of a qualifying holding in a financial undertaking is available within the *e-Administration - Authorisation* service at the institutions under the Credit Institutions Act, among the forms available for financial undertakings.

A mandatory annex to the application, the "Good Business Reputation Survey" is available, without registration or logging in, on the ERA interface (Public Services/Forms/Select Forms/Good Business Reputation Surveys/Acquisition of Holdings), as a pdf file to be filled in, saved and validated.
The filled in and electronically signed questionnaire can be attached to the prescribed electronic form as an annex. The questionnaire is available at: https://era.mnb.hu/ERA.WEB/PublicServices/Current?code=eraformanyomtatvany

The website of the MNB includes information materials on electronic administration and the submission of annexes to be attached in authorisation procedures (electronic documents) at:
https://www.mnb.hu/letoltes/tajekoztatas-az-e-ugyintezesrol-az-mnb-elotti-engedelyezesi-eljarasokban-1.pdf

Further information related to certain aspects of the licensing procedures (e.g. Ascertaining Good Business Reputation) is available at: https://www.mnb.hu/letoltes/tmpc812-tmp-12233381.pdf

I. QUALIFYING HOLDINGS

Qualifying holding: **it means a direct or indirect holding** in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking *(Section 6 (1) Item 6 of Act CXXXVII of 2013 on Credit Institutions and financial undertakings – **Credit Institutions Act** – Paragraph 36 of Article 4 (1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 ("**CRR**"))*

Any person who is the owner of a qualifying holding in a financial institution[1] must satisfy the following requirements:

a) be independent of any influences which may endanger the financial institution's sound, diligent and reliable (hereinafter referred to collectively as "prudent") operation, and have good business reputation and the capacity to provide reliable and diligent guidance and control of the financial institution, furthermore
b) transparency in business connections and ownership structure so as to allow the competent authority to exercise effective supervision over the financial institution *(Section 125 of the Credit Institutions Act)*.

Members of a financial undertaking may enter into a contract regarding members' shares or voting rights or to secure advantages in excess of such rights only upon the MNB's permission *(Section 126 (3) of the Credit Institutions Act)*.

Indirect holding

Indirect holding: Indirect holding means when equity holdings in an enterprise are held or controlled, or voting rights are exercised through the equity holdings or voting rights held by another company in that company (for the purposes of Schedule No. 3 of the Credit Institutions Act, hereinafter referred to as "intermediary company") *(Paragraph 66 of Section 6 (1) of the Credit Institutions Act)*.

Indirect ownership is calculated according to Annex 3 of the Credit Institutions Act:

a) The extent of an indirect holding should be determined by multiplying the share or voting right held in the intermediary company *(Paragraph 66 of Section 6 (1) of the Credit Institutions Act)* by the share or voting right – whichever is greater – held by the intermediary company in the target company (multiplication criterion calculation method). If the share or voting right in the intermediary company is greater than fifty per cent, it must be treated as a whole *(majority ownership calculation method)*.
b) In the case of natural persons, the ownership interests or voting rights jointly owned or exercised by the natural person's close relatives are to be calculated cumulatively.
c) Voting rights must be taken into account in the same manner as ownership shares.

II. DETERMINING THE EXTENT OF THE QUALIFYING HOLDING AND CALCULATING THE VOTING RIGHTS

For the purposes of determining the size of qualifying holding, the voting rights must be calculated, irrespective of any provisions for restrictions on voting rights, on the basis of all the shares to which voting rights are attached, as provided for in the company's charter document *(Section 127 (1) of the Credit Institutions Act)*.

