

Manual on assessment of fitness and propriety

September 2018

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0. Overview of adjustments

1. Introduction

1.1 BACKGROUND

In accordance with the various supervisory laws, directors, members of the management committee, responsible persons of independent control functions and senior managers of financial institutions must be assessed as being fit and proper.

Although it is incumbent first and foremost upon the financial institutions themselves to select and retain the right people, the suitability assessment is part of the prudential supervision carried out by the National Bank of Belgium (hereinafter “NBB”) and, where applicable, the European Central Bank (hereinafter “ECB”).

The subject of suitability has become highly topical over the last few years due inter alia to the severe financial crisis which broke out in 2008 and led to an increased need to guarantee that financial institutions are managed as soundly as possible. A process involving thinking about this subject has emerged and various steps have been taken at international, European and national level.

In the meantime, a number of these initiatives have culminated in regulatory or policy documents which need to be applied nationally. It is therefore appropriate to have a certain form of codification in order to provide a clear overview of the whole situation.

1.2 GENERAL BACKGROUND

In the aftermath of the financial crisis, the need to ensure good governance in financial institutions has been a key issue. A debate on this subject has emerged, both internationally and nationally, about the criteria for the suitability of persons who assume responsibility at the highest level at financial institutions. Indeed, it is essential that financial institutions have the right people in the right places in order to guarantee their integrity and smooth operation and that such people are fit and proper

In this respect, the NBB, as a prudential supervisory authority, decided in 2013 to improve the framework of its suitability policy, by publishing a circular. By and large, the principles contained in that circular remain relevant and are therefore upheld and integrated into this handbook.

For prudential supervision purposes, the concept of suitability covers two aspects. It can be seen from the point of view of the requirement for “adequate organisation and internal control” for the institution as a whole (“collective suitability”), as well as for the individual assessments of a precisely determined scope of people (“individual suitability”).

This handbook focuses mainly on the second aspect of supervision of suitability, although in various places it also refers to the first aspect, for instance as far as the collective composition of the statutory governing body, conflicts of interest within the institution and the ongoing nature of the suitability obligations are concerned.

There are two assessment standards which lie at the heart of this handbook: **fitness** and **propriety**, collectively referred to as “**suitability**”.

A person is considered to be an **expert** (fit) for a specific position when s/he has knowledge and experience, skills and the professional behaviour required for the position in question.

Propriety relates to a person's honesty and integrity. A person is considered to be professionally honourable (proper) if there is no evidence to the contrary and nor is there any reasonable doubt about the person's good reputation, meaning that one can consider that the person will perform the task entrusted to him or her honestly, ethically and with integrity.

The suitability assessment is based on the following principles:

- The concepts of fitness should be understood in a broad sense in determining whether a person has the right qualities for a given function: a person is suitable only if he/she has the

necessary qualities and characteristics to perform adequately all the duties and obligations associated with that function.

- A structured framework within the institutions is needed to assess the suitability of members of the management committee, directors, responsible persons of independent control functions and senior managers. This framework must be applied consistently.
- The NBB or, where applicable, the ECB, as prudential supervisor, shall have its own power of appreciation to assess the suitability of such persons. This power of appreciation must be exercised properly, on the basis of correct factual information, leading to a correct assessment and a well-founded decision.
- The individual and collective suitability of these persons should be a constant concern for both the institution and the supervisor.

In this handbook, the NBB wishes, among other things:

- to clarify what it means by the concepts of fitness and propriety as defined in the legislation. On this basis, the institutions may further determine the particulars of their own suitability assessments;
- to set out clearly what it expects from the institutions in terms of individual and collective suitability assessments;
- transparently communicate its suitability policy in order to streamline the suitability assessments as much as possible, both in terms of content and procedure;
- Where appropriate, provide further clarification on how other relevant European and international regulations and policies should be integrated into the suitability assessment. In this context, the role of the ECB is also further clarified, where appropriate.

In the end, the handbook also aims to raise awareness among persons to be assessed as to the fact that they have an extremely important role to play in helping to ensure that the institutions fulfil their obligations. They need to be aware of both their duties and their social responsibilities, and to reflect this awareness in the way that they go about their work.

1.3 METHODOLOGY

The handbook consists of 5 chapters and is intended to bring together all applicable policy documents relating to suitability (European regulations, Belgian legislation, preparatory parliamentary work, regulations, circulars, international standards, etc.) and, where necessary, to clarify them. In addition, the handbook provides guidance on topics that are not as such the subject of specific policy documents. Furthermore, any policy documents that are not dealt with in this handbook naturally remain applicable; likewise, the handbook does not affect the competences of other supervisory authorities (e.g. the FSMA) as regards suitability.

The handbook does not in any way replace the underlying policy documents. Any changes to the latter will result in an amendment of the handbook. As this is in principle an online publication, the handbook is intended to evolve as time goes without the need to change the reference and name each time, as is the case for circulars, for example. However, any changes will always be brought to the attention of the institutions. In addition, they will be clarified in a separate section, with an indication of the date of adjustment.

The handbook is structured around the scope *ratione personae*: Chapters 2, 3 and 4 each contain an overview of those legal texts and policy documents on fitness and propriety that are relevant to the financial institutions concerned. The terms used in the handbook shall have the same meaning as that assigned to them in the relevant sectoral legislation. For the sake of clarity, the following is a summary of the most common key terms used in this handbook:

Financial institutions (hereafter also referred to simply as institutions): the generic term for companies which are subject to supervision by the NBB (or, where applicable, the ECB) which fall within the scope of one or more parts of this handbook.

Independent control functions: the transversal functions internal audit, compliance, risk management, and the actuarial function in the insurance sector.

Directors: all members of the statutory governing body of a financial institution, both the executive and non-executive directors, who together decide upon the company's general policy and strategy (general policy function).

Executive directors: members of the statutory governing body involved in senior management of the company (management function). This includes inter alia the following persons: any member of the statutory governing body who is a member of the management committee or to whom the daily management within the meaning of Article 525 of the Companies Code is delegated.

Non-executive directors: members of the statutory governing body who supervise the management (supervisory function).

Senior managers: the group of persons, whether or not directors, whose function within the institution implies that they exercise at the highest level a direct and decisive influence at the highest level on the management of the company's activity¹.

Small institution: an institution which employs no more than 25 people, including the members of the statutory governing body, at the time of the assessment of suitability.

For each type of financial institution, the following issues are addressed in the handbook: (i) Scope of application; (ii) Delimitation of responsibilities for the suitability assessment; (iii) Guidelines on fitness and propriety standards; (iv) Assessment of suitability by the financial institution; (v) Assessment of suitability by the supervisor. The annexed handbook also contains the standard forms for the assessment of suitability as drawn up by the NBB.

¹ See also the explanation of the concept of "senior management" in the circular on outside employment (circular PPB-2006-13-CPB-CPA of 13 November 2006 on exercise of external functions by managers of regulated companies), especially as regards the recommendation to that effect of drawing up a list of persons who must be classified as senior managers on the basis of a formal decision.

2. Suitability requirements applicable to significant institutions under direct supervision by the ECB under the SSM regulation

Regulatory context:

1. Articles 4 and 6 SSM Regulation²
2. Article 93 and 94 SSM Framework Regulation³
3. Articles 11, 19, 20, 21, 27-31, 60, 61, 62, 72, 86, 168 and 212 of the Banking Law⁴; Article 526ter of the Belgian Companies Code
4. Royal Decree of 15 April 2018 approving the NBB regulation of 6 February 2018 on the fitness of the responsible persons for the compliance function
5. Royal Decree of 20 June 2012 approving the regulation of the National Bank of Belgium of 6 December 2011 on exercise of external functions by managers of regulated companies
6. Circular NBB_2018_25 of 18 September 2018 regarding the suitability of directors, members of the management committee, responsible persons of independent control functions and senior managers of financial institutions
7. Circular NBB_2017_21 of 7 July 2017 on loans, credits and guarantees to managers, shareholders and related persons
8. Circular PPB-2006-13-CPB-CPA of 13 November 2006 on exercise of external functions by managers of regulated companies
9. NBB's Governance Handbook for the Banking Sector (Governance Handbook)
10. External guidance on application of Article 62 of the Banking Law
11. EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2017/12)
12. EBA guidelines of 26 September 2017 on internal governance (EBA/GL/2017/11)
13. SSM Guide to fit and proper assessments of May 2018
14. BCBS Principles: Principles 2 and 4

² Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

³ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation).

⁴ Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms.

Directives 2013/36/EU⁵ ('CRD IV') and 2014/65/EU⁶ ('MIFID II') lay down various provisions that empower the EBA to issue guidelines on individual and, where applicable, collective suitability requirements for members of the statutory governing body and key function holders within credit institutions, stockbroking firms, financial holding companies and mixed financial holding companies.

In this context, the EBA issued on 26 September 2017 Guidelines EBA/GL/2017/12, which are to be applied as from 30 June 2018. The NBB will rely on these guidelines in its effective supervision of suitability requirements. Unless expressly provided otherwise, institutions should therefore apply and comply with these guidelines as a complement to and clarification of the legal provisions on suitability requirements. This is further explained in Circular NBB_2018_25.

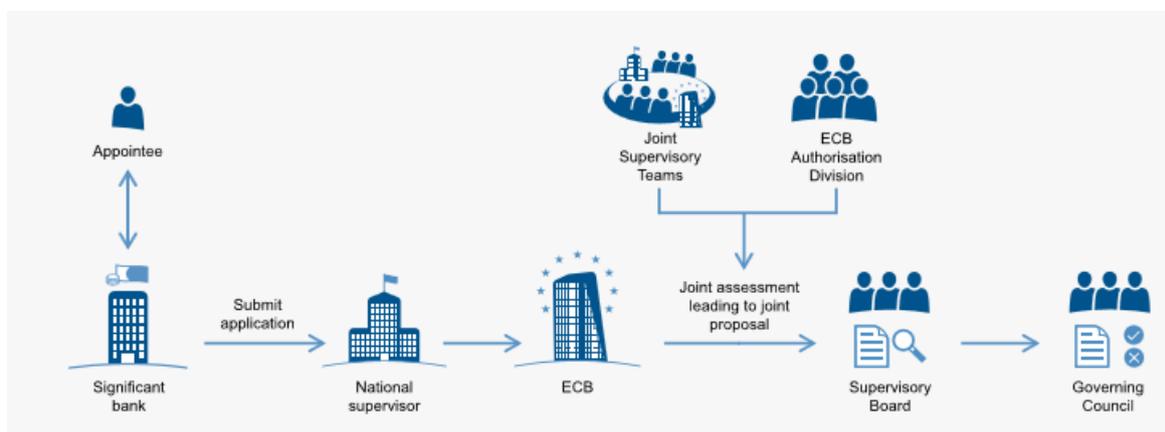
In addition, the ECB published in May 2018 a Guide to fit and proper assessments ('SSM Guide'), which aims to harmonise the application of assessment criteria for suitability assessments with a view to establishing a common ground in supervisory practice. The NBB and the ECB will also – as part of the Single Supervisory Mechanism – rely on this SSM Guide and recommend that institutions should take them into account.

2.1 GENERAL ASPECTS

This Chapter applies to significant credit institutions and other institutions (i.e. (mixed) financial holding companies) that are subject to direct supervision by the ECB pursuant to Article 6(4) and (5)(b) of the SSM Regulation.

Application of the suitability requirements to these institutions is in line with the rules of the so-called Single Supervisory Mechanism (hereinafter "SSM"). Specifically, this means that, although the ECB has competence for significant institutions, it is the task of the national competent authorities to assist the ECB in its supervisory activities. The NBB provides such assistance in the context of the Joint Supervisory Teams, which are the institutions' first point of contact. The term 'supervisor' therefore refers to the NBB and ECB working together within the aforementioned mechanism, and will therefore further be referred to as 'NBB/ECB' in this handbook.

The ECB has further explained the major steps of the suitability procedure and the cooperation with the national competent authorities on its website⁷ by means of a short instructional video and a schematic representation of the suitability process:



⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

⁶ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

⁷ <https://www.bankingsupervision.europa.eu/banking/tasks/authorisation/html/index.en.html>, see item "Fit and Proper Assessment", for the instructional video and schematic representation.

2.2 SCOPE OF APPLICATION

This chapter deals with the assessment of the individual and, where applicable, collective suitability of persons who hold or wish to hold the following positions within the above-mentioned institutions:

- director;
- member of the management committee (whether a director or not⁸);
- responsible person of an independent control function. The assessment must in all cases relate to the persons with the most senior operational responsibility⁹ for these supervisory functions;
- senior manager who is not a director.

With regard to senior managers who are not directors, the NBB/ECB should not, in principle, get involved by way of prior authorisation when they take up their positions. Naturally, this does not mean that these persons, who should be considered as key function holders, do not need to be fit and proper. The principles of this chapter also apply to them, provided that they do not relate to prior authorisation from the NBB/ECB. As, in principle, the NBB/ECB will not be carrying out its own assessment of the suitability of the person in question, institutions do not always have to inform the supervisory authority by using the forms appended to this handbook. For further guidance, reference is also made to the provisions on the assessment of the suitability of key function holders as laid down in Guidelines EBA/GL/2017/12.

2.2.1 CROSS-BORDER CONTEXT

For the application of this chapter within a cross-border context, we need to make a distinction between the following two situations:

- *EEA institutions which operate in Belgium via a branch or pursuant to the freedom to provide services (“inward passporting”)*: this chapter does NOT apply.

Consequently, persons who hold or wish to hold any of the above-mentioned positions at institutions which are authorised or registered by the competent supervisory authority of a State of the European Economic Area and which operate in Belgium either through a branch or pursuant to the freedom to provide services do not fall within the scope of this chapter.

- *Belgian institutions which operate abroad through a branch (“outward passporting”) or branches established in Belgium of financial institutions governed by the law of a State that is not a member of the European Economic Area*: this chapter DOES apply in this case.
- Consequently, in-scope persons employed by institutions authorised in Belgium and operating abroad through a branch do fall within the scope of this chapter, as do in-scope persons employed by branches established in Belgium of institutions governed by the law of a non-EEA Member State. For the latter category, in-scope persons are the managers and the compliance officer (Article 335 of the Banking Law). For Belgian institutions operating abroad by way of a branch, they are the senior managers and all local responsible persons of the independent control functions (Article 86 of the Banking Law).

2.2.2 GROUP CONTEXT

Pursuant to Article 109(2) and (3) of CRD IV, as transposed in Article 168 of the Banking Law, the consolidating institution shall ensure implementation of a consistent and integrated group policy for assessing the suitability (and compliance herewith) of all subsidiaries included in the prudential consolidation. Effective implementation of these obligations is further clarified in Guidelines EBA/GL/2017/12.

⁸ A mixed composition (directors/non-directors) is allowed for certain types of holding company, see article 212 of the Banking law.

⁹ The so-called “DC -1 level”.

Both in terms of the parent company governed by Belgian law and all regulated Belgian subsidiaries, the persons in question must be fit to hold their positions and must thus meet the fitness and propriety assessment standards. If a person holds a position both with the parent company and the subsidiary which requires a suitability assessment, two separate assessments need to be carried out.

2.3 DELIMITATION OF RESPONSIBILITIES FOR THE SUITABILITY ASSESSMENT

2.3.1 STARTING POINT

It is incumbent upon the institutions to select and retain the persons who are fit and proper to hold the positions which require a suitability assessment. The main responsibility for verifying that these persons are fit and proper also falls upon the institution. It must make every effort to check a person's suitability, by carrying out a suitability assessment. Amongst other things, the assessment process must be based upon information provided by the person who is to be assessed.

If the result of the assessment of suitability is positive, the institution must in turn send the NBB/ECB full, reliable information about the person's suitability. Based upon this information, supplemented by details collected by the supervisory authority on its own initiative, the NBB/ECB will carry out its own assessment of the suitability of the person in question. Such assessment deals not only with ensuring that the person is effectively fit and proper, but also takes account of the overall individual and collective assessment procedure used to assess the institution. The greater the margin of assessment for a given aspect (e.g. as far as skills, etc. are concerned – see below), the greater the weight the NBB/ECB can give to this internal procedure put into place by the institution and therefore limit itself to verifying that this assessment procedure offers the necessary guarantees.

2.3.2 THE RESPONSIBILITIES OF THE FINANCIAL INSTITUTION AND THE PERSON WHO IS TO BE ASSESSED

As has already been explained, it is incumbent, first and foremost, upon the financial institution to assess the fitness and propriety of persons who hold positions which require a suitability assessment. The institution should inform (inter alia) the supervisor of the outcome of its suitability assessment, including the assessment of suitability of the collective composition of the statutory governing body. In this respect, reference is also made to the information and documentation provided in Annex III to Guidelines EBA/GL/2017/12 (see point 2.6.3.1).

The statutory governing body is responsible for the appropriate recruitment, assessment and training policy designed, amongst other things, to support these assessments. The appointment committee should, in accordance with Article 31 of the Banking Law, make an active contribution to the taking of responsibility by the institution in this respect and draw up appropriate internal rules for the assessment of individual and collective suitability. The institution is best placed to determine what specific fitness criteria are required for a position at the company.

Furthermore, it is part of the duties of the compliance function of the institution to ensure compliance with the legal suitability requirements.

Both the institution and the person who is the subject of the assessment of suitability must ensure that the information given to the NBB/ECB during a second stage is complete and accurate.

2.3.3 THE RESPONSIBILITIES OF THE SUPERVISORY AUTHORITY

When a new person is deemed fit by the financial institution, the NBB and the ECB will jointly collect the necessary information and carry out an assessment, which is submitted for final approval to the ECB. For the purposes of its own assessment, the NBB/ECB will first of all use the information supplied by the institution and by the person in question as a basis. This information is primarily collected using standard forms designed especially for this purpose (see the annex). Obviously the NBB/ECB is free to ask for any additional information and, where applicable, to interview the person in question. More detailed explanations about the NBB/ECB's assessment procedure are given further on in this chapter.

The longer that a person has held a position, the more practical information the institution and the NBB/ECB will have about the way that the person works within the institution (e.g. by looking at

reports made by the statutory governing body, audits, etc.) The institution and the NBB/ECB both have a responsibility to reassess this information whenever this may appear necessary (see points 2.5.2 and 2.6.1.2).

