



No. 877/2012

RULES
on the Fit and Proper Assessment of Managing Directors
and Directors of Financial Undertakings

CHAPTER I

General

Art. 86

Scope

These Rules shall apply to managing directors and directors of financial undertakings. The term “managing director” refers to the individual engaged by the Board of Directors of a financial undertaking to direct its operations in accordance with the provisions of the Public Limited Companies Act or Act No. 161/2002, on Financial Undertakings, regardless of his/her actual title, cf. Point 6 of Art. 1 a of Act No. 161/2002. The term “directors” refers to members of the Board of Directors and their alternates.

Art. 2

Eligibility

Managing directors and directors must fulfil the eligibility requirements made of them in the Act on Financial Undertakings.

Art. 3

Notification of new managing directors or directors

Financial undertakings must inform the Financial Supervisory Authority, in advance if possible, of the composition of and subsequent changes to their Board of Directors and managing director. The following documentation must be submitted to the Financial Supervisory Authority no later than four weeks after the election of new directors or the hiring of a new managing director:

- a. disclosure by managing directors and directors of regulated entities in accordance with the questionnaire of the Financial Supervisory Authority;
- b. a statement in connection with assessment of the eligibility of managing directors and directors of financial undertakings, in accordance with the document of the Financial Supervisory Authority;
- c. a curriculum vitae;
- d. confirmation of any professional qualification, as applicable;



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- e. information on the financial situation, including total assets, debts of over ISK 2 million, income, expenses, guarantees, pledging of assets to third parties, defaults and anything else which the managing director or director considers may be of significance for assessing his/her financial independence in accordance with the form of the Financial Supervisory Authority.

The Financial Supervisory Authority may request further documentation in addition to the above if necessary for assessment of a person's eligibility.

If the information provided in accordance with the above is insufficient, in the estimation of the Financial Supervisory Authority, this may prevent an assessment being made of the person's eligibility, in which case Art. 19 of these Rules shall apply.

CHAPTER II

Eligibility requirements

Art. 4

Assessment of eligibility

Assessment of eligibility involves, firstly, a review of the written documentation and, secondly, an oral assessment of eligibility, if appropriate, cf. Chapters IV and V of these Rules.

A review of the written documentation, cf. Chapter I of these Rules, involves an examination of whether the person satisfies, for instance, the requirements of Art. 52 of the Act on Financial Undertakings regarding:

- a. residence,
- b. legal competence,
- c. an unblemished reputation,
- d. not having been declared bankrupt during the past five years,
- e. not having been sentenced for a punishable offence in connection with business operations during the past 10 years,
- f. financial independence,
- g. education,
- h. sufficient expertise and experience,
- i. not having conducted him-/herself in such a manner as would give cause to doubt the person's eligibility, and
- j. that no circumstances exist as referred to in the fourth paragraph, cf. however, the fifth and sixth paragraphs, of Art. 52 of the Act on Financial Undertakings.

Art. 5

Offences in connection with commercial operations

Managing directors and directors may not have been sentenced for a punishable offence in connection with commercial operations during the past 10 years under the General Penal



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Code, the Competition Act, the Act on Public Limited Companies, the Act on Private Limited Companies, the Accounting Act, the Act on Annual Financial Statements, the Act on Bankruptcy etc. and statutory provisions on withholding of public levies, as well as special Acts which apply to parties subject to official supervision of financial activities.

A sentence in connection with commercial operations shall mean that the person, as an employee, director, owner, contractor or through other connection with commercial operations, has been sentenced for a punishable offence under the Acts listed in the first paragraph.

Art. 6

Education

Managing directors and directors must have completed a university degree of relevance for their work.

Having a university degree of relevance for his/her work shall mean that the person has acquired theoretical knowledge related to the activities, development or operation of enterprises.

The Financial Supervisory Authority may grant an exemption from the educational requirements if a person demonstrates that he/she has acquired expertise and experience of relevance for the work. In this connection regard is had, for instance, to previous directorships and positions and the knowledge the person has acquired.

In assessing whether experience and expertise is sufficient, regard shall furthermore be had for the type and scope of the operations of the financial undertaking in question.

Art. 7

Work experience

Managing directors and directors must possess sufficient work experience to be able to fulfil their position in a satisfactory manner, including knowledge of the activities carried out by the financial undertaking in question.

In assessing whether work experience is sufficient, regard shall furthermore be had for the type and scope of the operations of the financial undertaking in question.