2.1 When determining the extent of the qualifying holding, in addition to the applicant's shares, the voting rights pursuant to Section 127 (3) and (4) of the Credit Institutions Act shall also be taken into account *(Section 127 (2) of the Credit Institutions Act*)

Within the scope of these rules, it is necessary to refer to the concept of controlled undertaking in the Credit Institutions Act, which is not defined in the Credit Institutions Act itself, but – in Paragraph 17 of Section 6 (1) – refers back to and adopts the definition of Act CXX of 2001 on the Capital Market ("**Tpt.**"), which is contained in Chapter II, Interpretative Provisions, Paragraph 136 of Section 5 (1) of the Tpt., as follows:

'controlled undertaking' means any undertaking

a) in which a majority of the voting rights may be exercised by one person,

[1] a financial institution means a credit institution and financial undertaking within the meaning of Section 7 (1) of the Credit Institutions Act.

b) one owner of which is entitled to appoint or dismiss a majority of the members of the decision-making, management or supervisory bodies or of the organs of the undertaking,
c) in which the majority of the voting rights may be exercised by one person alone, by agreement with the other owner(s) of the undertaking, or
d) over which a person exercises or may exercise decisive influence or control by virtue of a statute or agreement.

For the purposes of determining the size of a qualifying holding, in addition to the applicant's shares, the voting rights of:

a) any investment fund manager or undertaking for UCITS, if the investment fund manager or the UCITS management company is controlled by the applicant and if able to exercise the voting rights attached to the securities it manages,
b) any credit institution or investment firm, if the credit institution or investment firm is controlled by the applicant and if able to exercise the voting rights

attached to the portfolio it manages under direct or indirect instructions from the applicant or another controlled company of the applicant, or in any other way, must be taken into consideration *(Section 127 (3) of the Credit Institutions Act)*.

Pursuant to Section 127 (4) of the Credit Institutions Act, voting rights attached to shares must be recognised as the voting right of the applicant in any of the following cases, where the voting right is exercised:

a) by the applicant and a third party under an agreement, which provides for the concerted exercise of the voting rights for the parties to the agreement,
b) by the applicant under an agreement providing for the temporary transfer of the voting rights.
c) by the applicant related to shares which are placed with them as collateral, under an agreement,
d) by the applicant under the right of beneficial interest pertaining to the share,
e) by the applicant's controlled company within the meaning of paragraphs a)-d),
f) by the applicant as a depositary, at its own discretion in the absence of specific instructions from the depositor,
g) by a third party in their own name and on behalf of the applicant, under an agreement with the applicant, or
h) by the applicant as a proxy, at their own discretion in the absence of specific instructions from the principal.

2.2 The Credit Institutions Act provides for the following exceptions to the above in determining the extent of a qualifying holding:

For the purposes of determining the size of qualifying holding, voting rights held by the applicant's controlled company need not be taken into account if the applicant and its controlled company provides a written statement at the time of acquiring the share to the effect that:

a) those rights are not exercised, or exercised by a third party independently from the applicant and its controlled company, and that the shares will be disposed of within one year of acquisition;
b) those rights are exercised by a third party independently from the applicant and its controlled company according to specific instructions received from that third party on paper or by way of electronic means,
c) it is not involved in the decisions relating to the appointment and removal of members for the financial institution's decision-making, management or supervisory bodies. *(Section 127 (5) of the Credit Institutions Act).*

In determining the size of qualifying holding, voting rights held by any credit institution or investment firm that is controlled by the applicant need not to be taken into account if the credit institution or investment firm is authorized to provide portfolio management services and it is permitted to exercise the voting rights attached to the portfolio it manages:

a) under instructions submitted on paper or by way of electronic means,
b) independently from the applicant *(Section 127 (6) of the Credit Institutions Act).*

III. AUTHORISATION PROCEDURE

Prior to the entering into an agreement, the MNB's permission must be requested:

a) for the acquisition of a qualifying holding in a financial undertaking, or
b) for the modification of a qualifying holding in a financial undertaking by which to reach the 20, 33 or 50 per cent limit. (Section 126 (1) of the Credit Institutions Act) (on the prescribed form or form!)

Any person intending to acquire, directly or indirectly, a qualifying holding in a financial undertaking or to modify such a holding so that it reaches the thresholds of 20, 33 or 50 per cent must submit a request for prior authorisation to the MNB.