2.3.4 RESPONSIBILITY FOR THE ASSESSMENT OF SUITABILITY ON AN ONGOING BASIS

The legal requirement always to have persons who are suitable to hold the positions which require a suitability assessment is an obligation which all institutions must fulfil at all times. The persons in question must, at any time, “be” skilled and act with professional integrity. The specific details for continuous monitoring of suitability are discussed in more detail later in this handbook.

However, as regards the respective responsibilities of the parties involved for ensuring the ongoing nature of the suitability criteria, the following shall apply:

As regards the person in question

On the standard forms drawn up by the NBB, the person in question is expected to declare that s/he has made every effort to comply constantly with the suitability standards for the purposes of the position which s/he already holds or plans to hold.

Persons who already hold positions must immediately inform the institution of any event which is likely to influence their fitness and propriety.

As regards the institution

Where an institution considers that doubts might arise about the suitability of a person who holds a position or the collective suitability of the statutory governing body, the NBB/ECB expects it to take steps as quickly as possible and to make every effort to take a close look at these doubts. The institution must also inform the NBB/ECB - in accordance with Article 94(1) of the SSM Framework Regulation and Article 60, § 4, of the Banking Law - immediately thereof.

In order to guarantee the constant suitability of the persons in question, the following is recommended:

- When a person takes up a position, it is important for the institution to ask him or her for a written declaration in which s/he confirms that s/he will unreservedly abide by the current suitability standards for this position and that s/he will give immediate notice of any events which might turn out to be important in this respect.
- The person in question should be reminded of this declaration every year. In this way, the institution may, on an annual basis, explicitly ask the persons in question whether they are aware of any relevant, significant changes in relation to their compliance with the suitability standards.

As the financial sector is constantly on the move, continuing training would appear to be a necessary condition, although in principle it is not on its own sufficient to fulfil the requirement for fitness at all times. The supervisory authority expects the institution to take all necessary steps to implement judicious continuing training.

As regards the supervisory authority

The fitness and propriety of persons who require a suitability assessment is under constant scrutiny by the supervisory authority. Whenever the NBB becomes aware of any information which raises doubts about the suitability of a person who currently holds a position, the NBB will immediately carry out a more in-depth examination and, if required, a reassessment.

2.4 GUIDELINES ON FITNESS AND PROPRIETY STANDARDS

This part of the handbook gives guidelines on the way in which the standards for assessing fitness and propriety can specifically be implemented, although they are not intended to be exhaustive.

The main principle which needs to be remembered is that the suitability screening involves a process of in-depth assessment designed, using various kinds of relevant information, to give as full as possible an image of the suitability of person for a specific position. Assessments dealing firstly with a person's fitness and secondly his or her propriety are complementary.

2.4.1 WEIGHTING FACTORS TO BE USED IN THE ASSESSMENT PROCESS

Any available information which can be used to back up a suitability assessment is always used and weighted by the supervisory authority according to its relevance and importance in relation to the person's current or future responsibilities. There are a number of weighting factors, which means that the same importance does not need to be paid to all of the components of the file. Without prejudice to the more specific ones, the NBB/ECB always takes into account the following general weighting factors:

The seriousness of the information in the light of the prudential supervision goals

As the persons subject to the suitability assessment play or will play an important role in the key decisions taken by their institutions, which can have significant consequences for the institution, for the group to which it belongs, for its customers or even for the public authorities, the taxpayer, and the whole of the economy, any information which has a more significant impact upon the general interest pursued by the supervisory authority will thus have a greater influence. In order to measure their impact, the specific circumstances surrounding the information also play a role, as does the seriousness of the facts, any proof of rehabilitation, etc.

How old the information is

Information can become less important over time. Given the amount of time which can elapse between the occurrence of the information and the moment when the assessment of suitability takes place, in theory we see obsolete information as being of less or little importance.

The attitude and/or motivation of the person in question in relation to the information

A proper attitude, plausible, credible and sustained motivation by the institution and the interested party are positive points for the weighting of a very specific piece of data. Based upon the attitude and motivation, along with the explanations given by the person in question, it is possible to determine the way in which s/he weights the information, whether s/he understands that the information may have an impact upon his or her suitability or if s/he has learned lessons from the consequences of any previous events in his or her background. If the information relates to facts which are not inherently linked to the person him or herself (but, for instance, to a company at which the person in question was working), s/he must be able to show properly whether s/he was involved.

The combination of available information

If a variety of information about a single person is available, it will be weighted in the light of how it combines and/or the mode of operation it generates.

An overview of a person's background and the available information helps to give a precise, less static image of how the person operates. Combining the information gives an idea of a person's mode of operation and/or negligence and may lead to the conclusion that the interested party is not, or is no longer, considered to be fit or needs to improve his or her fitness on a specific point.

2.4.2 FITNESS

The definition of the concept of fitness (see Introduction, point 1.2) shows that the term covers a number of areas, including appropriate knowledge and experience, skills and professional behaviour. These three components are complementary, and an analysis of each of them helps to give an overview of a particular person's fitness. For instance, a person who has the knowledge required for a given position but who is unable to pass it on and generate it within the institution is not fit.

2.4.2.1 Appropriate knowledge and experience

By “knowledge” we mean everything that a person knows, everything that s/he has learned. In theory knowledge can be learned, for instance, by studying, training or “on the job”. The term covers both theoretical knowledge and knowledge acquired in practice.

Irrespective of the specific knowledge and experience which may be required for a given position (see point 2.4.2.3), the NBB expects persons subject to the suitability assessment to have knowledge and experience in:

- the regulatory context and legal requirements which apply to the institution;
- banking and financial markets;
- the management of an institution, and more particularly:
 - the strategic planning and understanding of an institution’s business strategy;
 - risk management (identification, assessment, follow-up, monitoring and mitigation of an institution's main risks);
 - financial reporting and supervision;
 - team management;
 - assessing the effectiveness of steps taken by an institution with a view to the creation of effective governance, oversight and controls;
 - the interpretation of financial information about an institution and, on this basis, the identification of key issues and appropriate controls and measures.

The presence of appropriate knowledge and experience may be demonstrated by the successful completion of relevant training and the availability of relevant work experience.

“Relevant training” should be interpreted in the widest sense. In addition to the obtaining of (university) diplomas, “on the job” training and in-company training courses should also be taken into account.

Special attention should be paid to the level and nature of education completed and to the relevance of the content in relation to the financial sector. As a general rule, training courses dealing with the banking, financial and insurance sector, economics, law, business management, general management, IT, marketing and quantitative methods may be considered to be relevant.

By “relevant professional experience”, we mean any experience which has been acquired in a working environment and which, in terms of content, shows similarities or has points in common with the type of institution and/or the type of position which the person in question holds or wishes to hold.

In order to determine the extent to which any previously held positions contribute to the existence of “relevant professional experience” or, on the contrary, prevent this, the following factors need to be taken into consideration:

- the level of the positions held;
- whether these positions were held within a single institution or group;
- the length of time over which the experience was acquired (how long the position[s] was [were] held);
- the nature, complexity and organisational structure of the institution at which a position was held;
- the number of subordinates.

The relevant work experience of the directors to be assessed (and, where appropriate, senior managers and branch managers) is in principle assessed by the NBB/ECB on the basis of the different thresholds defined in the SSM Guide, which vary according to the function concerned (CEO, chairperson of the board of directors, director, executive director). If these thresholds are reached, it is presumed that the person concerned has sufficient work experience, unless there is evidence to the contrary.

For responsible persons of independent control functions and other persons subject to a suitability assessment, the relevant work experience, taking into account the nature, size, complexity, risk profile and organisational structure, should in principle cover a period of at least three¹⁰ to five years.

The holding of several short-term positions (for instance temporarily standing in for another person) does not allow an automatic conclusion to be drawn that there is relevant professional experience over a sufficient period of time. In addition, given the speed at which changes can take place in the financial world, the training and experience need to be relatively recent. In this respect, one should also refer to what is provided for the various functions in the SSM Guide.

If the aforementioned thresholds are not met, the person concerned may still be considered suitable, provided such suitability is sufficiently substantiated and motivated by the institution. In this respect, reference is made to the SSM Guide for further clarification.

Without prejudice to the principles laid down in this handbook, the specific fit and proper requirements on the part of responsible persons of the compliance function are provided by the NBB regulation on the fitness of the responsible persons for the compliance function (Article 2). The specific requirements are as follows:

- at least three years' relevant work experience;
- holding a master's degree (unless exemption based on practical experience and knowledge);
- passing an examination with an institution whose examinations have been recognised by the NBB and the FSMA and, from the moment of passing the examination, participating in a training programme at a training institution recognised by the FSMA, on the advice of the NBB, with a minimum duration of 20 hours every three years.

In order to permanently comply with the knowledge requirement, responsible persons of the compliance function participate from their appointment in a training programme with a minimum duration of 40 hours every three years. The requirements with regard to continuing education are further explained in the information memorandum annexed to the aforementioned regulation and to communication FSMA_2018_05 of 8 May 2018 on permanent training for compliance officers.

2.4.2.2 Skills

“Skills” refer to what an individual is capable of doing. They help the person in question to behave in a specific way in certain situations (for instance in negotiation processes or when taking a decision). In principle, skills can be learned, just like knowledge. Knowing which skills are important for a given position is a question which the institution must first of all answer. It is important here to take account of the variables which are explained below (see below in point 2.4.2.3).

Annex II to Guidelines EBA/GL/2017/12 contains a non-exhaustive list of relevant skills that institutions should take into account in their suitability assessment.

The aim is not that the supervisory authority should assess individual skills. Rather, the assessment will look at the way in which the institution has taken the “skills” component into account in its own internal process of evaluating the applicant (for instance by organising assessments). The “skills” component can also be discussed at an interview (see point 2.6.4).

¹⁰ See Article 2, § 1, 1°, of the NBB regulation of 6 February 2018 on the fitness of the responsible persons for the compliance function.

2.4.2.3 Variables in the assessment of “appropriate knowledge and experience” and “skills”

When assessing these two components, a certain degree of proportionality must always be taken into account. The principle of proportionality manifests itself in the taking into account of a number of variables when carrying out the assessment, although this does not necessarily mean that the person in question is not fully fit. On the other hand, the application of variables in each specific case allows an assessment to be carried out which is tailored to the situation and circumstances. This also means that a person who is deemed to be fit for a given position at a given institution will not automatically be fit to hold another position, whether at the same institution or not.

In addition to the specific applications of proportionality already set out in points 2.4.2.1 and 2.4.2.2, the following two variables must also be borne in mind:

a. The characteristics of the institution

Each institution can be distinguished by its own nature or business market, its size or scale, its complexity, its risk profile and its organisational structure. Due to this diversity, similar positions held at different institutions do not necessarily require either the same level of knowledge and experience or the same skills.

The institution's nature and business market are components which are particularly decisive for the content of the knowledge required in terms of services, products and markets.

The institution's size or scale may refer to a number of aspects, e.g. the number of workers, the assets for which an institution is responsible, etc.

An institution's complexity and risk profile influence the specific level of fitness required, in the sense that a complex organisational structure or a high risk profile require very well developed fitness within a wide range of areas.

b. The (planned) position to be held by the person in question

As has already been mentioned above, it is the institution which is best placed to determine what knowledge, experience and skills are required for a given position at the company. The NBB/ECB expects the institution to carry out this exercise thoroughly, and analyses the responsibilities relating to a given position and the knowledge, experience and skills which are particularly required as precisely as possible. For this purpose, the institution must review the position's specific activities, without attaching any importance to the formal job title. In certain cases, the legislation also lays down requirements (for instance with regard to members of the audit committee).

Here, as an illustration, are a few examples of these variables:

- when assessing the skills of an applicant for the position of Chief Risk Officer (CRO), special attention must be paid to the independence of his or her judgement and to how influential the interested party can be in the taking of decisions within the institution;
- when assessing the skills of an applicant for the position of chairman of the statutory governing body, the emphasis should be first and foremost on suitability for acting as chairman and for strategic management work;
- the (assessment of) of a director's fitness varies depending upon whether the position to be held is executive or non-executive. In theory a non-executive director needs less detailed and practical knowledge than an executive director, but it is all the more important for him or her to be able to test the way that the executive directors are managing the company;
- with positions operating at the level of a parent company, in order to have the necessary overall understanding of all of the group's activities, fitness in relation to the activities both of the parent company and of all the subsidiaries will be needed. This does not necessarily mean that people employed by a parent company must have a detailed knowledge of the activities of all of the subsidiaries.

2.4.2.4 Professional behaviour

“Professional behaviour” relates to observable behaviour, whence, in day-to-day activities, come the standards and values involved in engaging in the profession. More particularly this is the behaviour required in order to guarantee adherence to the regulations applicable to the financial sector and, more broadly speaking, in order to protect the interests of both the institution and its customers, counterparts, counterparties and other stakeholders, along with the community as a whole. Professional behaviour must come from the person him or herself, but it is also determined by the environment in which the person operates (especially in terms of professional ethics and institutions’ own internal codes of conduct).

To a certain extent, professional behaviour is learned, mainly through experience. As a general rule, we can consider that a person behaves professionally if there are no hints to the contrary. If the person in question has, in the past, been in contact with the supervisory authority, this prior relationship plays a role.

In terms of “professional behaviour”, we need to look first of all at independence and secondly at the amount of time invested.

a. Independence and conflicts of interest

As already explained in the Governance Handbook, the institution must have in place an appropriate policy for identifying, reporting, managing and preventing conflicts of interest. Unless expressly provided otherwise by law, having a conflict of interest does not necessarily mean that a person subject to a suitability assessment is not suitable. In order for a conflict of interest to arise, it must be material and not, or only insufficiently, manageable. For the specific assessment of such conflicts of interest and how they can be managed, please refer to the guidelines and recommendations set out in the Governance Handbook, in the SSM Guide and in Guidelines EBA/GL/2017/12.

Without prejudice to the above and the provisions of general company law as far as conflicts of interest are concerned, in terms of “independence,” a distinction can be made between (i) independence of mind, (ii) the independence required for the purposes of preventing or managing conflicts of interest, and finally (iii) independence within the meaning of Article 526ter of the Companies Code (“formal independence”) or of Guidelines EBA/GL/2017/12.

As far as the first concept (independence of mind) is concerned, any person who holds a directorship is deemed to be able to make a conscious decision, objectively and independently, in the interests of both the company and its stakeholders, after having carefully weighed up all the information and opinions available, and independently of any outside influence. Assessment thereof must take into account the criteria and requirements set out in §§ 82 to 87 of Guidelines EBA/GL/2017/12.

With regard to the second concept (prevention and management of conflicts of interest), we can further refer specifically to the chapter on conflict of interest policy in the Governance Handbook for the Banking Sector, and to the obligations and undertakings which these persons are bound to adhere to on the basis of on the one hand Article 62, § 2 et seq., of the Banking Law on the exercise of external functions¹¹ (see below) and, on the other hand, Article 72 of the Banking Law concerning loans, credits and guarantees to leaders, shareholders and affiliated persons, as explained in NBB Circular_2017_21.

Finally, as regards 'independence', reference should be made to the criteria set out in the Banking Law, which refer to Article 526ter of the Companies Code, on the one hand, and to the guidelines and criteria set out in §§ 88-93 of Guidelines EBA/GL/2017/12 concerning the concept of 'independence', on the other hand. In this respect, it should be noted that the independence requirements laid down in the Banking Law differ from those laid down in §§ 91-93 of Guidelines EBA/GL/2017/12 on the following two points:

¹¹ See also the Royal Decree of 20 June 2012 approving the regulation of the National Bank of Belgium of 6 December 2011 on exercise of external functions by managers of regulated companies and Circular PPB-2006-13-CPB-CPA of 13 November 2006 on exercise of external functions by managers of regulated companies.

- the list of criteria laid down in Article 526ter of the Companies Code is less exhaustive in certain respects, since it does not repeat all the criteria laid down in Guidelines EBA/GL/2017/12; however,
- in contrast to the legally required independence criteria laid down in Article 526ter of the Companies Code, non-fulfilment of one of the independence criteria laid down in § 91 of Guidelines EBA/GL/2017/12 does not automatically mean that the person concerned can no longer be regarded as independent. In accordance with § 92 of Guidelines EBA/GL/2017/12, the institution still has the possibility to argue to the supervisory authority that - despite the fact that not all criteria were met - the independence of the person concerned was not compromised.

To the extent that Guidelines EBA/GL/2017/12 lay down additional independence requirements on top of those required provided for in Article 526ter of the Companies Code, these additional requirements should be considered as (recommended) good practice (i.e. application on the grounds of the so-called “comply or explain” principle), rather than as a formal legal requirement. In this respect, the institution should be mindful of the basic principle that not only the letter but also the spirit of the law must be respected: the formal criteria on legal independence aim to guarantee effective independence of the directors concerned in their day-to-day functioning. However, if the institution were to become aware of elements which might potentially compromise that effective independence, it should examine those elements and, where appropriate, justify why it considers that the ability of the person concerned to make an objective and balanced assessment and take independent decisions is not affected.

Therefore, as a result of the introduction of the EBA guidelines, there are now two forms/levels of 'independence':

- being "formally independent" within the meaning of the Banking Law and Article 526ter of the Companies Code. (i.e. 'legal independence'): in cases where the Banking Law explicitly requires formal independence, the director concerned must meet the conditions set out in Article 526ter of the Companies Code, and compliance with certain additional independence criteria set out in § 91 of Guidelines EBA/GL/2017/12 may be considered as (recommended) good practice;
- independence' within the meaning of Guidelines EBA/GL/2017/12 (i.e. 'independence in accordance with the EBA Guidelines'): this concerns directors who meet the requirements set out in §§ 91-93 of Guidelines EBA/GL/2017/12.

For example, if a director, in their capacity as supplier or client of the institution, has had with this institution, in the past financial year, a significant business relationship¹² within the meaning of Article 526ter of the Companies Code, this person cannot be regarded as "legally or formally independent" within the meaning of the Banking Law. However, that person may still qualify as 'independent' in accordance with the EBA Guidelines' if it can be demonstrated that the person's ability to make an objective and balanced assessment and take independent decisions is not affected by the significant business relationship that existed during the past financial year.

In this respect, it should be noted that independence 'in accordance with §§ 91-93 of the EBA Guidelines' may provide a relevant answer in specific situations where, as good practice, additional prudential independence expectations are put forward which would go beyond what is required by the Banking Law.