Art. 8

Conduct

Managing directors and directors may not have conducted themselves, either through action or inaction, in such a manner as would give cause to doubt their ability to pursue sound and healthy operations, or make it likely that they would conceivably abuse their position or damage the company.

Assessment thereof shall consider, among other things, conduct by persons which could diminish their credibility and damage the reputation of the financial undertaking if it were



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publicly known. Furthermore, consideration shall be given to previous involvement of the Financial Supervisory Authority in connection with a person's work or the working practices of a regulated entity which he/she previously directed or was responsible for.

Art. 9

Assessment of conflicts of interest

Directors of a financial undertaking or other regulated entity may not sit on the Boards of another regulated entity or an entity connected to the latter, nor may they be employees, attorneys or auditors of another regulated entity or closely connected companies. Employees of a financial undertaking may not sit on the Board of the financial undertaking concerned, cf. the fourth paragraph of Art. 52 of the Act on Financial Undertakings.

A director or employee of a financial undertaking may take a seat on the Board of another financial undertaking, insurance company or financial conglomerate, if the company concerned is partly or fully owned by the financial undertaking or a company which is partly or fully owned by a company controlling the financial undertaking. The same shall apply to an attorney of the parent company, cf. the fifth paragraph of Art. 52 of the Act on Financial Undertakings. The directorship is authorised on the condition that it does not create, in the estimation of the Financial Supervisory Authority, a risk of conflicts of interest on the financial market, cf. the sixth paragraph of Art. 52 of the Act.

In assessing conflicts of interest as referred to in the second paragraph regard is had, for instance, to the company's connections with other financial market parties and whether the connections could be detrimental to the financial undertaking's sound and healthy operation. In the assessment regard is also had for whether the undertakings are licensed for the same operations, as a risk of conflicts of interest could arise if they are considered to be in competition.

CHAPTER III

Assessment of financial independence

Art. 10

Financial independence,

Directors and managing directors of financial undertakings must be financially independent, cf. the third paragraph of Art. 52 of the Act on Financial Undertakings. In assessing persons' financial independence, FME has regard, for instance, for the following aspects:

- a. that their equity position is positive;
- b. that their income is sufficient to cover debt service and living expenses;
- c. that debts, third-party guarantees and pledging of assets is not such as will raise doubts as to their independence towards a lender/creditor, and be liable to affect their work in the financial undertaking in question. In assessing whether a person is considered to be independent of others, regard is had for whether an obligation is deemed substantial relative to annual income. Obligations which are excluded from this item are normal loans which are offered to the general public, e.g. housing mortgages, auto loans and student loans;



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- d. aspects other than those listed above concerning financial status or financial obligations which may be of significance in the estimation of the Financial Supervisory Authority.

Art. 11

Assessment of financial independence

A person is considered financially independent if he/she fulfils the requirements of all subparagraphs of Art. 10.

If a person does not fulfil the requirements of subparagraph a or b of Art. 10, consideration is given to his/her equity position and future income and cash flow to determine whether the person will be able to fulfil his/her commitments.

In assessing subparagraph c, consideration is given as to whether the person would repeatedly be ineligible to participated in decisions on issues, having regard to the provisions of Acts, Rules and other criteria in this regard, e.g. Art. 72 of Act No. 2/1995, on Public Limited Companies, and Art. 55 of Act No. 161/2002, on Financial Undertakings, as applicable.

Other aspects, as referred to in subparagraph d of Art. 10, shall mean aspects which substantially affect a person's financial independence, including aspects which lead repeatedly to a person's ineligibility, cf. the third paragraph.

CHAPTER IV

Assessment of a managing director's expertise

Art. 12

Oral assessment of a managing director's eligibility

A managing director must undergo an assessment of eligibility within six weeks of fulfilling the eligibility requirements set out in Chapters II and III of these Rules, in the estimation of the Financial Supervisory Authority.

The oral assessment of eligibility is intended to examine whether the managing director possesses sufficient expertise to be able to fulfil his/her position in a satisfactory manner. In the oral assessment an examination is made, among other things, of the person's knowledge of the activities pursued by the financial undertaking in question, knowledge of Acts and Rules on financial markets, accounting, auditing and general commercial and administrative factors.

In conducting assessment of managing directors' eligibility the Financial Supervisory Authority may be assisted by external parties, for instance, to assess their expertise.

Art. 13

Invitation of managing directors for oral eligibility assessment



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An invitation for oral assessment must be made in writing with at least two weeks' notice, specifying what subjects will be discussed. The announced eligibility assessment may not be postponed unless it is demonstrated that there are pressing grounds for so doing and, in general, by no more than one week.