The MNB's authorisation is not required if the person acquiring the qualifying holding or exceeding the limit belongs to a group with the financial institution and the acquisition of the qualifying holding or the increase of the threshold takes place as a result of a merger, division or transformation within the group. (Section 126 (4) of the Credit Institutions Act)

Please note that, **in addition to the direct acquisition of a qualifying holding** in a financial undertaking, a **first level indirect acquisition of a qualifying holding is always subject to authorisation, whether it is made on its own (where a new indirect holder acquires a qualifying holding in the financial undertaking through an intermediate undertaking) or in connection with a direct acquisition (where a direct acquisition of a qualifying holding in a financial undertaking leads to a change in the indirect holder of the financial undertaking)**. If the indirect acquisition of a holding takes place during/because of a direct acquisition of a holding, **the prospective first level indirect holder(s) must also submit an application** for the indirect acquisition of a holding, **together with the payment of the judicial administration service fee and proof of this fact**.

3.1 Administrative time-limit

The time limit for processing the application is 60 working days, **starting from the date of issue of the certificate of completeness**. The MNB confirms receipt of the application and inform the applicant about the administrative time limit in writing within two working days of receipt ("certificate of receipt"). (Section 129 (1) of the Credit Institutions Act)

The certificate of completeness will not be issued until any annexes required by law for the assessment of the application are missing. If necessary, the MNB will request the applicant in writing to provide these missing documents. The time elapsed until the issue of the certificate of completeness does not count towards the time limit for the administration of the case!

The MNB shall thus examine the intention to acquire qualifying holdings within sixty working days of the issue of the **certificate of completeness** following the submission of all the documents to be attached to the application, i.e. the complete application, to determine whether, once it has been effected, the requirements of this Act can be met. (Section 129 (2) of the Credit Institutions Act). If the information supplied is found incomplete or deficient, the MNB may request within fifty working days from the date of the certificate of receipt, in writing, additional information or to have the deficiencies remedied, indicating the information specifically required for completion of the evaluation process (hereinafter: "remediation of deficiencies"). (Section 129 (3) of the Credit Institutions Act).

The time limit for remedying deficiencies is twenty working days. The time limit for remedying deficiencies is thirty working days if:

a) the applicant is established 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 Council Directives 85/611/EEC and 92/49/EEC, and Directives 2002/83/EC, 2005/68/EC and 2006/48/EC of the European Parliament and the Council. (Section 129 (3)–(5) of the Credit Institutions Act)

If the MNB did not refuse to grant its consent within the administrative time limit specified in the Credit Institutions Act for the acquisition of qualifying holding or for increasing the size of qualifying holding, its consent should be considered as granted. (Section 132 (1) of the Credit Institutions Act)

3.2 Deadline for the execution of the authorised transaction

If the MNB did not refuse to grant its consent for the acquisition of qualifying holding or for increasing the size of qualifying holding, it may specify the time limit within which to complete the transaction, not exceeding six months *(Section 132 (2) of the Credit Institutions Act)*.

3.3 Administrative service fee

On grounds of Sections 2 (2) of MNB Decree 32/2023. (VII. 19.) on the administrative service fees of the Magyar Nemzeti Bank applied in certain authorisation and registration procedures in the context of the supervision of the

financial intermediary system and with respect to trustee enterprises ("**MNB Decree**"), the fee payable for the authorisation of the acquisition of qualifying holding is HUF 700,000 per applicant in the case of financial undertakings.

Section 2 (3) of the MNB Decree sets forth that the administrative service fee payable for the authorisation of the acquisition of qualifying holding in the event of a change beyond the person of the applicant (e.g. inheritance, succession) is HUF 450,000 per applicant in the case of financial undertakings.