¹² As regards the requirement of absence of any 'significant business relationship', the significant nature of the relationship should be assessed both from the perspective of the institution and of the individual concerned. From the latter point of view, the fact that the person has a commercial relationship with the financial institution concerned prevents that person from qualifying as an independent director within the meaning of Article 526ter of the Companies Code, with the exception of those cases in which only a limited number of financial basic products are involved (e.g. a current account, a savings account, supplementary group insurance, compulsory fire/motor insurance, etc.), and they were concluded at arm's length.

For example, if the EBA guidelines¹³ recommend for certain institutions that the majority of the members of the risk committee should be independent, this can be addressed by having one formal independent director within the meaning of Article 526ter of the Companies Code, supplemented - as a matter of good practice - by additional directors who are 'independent in accordance with §§ 91-93 of the EBA Guidelines'.

Finally, it should also be noted that it is the responsibility of the institution to verify that all the above formal independence criteria are met.

b. Amount of time invested

As provided for in Article 62, § 1, of the Banking Law, all directors and senior managers should be able to devote sufficient time to the performance of their duties in the institution. This also applies in periods of sharply increased activity, such as reorganisations, crisis situations, mergers, etc. Guidelines EBA/GL/2017/12 provide that institutions shall document the roles, tasks and required skills of the different functions within the statutory governing body, including the expected time to be devoted to each function. Institutions may require the persons concerned to confirm that they will effectively abide by the time commitment proposed by the institution.

In this context, particular attention should also be paid to the cumulation of functions, which may not only lead to conflicts of interest on the part of the person concerned, but may also have an impact on the time devoted to the institution's directorship.

In accordance with Article 62, § 3, of the Banking Law, every credit institution is required to draw up an internal policy on external functions. In doing so, account must also be taken of qualitative and quantitative restrictions as set out in Article 62 of the Banking Law (and the relevant external guidance of the NBB), and the NBB Regulation and Circular on exercise of external functions by managers of regulated companies.

As far as quantitative restrictions are concerned, the Banking Law determines the maximum number of directorships an executive or non-executive director can take up. For the purposes of this calculation, the aggregation of different mandates exercised within the same group shall be subject to the specific rules laid down in Article 62, § 9, of the Banking Law, which differ from those set out in this respect in Guidelines EBA/GL/2017/12.

In addition to the number of board mandates, the use of time is also influenced by a number of other factors specific to the person concerned or the institution, such as, for example, the size and complexity of the institution's activities, its geographical proximity and travel time associated with the performance of the position, etc. In this respect, it is recommended to take into account at least the factors set out in Guidelines EBA/GL/2017/12.

Reference is also made to the explanation of time commitment provided in the SSM Guide and the information to be provided by the institution to the supervisory authority in this context (see point 2.6.3.1).

2.4.2.5 Track record

For the purposes of the fitness assessment, attention will also be paid to relevant precedents, e.g. the question of whether, in an institution in which major financial problems have been found and which have led to intervention by the public authorities, the person (i) holds or has held a position which requires a suitability assessment, or (ii) significantly influences or has influenced policy, or (iii) owns or has owned a significant interest.

2.4.2.6 The collective composition of the institution's statutory governing body

In principle, an assessment of fitness always deals with an individual. However, when the assessment relates to a directorship (whether executive or not) on a body made up of a number of persons, account must also be taken of the composition and operation of the statutory governing body as a whole. This means that there must be checks on whether the fitness within the body made

¹³ See also in this respect Guidelines EBA/GL/2017/11 on internal governance.

up of a number of persons is sufficiently guaranteed with this person, in view of his or her knowledge and specific experience, skills and professional behaviour.

Here are a few examples as an illustration:

- When a director leaves, his or her successor must have the appropriate additional fitness (for the purpose of the collective assessment) according to the new composition of the statutory governing body. If this is not the case, the supervisory authority will ask the institution how it plans to address this deficiency in terms of fitness.

If there is no satisfactory answer, the supervisory authority will hold the institution accountable. Where applicable, this may mean that a new applicant is unable to be accepted onto the statutory governing body. It may also mean that one or more persons who hold positions are not sufficiently fit, due to the statutory governing body's new composition and distribution of tasks.

The institution must address this deficiency either by extending the fitness of the remaining directors or by appointing a new director who has the specific fitness required.

- Within a statutory governing body, specific knowledge and skills may vary from one person to another. For instance, a CEO must be able to offer critical opinions about the work of the CFO, which requires a certain degree of knowledge of this field, but the CFO must obviously be able to show more specific (financial) knowledge.
- The lack of specific knowledge and experience on the part of a person within a body made up of a number of people does not necessarily lead to a refusal, provided that other people within the body are able to make up for this deficiency. Nevertheless, each member must have a certain basic knowledge of the fields listed in point 2.4.2.1), as each member holds the same degree of responsibility.

One should remember in this respect that institutions are bound by Article 60 of the Banking Law to inform the NBB/ECB of any distribution of tasks between members of the statutory governing body and of any significant changes thereto.

Guidelines EBA/GL/2017/12 further clarify the cases in which the institution should (re)assess the collective suitability of the statutory governing body, and what the attention points should be in the context of such exercise. They also provide guidance on the instruments that can be used for this purpose. On this last point, reference is made in particular to Annex I to the Guidelines, which provides a model for a matrix to assess collective suitability. As indicated in § 151 of the Guidelines, institutions may also choose to adjust the proposed matrix according to the proportionality or speciality criteria set out in Title I of the Guidelines or to develop their own appropriate method in line with the criteria on collective suitability set out in the Guidelines.

Both the SSM Guide and Guidelines EBA/GL/2017/12 provide further clarification on the information and motivation (including self-assessment and statement thereon) to be provided by the institution to the supervisor regarding the assessment of collective suitability.

2.4.3 PROPRIETY

2.4.3.1 The scope of the concept of propriety

As indicated in the introduction, whether or not a person is judged to be proper depends upon his or her integrity and honesty. This is a characteristic which can be specifically analysed on the basis of a person's history.

More specifically, the person's background allows us to check whether it can reasonably be supposed that s/he will carry out the task entrusted to him or her honestly, faithfully, independently, ethically and with integrity.

A distinction needs to be made between the professional disqualification technique, which is an automatic mechanism (there is no room for appraisal by the NBB/ECB) and the wider-ranging assessment of professional integrity (to which, on the other hand, the NBB/ECB's power of appraisal does apply, manifesting itself amongst other things in the application of weighting factors relating to

relevance and importance (see point 2.4.1). Even so, there is a link between the two, in the sense that, in some specific situations relating to offences which give rise to professional disqualification, the NBB/ECB sets out to make use of its power of appraisal so strictly that we can call it a “near-automatic” assessment.

1) Professional disqualification

Article 20 of the Banking Law contains a list of convictions which, when a person is liable to them, in any case mean that, for a very specific period of time, s/he is unable to hold a position as a director or as a responsible person of an independent control function as described in Article 20, § 1. As a supervisory authority, the NBB is unable to tolerate any exemptions or system of exceptions in this respect, nor can there be any exemption with regard to these convictions.

2) Power of assessment of the NBB/ECB

Nevertheless, the assessment of a person’s professional integrity cannot be limited solely to a lack of such “disqualifying” convictions. The concept of propriety must also be understood in the wider sense, in the sense that other details in the person’s background may affect his or her propriety. Criminal proceedings and the intervention of the NBB/ECB as an administrative authority are independent of one another in that they pursue separate objectives and may thus lead to a different appraisal of the facts. The assessment of propriety is not necessarily the same as either the criminal classification of behaviour or acts or the outcome of criminal proceedings. Indeed, it is not based upon the concept of “guilt” in the criminal sense of the word, but rather on an appraisal of the facts and the actions taken, the goal being to determine whether persons subject to a suitability assessment do indeed have the qualities required in order to carry out their duties and fulfil the responsibilities pertaining thereto.

On the basis of the standard form used by the NBB (see the annexe) and the explanation given on the subject in the SSM Guide, institutions can see to which details should be paid special attention as part of a propriety assessment. Any convictions - of any kind whatsoever - must always appear on the forms (see point 2.6.3.2).

a. Events in a person’s background which are covered by the list of offences leading to professional disqualification

An admission of guilt, even though no conviction has been formally handed down by the authority with jurisdiction for the matter, must also have the same consequences as an actual conviction, and the person involved may indeed not be considered to be proper.

Where any criminal, administrative or disciplinary proceedings are in progress or pending against a person who is to be assessed, the NBB/ECB deems that this person may not be considered to be proper when:

- the person in question has admitted the underlying facts; or,
- the person in question already has a first conviction in this respect, even if channels of appeal against this conviction still remain open.

b. Financial track record

A person’s financial behaviour is relevant as part of an assessment of his or her propriety in that it may have an impact upon his or her reputation. We expect persons who require a suitability assessment to manage their affairs in a sound and prudent manner. They must be able to prove that the holding of their positions is not negatively influenced by anything in their financial backgrounds.

It must nevertheless be pointed out that the fact that a person has limited financial resources cannot negatively influence/will not negatively influence his or her suitability to hold a position.

Taking account of the weighting factors set out in point 2.4.1, for the purposes of a propriety assessment, it is recommended to pay attention to both personal and professional financial backgrounds. The following situations can be given as examples:

- the person in question has had major personal financial problems (e.g. recurring “gambling” issues, getting repeatedly into debt, etc.) which has led to legal, recovery or collection proceedings;
- a suspension of payments, insolvency, bankruptcy, restructuring of debts or an arrangement with creditors has been requested or ordered with regard to the person in question;
- the person in question has already been involved in fiscal procedures, or his or her involvement is to be expected;
- the person in question has been sentenced to settle outstanding debts on grounds of liability for the bankruptcy of a company or a legal entity;
- suspension of payments or bankruptcy has been requested or ordered for a company, an institution or any other body at which the person holds or has held a position as a director or as a responsible person of an independent control function, or influences or has influenced policy in another significant way, or owns or has owned a significant interest.

c. Other track record

Taking account of the weighting factors set out in point 2.4.1, attention also needs to be paid to the following events in a person’s background:

- any other criminal, disciplinary, civil and administrative convictions incurred (e.g. violations of preventive money laundering laws, consumer laws, tax laws, etc.);
- any ongoing cases in these areas, and especially a person’s involvement in investigations or disciplinary proceedings being carried out by the NBB, the ECB or other supervisory authorities;
- any amicable arrangements (“termination of prosecution on payment of a sum of money”) or settlements concluded in relation to offences under financial or other legislation;
- any other facts which, irrespective of their legal classification, are likely to cast doubt upon a person’s propriety (see in this context also §§ 77 and 78 of Guidelines EBA/GL/2017/12).

This list must apply both directly (with regard to the person) and indirectly (with regard to a company, an institution or any other body at which the person holds or has held a position as a director or as a responsible person of an independent control function, or influences or has influenced policy in another significant way, or owns or has owned a significant interest). In this latter case, the person’s degree of involvement must certainly be weighed up.

2.5 ASSESSMENT OF SUITABILITY BY THE FINANCIAL INSTITUTION

Although in principle the assessment of suitability takes place either before the person takes up the position or when s/he changes his or her position, when any information appears in the course of a function which is likely to influence a person’s fitness and propriety, the institution must analyse it without delay.

2.5.1 BEFORE TAKING UP A POSITION: FUNCTION PROFILES AND RECRUITMENT POLICY

The NBB/ECB expects institutions to set down a detailed job description in writing clearly stating the way in which the suitability standard works in practice for each position which requires a suitability assessment. It is recommended that institutions should use the various components of this handbook, especially the guidelines on assessment standards, as a frame of reference for the drawing up of their recruitment policies and function profiles.

The institution carries out a “due diligence” investigation, the specific level of which depends upon the planned position. It is recommended that the scope and practical operation of the “due diligence” investigation should be specified in the institution’s recruitment policy. Guidelines EBA/GL/2017/12 and the SSM Guide both contain specific recommendations and guidance (e.g. on the information and documentation to be collected, criteria to be verified, etc.) that the institution may use when assessing the suitability of individuals.

Where the institution has completed the investigation and wishes to consider the person's application for the particular position, it is recommended to record this internal selection decision in writing. The decision should contain not only the selection decision but also any considerations upon which it is based. Where applicable, any agreements which have been reached in order to improve the person in question’s fitness on certain points should also be mentioned.

A properly documented recruitment policy, job descriptions accurately drawn up by the institution and selection decisions stating the grounds for them can be extremely useful as a source of information for the assessment of suitability which is carried out by the NBB/ECB subsequently.

2.5.2 IN THE PERFORMANCE OF DUTIES: ASSESSMENT PROCEDURE AND PERIODIC ASSESSMENT

The suitability criterion is of an ongoing nature: in accordance with Article 19 of the Banking Law, the persons concerned must at all times during the performance of their duties be fit and proper.

In addition, in accordance with Article 31 of the Banking Law, the appointment committee should assess the composition and functioning of the governing and management bodies, in particular as regards individual and collective suitability of the members. To this end, the appointment committee should periodically, and at least annually, evaluate (i) the structure, size, composition and performance of the statutory governing body, and (ii) the knowledge, skills, experience and degree of involvement of, on the one hand, the individual members of the statutory governing body, and, on the other hand, the statutory governing body as a whole.

As a result, the necessary evaluation procedures should be put in place to monitor the individual and collective suitability of the persons concerned on an ongoing basis. These procedures must clearly state what measures must be taken by the institution in the event of a negative assessment. The periodic assessments should be in writing, and they should contain, along with the final assessment, the considerations that led to this assessment, as well any shortcomings and the agreements made to remedy them. The ongoing nature of the suitability requirements should also appear in the institution’s training policy.

Furthermore, reference is also made to Guidelines EBA/GL/2017/12, which provide further guidance on the process and criteria to be considered in the ongoing monitoring and reassessment of individual and collective suitability, including the information and documentation to be provided to the supervisor in this respect.

If, as a result of a reassessment, significant shortcomings are identified with regard to the individual or collective suitability of the persons concerned, these should be immediately brought to the attention of the supervisor. As indicated in the Explanatory Memorandum to the Law of 5 December 2017¹⁴, it is the primary responsibility of the person concerned and of the institution to immediately report to the supervisor any relevant new fact that may affect suitability: they must always provide the supervisor with correct and complete information so that the latter can form a correct picture of the suitability of the person concerned. Failure to do so may result in the supervisor disqualifying the person concerned, implying that he or she is no longer considered fit.

¹⁴ Explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, 2017-2018, Doc. 54 - 2682/001, p. 24.

2.6 ASSESSMENT OF SUITABILITY BY THE SUPERVISOR

2.6.1 MOMENT OF THE ASSESSMENT

The supervisor shall assess the suitability of persons who wish to perform a function which requires a suitability assessment prior to the actual taking up of the function. However, the supervisory authority will also carry out an assessment if facts and/or circumstances give cause to do so.

The effective scope and details of the assessment vary according to when it takes place.

2.6.1.1 Before taking up a position

This assessment takes place either when the application for authorisation or registration of an institution is made or when an already authorised or registered institution has plans to appoint a person to a position which requires a suitability assessment (including appointments that are subject to the approval procedure for qualified holdings - see the SSM Guide). In this latter case, it may be either a person who already works at the institution or a person from outside.

The assessment of suitability before the position is taken up relates to a very specific stage in the process.

2.6.1.2 In the performance of duties

As part of the ongoing prudential supervision carried out by the NBB/ECB, an analysis is also carried out to ensure that the persons concerned are suitable whenever there are new facts and/or changes in circumstances which provide reasonable grounds for a reassessment. It is incumbent upon the supervisory authority to determine when there are reasonable grounds.

1) Reassessment on the basis of particular signals

In practice, the supervisory authority will rely on any signals which shed doubt about the way that a person operates and can thus provide grounds for checking whether the person in question is sufficiently suitable to hold the position in question. These signals can be very different. A few examples of possible signals are: the issuing of criminal, civil, administrative or disciplinary proceedings, or developments in proceedings which are already underway, an unexpected change in the company's results, concerns about the business model applied, concerns about the honest and controlled management of the company, the extension of the company's activities abroad, the subcontracting of (key) tasks, the systematic lack of a reaction or a delayed reaction to requests for information made by the supervisory authority, failure to comply with certain recommendations, conditions or obligations imposed by the supervisor, significant staff turnover, poor administration, (repeated) breaches of laws and regulations. Where applicable, it is a combination of signals which cause the supervisory authority to doubt a person's suitability.

When criminal, administrative, civil or disciplinary proceedings are issued against a person who holds a position and this is likely to cast doubt upon whether this person is fit and proper, the NBB/ECB will first of all approach the statutory governing body of the institution. It will remind the latter of its responsibilities and will ask it – in the light of the accusations made against the person in question – if it wishes to maintain its trust in this person. The institution must obtain full transparency from the person in question with regard to the accusations against him or her. The supervisory authority will carry out its own assessment and will take account of the reasoning of the statutory governing body and of the nature of the accusations.

If the supervisory authority carries out a reassessment, it will essentially deal with the actions and operation of the person in question in practice. For this purpose, the supervisory authority uses factual data gathered over a given period of time (mode of operation), so that the assessment is less of a snapshot. Amongst other things, the supervisory authority will check how the person in question has applied his or her knowledge and skills, and to what extent the taking of decisions and the management of the company shows professional behaviour (or not).

A reassessment may relate to one or more people at the same time. It will be tailored to the specific circumstances, in the sense that it will depend upon the grounds for it. If concerns about the company culture have provided grounds for a reassessment, it is possible that several members of the

statutory governing body of the institution may be involved. If, on the other hand, the grounds for the assessment are concerns about specific activities in which the institution engages (a specific product or market, or a particular internal control line) and which are part of a specific person's tasks, it will probably focus on this person in particular.

As has already been mentioned above, the arrival of a new director does not automatically lead to the reassessment of members who already sit on the institution's statutory governing body. A change to the composition of the statutory governing body, whether or not this follows the arrival of a new person, may on the other hand be reasonable grounds for a reassessment. Amongst other things, this may be the case if a person who has a certain expertise resigns and no (temporary) replacement is sought or found, or if the people sitting on the statutory governing body change their positions (e.g. if they switch from non-executive to executive director status).

