FJÁRMÁLAEFTIRLITIÐ
THE FINANCIAL SUPERVISORY AUTHORITY, ICELAND

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Guidelines

No. 3/2010

Qualifications of Key Employees

Issued pursuant to the second paragraph of Article 8 of Act No. 87/1998 on Official Supervision of Financial Activities

5 September 2011

I. Introduction

1: Act No. 161/2002 on financial undertakings was amended by Act No. 75/2010, which entered into force last 25 June. The amendments included various new provisions relating to key employees of financial undertakings, especially as regards the business transactions of the undertakings with such employees, such as loans, severance agreements and other terms of employment. However, no provisions have been enacted regarding the qualifications of key employees, neither in the Act referred to above nor in other acts of law. Nevertheless, it is necessary, in the opinion of the Financial Supervisory Authority to verify the qualifications of key management as well as the qualifications of board members and managing directors of undertakings in the financial market. For this reason, the Financial Supervisory Authority is issuing these Guidelines on the qualifications of key managers, as authorised in the second paragraph of Article 8 of the Act on official supervision of financial activities No. 87/1998. The Guidelines are addressed to all regulated parties, as provided in the third paragraph of Article 2 of the cited Act.

2: Special laws governing the business of regulated parties include provisions on the qualifications and independence of board members and the managing director appointed by the board of directors. The managing director hires other employees and is responsible for their work. The Financial Supervisory Authority notes that the qualifications and integrity of key employees are among the fundamental elements affecting the operating risk and reputation risk of regulated parties. The qualifications of board members, managing director and key employees are therefore of fundamental importance for the sound and normal business practices of a financial undertaking and other undertakings in the financial market.

II. Key employee

3: The term "key employee" is defined in Point 8 of Article 1 of the Act on financial undertakings: *Key employee: A natural person in a position of management, other than the managing director, who is empowered to make decisions which are capable of impacting the future development and performance of the undertaking.*

4: The Act also includes provisions that limit or clarify the position of key employees in a financial undertaking, e.g. that an undertaking is prohibited from extending a loan to a key employee which constitutes an exposure, except against secure collateral (Article 29(a)); that the board of directors of a financial undertaking shall establish rules concerning the undertaking's transactions with key employees (article 57); and that a severance agreement with a key employee is permitted only if the undertaking has shown a profit over the last three years of his/her term of employment (Article 57(b)). Also, annual financial reports must disclose information on total payments and benefits to key employees and on their number (Article 87). The above duties of financial undertakings with regard to key employees require top management to define which managerial positions constitute key positions.

III. Internal rules on qualifications and assessment of qualification

5: The Financial Supervisory Authority recommends to regulated parties in the financial market to establish their own rules on the qualifications of key employees and publish them on their respective websites. The Authority believes that it is reasonable in the establishment of such rules to take account of the conditions of qualification for board members and managing directors found in the special laws applicable to their operations. The applies both to objective and subjective conditions of qualification.

6: In the opinion of the Financial Supervisory Authority it is consistent with normal and sound business practices that a register should always be available in regulated parties of the identities of key employees. This means also that an internal assessment by the managing director and board of directors of the individuals holding key positions should also be available.

7: More specifically, the Financial Supervisory Authority recommends to all regulated parties that they should undertake to list and assess key employees and their qualifications. In this context, the career of the persons in question and their success in former employment should be reviewed. Account should be taken of the potential operating and reputation risk of the financial undertaking arising from the work of the persons in question. If such a review results in any doubt regarding the desirability of the person in question holding a key position, the Financial Supervisory Authority recommends to regulated parties that they should ensure that the person in question does not continue to hold a key position in the undertaking.

IV. Role of the Financial Supervisory Authority

8: The Financial Supervisory Authority will review and provide feedback on the rules that regulated parties establish for themselves in line with these Guidelines.

9: The Financial Supervisory Authority will regularly review lists of key employees and their positions and the enforcement by financial undertakings of any rules established pursuant to these Guidelines.

10: The Financial Supervisory Authority will, when appropriate, call for effective remedial actions by regulated parties for the purpose of mitigating operating and reputation risk in their operations arising from the work of key employees.

The Board of Directors of the Financial Supervisory Authority agreed to re-issue and publish the Guidelines on 31 August 2011. Amendments were made to the phrasing of Sections 5 and 7.

The Board of Directors of the Financial Supervisory Authority had earlier agreed to issue and publish the Guidelines on 01 October 2010.

Reykjavík, 5 September 2011.

THE FINANCIAL SUPERVISORY AUTHORITY

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