Direct and indirect applicants both qualify as applicants. For the authorisation of the acquisition of indirect qualifying holdings (acquisition of qualifying influence) the fee payable by the applicant is 75 per cent of the abovementioned fees. (Section 20 (2) of the MNB Decree).
Further information about the administrative service fee is available at the following link:
https://www.mnb.hu/letoltes/tajekoztatas-a-magyar-nemzeti-bank-altal-egyes-engedelyezesi-es-nyilvantartasba-veteli-eljarasokban-alkalmazott-igazgatasi-szolgaltatasi-dijrol.pdf

IV. THE CONTENT OF THE APPLICATION FOR AUTHORISATION

The applicant wishing to acquire a direct/indirect holding shall submit the documents specified in Section 18 (1) g) and h) and Section 18 (2) to (4) and Section 126 (5) of the Credit Institutions Act pursuant to Section 126 (2) of the Credit Institutions Act.

As of 1 September 2023, there is no difference between the documentation required for an application for authorisation to acquire an indirect holding and a direct holding.

4.1 Documents to be submitted

The application for authorisation *(on the form of a natural person, on an ÁNYK form, on an e-form for an economic operator!*) must include:

a) the name of the holder of a qualifying holding in the financial institution *(on the form of a natural person, on an ÁKNY form, on an e-form of an economic operator*) *(Section 126 (5) of the Credit Institutions Act)*
b) an indication of the share held by the applicant in an undertaking which has a qualifying holding in a financial institution *(on the form of a natural person, on an ÁKNY form, on the e-form of an economic operator) (Section 126 (5) of the Credit Institutions Act)*
c) the proportion of the shareholding to be acquired *(on the form of a natural person, on an ÁKNY form, on the e-form of an economic operator) (Section 126 (5) of the Credit Institutions Act)*
d) a description of the proposed acquisition price and the criteria applied in the determination of that price and, if the market value and the proposed acquisition price are different, an explanation as to the reason of the difference. (Section 18(2)(b), 126(2) of the Credit Institutions Act)
e) the contract proposal made for the acquisition of members' share or for an agreement to provide substantial advantages attached to voting rights *(Section 126 (5) of the Credit Institutions Act)*
f) having regard to an executive officer of the applicant, all data and information for assessment of the grounds for exclusion specified in Section 137 (4) and a statement regarding the criminal proceedings specified in Section 137 (6) *(Section 126 (5) of the Credit Institutions Act)*
g) the applicant's identification data specified in Annex No. 2 of the Credit Institutions Act (Section 18 (2) a), Section 126 (2) of the Credit Institutions Act)
h) proof of the legitimate origin of the financial resources necessary for the acquisition of a qualifying holding, also in the case of indirect acquisitions (Section 18 (2) (b), Section 126 (2) of the Credit Institutions Act)
i) documents issued within 30 (thirty) days in proof of having no outstanding debts owed to the tax authority, customs authority, health insurance administration or pension insurance administration of competence under the applicant's national law, (Section 18 (2) c), Section 126 (2) of the Credit Institutions Act)
j) a statement declaring that other holdings and business activities of the applicant are not harmful to the prudent management of the financial institution (Section 18 (2) d), Section 126 (2) of the Credit Institutions Act) (statement to be made in the prescribed form or form)
k) in the case of natural persons and senior executives, in order to prove the clean record specified in Section 137 (4)c) of the Credit Institutions Act, an **extract from the judicial 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 (ninety) days**

shall be submitted. With regard to Section 71 (4a) of the Bnytv.[2], the MNB also accepts the extended certificate of good conduct if it contains information that the candidate has no criminal record and is not under a ban from public office. (Section 18 (2) e) and Section 126 (2) of the Credit Institutions Act)

l) in the case of a natural person, a statement that he is not subject to the grounds for exclusion under Sections 137 (4) and (6) of the Credit Institutions Act (paragraph e) of Section 131 (2) and Section 131 (3) of the Credit Institutions Act).