2) Reassessment in the absence of particular signals

The supervisor may also reassess the individual and collective suitability of the members of the statutory governing body and of the responsible persons of independent control functions - in the absence of specific signals - in the context of its general risk-based supervision. In practice, such reassessment can take place as a result of various elements (e.g. reassessment as a result of elements that have come to attention as part of periodic checks, inspections related to governance, thematic or horizontal supervisory actions, etc.).

2.6.2 ASSESSMENT PROCEDURE

As already indicated in point 2.1, the application of the suitability requirements to institutions subject to direct supervision by the ECB shall be carried out in accordance with the rules of the SSM. Therefore, for more information on the specific procedural steps in the assessment process, reference is made to the SSM Guide. As indicated in this Guide, the national competent authorities, i.e. the NBB, act as the access point for initiating the procedure and assist the ECB in the actual assessment process. With the exception of the suitability procedures which are part of a procedure for authorisation or the assessment of a qualifying holding (both subject to the so-called 'common procedures' rules), the ECB is competent to decide on suitability.

2.6.2.1 Before taking up a position

In accordance with Article 60 of the Banking Law, institutions must inform the NBB/ECB in advance of any proposed appointment, reappointment or non-appointment, dismissal or resignation of the persons concerned. When a person changes position, this must be considered as a new appointment, and it is also considered to be a change of position when there is a significant new distribution of tasks within the statutory governing body.

In close cooperation with the NBB, the ECB aims to provide its approval of the proposed appointment within a reasonable period of time, preferably within 2 to 3 months, and for time-consuming cases within 4 months, as indicated in § 178 of Guidelines EBA/GL/2017/12.

These indicative time frames start from the moment when the duly completed forms are sent to the NBB. They are suspended when the NBB/ECB requires additional information from the institution until the information is provided. Institutions are asked to take these indicative time frames into account in order to send the written documentation using the standard forms in good time.

In principle, the appointment may not become effective and may not be made public until the ECB has made a ruling. The institution may contact the NBB/ECB through the usual channels shortly after sending the duly completed forms in order to find out whether or not the NBB/ECB considers the case as time-consuming. If the case is considered to be time-consuming, the appointment may, in exceptional circumstances, take place subject to a condition precedent, and may be made public provided that this condition is mentioned.

When a proposed appointment relates to a person who is being proposed for the first time for a position which requires a suitability assessment, the NBB/ECB first consults the FSMA¹⁵. The FSMA

¹⁵ Article 60, § 2, of the Banking Law.

sends any relevant factual information to the NBB within one week from receipt of the request for an opinion.

2.6.2.2 In the performance of duties

An assessment must come with firm guarantees but it is up to the supervisory authority to examine whether a reassessment of a given person is appropriate. As a prudential supervisory body, the NBB/ECB has an ongoing competence to carry out both an individual and a collective reassessment.

Thus, in accordance with Articles 45, 134 and 135 of the Banking Law, the NBB/ECB may decide to reassess the suitability of the managers concerned following findings or analyses made in the course of its supervision of a particular institution. Such reassessment may, for example, result from reports or findings showing a negative or reluctant attitude towards generally accepted good practices (e.g. regarding the transparent and complete flow of information to the statutory governing body), repeated or deliberate non-compliance with supervisory recommendations, an established lack of availability to attend meetings, provision of incomplete or incorrect information to the supervisor or shareholders, a non-cooperative attitude towards the supervisor, etc.¹⁶.

As has already been pointed out, the stage in the process and the grounds for a reassessment will always depend upon the specific circumstances, so it is impossible to provide an exhaustive list of the cases in which a reassessment may or may not take place; it is up to the NBB/ECB to make the final appraisal.

In the event of a reassessment of a person, the NBB/ECB shall indicate to the institution what information it wishes to receive. The NBB/ECB may request information on periodic reviews carried out by the institution.

When the NBB/ECB carries out a reassessment, it also calls upon the person to take part, and if the interested party refuses to accede to this request, the NBB/ECB first of all informs the institution of this. If this still does not lead to a satisfactory result, the supervisory authority may then order measures which are legally binding upon the institution. In extreme cases, it may even order the institution to replace the person.

As indicated in § 185 of Guidelines EBA/GL/2017/12, depending on the specific circumstances, an institution's breach of prudential or other regulation may support the supervisory finding that a person is no longer fit. This may be the case, for example, where it is established that the person has failed to take the necessary steps that may reasonably be expected to prevent, remedy or bring to an end the breach of the rules.

2.6.3 INFORMATION FOR THE ASSESSMENT TO BE CARRIED OUT BY THE SUPERVISORY AUTHORITY

2.6.3.1 Sources of information for the supervisory authority

In order to obtain as full a picture as possible of a person's suitability, the supervisory authority will use a wide range of sources of information, such as inter alia:

- the current standard form, duly filled in and signed by both the institution and the person (see the annexe), including any information which the supervisory authority may, if necessary, obtain from any references mentioned on it;
- the suitability assessments carried out by the institution, including the assessment of the collective composition of the statutory governing body. This shall include the information and documentation set out in Annex III to Guidelines EBA/GL/2017/12, and the information to be provided on the time commitment as provided for in the SSM Guidelines;
- any information and background which the NBB/ECB, as a prudential supervisory authority, may have;

¹⁶ Explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, 2017-2018, Doc. 54 - 2682/001, p. 24.

- the institution's documented policy (processes and procedures) which is being used as a basis for the recruitment of the person and the function profile which the institution has drawn up for the position;
- the opinions of the FSMA and/or other supervisory authorities;
- any information obtained from the judicial authorities;
- where applicable, the periodic assessment of the person carried out by the institution (and recorded in writing), on the basis of the applicable function profile, including any considerations which led to this assessment;
- any other information which the institution may have and which may be important for the purposes of assessing a person's fitness and propriety;
- any public information.

The Supervisor shall have the power to require any information that it considers necessary for the purpose of assessing the suitability of a person¹⁷. It is appropriate for institutions to report changes to their abovementioned recruitment and periodic review policies to the supervisor by default, for example as an annex to the institution's internal governance statement. However, policy changes do not automatically lead to a reassessment.

2.6.3.2 Deliberate withholding or incorrect transmission of information

The NBB/ECB expects the institution and the person who is to be assessed to send full, accurate information using the standard forms. If there is any doubt as to the relevance or importance of a piece of information, the information must be sent, or contact must be made with the NBB/ECB through the usual channels. Any convictions, of any kind whatsoever, must nevertheless always appear on the forms, and it is up to the supervisory authority alone to judge the relevance or importance for the purposes of the suitability assessment.

If it is found that there has been a breach of this kind it will have a negative impact on the assessment by the supervisory authority. The NBB/ECB considers any failure to send relevant, important information as a supervisory antecedent. The NBB/ECB may detect this breach on the basis of other sources of information.

Any deliberate withholding of information will lead to an immediate refusal, given the inherent problem of trust relating to this breach.

2.6.4 INTERVIEW TECHNIQUE

For the purposes of an assessment of suitability, the NBB/ECB may choose to hold an interview with the person. It will do this, amongst other things, if it thinks that a discussion with the interested party is desirable or necessary in order to gain a full, accurate picture of his or her fitness and propriety. The NBB/ECB will thus apply a risk-based approach and will take account of the institution's nature, size and risk profile, the planned position and any other details which might raise questions about the information supplied by both the institution and the person. As a rule, an interview will always take place for new appointments to the function of CEO (or equivalent function) or chairman of the board of directors of the institution. In all other cases, interviews can also be used as a tool for assessing fitness and propriety, depending on specific needs. If concerns remain after the initial interview, a second specific interview may be held around the remaining concerns.

The interview panel shall consist of a minimum of two members. The composition of the panel will depend on the nature of activities and function the individual wishes to exercise, as well as on the nature, scale and complexity of the institution's risks and activities. If the post is CEO or chairman of the board of directors, at least one member of the panel must have sufficient seniority or hierarchical level.

¹⁷ Article 36/19 of the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium.

During this interview, the supervisory authority will check whether the picture which the institution has given regarding the person's suitability matches the way in which the person presents him or herself during the interview, where applicable taking into account any other supervisory information and background relating either to the institution or to the person. The interview also gives the supervisory authority an opportunity to make sure that the interested party has been properly informed of both its own and the institution's expectations. Where applicable, the NBB/ECB will draw the institution's attention to areas (e.g. a lack of knowledge about a specific subject) where additional efforts need to be made.

In principle, the interview shall take place without the institution concerned being present, although the NBB/ECB may decide otherwise.

If the interview should raise or confirm any doubts about the applicant's suitability, or bring up a certain number of points which require improvement, the NBB/ECB will send this assessment of the interview in writing both to the chairman of the institution's statutory governing body and to the interested party.

When a person leaves a position, it can be especially useful for the NBB/ECB to conduct an "exit interview" in order to obtain further details about the circumstances in which the person is leaving the position or the governance of the institution in general.

2.6.5 RESULT AND CONSEQUENCES OF THE ASSESSMENT

Once the assessment of suitability is complete (either before or during the holding of a very particular position, as the case may be), the supervisory authority informs without delay both the institution and the person of the result of the assessment and, where applicable, any underlying conclusions. In the communication which it sends to the institution, the NBB/ECB will make a clear distinction between the fit and proper parts of the assessment. If the assessment is negative, the person may contact the NBB for feedback.

The supervisor may also decide that a positive decision is accompanied by recommendations, conditions or obligations; in this respect, it will refer to the guidelines set out in the SSM Guide. In such a case, as indicated in the aforementioned Guide, the NBB/ECB will clearly define the conditions or obligations and determine a relatively short period of time within which they must be fulfilled. Because suitability is of an ongoing nature, the supervisor has the possibility to continuously monitor effective compliance with such recommendations, conditions or obligations and, if necessary, to carry out a reassessment (see point 2.6.1.2).

In the event of a negative assessment, the person concerned may contact the NBB/ECB for feedback. Due grounds for any negative assessment by the NBB/ECB relating to a person's suitability will – as indicated in the SSM Guide - always be given. As indicated in the SSM Guide, negative decisions can be appealed against before the Administrative Board of Review or before the Court of Justice of the European Union. The effective possibilities for appeal will always be specified in the notification letter.

Finally, it should be noted that the supervisor may also - irrespective of any formal positive, negative or conditional suitability decision – contact the institution to provide feedback on a submitted application. For example, if the institution should withdraw its application in the course of the supervisory authority's examination of the file, the ECB/NBB may - in the context of the institution's responsibility for assessing suitability (see point 2.3.2) on the one hand, and/or the broader governance perspective on the other - provide feedback on identified issues. Where necessary, the supervisor may also impose appropriate prudential measures to remedy certain deficiencies in the institution's suitability policy or governance.

3. Suitability requirements applicable to credit institutions under direct supervision by the NBB, stockbroking firms, payment institutions, electronic money institutions, settlement institutions and institutions assimilated thereto, central securities depositories and their supporting institutions, central depository banks, certain (mixed) financial holding companies, and certain branches

Regulatory context:

1. Articles 26 and 27 of Regulation 909/2014 on central securities depositories¹⁸
2. Articles 11, 19, 20, 21, 27-31, 60, 61, 62, 72, 86, 168, 212, 333, 335, 494, 501, 502, 504-506, 524, 525, 535, 544 and 573-576 of the Banking Law
3. Article 526ter of the Belgian Companies Code
4. Articles 10, 20, 21, 34, 37, 59, 144, 167, 175, 176, 179, 181, 186, and 228 of the Law on payment institutions and electronic money institutions¹⁹
5. Articles 36/2, 36/26 and 36/26/1, §§ 3, 5 and 6, of the Organic Law²⁰
6. Articles 9, 10, 10bis, 12, 15, 17, 21, 36 Royal Decree on settlement institutions²¹
7. Royal Decree of 15 April 2018 approving the NBB regulation of 6 February 2018 on the fitness of the responsible persons for the compliance function
8. Royal Decree of 20 June 2012 approving the regulation of the National Bank of Belgium of 6 December 2011 on exercise of external functions by managers of regulated companies
9. Circular NBB_2018_25 of 18 September 2018 regarding the suitability of directors, members of the management committee, responsible persons of independent control functions and senior managers of financial institutions
10. Circular NBB_2017_21 of 7 July 2017 on loans, credits and guarantees to managers, shareholders and related persons
11. Circular PPB-2006-13-CPB-CPA of 13 November 2006 on exercise of external functions by managers of regulated companies
12. NBB's Governance Handbook for the Banking Sector (Governance Handbook)
13. External guidance on application of Article 62 of the Banking Law
14. EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2017/12)
15. EBA guidelines of 26 September 2017 on internal governance (EBA/GL/2017/11)

¹⁸ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

¹⁹ Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the business of payment service provider and to the activity of issuing electronic money, and access to payment systems.

²⁰ Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium.

²¹ Royal Decree of 26 September 2005 on the legal status of settlement institutions and institutions assimilated to settlement institutions.

3.1 GENERAL ASPECTS

This Chapter shall apply to the following institutions under direct supervision by the NBB:

- credit institutions, stockbroking firms, payment institutions and electronic money institutions governed by Belgian law, and the aforementioned institutions' branches abroad,
- branches established in Belgium of credit institutions, stockbroking firms, payment institutions and electronic money institutions governed by the law of a State that is not a member of the European Economic Area,
- settlement institutions and institutions assimilated to settlement institutions governed by Belgian law, and the aforementioned institutions' branches abroad,
- central securities depositories, their supporting institutions and central depository banks governed by Belgian law, and the aforementioned institutions' branches abroad,
- branches established in Belgium of institutions supporting central securities depositories, central depository banks and settlement institutions and institutions assimilated to settlement institutions, governed by the law of a State that is not a member of the European Economic Area,
- (mixed) financial holding companies.

For reasons of consistency and level playing field, a cross-sectoral approach to the suitability requirements has been pursued as far as possible. Therefore, the guidelines dealt with in this Chapter apply to all the afore-mentioned institutions, though only to the extent that this is provided by the national or European legal framework that applies to them. However, in assessing suitability, the NBB will take into account, inter alia, the nature, size, complexity, risk profile and organisational structure of the institution in which the person concerned operates (see point 3.4.2.3). In the view of the NBB as supervisor, there are no decisive reasons for the interpretation of the assessment standards to vary even further (than in function of the above-mentioned parameters) between the institutions referred to in this chapter.

In line with the cross-sectoral approach mentioned above, it should be noted that some international guidelines and policy documents, although explicitly addressed to credit institutions or stockbroking firms, contain good practices which should be widely replicated. Consequently, the NBB also recommends that the other institutions in this chapter should wherever possible apply, *mutatis mutandis*, the following good practices - within the limits of the respective supervisory laws and taking into account the specific proportionality variables of point 3.4.2.3:

- In application of Directives 2013/36/EU ('CRD IV') and 2014/65/EU ('MIFID II'), EBA issued on 26 September 2017 Guidelines EBA/GL/2017/12, which are to be applied as from 30 June 2018. The NBB will rely on these guidelines in its effective supervision of suitability requirements.
- The ECB published in May 2018 a Guide to fit and proper assessments ('SSM Guide'), which aims to harmonise the application of assessment criteria for suitability assessments with a view to establishing a common ground in supervisory practice for credit institutions under its direct supervision.

3.2 SCOPE OF APPLICATION

This chapter deals with the assessment of the individual and, where applicable, collective suitability of persons who hold or wish to hold the following positions within the above-mentioned institutions:

- director;
- member of the management committee (whether a director or not²²);
- responsible person of an independent control function (the assessment must in all cases relate to the persons with the most senior operational responsibility²³ for these supervisory functions) or, when outsourcing, the person within the institution who is responsible for such outsourcing;
- senior manager who is not a director.

With regard to senior managers who are not directors, the NBB/ECB should not, in principle, get involved by way of prior authorisation when they take up their positions. Naturally, this does not mean that these persons, who should be considered as key function holders, do not need to be fit and proper. The principles of this chapter also apply to them, provided that they do not relate to prior authorisation from the NBB. As, in principle, the NBB will not be carrying out its own assessment of the suitability of the person in question, institutions do not always have to inform the supervisory authority by using the forms appended to this handbook. For further guidance, reference is also made to the provisions on the assessment of the suitability of key function holders as laid down in Guidelines EBA/GL/2017/12.

3.2.1 CROSS-BORDER CONTEXT

For the application of this chapter within a cross-border context, we need to make a distinction between the following two situations:

- *EEA institutions which operate in Belgium via a branch or pursuant to the freedom to provide services (“inward passporting”)*: this chapter does NOT apply.

Consequently, persons who hold or wish to hold any of the above-mentioned positions at institutions which are authorised or registered by the competent supervisory authority of a State of the European Economic Area and which operate in Belgium either through a branch or pursuant to the freedom to provide services do not fall within the scope of this chapter.

- *Belgian institutions which operate abroad through a branch (“outward passporting”) or branches established in Belgium of financial institutions governed by the law of a State that is not a member of the European Economic Area*: this chapter DOES apply in this case.

Consequently, in-scope persons employed by institutions authorised in Belgium and operating abroad through a branch do fall within the scope of this chapter, as do in-scope persons employed by branches established in Belgium of institutions governed by the law of a non-EEA Member State. The persons referred to are the senior managers of the branch and, where applicable (depending on the legislation that applies to the type of institution), the local responsible persons of the independent control functions.

3.2.2 GROUP CONTEXT

Both in terms of the parent company governed by Belgian law and all regulated Belgian subsidiaries, the persons in question must be fit to hold their positions and must thus meet the fitness and propriety assessment standards. If a person holds a position both with the parent company and the subsidiary which requires a suitability assessment, two separate assessments need to be carried out.

Pursuant to Article 109(2) and (3) of CRD IV, as transposed in Article 168 of the Banking Law, the consolidating institution shall ensure implementation of a consistent and integrated group policy for

²² A mixed composition (directors/non-directors) is allowed for certain types of holding company.

²³ The so-called “DC -1 level”.

assessing the suitability (and compliance herewith) of all subsidiaries included in the prudential consolidation. Effective implementation of these obligations is further clarified in Guidelines EBA/GL/2017/12.

3.3 DELIMITATION OF RESPONSIBILITIES FOR THE SUITABILITY ASSESSMENT

3.3.1 STARTING POINT

It is incumbent upon the institutions to select and retain the persons who are fit and proper to hold the positions which require a suitability assessment. The main responsibility for verifying that these persons are fit and proper also falls upon the institution. It must make every effort to check a person's suitability, by carrying out a suitability assessment. Amongst other things, the assessment process must be based upon information provided by the person who is to be assessed.