Art. 14

Outcome of managing directors' oral eligibility assessment

The Financial Supervisory Authority shall assess whether the managing director, in the oral assessment, has demonstrated sufficient expertise to be able to fulfil his/her position in a satisfactory manner.

The Financial Supervisory Authority shall inform the managing director and Board of Directors of the financial undertaking in writing of the outcome of the eligibility assessment within two weeks of its implementation.

Art. 15

Repeat of managing directors' oral eligibility assessment

Should a managing director, in the estimation of the Financial Supervisory Authority, fail to demonstrate sufficient knowledge of the subject discussed in the eligibility assessment, he/she shall be given the opportunity of repeating the oral eligibility assessment within four weeks of the outcome being available.

An eligibility assessment may only be repeated once, unless there are special grounds to do otherwise.

Art. 16

Exemptions from a managing director's oral eligibility assessment

If a managing director has, during the past 12 months, served as managing director of a financial undertaking licensed for the same type of operations and has satisfied the eligibility requirements of the Financial Supervisory Authority for that position, he/she may request an exemption from oral eligibility assessment.

The request for exemption shall be sent to the Financial Supervisory Authority in writing and supported with appropriate documentation.

The Financial Supervisory Authority may request additional information if necessary.

CHAPTER V

Assessment of directors' expertise

Art. 17

Oral assessment of directors' eligibility



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The Financial Supervisory Authority shall assess whether directors shall undergo an oral eligibility assessment.

In conducting an assessment of directors' eligibility the Financial Supervisory Authority may be assisted by external parties, for instance, to assess their expertise.

The provisions of Chapter IV of these Rules shall apply as appropriate to directors' oral eligibility assessment.

CHAPTER VI

Assessment of eligibility

Art. 18

Eligibility requirements satisfied

If the Financial Supervisory Authority is of the opinion that a person satisfies the eligibility requirements of the Act on Financial Undertakings and provisions of these Rules, it shall inform the person and the Board of Directors of the financial undertaking of its conclusion in writing.

Art. 19

Eligibility requirements not satisfied

If the Financial Supervisory Authority is of the opinion that a person does not satisfy the eligibility requirements of the Act on Financial Undertakings and the provisions of these Rules, or if the person's eligibility as provided for in the third paragraph of Art. 3 of these Rules cannot be assessed, it shall inform the person and the Board of Directors of the financial undertaking of its conclusion in writing giving the grounds for such.

A person who does not satisfy the eligibility requirements of the Act on Financial Undertakings and these Rules may not serve as managing director or take a seat on the Board of Directors of a financial undertaking. If the person has already commenced work, the Financial Supervisory Authority may demand that the person resign, either temporarily or permanently. If the demands of the Financial Supervisory Authority are not complied with within a reasonable length of time, the Financial Supervisory Authority may unilaterally dismiss the person, cf. the fourth paragraph of Art. 10 of Act No. 87/1998 on Official Supervision of Financial Activities.

Art. 20

Ongoing assessment of eligibility

Managing directors and directors must, at all times, satisfy the eligibility requirements of the Act on Financial Undertakings and provisions of these Rules.

Should there be changes to information previously provided which could affect a person's eligibility, he/she must inform the Financial Supervisory Authority thereof without delay and no later than two weeks after the changes occur.



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The Financial Supervisory Authority may, at any time, make a special examination of the eligibility of managing directors and directors, for instance, if their conduct in their work for a financial undertaking gives cause for so doing or if there are major changes in the scope, work, operations or legal environment of a financial undertaking.

Art. 21

Assessment of eligibility in connection with an application for an operating license

If an assessment of the eligibility of a managing director and directors is connected with an application for an operating license as a financial undertaking, and the person concerned fails to satisfy the eligibility requirements of the Act on Financial Undertakings, the undertaking will not be granted a license.

The Financial Supervisory Authority may, in connection with an application for a more extensive license, decide to re-examine the eligibility of the managing director and directors. Should the persons concerned fail to satisfy the eligibility requirements of the Act on Financial Undertakings the financial undertaking will not be granted a more extensive license.

CHAPTER VII

Entry into force

Art. 22

Entry into force

These Rules are issued on the basis of an authorisation in the third paragraph of Art. 52 of the Act on Financial Undertakings and shall enter into force immediately. At the same time Rules No. 627/2011, on the Implementation of Eligibility Assessment of Managing Directors and Directors of Financial Undertakings, shall be cancelled.

Financial Supervisory Authority, 17 October 2012

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Section B - Date of publication: 30 October 2012