m) if other than a natural person, the applicant's charter document in force at the time of the submission of the application, documentary proof issued within 30 (thirty) days that it has been established (registered) in compliance with its personal law, that it is not undergoing bankruptcy, liquidation or winding up, further, that its executive officers are not subject to any disqualifying factors (as regards the absence of a bankruptcy, liquidation or winding up procedure, it is sufficient to make a statement) (Section 18 (2) f), Section 126 (2) of the Credit Institutions Act) (statement to be made in the prescribed form or form)

n) in the case of applicants who are not natural persons, a detailed description of the ownership structure supported by documents and, if possible, a description of the beneficial owners (Section 18 (2) (g), Section 126 (2) of the Credit Institutions Act)

o) a statement declaring any and all contingent liabilities and commitments, by definition of the Accounting Act, (Section 18 (2) h), Section 126 (2) of the Credit Institutions Act) (statement to be made in the prescribed form or form)

p) a statement of the applicant executed in a private document representing conclusive evidence, giving consent to having the authenticity of the documents attached to the application for authorisation verified by the MNB by way of addressed bodies, (paragraph i) of Section 18 (2), Section 126 (2) of the Credit Institutions Act) (statement to be made in the prescribed form or form)

q) The application must be accompanied also be a statement the applicant that he has disclosed to the MNB all important facts, data and information required for the issue of the authorisation. (Section 59 (2) of the MNB Act) (In the prescribed form or form)

r) to prove the good business reputation of the applicant (in the case of a non-natural person applicant, that of the applicant and its executive officers), the completed questionnaire posted on the website of the MNB in accordance with the provisions contained in the information issued on this subject *(Section 139 (2) e) of the Credit Institutions Act)*.

s) a declaration that there are no grounds for disqualification as defined in Section 137 (4) and (6) of the Credit Institutions Act against the person holding the position of executive officer/natural person applicant, and in respect of these persons: In order to prove the clean record specified in Section 137 (4)c) of the Credit Institutions Act, an **extract from the judicial 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 (ninety) days** shall be submitted. With regard to Section 71 (4a) of the Bnytv.[3], the MNB also accepts the extended certificate of good conduct if it contains information that the candidate has no criminal record and is not under a ban from public office.

t) a questionnaire (on a form) for the applicant and the applicant's senior executives/the natural person applicant to prove the existence of good business reputation *(Section 139 (1) of the Credit Institutions Act)* Using the information included in the questionnaire as a basis, the MNB may require submission of other types of documents or the proof of facts in a wider range if it considers that the information provided in the questionnaire is not sufficient to prove the existence of good business reputation.

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[2] According to Section 71 (4a) of Act XLVII of 2009 on the Criminal Records System, the Register of Rulings by the Courts of the Member States of the European Union against Hungarian Citizens and on the Register of Biometric Data in Criminal and Law Enforcement Matters (Bnytv.), *if the applicant is prohibited from an occupation or activity, then the fact specified in Paragraph (3) (e)* (the occupation or activity from which the applicant is prohibited) *must be indicated in the official certificate of good conduct in the case of an application to prove the fact specified in Paragraph (3) (b)* (i.e. that the applicant has no criminal record), *even in the absence of such an application.*

[3] According to Section 71 (4a) of Act XLVII of 2009 on the Criminal Records System, the Register of Rulings by the Courts of the Member States of the European Union against Hungarian Citizens and on the Register of Biometric Data in Criminal and Law Enforcement Matters (Bnytv.), *if the applicant is prohibited from an occupation or activity, then the fact specified in Paragraph (3) (e)* (the occupation or activity from which the applicant is prohibited) *must be indicated in the official certificate of good conduct in the case of an application to prove the fact specified in Paragraph (3) (b)* (i.e. that the applicant has no criminal record), *even in the absence of such an application.*

The form to prove good business reputation is available in the menu below:
ERA interface (Public Services/Forms/Select Forms/Good Business Questionnaires/Acquisition of Shares)
https://era.mnb.hu/ERA.WEB/PublicServices/Current?code=eraformanyomtatvany

4.2 Criteria for assessing the legitimate origin and availability of a financial resource:

4.2.1 Assessment of the value for money

The MNB examines how the purchase price is proportionate to the equity of the financial undertaking concerned, and whether there may be a disproportion of value. The examination is based on the declarations submitted by the applicant and the data provided by the financial undertaking. In order to do so, the applicant must submit in the application for authorisation

- the method of determining the purchase price on which the contract is based; and
- in the event of a significant difference between the nominal value of the block of shares sold and the purchase price, a detailed justification and explanation of the difference.