If the result of the assessment of suitability is positive, the institution must in turn send the NBB full, reliable information about the person's suitability. Based upon this information, supplemented by details collected by the supervisory authority on its own initiative, the NBB will carry out its own assessment of the suitability of the person in question. Such assessment deals not only with ensuring that the person is effectively fit and proper, but also takes account of the overall individual and collective assessment procedure used to assess the institution. The greater the margin of assessment for a given aspect (e.g. as far as skills, etc. are concerned – see below), the greater the weight the NBB can give to this internal procedure put into place by the institution and therefore limit itself to verifying that this assessment procedure offers the necessary guarantees.

3.3.2 THE RESPONSIBILITIES OF THE FINANCIAL INSTITUTION AND THE PERSON WHO IS TO BE ASSESSED

As has already been explained, it is incumbent, first and foremost, upon the financial institution to assess the fitness and propriety of persons who hold positions which require a suitability assessment. The institution should inform (inter alia) the supervisor of the outcome of its suitability assessment, including the assessment of suitability of the collective composition of the statutory governing body. In this respect, reference is also made to the information and documentation provided in Annex III to Guidelines EBA/GL/2017/12 (see point 3.6.3.1).

The statutory governing body is responsible for the appropriate recruitment, assessment and training policy designed, amongst other things, to support these assessments. Where the institution has an appointment committee, said committee should make an active contribution to the taking of responsibility by the institution in this respect and draw up appropriate internal rules for the assessment of individual and collective suitability. The institution is best placed to determine what specific fitness criteria are required for a position at the company.

It is part of the duties of the compliance function of the institution to ensure compliance with the legal suitability requirements.

Both the institution and the person who is the subject of the assessment of suitability must ensure that the information given to the NBB during a second stage is complete and accurate.

3.3.3 THE RESPONSIBILITIES OF THE SUPERVISORY AUTHORITY

When a new person is deemed fit by the financial institution, the NBB will collect the necessary information and carry out an assessment on the basis of which it will decide on final approval. For the purposes of its own assessment, the NBB will first of all use the information supplied by the institution and by the person in question as a basis. This information is primarily collected using standard forms designed especially for this purpose (see the annex). Obviously the NBB is free to ask for any additional information and, where applicable, to interview the person in question. More detailed explanations about the NBB's assessment procedure are given further on in this chapter.

The longer that a person has held a position, the more practical information the institution and the NBB will have about the way that the person works within the institution (e.g. by looking at reports made by the statutory governing body, audits, etc.) The institution and the NBB both have a

responsibility to reassess this information whenever this may appear necessary (see points 3.5.2 and 3.6.1.2).

3.3.4 RESPONSIBILITY FOR THE ASSESSMENT OF SUITABILITY ON AN ONGOING BASIS

The legal requirement always to have persons who are suitable to hold the positions which require a suitability assessment is an obligation which all institutions must fulfil at all times. The persons in question must, at any time, “be” skilled and act with professional integrity. The specific details for continuous monitoring of suitability are discussed in more detail later in this handbook.

However, as regards the respective responsibilities of the parties involved for ensuring the ongoing nature of the suitability criteria, the following shall apply:

As regards the person in question

On the standard forms drawn up by the NBB, the person in question is expected to declare that s/he has made every effort to comply constantly with the suitability standards for the purposes of the position which s/he already holds or plans to hold.

Persons who already hold positions must immediately inform the institution of any event which is likely to influence their fitness and propriety.

As regards the institution

Where an institution considers that doubts might arise about the suitability of a person who holds a position or the collective suitability of the statutory governing body, the NBB expects it to take steps as quickly as possible and to make every effort to take a close look at these doubts. The institution must also inform the NBB immediately thereof.

In order to guarantee the constant suitability of the persons in question, the following is recommended:

- When a person takes up a position, it is important for the institution to ask him or her for a written declaration in which s/he confirms that s/he will unreservedly abide by the current suitability standards for this position and that s/he will give immediate notice of any events which might turn out to be important in this respect.
- The person in question should be reminded of this declaration every year. In this way, the institution may, on an annual basis, explicitly ask the persons in question whether they are aware of any relevant, significant changes in relation to their compliance with the suitability standards.

As the financial sector is constantly on the move, continuing training would appear to be a necessary condition, although in principle it is not on its own sufficient to fulfil the requirement for fitness at all times. The supervisory authority expects the institution to take all necessary steps to implement judicious continuing training.

As regards the supervisory authority

The fitness and propriety of persons who require a suitability assessment is under constant scrutiny by the supervisory authority. Whenever the NBB becomes aware of any information which raises doubts about the suitability of a person who currently holds a position, the NBB will immediately carry out a more in-depth examination and, if required, a reassessment.

3.4 GUIDELINES ON FITNESS AND PROPRIETY STANDARDS

This part of the handbook gives guidelines on the way in which the standards for assessing fitness and propriety can specifically be implemented, although they are not intended to be exhaustive.

The main principle which needs to be remembered is that the suitability screening involves a process of in-depth assessment designed, using various kinds of relevant information, to give as full as

possible an image of the suitability of person for a specific position. Assessments dealing firstly with a person's fitness and secondly his or her propriety are complementary.

3.4.1 WEIGHTING FACTORS TO BE USED IN THE ASSESSMENT PROCESS

Any available information which can be used to back up a suitability assessment is always used and weighted by the supervisory authority according to its relevance and importance in relation to the person's current or future responsibilities. There are a number of weighting factors, which means that the same importance does not need to be paid to all of the components of the file. Without prejudice to the more specific ones, the NBB always takes into account the following general weighting factors:

The seriousness of the information in the light of the prudential supervision goals

As the persons subject to the suitability assessment play or will play an important role in the key decisions taken by their institutions, which can have significant consequences for the institution, for the group to which it belongs, for its customers or even for the public authorities, the taxpayer, and the whole of the economy, any information which has a more significant impact upon the general interest pursued by the supervisory authority will thus have a greater influence. In order to measure their impact, the specific circumstances surrounding the information also play a role, as does the seriousness of the facts, any proof of rehabilitation, etc.

How old the information is

Information can become less important over time. Given the amount of time which can elapse between the occurrence of the information and the moment when the assessment of suitability takes place, in theory we see obsolete information as being of less or little importance.

The attitude and/or motivation of the person in question in relation to the information

A proper attitude, plausible, credible and sustained motivation by the institution and the interested party are positive points for the weighting of a very specific piece of data. Based upon the attitude and motivation, along with the explanations given by the person in question, it is possible to determine the way in which s/he weights the information, whether s/he understands that the information may have an impact upon his or her suitability or if s/he has learned lessons from the consequences of any previous events in his or her background. If the information relates to facts which are not inherently linked to the person him or herself (but, for instance, to a company at which the person in question was working), s/he must be able to show properly whether s/he was involved.

The combination of available information

If a variety of information about a single person is available, it will be weighted in the light of how it combines and/or the mode of operation it generates.

An overview of a person's background and the available information helps to give a precise, less static image of how the person operates. Combining the information gives an idea of a person's mode of operation and/or negligence and may lead to the conclusion that the interested party is not, or is no longer, considered to be fit or needs to improve his or her fitness on a specific point.

3.4.2 FITNESS

The definition of the concept of fitness (see Introduction, point 1.2) shows that the term covers a number of areas, including appropriate knowledge and experience, skills and professional behaviour. These three components are complementary, and an analysis of each of them helps to give an overview of a particular person's fitness. For instance, a person who has the knowledge required for a given position but who is unable to pass it on and generate it within the institution is not fit.

3.4.2.1 Appropriate knowledge and experience

By "knowledge" we mean everything that a person knows, everything that s/he has learned. In theory knowledge can be learned, for instance, by studying, training or "on the job". The term covers both theoretical knowledge and knowledge acquired in practice.

Irrespective of the specific knowledge and experience which may be required for a given position (see point 3.4.2.3), the NBB expects persons subject to the suitability assessment to have knowledge and experience in:

- the regulatory context and legal requirements which apply to the institution;
- the effective activities of the institution and the financial markets;
- the management of an institution, and more particularly:
 - the strategic planning and understanding of an institution's business strategy;
 - risk management (identification, assessment, follow-up, monitoring and mitigation of an institution's main risks);
 - financial reporting and supervision;
 - team management;
 - assessing the effectiveness of steps taken by an institution with a view to the creation of effective governance, oversight and controls;
 - the interpretation of financial information about an institution and, on this basis, the identification of key issues and appropriate controls and measures.

The presence of appropriate knowledge and experience may be demonstrated by the successful completion of relevant training and the availability of relevant work experience.

"Relevant training" should be interpreted in the widest sense. In addition to the obtaining of (university) diplomas, "on the job" training and in-company training courses should also be taken into account.

Special attention should be paid to the level and nature of education completed and to the relevance of the content in relation to the financial sector. As a general rule, training courses dealing with the banking, financial and insurance sector, economics, law, business management, general management, IT, marketing and quantitative methods may be considered to be relevant.

By "relevant professional experience", we mean any experience which has been acquired in a working environment and which, in terms of content, shows similarities or has points in common with the type of institution and/or the type of position which the person in question holds or wishes to hold.

In order to determine the extent to which any previously held positions contribute to the existence of "relevant professional experience" or, on the contrary, prevent this, the following factors need to be taken into consideration:

- the level of the positions held;
- whether these positions were held within a single institution or group;
- the length of time over which the experience was acquired (how long the position[s] was [were] held);
- the nature, complexity and organisational structure of the institution at which a position was held;
- the number of subordinates.

The relevant work experience of the directors to be assessed (and, where appropriate, senior managers and branch managers) is in principle assessed by the NBB on the basis of the different thresholds defined in the SSM Guide, which vary according to the function concerned (CEO, chairperson of the board of directors, director, executive director). If these thresholds are reached, it is presumed that the person concerned has sufficient work experience, unless there is evidence to the contrary. However, as indicated in point 3.4.2.3, in applying the thresholds, the NBB will also take into account the nature, size, complexity, risk profile and organisational structure of the institution in

which the person concerned operates. On that basis, the NBB may, for certain institutions, use a minimum of five years' professional experience as the standard threshold level. In the case of smaller institutions, a period of three years' relevant work experience may be sufficient.

For responsible persons of independent control functions and other persons subject to a suitability assessment, the relevant work experience, taking into account the nature, size, complexity, risk profile and organisational structure of the institution, should in principle cover a period of at least three²⁴ to five years.

The holding of several short-term positions (for instance temporarily standing in for another person) does not allow an automatic conclusion to be drawn that there is relevant professional experience over a sufficient period of time. In addition, given the speed at which changes can take place in the financial world, the training and experience need to be relatively recent. In this respect, one should also refer to what is provided for the various functions in the SSM Guide.

If the aforementioned thresholds are not met, the person concerned may still be considered suitable, provided such suitability is sufficiently substantiated and motivated by the institution.

Without prejudice to the principles laid down in this handbook, the specific fit and proper requirements on the part of responsible persons of the compliance function are provided by the NBB regulation on the fitness of the responsible persons for the compliance function (Article 2). The specific requirements are as follows:

- at least three years' relevant work experience;
- holding a master's degree (unless exemption based on practical experience and knowledge);
- passing an examination with an institution whose examinations have been recognised by the NBB and the FSMA and, from the moment of passing the examination, participating in a training programme at a training institution recognised by the FSMA, on the advice of the NBB, with a minimum duration of 20 hours every three years.

In order to permanently comply with the knowledge requirement, responsible persons of the compliance function participate from their appointment in a training programme with a minimum duration of 40 hours every three years. The requirements with regard to continuing education are further explained in the information memorandum annexed to the aforementioned regulation and to communication FSMA_2018_05 of 8 May 2018 on permanent training for compliance officers.

3.4.2.2 Skills

“Skills” refer to what an individual is capable of doing. They help the person in question to behave in a specific way in certain situations (for instance in negotiation processes or when taking a decision). In principle, skills can be learned, just like knowledge. Knowing which skills are important for a given position is a question which the institution must first of all answer. It is important here to take account of the variables which are explained below (see below in point 3.4.2.3).

Annex II to Guidelines EBA/GL/2017/12 contains a non-exhaustive list of relevant skills that institutions should take into account in their suitability assessment.

The aim is not that the supervisory authority should assess individual skills. Rather, the assessment will look at the way in which the institution has taken the “skills” component into account in its own internal process of evaluating the applicant (for instance by organising assessments). The “skills” component can also be discussed at an interview (see point 3.6.4). This component will not be tested separately by the NBB in the case of small institutions, except where facts or circumstances would be reasonable grounds for doing so.

²⁴ See Article 2, § 1, 1°, of the NBB regulation of 6 February 2018 on the fitness of the responsible persons for the compliance function.

3.4.2.3 Variables in the assessment of “appropriate knowledge and experience” and “skills”

When assessing these two components, a certain degree of proportionality must always be taken into account. The principle of proportionality manifests itself in the taking into account of a number of variables when carrying out the assessment, although this does not necessarily mean that the person in question is not fully fit. On the other hand, the application of variables in each specific case allows an assessment to be carried out which is tailored to the situation and circumstances. This also means that a person who is deemed to be fit for a given position at a given institution will not automatically be fit to hold another position, whether at the same institution or not.

In addition to the specific applications of proportionality already set out in points 3.4.2.1 and 3.4.2.2, the following two variables must also be borne in mind:

a. The characteristics of the institution

Each institution can be distinguished by its own nature or business market, its size or scale, its complexity, its risk profile and its organisational structure. Due to this diversity, similar positions held at different institutions do not necessarily require the same level of knowledge, experience and skills.

The institution's nature and business market are components which are particularly decisive for the content of the knowledge required in terms of services, products and markets.

The institution's size or scale may refer to a number of aspects, e.g. the number of workers, the assets for which an institution is responsible, etc.

An institution's complexity and risk profile influence the specific level of fitness required, in the sense that a complex organisational structure or a high risk profile require very well developed fitness within a wide range of areas.

b. The (planned) position to be held by the person in question

As has already been mentioned above, it is the institution which is best placed to determine what knowledge, experience and skills are required for a given position at the company. The NBB expects the institution to carry out this exercise thoroughly, and analyses the responsibilities relating to a given position and the knowledge, experience and skills which are particularly required as precisely as possible. For this purpose, the institution must review the position's specific activities, without attaching any importance to the formal job title. In certain cases, the legislation also lays down requirements (for instance with regard to members of the audit committee).

Here, as an illustration, are a few examples of these variables:

- when assessing the skills of an applicant for the position of Chief Risk Officer (CRO), special attention must be paid to the independence of his or her judgement and to how influential the interested party can be in the taking of decisions within the institution;
- when assessing the skills of an applicant for the position of chairman of the statutory governing body, the emphasis should be first and foremost on suitability for acting as chairman and for strategic management work;
- the (assessment of) of a director's fitness varies depending upon whether the position to be held is executive or non-executive. In theory a non-executive director needs less detailed and practical knowledge than an executive director, but it is all the more important for him or her to be able to test the way that the executive directors are managing the company;
- with positions operating at the level of a parent company, in order to have the necessary overall understanding of all of the group's activities, fitness in relation to the activities both of the parent company and of all the subsidiaries will be needed. This does not necessarily mean that people employed by a parent company must have a detailed knowledge of the activities of all of the subsidiaries.

3.4.2.4 Professional behaviour

“Professional behaviour” relates to observable behaviour, whence, in day-to-day activities, come the standards and values involved in engaging in the profession. More particularly this is the behaviour require

ed in order to guarantee adherence to the regulations applicable to the financial sector and, more broadly speaking, in order to protect the interests of both the institution and its customers, counterparts, counterparties and other stakeholders, along with the community as a whole. Professional behaviour must come from the person him or herself, but it is also determined by the environment in which the person operates (especially in terms of professional ethics and institutions’ own internal codes of conduct).

To a certain extent, professional behaviour is learned, mainly through experience. As a general rule, we can consider that a person behaves professionally if there are no hints to the contrary. If the person in question has, in the past, been in contact with the supervisory authority, this prior relationship plays a role.

In terms of “professional behaviour”, we need to look first of all at independence and secondly at the amount of time invested.

a. Independence and conflicts of interest

Institutions must have in place an appropriate policy for identifying, reporting, managing and preventing conflicts of interest. Unless expressly provided otherwise by law, having a conflict of interest does not necessarily mean that a person subject to a suitability assessment is not suitable. In order for a conflict of interest to arise, it must be material and not, or only insufficiently, manageable. For the specific assessment of such conflicts of interest and how they can be managed, please refer inter alia to the guidelines and recommendations set out in the Governance Handbook, in the SSM Guide and in Guidelines EBA/GL/2017/12.

Without prejudice to the above and the provisions of general company law as far as conflicts of interest are concerned, in terms of “independence,” a distinction can be made between (i) independence of mind, (ii) the independence required for the purposes of preventing or managing conflicts of interest, and finally (iii) independence within the meaning of Article 526ter of the Companies Code (“formal independence”) or of Guidelines EBA/GL/2017/12.

As far as the first concept (independence of mind) is concerned, any person who holds a directorship is deemed to be able to make a conscious decision, objectively and independently, in the interests of both the company and its stakeholders, after having carefully weighed up all the information and opinions available, and independently of any outside influence. Assessment thereof must take into account the criteria and requirements set out in §§ 82 to 87 of Guidelines EBA/GL/2017/12.

With regard to the second concept (prevention and management of conflicts of interest), reference can be made to the obligations and commitments that these persons must comply with on the basis of the legal provisions concerning the exercise of external functions²⁵, relating to strategic goals, corporate values and policy on conflicts of interest set out in the circular on internal governance²⁶, and the manner in which all this is translated into the institution's internal policy on conflicts of interest.

For the banking sector, we can further refer specifically to the chapter on conflicts of interest in the Governance Handbook for the Banking Sector, and to the obligations and undertakings which these persons are bound to adhere to on the basis of on the one hand Article 62, § 2 et seq., of the Banking Law and, on the other hand, Article 72 of the Banking Law concerning loans, credits and guarantees to leaders, shareholders and affiliated persons, as explained in NBB Circular_2017_21.

²⁵ See also the Royal Decree of 20 June 2012 approving the regulation of the National Bank of Belgium of 6 December 2011 on exercise of external functions by managers of regulated companies and Circular PPB-2006-13-CPB-CPA of 13 November 2006 on exercise of external functions by managers of regulated companies.