4.2.2 Legitimate origin

The legitimate origin of the financial resource must also be demonstrated in the case of indirect acquisition of ownership, where the indirect acquirer of a holding acquires a holding in the intermediary undertaking that constitutes a qualifying holding in the financial undertaking.
The financial resources may be provided from own or foreign sources.

Own source can be verified, in the case of private individuals, primarily by an income certificate issued by the National Tax and Customs Administration, which also includes the separately taxed income. Separately taxed income includes, among others, dividends, income from the renting out of property and exchange gains.
From the amount of the aggregate income shown in the income certificate, costs reasonably necessary to cover the normal way of living and the tax(es) indicated in the income certificate will be deducted. **The tax return itself is not sufficient to prove own sources.**

A business associations applicant may verify own sources by means of its balance sheet data and audited accounts if the amount of the balance sheet profit and the profit reserve on the assets side equals or is higher than the amount to be used for acquiring the holding.

If, due to the lapse of time, the audited accounts cannot be considered current when the licensing procedure is initiated, a non-audited interim balance sheet should be submitted, which should be supported by the current ledger extract.
In addition to the assets side of the annual account, the liabilities will also be examined to verify if the applicant has sufficient liquid assets for the financial sources and, on the other hand, that such liquid assets ensure the proper liquidity of the applicant also after the acquisition of holding.

The MNB requests the Applicant to indicate at all times which line of the annual accounts contains the financial source necessary for the acquisition of the holding.

Sources from e.g. loan contracts may be taken into account as **foreign sources**, in respect of which the legitimate origin of the loan amount must be examined.
A loan contract from a financial institution may be accepted if its objective is in accordance with the acquisition of the qualifying holding.
Where the lender is a private individual, it is necessary to examine the legality of the source provided by them.
In the case of a business association or other non-natural person lender, it should be examined if the lender has a profit or profit reserve or liquid assets, income that allow for the lending and whether it has not used those for another purpose.

The loan contract or another document setting out the terms of the loan must be submitted in the licensing procedure. It must also be substantiated that the applicant is able to repay the loan. If the loan will be repaid from the profit of the supervised institution, the business plan of the supervised institution may also be necessary to substantiate the repayment, regardless of the size of the holding.

Given that a capital fund is a mass of assets, if the applicant is a closed-end capital fund or a similar fund, the financial source in respect of the capital fund and, in respect of the existence of other conditions (good business reputation, clean criminal record of the executive officer, declaration on grounds for exclusion), the manager of the capital fund must be examined. In the case of acquisition of a holding by a capital fund, not only the capital fund itself but, in respect of the exercise of voting rights, the capital fund manager is also considered as the applicant, so the provisions of this guidance apply to them as well.
In the case of an operating fund, the annual accounts of the fund should be submitted. If the fund is newly established, the sums made available to the fund by the investors making payments into the fund will be examined.
In the case of an application for the acquisition of holdings by a fiduciary, please refer to the MNB's Information Notice on the supervisory control and authorisation of the acquisition of qualifying holdings/qualifying influence by fiduciaries in supervised institutions:
tajekoztato-a-bizalmi-vagyonkezelok-felugyelt-intezmenyekben-torteno-befolyasolo-reszesedesszerzese-minositett-befolyasszerzese-felugyeleti-ellenorzeserol-es-engedelyezeserol.pdf (mnb.hu)

4.2.3 Examination of availability

It is necessary to prove that the financial sources from legitimate sources are continuously available to the applicant from the creation of the source to the time of acquisition of the holding, meaning, that its legality is maintained.

Availability means that if a longer time passes between the acquisition and the use, that is, the acquisition of the qualifying holding, it is also necessary to verify that the source is still available in the given procedure and has not been used for any other purpose in the meantime. The availability of the sources may primarily be verified by means of certificates issued by account keeping banks or securities account managers.

In the case of a loan, it is necessary to prove the flow of the funds from the payment to the use thereof. To prove the transfers, transfer orders or certificates of the banks involved in the money flows are also acceptable. If the foreign source comes from other than a bank loan, the loan contract must state the purpose of the loan and where it is transferred.

Depending on the type of the acquirer, a bank certificate of an escrow certificate by an attorney or notary public is necessary if the funds on the account of the acquirer or escrow agent, which will be used for the acquisition of the holding once the authorisation has been obtained, is blocked or separated for such purpose. If the source is securities, a statement must be made that the source of the cash will be the sale of the existing liquid securities (e.g. they can be sold on the market within 2 days).

Please note that the contents of Clauses 4.2.1–4.2.2 are for information purposes only, but they represent the principles and the main assessment aspects of the authorisation procedure. On the basis of the information contained in the relevant licence application, the MNB may require submission of other types of documents in a circle wider than the above if it considers that the documents that have already been submitted are not sufficient to verify the legality or the availability of the financial sources or the proper economic and financial position of the applicant.

V. REJECTION OF THE APPLICATION

The MNB shall reject an application for an authorisation to acquire or increase holdings – as defined in Section 126 (1) and (3) of the Credit Institutions Act – if the applicant's (or its member's or executive officer's):

a) activities, influence on the financial institution is considered harmful to the financial institution's independent, sound and prudent management,
b) the nature of its business activities or relations, or their direct or indirect members' shares or holdings in other companies are structured in a manner to obstruct supervisory activities,
c) does not have a good business reputation,
d) there are reasonable grounds to suspect that, in connection with the acquisition of its qualifying holding, money laundering or terrorist financing within the meaning of the relevant legislation is being or has been committed or attempted, or that the planned acquisition of qualifying holding could increase the risk thereof. *(Section 131 (1) of the Credit Institutions Act).*

The activity of the applicant, or of any member or executive officer of the applicant, or their influence on the financial institution must be considered harmful to the independent, sound and prudent management of the financial institution in particular

a) if the applicant's financial and economic position is deemed inadequate for the size of the ownership interest they propose to acquire.
b) the legitimacy of the funds used for the acquisition of holding or that of the authenticity of the particulars of the person indicated as the owner of such funds cannot be verified,
c) the applicant fails to meet the conditions set out in the emergency action plan,
d) the MNB has suspended its right to exercise voting rights within five years preceding the notification, or
e) in respect of natural persons, there are grounds for exclusion under Section 137 (4) *(Section 131 (2) of the Credit Institutions Act).*

In order to verify the fact or circumstance specified in Section 131 (1)-(2) of the Credit Institutions Act, the Supervisory Authority may request data or information from any interested party that may be processed on the basis of the authorisation granted by law *(Section 131 (4) of the Credit Institutions Act).*

VI. AUTHORISATION OF AN APPLICATION TO ACQUIRE A QUALIFYING HOLDING WITH SUSPENSION OF VOTING RIGHTS

If there are no grounds to refuse authorisation for the acquisition of a qualifying holding, but there are criminal proceedings in progress against the natural person as an applicant as provided for in Section 137 (6) of the Credit Institutions Act, the MNB must grant the authorisation subject to suspension of the owner's voting rights pending conclusion of the criminal proceedings *(Section 131 (3) of the Credit Institutions Act).*

VII. OTHER PROVISIONS RELATING TO THE SUSPENSION OR PROHIBITION OF VOTING RIGHTS

7.1 Suspension of voting rights

If the conditions for the authorisation of the acquisition of a qualifying holding are no longer fulfilled, the MNB must suspend the owner's voting rights until the unlawful situation is terminated or the fulfilment of the conditions is verified again *(Section 131 (5) of the Credit Institutions Act).*