²⁶ Circular PPB-2007_6_CPB-CPA / Prudential Expectations on financial institutions’ corporate governance. This circular applies to stockbroking firms.

Finally, as regards 'independence', reference should be made to the criteria set out in Article 526ter of the Companies Code, on the one hand, and to the guidelines and criteria set out in §§ 88-93 of Guidelines EBA/GL/2017/12 concerning the concept of 'independence', on the other hand. In this respect, it should be noted that the independence requirements laid down in the Banking Law differ from those laid down in §§ 91-93 of Guidelines EBA/GL/2017/12 on the following two points:

- the list of criteria laid down in Article 526ter of the Companies Code is less exhaustive in certain respects, since it does not repeat all the criteria laid down in Guidelines EBA/GL/2017/12; however,
- in contrast to the legally required independence criteria laid down in Article 526ter of the Companies Code, non-fulfilment of one of the independence criteria laid down in § 91 of Guidelines EBA/GL/2017/12 does not automatically mean that the person concerned can no longer be regarded as independent. In accordance with § 92 of Guidelines EBA/GL/2017/12, the institution still has the possibility to argue to the supervisory authority that - despite the fact that not all criteria were met - the independence of the person concerned was not compromised.

To the extent that Guidelines EBA/GL/2017/12 lay down additional independence requirements on top of those required provided for in Article 526ter of the Companies Code, these additional requirements should be considered as (recommended) good practice (i.e. application on the grounds of the so-called "comply or explain" principle), rather than as a formal legal requirement. In this respect, the institution should be mindful of the basic principle that not only the letter but also the spirit of the law must be respected: the formal criteria on legal independence aim to guarantee effective independence of the directors concerned in their day-to-day functioning. However, if the institution were to become aware of elements which might potentially compromise that effective independence, it should examine those elements and, where appropriate, justify why it considers that the ability of the person concerned to make an objective and balanced assessment and take independent decisions is not affected.

Therefore, as a result of the introduction of the EBA guidelines, there are now two forms/levels of 'independence':

- being "formally independent" within the meaning of the Banking Law and Article 526ter of the Companies Code. (i.e. 'legal independence'): in cases where the Banking Law explicitly requires formal independence, the director concerned must meet the conditions set out in Article 526ter of the Companies Code, and compliance with certain additional independence criteria set out in § 91 of Guidelines EBA/GL/2017/12 may be considered as (recommended) good practice;
- independence' within the meaning of Guidelines EBA/GL/2017/12 (i.e. 'independence in accordance with the EBA Guidelines'): this concerns directors who meet the requirements set out in §§ 91-93 of Guidelines EBA/GL/2017/12.

For example, if a director, in their capacity as supplier or client of the institution, has had with this institution, in the past financial year, a significant business relationship²⁷ within the meaning of Article 526ter of the Companies Code, this person cannot be regarded as "legally or formally independent" within the meaning of the Banking Law. However, that person may still qualify as 'independent' in accordance with the EBA Guidelines' if it can be demonstrated that the person's ability to make an objective and balanced assessment and take independent decisions is not affected by the significant business relationship that existed during the past financial year.

In this respect, it should be noted that independence 'in accordance with §§ 91-93 of the EBA Guidelines' may provide a relevant answer in specific situations where, as good practice, additional

²⁷ As regards the requirement of absence of any 'significant business relationship', the significant nature of the relationship should be assessed both from the perspective of the institution and of the individual concerned. From the latter point of view, the fact that the person has a commercial relationship with the financial institution concerned prevents that person from qualifying as an independent director within the meaning of Article 526ter of the Companies Code, with the exception of those cases in which only a limited number of financial basic products are involved (e.g. a current account, a savings account, supplementary group insurance, compulsory insurance for fire/vehicle, etc.), and they were concluded at arm's length.

prudential independence expectations are put forward which would go beyond what is required by the Banking Law.

For example, if the EBA guidelines²⁸ recommend for certain institutions that the majority of the members of the risk committee should be independent, this can be addressed by having one formal independent director within the meaning of Article 526ter of the Companies Code, supplemented - as a matter of good practice - by additional directors who are 'independent in accordance with §§ 91-93 of the EBA Guidelines'.

Finally, it should also be noted that it is the responsibility of the institution to verify that all the above formal independence criteria are met.

b. Amount of time invested

All directors and senior managers should be able to devote sufficient time to the performance of their duties in the institution²⁹. This also applies in periods of sharply increased activity, such as reorganisations, crisis situations, mergers, etc. Guidelines EBA/GL/2017/12 provide that institutions shall document the roles, tasks and required skills of the different functions within the statutory governing body, including the expected time to be devoted to each function. Institutions may require the persons concerned to confirm that they will effectively abide by the time commitment proposed by the institution.

In this context, particular attention should also be paid to the cumulation of functions, which may not only lead to conflicts of interest on the part of the person concerned, but may also have an impact on the time devoted to the institution's directorship.

Therefore, institutions are required to draw up an internal policy on external functions. In doing so, account must also be taken of qualitative and quantitative restrictions as set out in Article 62 of the Banking Law (and the relevant external guidance of the NBB), and the NBB Regulation and Circular on exercise of external functions by managers of regulated companies.

As far as quantitative restrictions are concerned (insofar as they apply), the Banking Law determines the maximum number of directorships an executive or non-executive director can take up. For the purposes of this calculation, the aggregation of different mandates exercised within the same group shall be subject to the specific rules laid down in Article 62, § 9, of the Banking Law, which differ from those set out in this respect in Guidelines EBA/GL/2017/12.

In addition to the number of board mandates, the use of time is also influenced by a number of other factors specific to the person concerned or the institution, such as, for example, the size and complexity of the institution's activities, its geographical proximity and travel time associated with the performance of the position, etc. In this respect, it is recommended to take into account at least the factors set out in Guidelines EBA/GL/2017/12.

Reference is also made to the explanation of time commitment provided in the SSM Guide and the information to be provided by the institution to the supervisory authority in this context (see point 3.6.3.1).

3.4.2.5 Track record

For the purposes of the fitness assessment, attention will also be paid to relevant precedents, e.g. the question of whether, in an institution in which major financial problems have been found and which have led to intervention by the public authorities, the person (i) holds or has held a position which requires a suitability assessment, or (ii) significantly influences or has influenced policy, or (iii) owns or has owned a significant interest.

3.4.2.6 The collective composition of the institution's statutory governing body

In principle, an assessment of fitness always deals with an individual. However, when the assessment relates to a directorship (whether executive or not) on a body made up of a number of

²⁸ See also in this respect Guidelines EBA/GL/2017/11 on internal governance.

²⁹ See inter alia Article 62, § 1, of the Banking Law.

persons, account must also be taken of the composition and operation of the statutory governing body as a whole. This means that there must be checks on whether the fitness within the body made up of a number of persons is sufficiently guaranteed with this person, in view of his or her knowledge and specific experience, skills and professional behaviour.

Here are a few examples as an illustration:

- When a director leaves, his or her successor must have the appropriate additional fitness (for the purpose of the collective assessment) according to the new composition of the statutory governing body. If this is not the case, the supervisory authority will ask the institution how it plans to address this deficiency in terms of fitness.

If there is no satisfactory answer, the supervisory authority will hold the institution accountable. Where applicable, this may mean that a new applicant is unable to be accepted onto the statutory governing body. It may also mean that one or more persons who hold positions are not sufficiently fit, due to the statutory governing body's new composition and distribution of tasks.

The institution must address this deficiency either by extending the fitness of the remaining directors or by appointing a new director who has the specific fitness required.

- Within a statutory governing body, specific knowledge and skills may vary from one person to another. For instance, a CEO must be able to offer critical opinions about the work of the CFO, which requires a certain degree of knowledge of this field, but the CFO must obviously be able to show more specific (financial) knowledge.
- The lack of specific knowledge and experience on the part of a person within a body made up of a number of people does not necessarily lead to a refusal, provided that other people within the body are able to make up for this deficiency. Nevertheless, each member must have a certain basic knowledge of the fields listed in point 3.4.2.1), as each member holds the same degree of responsibility.

One should remember in this respect that institutions have a legal obligation to inform the NBB of any distribution of tasks between members of the statutory governing body and of any significant changes thereto.

Guidelines EBA/GL/2017/12 further clarify the cases in which the institution should (re)assess the collective suitability of the statutory governing body, and what the attention points should be in the context of such exercise. They also provide guidance on the instruments that can be used for this purpose. On this last point, reference is made in particular to Annex I to the Guidelines, which provides a model for a matrix to assess collective suitability. As indicated in § 151 of the Guidelines, institutions may also choose to adjust the proposed matrix according to the proportionality or speciality criteria set out in Title I of the Guidelines or to develop their own appropriate method in line with the criteria on collective suitability set out in the Guidelines.

Both the SSM Guide and Guidelines EBA/GL/2017/12 provide further clarification on the information and motivation (including self-assessment and statement thereon) to be provided by the institution to the supervisor regarding the assessment of collective suitability.

3.4.3 PROPRIETY

3.4.3.1 The scope of the concept of propriety

As indicated in the introduction, whether or not a person is judged to be proper depends upon his or her integrity and honesty. This is a characteristic which can be specifically analysed on the basis of a person's history.

More specifically, the person's background allows us to check whether it can reasonably be supposed that s/he will carry out the task entrusted to him or her honestly, faithfully, independently, ethically and with integrity.

A distinction needs to be made between the professional disqualification technique, which is an automatic mechanism (there is no room for appraisal by the NBB) and the wider-ranging assessment

of professional integrity (to which, on the other hand, the NBB's power of appraisal does apply, manifesting itself amongst other things in the application of weighting factors relating to relevance and importance (see point 3.4.1). Even so, there is a link between the two, in the sense that, in some specific situations relating to offences which give rise to professional disqualification, the NBB sets out to make use of its power of appraisal so strictly that we can call it a "near-automatic" assessment.

1) Professional disqualification

The various supervisory laws contain a list of convictions which, when a person is liable to them, in any case mean that, for a very specific period of time, s/he is unable to hold a position as a director or as a responsible person of an independent control function as described in said laws. As a supervisory authority, the NBB is unable to tolerate any exemptions or system of exceptions in this respect, nor can there be any exemption with regard to these convictions.

2) Power of assessment of the NBB

Nevertheless, the assessment of a person's professional integrity cannot be limited solely to a lack of such "disqualifying" convictions. The concept of propriety must also be understood in the wider sense, in the sense that other details in the person's background may affect his or her propriety. Criminal proceedings and the intervention of the NBB as an administrative authority are independent of one another in that they pursue separate objectives and may thus lead to a different appraisal of the facts. The assessment of propriety is not necessarily the same as either the criminal classification of behaviour or acts or the outcome of criminal proceedings. Indeed, it is not based upon the concept of "guilt" in the criminal sense of the word, but rather on an appraisal of the facts and the actions taken, the goal being to determine whether persons subject to a suitability assessment do indeed have the qualities required in order to carry out their duties and fulfil the responsibilities pertaining thereto.

On the basis of the standard form used by the NBB (see the annexe) and the explanation given on the subject in the SSM Guide, institutions can see to which details should be paid special attention as part of a propriety assessment. Any convictions - of any kind whatsoever - must always appear on the forms (see point 3.6.3.2).

a. Events in a person's background which are covered by the list of offences leading to professional disqualification

An admission of guilt, even though no conviction has been formally handed down by the authority with jurisdiction for the matter, must also have the same consequences as an actual conviction, and the person involved may indeed not be considered to be proper.

Where any criminal, administrative or disciplinary proceedings are in progress or pending against a person who is to be assessed, the NBB deems that this person may not be considered to be proper when:

- the person in question has admitted the underlying facts; or,
- the person in question already has a first conviction in this respect, even if channels of appeal against this conviction still remain open.

b. Financial track record

A person's financial behaviour is relevant as part of an assessment of his or her propriety in that it may have an impact upon his or her reputation. We expect persons who require a suitability assessment to manage their affairs in a sound and prudent manner. They must be able to prove that the holding of their positions is not negatively influenced by anything in their financial backgrounds.

It must nevertheless be pointed out that the fact that a person has limited financial resources cannot negatively influence/will not negatively influence his or her suitability to hold a position.

Taking account of the weighting factors set out in point 3.4.1, for the purposes of a propriety assessment, it is recommended to pay attention to both personal and professional financial backgrounds. The following situations can be given as examples:

- the person in question has had major personal financial problems (e.g. recurring “gambling” issues, getting repeatedly into debt, etc.) which has led to legal, recovery or collection proceedings;
- a suspension of payments, insolvency, bankruptcy, restructuring of debts or an arrangement with creditors has been requested or ordered with regard to the person in question;
- the person in question has already been involved in fiscal procedures, or his or her involvement is to be expected;
- the person in question has been sentenced to settle outstanding debts on grounds of liability for the bankruptcy of a company or a legal entity;
- suspension of payments or bankruptcy has been requested or ordered for a company, an institution or any other body at which the person holds or has held a position as a director or as a responsible person of an independent control function, or influences or has influenced policy in another significant way, or owns or has owned a significant interest.

c. Other track record

Taking account of the weighting factors set out in point 3.4.1, attention also needs to be paid to the following events in a person’s background:

- any other criminal, disciplinary, civil and administrative convictions incurred (e.g. violations of preventive money laundering laws, consumer laws, tax laws, etc.);
- any ongoing cases in these areas, and especially a person’s involvement in investigations or disciplinary proceedings being carried out by the NBB, the ECB or other supervisory authorities;
- any amicable arrangements (“termination of prosecution on payment of a sum of money”) or settlements concluded in relation to offences under financial or other legislation;
- any other facts which, irrespective of their legal classification, are likely to cast doubt upon a person’s propriety (see in this context also §§ 77 and 78 of Guidelines EBA/GL/2017/12).

This list must apply both directly (with regard to the person) and indirectly (with regard to a company, an institution or any other body at which the person holds or has held a position as a director or as a responsible person of an independent control function, or influences or has influenced policy in another significant way, or owns or has owned a significant interest). In this latter case, the person’s degree of involvement must certainly be weighed up.

3.5 ASSESSMENT OF SUITABILITY BY THE FINANCIAL INSTITUTION

Although in principle the assessment of suitability takes place either before the person takes up the position or when s/he changes his or her position, when any information appears in the course of a function which is likely to influence a person’s fitness and propriety, the institution must analyse it without delay.

3.5.1 BEFORE TAKING UP A POSITION: FUNCTION PROFILES AND RECRUITMENT POLICY

The NBB expects institutions to set down a detailed job description in writing clearly stating the way in which the suitability standard works in practice for each position which requires a suitability assessment. It is recommended that institutions should use the various components of this handbook, especially the guidelines on assessment standards, as a frame of reference for the drawing up of their recruitment policies and function profiles.

The institution carries out a “due diligence” investigation, the specific level of which depends upon the planned position. It is recommended that the scope and practical operation of the “due diligence” investigation should be specified in the institution’s recruitment policy. Guidelines EBA/GL/2017/12 and the SSM Guide both contain specific recommendations and guidance (e.g. on the information and documentation to be collected, criteria to be verified, etc.) that the institution may use when assessing the suitability of individuals.

Where the institution has completed the investigation and wishes to consider the person's application for the particular position, it is recommended to record this internal selection decision in writing. The decision should contain not only the selection decision but also any considerations upon which it is based. Where applicable, any agreements which have been reached in order to improve the person in question’s fitness on certain points should also be mentioned.

A properly documented recruitment policy, job descriptions accurately drawn up by the institution and selection decisions stating the grounds for them can be extremely useful as a source of information for the assessment of suitability which is carried out by the NBB subsequently.

3.5.2 IN THE PERFORMANCE OF DUTIES: ASSESSMENT PROCEDURE AND PERIODIC ASSESSMENT

The suitability criterion is of an ongoing nature: the persons concerned must at all times during the performance of their duties be fit and proper.

Where the institution has an appointment committee, said committee should assess the composition and functioning of the governing and management bodies, in particular as regards individual and collective suitability of the members. To this end, the appointment committee should periodically, and at least annually, evaluate (i) the structure, size, composition and performance of the statutory governing body, and (ii) the knowledge, skills, experience and degree of involvement of, on the one hand, the individual members of the statutory governing body, and, on the other hand, the statutory governing body as a whole.

As a result, the necessary evaluation procedures should be put in place to monitor the individual and collective suitability of the persons concerned on an ongoing basis. These procedures must clearly state what measures must be taken by the institution in the event of a negative assessment. The periodic assessments should be in writing, and they should contain, along with the final assessment, the considerations that led to this assessment, as well any shortcomings and the agreements made to remedy them. The ongoing nature of the suitability requirements should also appear in the institution’s training policy.

Furthermore, reference is also made to Guidelines EBA/GL/2017/12, which provide further guidance on the process and criteria to be considered in the ongoing monitoring and reassessment of individual and collective suitability, including the information and documentation to be provided to the supervisor in this respect.

If, as a result of a reassessment, significant shortcomings are identified with regard to the individual or collective suitability of the persons concerned, these should be immediately brought to the attention of the supervisor. It is the primary responsibility of the person concerned and of the institution to immediately report to the supervisor any relevant new fact that may affect suitability: they must always provide the supervisor with correct and complete information so that the latter can form a correct picture of the suitability of the person concerned. Failure to do so may result in the supervisor disqualifying the person concerned, implying that he or she is no longer considered fit.³⁰

3.6 ASSESSMENT OF SUITABILITY BY THE SUPERVISOR

3.6.1 MOMENT OF THE ASSESSMENT

The supervisor shall assess the suitability of persons who wish to perform a function which requires a suitability assessment prior to the actual taking up of the function. However, the supervisory authority will also carry out an assessment if facts and/or circumstances give cause to do so.

³⁰ See inter alia the explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, 2017-2018, Doc. 54 - 2682/001, p. 24.

The effective scope and details of the assessment vary according to when it takes place.

3.6.1.1 Before taking up a position

This assessment takes place either when the application for authorisation or registration of an institution is made or when an already authorised or registered institution has plans to appoint a person to a position which requires a suitability assessment. In this latter case, it may be either a person who already works at the institution or a person from outside.

It should also be noted in this context that credit institutions that are not under direct supervision by the ECB are nevertheless subject to the ECB's competence with regard to the suitability assessments associated with an authorisation procedure or the acquisition of a qualifying holding (see the SSM Guide, point 6.6). Such assessments are carried out in accordance with the rules of the 'common procedure', whereby the NBB also acts as a first access point.