If a member of a financial institution is not entitled to exercise its voting rights under the law, its voting rights shall be disregarded for the purposes of determining its capacity to vote. *(Section 131 (6) of the Credit Institutions Act)* The permission of the MNB is not a substitute for the authorisation of the Gazdasági Versenyhivatal (Hungarian Competition Authority) required for the acquisition of control *(Section 131 (7) of the Credit Institutions Act).*

7.2 Prohibition of the exercise of voting rights

In the case of a failure to apply for authorisation as prescribed, refusal of the application, failure to comply with the obligation of notification as prescribed or refusal to disclose information, the MNB may prohibit the exercising of voting rights arising from the agreement for the acquisition of a holding or for providing advantages until the relevant statutory requirements are fulfilled *(Section 133 of the Credit Institutions Act).*

VIII. THE OBLIGATION TO NOTIFY THE ACQUISITION OR CHANGE (INCREASE OR DECREASE) OF A QUALIFYING HOLDING AFTER OBTAINING THE OFFICIAL AUTHORISATION

8.1 For the person acquiring/increasing/reducing a direct/indirect qualifying holding

Within thirty days of the conclusion of the contract, the MNB must be notified in writing *(on the form of a natural person, on an ÁNYK form, on an e-form for an economic operator!*),

a) who has acquired a qualifying holding in a financial institution,
b) who has altered the size of his qualifying holding in a financial institution:
- who reaches a limit of twenty, thirty-three or fifty per cent in a financial institution, or
- who is below the limit of twenty, thirty-three or fifty per cent in a financial institution, or

c) who has entered into an agreement providing substantial advantages attached to ownership rights or voting rights, or has amended such an agreement *(Section 134 (1) of the Credit Institutions Act)*

8.2 For the financial undertaking concerned

Within five working days, the financial institution shall inform the MNB in writing*(e-form!*) and through the ERA system if it becomes aware of the acquisition, disposal or modification of a shareholding in the proportion specified in Sections 126-128 of the Credit Institutions Act *(Section 134 (2) of the Credit Institutions Act)*

IX. OBLIGATION TO NOTIFY – IN THE EVENT OF TERMINATION OR REDUCTION OF DIRECT/INDIRECT QUALIFYING HOLDING OR ELECTION OF A NEW OFFICER – WITH NO OBLIGATION TO OBTAIN AUTHORISATION

A person with a qualifying holding in a financial undertaking *(on the form of a natural person, on an ÁKNY form, on an e-form of an economic operator*) must notify the MNB two days before the conclusion of the contract if

a) it intends to terminate their qualifying holding in full, or
b) it intends to adjust its qualifying holding so that it would fall below the limit of twenty, thirty-three or fifty per cent *(Section 128 (1) of the Credit Institutions Act)*.

A person with a holding in a financial undertaking must notify the MNB within two days if it has elected a new managing director *(Section 128 (2) of the Credit Institutions Act)*.
The notification must also include – in the case of Section 128 (1) (b) of the Credit Institutions Act – the remaining member's shareholding, the extent of voting rights or the amendment of the contract conferring a significant advantage *(Section 128 (3) of the Credit Institutions Act).*

In addition to the above, applicants should also refer to the following information published on the MNB website under "Supervision/Authorisation and Supervision of Institutions/Authorisation/Frequently Asked Questions": *"Information on certain issues most frequently arising in certain authorisation and registration procedures affecting the practice of the Magyar Nemzeti Bank".*

If, after reviewing these guidelines, further questions arise which cannot be answered in a telephone or written consultation on a specific case, the MNB will also provide the applicant with the opportunity for personal consultation. For personal consultations, please contact the Secretariat of the Financial and Capital Markets Licensing Department (phone: +36 1-489-9300; e-mail: ptef@mnb.hu).

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