The assessment of suitability before the position is taken up relates to a very specific stage in the process.

3.6.1.2 In the performance of duties

1) Reassessment on the basis of particular signals

As part of the ongoing prudential supervision carried out by the NBB, an analysis is also carried out to ensure that the persons concerned are suitable whenever there are new facts and/or changes in circumstances which provide reasonable grounds for a reassessment. It is incumbent upon the supervisory authority to determine when there are reasonable grounds.

In practice, the supervisory authority will rely on any signals which shed doubt about the way that a person operates and can thus provide grounds for checking whether the person in question is sufficiently suitable to hold the position in question. These signals can be very different. A few examples of possible signals are: the issuing of criminal, civil, administrative or disciplinary proceedings, or developments in proceedings which are already underway, an unexpected change in the company's results, concerns about the business model applied, concerns about the honest and controlled management of the company, the extension of the company's activities abroad, the subcontracting of (key) tasks, the systematic lack of a reaction or a delayed reaction to requests for information made by the supervisory authority, failure to comply with certain recommendations, conditions or obligations imposed by the supervisor, significant staff turnover, poor administration, (repeated) breaches of laws and regulations. Where applicable, it is a combination of signals which cause the supervisory authority to doubt a person's suitability.

When criminal, administrative, civil or disciplinary proceedings are issued against a person who holds a position and this is likely to cast doubt upon whether this person is fit and proper, the NBB will first of all approach the statutory governing body of the institution. It will remind the latter of its responsibilities and will ask it – in the light of the accusations made against the person in question – if it wishes to maintain its trust in this person. The institution must obtain full transparency from the person in question with regard to the accusations against him or her. The supervisory authority will carry out its own assessment and will take account of the reasoning of the statutory governing body and of the nature of the accusations.

If the supervisory authority carries out a reassessment, it will essentially deal with the actions and operation of the person in question in practice. For this purpose, the supervisory authority uses factual data gathered over a given period of time (mode of operation), so that the assessment is less of a snapshot. Amongst other things, the supervisory authority will check how the person in question has applied his or her knowledge and skills, and to what extent the taking of decisions and the management of the company shows professional behaviour (or not).

A reassessment may relate to one or more people at the same time. It will be tailored to the specific circumstances, in the sense that it will depend upon the grounds for it. If concerns about the company culture have provided grounds for a reassessment, it is possible that several members of the statutory governing body of the institution may be involved. If, on the other hand, the grounds for the assessment are concerns about specific activities in which the institution engages (a specific product

or market, or a particular internal control line) and which are part of a specific person's tasks, it will probably focus on this person in particular.

As has already been mentioned above, the arrival of a new director does not automatically lead to the reassessment of members who already sit on the institution's statutory governing body. A change to the composition of the statutory governing body, whether or not this follows the arrival of a new person, may on the other hand be reasonable grounds for a reassessment. Amongst other things, this may be the case if a person who has a certain expertise resigns and no (temporary) replacement is sought or found, or if the people sitting on the statutory governing body change their positions (e.g. if they switch from non-executive to executive director status).

2) Reassessment in the absence of particular signals

The supervisor may also reassess the individual and collective suitability of the members of the statutory governing body and of the responsible persons of independent control functions - in the absence of specific signals - in the context of its general risk-based supervision. In practice, such reassessment can take place as a result of various elements (e.g. reassessment as a result of elements that have come to attention as part of periodic checks, inspections related to governance, thematic or horizontal supervisory actions, etc.).

3.6.2 ASSESSMENT PROCEDURE

3.6.2.1 Before taking up a position

In accordance with the supervisory laws, institutions must inform the NBB in advance of any proposed appointment, reappointment or non-appointment, dismissal or resignation of the persons concerned. When a person changes position, this must be considered as a new appointment, and it is also considered to be a change of position when there is a significant new distribution of tasks within the statutory governing body.

The NBB aims to provide its approval of the proposed appointment within a reasonable period of time, preferably and in principle within one month. However, given the fact that suitability assessments can, depending on the case, lead to additional verifications (e.g. conducting 1 or even several interviews, consulting other [foreign] supervisors, consulting specified references, requesting additional information from judicial or other authorities, etc.), which in turn involves additional analytical work for the supervisor, this may lead the specific examination of the file to also require more time. In such cases, the NBB applies the guideline that a decision must be communicated no later than within 4 months, as indicated in § 178 of Guidelines EBA/GL/2017/12.

These indicative time frames start from the moment when the duly completed forms are sent to the NBB. They are suspended when the NBB requires additional information from the institution until the information is provided. Institutions are asked to take these indicative time frames into account in order to send the written documentation using the standard forms in good time.

In principle, the appointment may not become effective and may not be made public until the NBB has made a ruling. The institution may contact the NBB through the usual channels shortly after sending the duly completed forms in order to find out whether or not the NBB considers the case as time-consuming. If the case is considered to be time-consuming, the appointment may, in exceptional circumstances, take place subject to a condition precedent, and may be made public provided that this condition is mentioned.

When a proposed appointment relates to a person who is being proposed for the first time for a position which requires a suitability assessment, the NBB first consults the FSMA³¹. The FSMA sends any relevant factual information to the NBB within one week from receipt of the request for an opinion.

³¹ Article 60, § 2, of the Banking Law.

3.6.2.2 In the performance of duties

An assessment must come with firm guarantees but it is up to the supervisory authority to examine whether a reassessment of a given person is appropriate. As a prudential supervisory body, the NBB has an ongoing competence to carry out both an individual and a collective reassessment.

Thus the NBB may decide to reassess the suitability of the managers concerned following findings or analyses made in the course of its supervision of a particular institution. Such reassessment may, for example, result from reports or findings showing a negative or reluctant attitude towards generally accepted good practices (e.g. regarding the transparent and complete flow of information to the statutory governing body), repeated or deliberate non-compliance with supervisory recommendations, an established lack of availability to attend meetings, provision of incomplete or incorrect information to the supervisor or shareholders, a non-cooperative attitude towards the supervisor, etc.³².

As has already been pointed out, the stage in the process and the grounds for a reassessment will always depend upon the specific circumstances, so it is impossible to provide an exhaustive list of the cases in which a reassessment may or may not take place; it is up to the NBB to make the final appraisal.

In the event of a reassessment of a person, the NBB shall indicate to the institution what information it wishes to receive. The NBB may request information on periodic reviews carried out by the institution.

When the NBB carries out a reassessment, it also calls upon the person to take part, and if the interested party refuses to accede to this request, the NBB first of all informs the institution of this. If this still does not lead to a satisfactory result, the supervisory authority may then order measures which are legally binding upon the institution. In extreme cases, it may even order the institution to replace the person.

As indicated in § 185 of Guidelines EBA/GL/2017/12, depending on the specific circumstances, an institution's breach of prudential or other regulation may support the supervisory finding that a person is no longer fit. This may be the case, for example, where it is established that the person has failed to take the necessary steps that may reasonably be expected to prevent, remedy or bring to an end the breach of the rules.

3.6.3 INFORMATION FOR THE ASSESSMENT TO BE CARRIED OUT BY THE SUPERVISORY AUTHORITY

3.6.3.1 Sources of information for the supervisory authority

In order to obtain as full a picture as possible of a person's suitability, the supervisory authority will use a wide range of sources of information, such as inter alia:

- the current standard form, duly filled in and signed by both the institution and the person (see the annexe), including any information which the supervisory authority may, if necessary, obtain from any references mentioned on it;
- the suitability assessments carried out by the institution, including the assessment of the collective composition of the statutory governing body. This shall include the information and documentation set out in Annex III to Guidelines EBA/GL/2017/12, and the information to be provided on the time commitment as provided for in the SSM Guidelines;
- any information and background which the NBB, as a prudential supervisory authority, may have;
- the institution's documented policy (processes and procedures) which is being used as a basis for the recruitment of the person and the function profile which the institution has drawn up for the position;

³² See inter alia the explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, 2017-2018, Doc. 54 - 2682/001, p. 24.

- the opinions of the FSMA and/or other supervisory authorities;
- any information obtained from the judicial authorities;
- where applicable, the periodic assessment of the person carried out by the institution (and recorded in writing), on the basis of the applicable function profile, including any considerations which led to this assessment;
- any other information which the institution may have and which may be important for the purposes of assessing a person's fitness and propriety;
- any public information.

The supervisor shall have the power to require any information that it considers necessary for the purpose of assessing the suitability of a person³³. It is appropriate for institutions to report changes to their abovementioned recruitment and periodic review policies to the supervisor by default, for example as an annex to the institution's internal governance statement. However, policy changes do not automatically lead to a reassessment.

3.6.3.2 Deliberate withholding or incorrect transmission of information

The NBB expects the institution and the person who is to be assessed to send full, accurate information using the standard forms. If there is any doubt as to the relevance or importance of a piece of information, the information must be sent, or contact must be made with the NBB through the usual channels. Any convictions, of any kind whatsoever, must nevertheless always appear on the forms, and it is up to the supervisory authority alone to judge the relevance or importance for the purposes of the suitability assessment.

If it is found that there has been a breach of this kind it will have a negative impact on the assessment by the supervisory authority. The NBB considers any failure to send relevant, important information as a supervisory antecedent. The NBB may detect this breach on the basis of other sources of information.

Any deliberate withholding of information will lead to an immediate refusal, given the inherent problem of trust relating to this breach.

3.6.4 INTERVIEW TECHNIQUE

For the purposes of an assessment of suitability, the NBB may choose to hold an interview with the person. It will do this, amongst other things, if it thinks that a discussion with the interested party is desirable or necessary in order to gain a full, accurate picture of his or her fitness and propriety. The NBB will thus apply a risk-based approach and will take account of the institution's nature, size and risk profile, the planned position and any other details which might raise questions about the information supplied by both the institution and the person. As a rule, an interview will always take place for new appointments to the function of CEO (or equivalent function) or chairman of the board of directors of the significant institution. In all other cases, interviews can also be used as a tool for assessing fitness and propriety, depending on specific needs. If concerns remain after the initial interview, a second specific interview may be held around the remaining concerns.

The interview panel shall consist of a minimum of two members. The composition of the panel will depend on the nature of activities and function the individual wishes to exercise, as well as on the nature, scale and complexity of the institution's risks and activities. If the post is CEO or chairman of the board of directors in a significant institution, at least one member of the panel must have sufficient seniority or hierarchical level. In all other cases, the NBB shall decide on the exact composition of the interview panel on an ad hoc basis.

During this interview, the supervisory authority will check whether the picture which the institution has given regarding the person's suitability matches the way in which the person presents him or herself during the interview, where applicable taking into account any other supervisory information and background relating either to the institution or to the person. The interview also gives the

³³ Article 36/19 of the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium.

supervisory authority an opportunity to make sure that the interested party has been properly informed of both its own and the institution's expectations. Where applicable, the NBB will draw the institution's attention to areas (e.g. a lack of knowledge about a specific subject) where additional efforts need to be made.

Generally speaking the institution does not attend the interview, although the NBB may decide otherwise.

In principle, the interview shall take place without the institution concerned being present, although the NBB may decide otherwise.

If the interview should raise or confirm any doubts about the applicant's suitability, or bring up a certain number of points which require improvement, the NBB will send this assessment of the interview in writing both to the chairman of the institution's statutory governing body and to the interested party.

When a person leaves a position, it can be especially useful for the NBB to conduct an "exit interview" in order to obtain further details about the circumstances in which the person is leaving the position or the governance of the institution in general.

3.6.5 RESULT AND CONSEQUENCES OF THE ASSESSMENT

Once the assessment of suitability is complete (either before or during the holding of a very particular position, as the case may be), the supervisory authority informs without delay both the institution and the person of the result of the assessment and, where applicable, any underlying conclusions. In the communication which it sends to the institution, the NBB will make a clear distinction between the fit and proper parts of the assessment. If the assessment is negative, the person may contact the NBB for feedback.

The supervisor may also decide that a positive decision is accompanied by recommendations, conditions or obligations; in this respect, it will refer to the guidelines set out in the SSM Guide. In such a case, as indicated in the aforementioned Guide, the NBB/ECB will clearly define the conditions or obligations and determine a relatively short period of time within which they must be fulfilled. Because suitability is of an ongoing nature, the supervisor has the possibility to continuously monitor effective compliance with such recommendations, conditions or obligations and, if necessary, to carry out a reassessment (see point 3.6.1.2).

If the suitability assessment carried out by the NBB reveals that fitness and propriety of the person assessed has not been sufficiently demonstrated and that the deficiencies cannot be remedied, the NBB shall oppose or abstain from approving that person's appointment. The decision shall be notified to the undertaking concerned.

Due grounds for any negative assessment by the NBB relating to a person's suitability will always be given. In addition, the person concerned as well as the undertaking can contact the NBB for feedback. An appeal before the Council of State is also possible. The effective possibilities for appeal will always be specified in the notification letter.

Finally, it should be noted that the supervisor may also - irrespective of any formal positive, negative or conditional suitability decision - contact the institution to provide feedback on a submitted application. For example, if the institution should withdraw its application in the course of the supervisory authority's examination of the file, the NBB may - in the context of the institution's responsibility for assessing suitability (see point 3.3.2) on the one hand, and/or the broader governance perspective on the other - provide feedback on identified issues. Where necessary, the supervisor may also impose appropriate prudential measures to remedy certain deficiencies in the institution's suitability policy or governance.

4. Suitability requirements applicable to the insurance and reinsurance sector

Regulatory context:

1. Articles 40, 41, 45 to 47, 80 to 83, 93, 94 and 443 of the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies (hereinafter the "Insurance Supervision Law")
2. Article 526ter of the Belgian Companies Code
3. Articles 258 and 273 of Delegated Regulation 2015/35
4. Royal Decree of 15 April 2018 approving the NBB regulation of 6 February 2018 on the expertise of those responsible for the compliance function
5. Royal Decree of 20 June 2012 approving the regulation of the National Bank of Belgium of 6 December 2011 on exercise of external functions by managers of regulated companies
6. Royal Decree of 19 July 2002 approving the CBFA Regulation of 9 July 2002 on external functions
7. Circular NBB_2018_25 of 18 September 2018 regarding the suitability of directors, members of the management committee, responsible persons of independent control functions and senior managers of financial institutions
8. Circular NBB_2016_31 on the expectations of the National Bank of Belgium regarding the governance system for the insurance and reinsurance sector updated by the Communication NBB_2018_23
9. Circular NBB_2017_21 of 7 July 2017 on loans, credits and guarantees to managers, shareholders and related persons
10. Circular PPB-2006-13-CPB-CPA of 13 November 2006 on exercise of external functions by managers of regulated companies
11. EIOPA Guidelines on System of Governance of 14 September 2015 (guidelines 11 to 14)
12. EIOPA Decision of 30 January 2017 on the collaboration of the insurance supervisory authorities

4.1 GENERAL ASPECTS

The Solvency II Directive³⁴ lays down a series of requirements on fitness and propriety for managers of insurance and reinsurance undertakings and responsible persons of independent control functions. Additional requirements are also included in Delegated Regulation 2015/35³⁵ (hereinafter "Delegated Regulation 2015/35"), EIOPA's Guidelines on System of Governance of 14 September 2015 (hereinafter "EIOPA Guidelines") and the NBB Circular 2016_31 on the governance system (hereinafter "Circular 2016_31").

4.2 SCOPE OF APPLICATION

4.2.1 SCOPE OF UNDERTAKINGS CONCERNED

This Chapter applies to:

- Insurance undertakings under Belgian law (including such small insurance undertakings as are referred to in Article 275 of the Insurance Supervision Law);
- Reinsurance undertakings under Belgian law;
- Branches established in Belgium of insurance or reinsurance undertakings governed by the law of third countries;
- Insurance holding companies under Belgian law;
- Mixed financial holding companies under Belgian law at the head of a financial conglomerate in which the insurance sector is the main sector.

For reasons of consistency and level playing field, a cross-sectoral approach to the suitability requirements has been pursued as far as possible. Therefore, the guidelines dealt with in this Chapter - to the extent that they fall within the scope of the legal obligations applicable to the undertakings concerned - apply to all the afore-mentioned undertakings. However, in assessing suitability, the NBB will take into account the nature, size, complexity, risk profile and organisational structure of the undertaking in which the person concerned operates (see point 4.4.2.4). In the view of the NBB as supervisor, there are no decisive reasons for the interpretation of the assessment standards to vary according to the components of the financial sector.

4.2.2 SCOPE OF PERSONS CONCERNED

This chapter deals with the assessment of the individual and, where applicable, collective suitability of persons who hold or wish to hold the following positions:

- director;
- member of the management committee (whether a director or not) or senior manager for undertakings that have received an exemption, on the basis of Article 47 of the Insurance Supervision Law, from the obligation to set up a management committee;
- responsible person of an independent control function (the assessment must in all cases relate to the persons with the most senior operational responsibility³⁶ for these supervisory functions) or, when outsourcing the independent control function, the person who is responsible for monitoring such outsourcing (and will be referred to as the "relay person");

³⁴ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance.

³⁵ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance.

³⁶ The so-called "DC -1 level", except for the Chief Risk Officer, who must in principle be a member of the management committee.

- general agent and, where applicable, the persons in charge of senior management of the branch.

All the above functions are subject to prior approval by the NBB (see point 4.6 below).

4.2.3 CROSS-BORDER CONTEXT

For the application of this chapter within a cross-border context, we need to make a distinction between the following two situations:

- *EEA undertakings which operate in Belgium via a branch or pursuant to the freedom to provide services ("inward passporting")*: this chapter does NOT apply.

Consequently, persons who hold or wish to hold any of the above-mentioned positions at undertakings which are authorised or registered by the competent supervisory authority of a State of the European Economic Area and which operate in Belgium either through a branch or pursuant to the freedom to provide services do not fall within the scope of this chapter.

- *Belgian undertakings which operate abroad through a branch ("outward passporting") or branches established in Belgium of insurance or reinsurance undertakings governed by the law of a State that is not a member of the European Economic Area*: this chapter DOES apply in this case.

On the other hand, this chapter does apply to persons employed by undertakings authorised in Belgium and operating abroad through a branch, as well as persons employed by branches established in Belgium of insurance or reinsurance undertakings governed by the law of a non-EEA State. The persons referred to in this case are the general agent of the branch or, where applicable, the persons in charge of senior management of the branch and the local responsible persons of the independent control functions.

4.2.4 GROUP CONTEXT

The application of this chapter in a group context can be explained as follows. Both in terms of the parent company governed by Belgian law and all regulated Belgian subsidiaries, the persons in question must be fit to hold their positions and must thus meet the suitability assessment standards. If a person holds, both with the parent company and the subsidiary, a position which falls within the scope of the Law, two separate assessments need to be carried out. However, in accordance with the EIOPA Guidelines and Circular 2016_31, the entity responsible for an insurance or reinsurance group must ensure that there is a consistent group policy for assessing fitness (and compliance therewith) for all subsidiary undertakings within the insurance or reinsurance group.

4.3 DELIMITATION OF RESPONSIBILITIES FOR THE SUITABILITY ASSESSMENT

Article 273(1) of Delegated Regulation 2015/35 provides that "[i]nsurance and reinsurance undertakings shall establish, implement and maintain documented policies and adequate procedures to ensure that all persons who effectively run the undertaking or have other key functions are at all times fit and proper within the meaning of Article 42 of Directive 2009/138/EC".

4.3.1 PRIMARY RESPONSIBILITY OF THE UNDERTAKINGS

The primary responsibility for the fitness and propriety of persons subject to a suitability assessment under the Insurance Supervision Law lies with the undertaking. To this end, the undertaking should develop a suitability policy and check a person's suitability, by carrying out an assessment (see point 4.5). Amongst other things, the assessment process must be based upon information provided by the person who is to be assessed.

If the result of the assessment of suitability is positive, the undertaking must in turn send the NBB full, reliable information about the person's suitability. Based upon this information, supplemented by details collected by the supervisory authority on its own initiative, the NBB will carry out its own assessment of the suitability of the person in question. Such assessment deals not only with ensuring that the person is effectively fit and proper, but also takes account of the individual and collective

assessment procedure used to assess the undertaking. The greater the margin of assessment for a given aspect (e.g. as far as skills, etc. are concerned – see point 4.4.2.3), the greater the weight the NBB can give to this internal procedure put into place by the undertaking and therefore limit itself to verifying that this assessment procedure offers the necessary guarantees.

4.3.2 THE RESPONSIBILITIES OF THE NBB – “GATEKEEPER”

When a new person is deemed fit by the undertaking, the NBB will collect the necessary information and carry out an assessment on the basis of which it will decide on final approval. For the purposes of its own assessment, the NBB will first of all use the information supplied by the undertaking and by the person in question as a basis.

This information is collected using standard forms designed especially for this purpose (see the annexed suitability form, which comprises two parts: Part A, to be completed by the person concerned, and Part B, to be completed by the undertaking). Obviously the NBB is free to ask for any additional information and, where applicable, to interview the person in question. More detailed explanations about the NBB's assessment procedure are given further on in this chapter.

The longer that a person has held a position, the more practical information the undertaking and the NBB will have about the way that the person works within the undertaking (e.g. by looking at reports made by the statutory governing body, audits, etc.) The undertaking and the NBB both have a responsibility to reassess this information whenever this may appear necessary (see points 4.5.3 and 4.6.1.2).

4.3.3 RESPONSIBILITY ASSESSMENT OF SUITABILITY ON AN ONGOING BASIS

The legal requirement, as laid down in the Insurance Supervision Law, always to have persons who are suitable to hold the positions which fall within the scope of the Law is an obligation which all undertakings must fulfil at all times. The persons in question must, at any time, “be” skilled and act with professional integrity. The specific details for continuous monitoring of suitability are discussed in more detail later in this handbook.

However, as regards the respective responsibilities of the parties involved for ensuring the ongoing nature of the suitability criteria, the following shall apply:

As regards the person in question

On the standard forms drawn up by the NBB, the person in question is expected to declare that s/he has made every effort to comply constantly with the suitability standards for the purposes of the position which s/he already holds or plans to hold.

Persons who already hold positions must immediately inform the undertaking of any event which is likely to influence their fitness and propriety.

As regards the undertaking

Where an undertaking considers that doubts might arise about the fitness and propriety of a person who holds a position or the collective suitability of the board of directors or management committee, the NBB expects it to take steps as quickly as possible and to make every effort to take a close look at these doubts. The undertaking must also inform the NBB immediately thereof.

In order to guarantee the constant suitability of the persons in question, the following is recommended:

- When a person takes up a position, it is important for the undertaking to ask him or her for a written declaration in which s/he confirms that s/he will unreservedly abide by the current suitability standards for this position and that s/he will give immediate notice of any events which might turn out to be important in this respect.
- The person in question should be reminded of this declaration. In this way, the undertaking may, on an annual basis for significant undertakings and every two years for less significant undertakings, explicitly ask the persons in question whether they are aware of any relevant, significant changes in relation to their compliance with the suitability standards.

As the financial sector is constantly on the move, continuing training would appear to be a necessary condition, although in principle it is not on its own sufficient to fulfil the requirement for fitness at all times. The NBB expects the undertaking to take all necessary steps to implement judicious continuing training.

As regards the supervisory authority

The fitness and propriety of persons who fall within the scope of the Insurance Supervision Law is supervised on an ongoing basis by the NBB. Whenever the NBB becomes aware of any information which raises doubts about the suitability of a person who currently holds a position, the NBB will immediately carry out a more in-depth examination and, if required, a reassessment. In addition, the NBB will also reassess the fitness and propriety of the persons concerned on an ongoing basis, taking into account the elements observed in the course of prudential supervision and in particular through inspections, thematic surveys, etc.

4.4 GUIDELINES ON SUITABILITY STANDARDS

This part of the handbook gives guidelines on the way in which the standards for assessing suitability can specifically be implemented, although they are not intended to be exhaustive.

The main principle which needs to be remembered is that the suitability screening involves a process of in-depth assessment designed, using various kinds of relevant information, to give as full as possible an image of the suitability of person for a specific position. Assessments dealing firstly with a person's fitness and secondly his or her propriety are complementary.

4.4.1 WEIGHTING FACTORS TO BE USED IN THE ASSESSMENT PROCESS

Any available information which can be used to back up a suitability assessment is always used and weighted by the supervisory authority according to its relevance and importance in relation to the person's current or future responsibilities. There are a number of weighting factors, which means that the same importance does not need to be paid to all of the components of the file. Without prejudice to the more specific ones, the NBB always takes into account the following general weighting factors:

The seriousness of the information in the light of the prudential supervision goals

As the persons who fall within the scope of the Insurance Supervision Law play or will play an important role in the key decisions taken by their undertakings, which can have significant consequences for the undertaking, for the group to which it belongs, for its customers or even for the public authorities, the taxpayer, and the whole of the economy, any information which has a more significant impact upon the general interest pursued by the supervisory authority will thus have a greater influence. In order to measure their impact, the specific circumstances surrounding the information also play a role, as does the seriousness of the facts, any proof of rehabilitation, etc.

How old the information is

Information can become less important over time. Given the amount of time which can elapse between the occurrence of the information and the moment when the assessment of suitability takes place, in theory we see obsolete information as being of less or little importance.

The attitude and/or motivation of the person in question in relation to the information

A proper attitude, plausible, credible and sustained motivation by the undertaking and the interested party are positive points for the weighting of a very specific piece of data. Based upon the attitude and motivation, along with the explanations given by the person in question, it is possible to determine the way in which s/he weights the information, whether s/he understands that the information may have an impact upon his or her suitability or if s/he has learned lessons from the consequences of any previous events in his or her background. If the information relates to facts which are not inherently linked to the person him or herself (but, for instance, to a company at which the person in question was working), s/he must be able to show properly whether s/he was involved.

The combination of available information

If a variety of information about a single person is available, it will be weighted in the light of how it combines and/or the mode of operation it generates.

An overview of a person's background and the available information helps to give a precise, less static image of how the person operates. Combining the information gives an idea of a person's mode of operation and/or negligence and may lead to the conclusion that the interested party is not, or is no longer, considered to be fit or needs to improve his or her fitness on a specific point.

4.4.2 FITNESS

Article 273(2) of Delegated Regulation 2015/35 further provides that "[t]he assessment of whether a person is fit shall include an assessment of the person's professional and formal qualifications, knowledge and relevant experience within the insurance sector, other financial sectors or other businesses and shall take into account the respective duties allocated to that person and, where relevant, the insurance, financial, accounting, actuarial and management skills of the person."

4.4.2.1 General scope of the concept of "fitness"

The definition of the concept of fitness (see Introduction, point 1.2) shows that the term covers a number of areas, including appropriate knowledge and experience, skills and professional behaviour. These three components are complementary, and an analysis of each of them helps to give an overview of a particular person's fitness. For instance, a person who has the knowledge required for a given position but who is unable to pass it on and generate it within the undertaking is not fit.

4.4.2.2 Appropriate knowledge and experience

Persons subject to a suitability assessment under the Insurance Supervision Law must have adequate theoretical knowledge and practical experience.

Theoretical knowledge - minimum requirements

By "knowledge" we mean everything that a person knows, everything that s/he has learned. In theory knowledge can be learned, for instance, by studying, training or "on the job". The term covers both theoretical knowledge and knowledge acquired in practice.

Irrespective of the specific knowledge and experience which may be required for a given position (see point 4.4.2.4, b), the NBB expects persons subject to the suitability assessment to have knowledge and experience in:

- insurance, reinsurance and the financial markets;
- the strategic aspects and the economic model in relation to the specific activity of the undertaking concerned;
- the regulatory context and legal requirements which apply to insurance and reinsurance undertakings;
- the management of an undertaking, and more particularly:
 - understanding of risks (identification, assessment, follow-up, monitoring and mitigation of the main risks of an insurance or reinsurance undertaking);
 - the interpretation of financial information about an undertaking and, on this basis, the identification of key issues and appropriate controls and measures;
 - assessing the effectiveness of steps taken by an undertaking in terms of the governance system;
 - team management.

The presence of appropriate knowledge and experience may be demonstrated by the successful completion of relevant training and the availability of relevant work experience. "Relevant training"

should be interpreted in the widest sense. In addition to the obtaining of (university) diplomas, “on the job” training and in-company training courses should also be taken into account. Special attention should be paid to the level and nature of education completed and to the relevance of the content in relation to the insurance and reinsurance sector. As a general rule, training courses dealing with the banking, financial and insurance and reinsurance sector, economics, law, business management, general management, IT, marketing and quantitative methods may be considered to be relevant.

Practical experience

By “relevant professional experience”, we mean any experience which has been acquired in a working environment and which, in terms of content, shows similarities or has points in common with the type of undertaking and/or the type of position which the person in question holds or wishes to hold.

In order to determine the extent to which any previously held positions contribute to the existence of “relevant professional experience” or, on the contrary, prevent this, the following factors need to be taken into consideration:

- the level of the positions held;
- whether these positions were held within a single undertaking or group;
- the length of time over which the experience was acquired (how long the position[s] was [were] held);
- the nature, complexity and organisational structure of the undertaking at which a position was held;
- the number of subordinates.

As regards the relevant work experience of the directors and members of the management committee to be assessed (and, where appropriate, senior managers and branch managers), the NBB considers that relevant professional experience must in most cases cover a minimum period of five years. For smaller undertakings, three years of professional experience may be sufficient.

The holding of several short-term positions (for instance temporarily standing in for another person) does not allow an automatic conclusion to be drawn that there is relevant professional experience over a sufficient period of time. In addition, given the speed at which changes can take place in the financial world, the training and experience need to be relatively recent. The guideline in this respect is to not exceed three years between the moment of the suitability assessment and the most recent training/experience.

As regards the responsible persons of independent control functions, the NBB considers that relevant professional experience should, depending on the characteristics of the undertaking (nature, size, complexity of activities and risk profile), in principle cover a minimum period of three³⁷ to five years. Where the independent control function is fully outsourced, the NBB will assess the knowledge and relevant professional experience of the “reference person” responsible for monitoring such outsourcing taking into account that he/she should possess sufficient knowledge and experience regarding the outsourced key function to be able to challenge the performance and results of the service provider.

Without prejudice to the principles laid down in this handbook, the specific fit and proper requirements on the part of responsible persons of the compliance function are provided by the NBB regulation on the expertise of those responsible for the compliance function (Article 2). The specific requirements are as follows:

- at least three years' relevant work experience;
- holding a master's degree (unless exemption based on practical experience and knowledge);

³⁷ See Article 2, § 1, 1°, of the NBB Regulation of 6 February 2018 on the fitness of the responsible persons for the compliance function.

- passing an examination with an undertaking whose examinations have been recognised by the NBB and the FSMA and, from the moment of passing the examination, participating in a training programme at a training undertaking recognised by the FSMA, on the advice of the NBB, with a minimum duration of 20 hours every three years.

In order to permanently comply with the knowledge requirement, responsible persons of the compliance function participate from their appointment in a training programme with a minimum duration of 40 hours every three years. The requirements with regard to continuing education are further explained in the information memorandum annexed to the aforementioned regulation and to communication FSMA_2018_05 of 8 May 2018 on permanent training for compliance officers.

Moreover, as regards the person responsible for the actuarial function, Article 59, § 2, of the Insurance Supervision Law provides that the person responsible for the actuarial function must “*have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the (...) company, and who are able to demonstrate their relevant experience with applicable professional and other standards*”.

4.4.2.3 Skills

“Skills” refer to what an individual is capable of doing. They help the person in question to behave in a specific way in certain situations (for instance in negotiation processes or when taking a decision). In principle, skills can be learned, just like knowledge. Knowing which skills are important for a given position is a question which the undertaking must first of all answer. It is important here to take account of the variables which are explained below (see below in point 4.4.2.4).

As examples of skills, undertakings should consider the following when carrying out a suitability assessment:

- **Communication:** is capable of conveying a message in an understandable and acceptable manner, and in an appropriate form. Focuses on providing and obtaining clarity and transparency and encourages active feedback.
- **Decisiveness:** takes timely and well-informed decisions by acting promptly or by committing to a particular course of action, for example by expressing his or her views and not procrastinating.
- **Judgement:** is capable of weighing up data and different courses of action and coming to a logical conclusion. Examines, recognises and understands the essential elements and issues. Has the breadth of vision to look beyond his or her own area of responsibility, especially when dealing with problems that may jeopardise the continuity of the undertaking.
- **Authenticity:** is consistent in word and deed and behaves in accordance with own stated values and beliefs. Openly communicates his or her intentions, ideas and feelings, encourages an environment of openness and honesty, and correctly informs the supervisor about the actual situation, at the same time acknowledging risks and problems.
- **Loyalty:** identifies with the undertaking and has a sense of involvement. Shows that he or she can devote sufficient time to the job and can discharge his or her duties properly, defends the interests of the undertaking and operates objectively and critically. Recognises and anticipates potential conflicts of personal and business interest.
- **Chairing meetings:** is capable of chairing meetings efficiently and effectively and creating an open atmosphere that encourages everyone to participate on an equal footing; is aware of other people's duties and responsibilities.
- **Negotiating:** identifies and reveals common interests in a manner designed to build consensus, while pursuing the negotiation objectives.
- **Persuasive:** is capable of influencing the views of others by exercising persuasive powers and using natural authority and tact. Is a strong personality and capable of standing firm.
- **Teamwork:** is aware of the group interest and makes a contribution to the common result; able to function as part of a team.

- **Strategic acumen:** is capable of developing a realistic vision of future developments and translating this into long-term objectives, for example by applying scenario analysis. In doing so, takes proper account of risks that the undertaking is exposed to and takes appropriate measures to control them.
- **Sense of responsibility:** understands internal and external interests, evaluates them carefully and renders account for them. Has the capacity to learn and realises that his or her actions affect the interests of stakeholders, etc.

The aim is not that NBB should assess individual skills. Rather, the assessment will look at the way in which the undertaking has taken the “skills” component into account in its own internal process of evaluating the applicant (for instance by organising assessments). The “skills” component can also be discussed at an interview (see point 4.6.4). This component will not be tested separately by the NBB in the case of small undertakings, except if facts or circumstances so justify.

4.4.2.4 Variables in the assessment of “appropriate knowledge and experience” and “skills”

When assessing these two components, a certain degree of proportionality must always be taken into account. The principle of proportionality manifests itself in the taking into account of a number of variables when carrying out the assessment, although this does not necessarily mean that the person in question is not fully fit. On the other hand, the application of variables in each specific case allows an assessment to be carried out which is tailored to the situation and circumstances. This also means that a person who is deemed to be fit for a given position at a given undertaking will not automatically be fit to hold another position, whether at the same undertaking or not.

In addition to the specific applications of proportionality already set out in points 4.4.2.2 and 4.4.2.3, the following two variables must also be borne in mind:

a. The characteristics of the undertaking

Each undertaking can be distinguished by its own nature or business market, its size or scale, its complexity, its risk profile and its organisational structure. Due to this diversity, similar positions held at different undertakings do not necessarily require the same level of knowledge, experience and skills.

The undertaking’s nature and business market are components which are particularly decisive for the content of the knowledge required in terms of services, products and markets. In this respect, the fact that an undertaking is only active in non-life or life activities or that it is mixed is a factor to be taken into account.

The undertaking’s size or scale may refer to a number of aspects, e.g. (i) the number of workers, (ii) the balance sheet total and (iii) turnover (net of reinsurance), (iv) the amount of technical provisions, etc.

An undertaking's complexity and risk profile influence the specific level of fitness required, in the sense that a complex organisational structure or a high risk profile require very well developed fitness within a wide range of areas. In this respect, elements to be taken into account are whether the undertaking has an international dimension, whether it has branches and subsidiaries abroad, whether it provides services abroad under the freedom to provide services, etc.

The principle of proportionality aims to align governance arrangements consistently with the risk profile and business model of each undertaking and takes account of each item for which an assessment is carried out so that the objectives of the regulatory obligations are effectively achieved.

In other words, the application of the principle of proportionality does not lead to a decline in the suitability standards but may result in a differentiated approach in the assessment procedure or in the application of the criteria on 'appropriate knowledge and experience' and 'skills'. The members of the board of directors, the management committee (or, as the case may be, senior management), the responsible persons of independent control functions and the managers of branches must, in any case, comply with the requirements on fitness and propriety and demonstrate an independent spirit and be available, irrespective of the nature of the activities, the size of the undertaking and its complexity and risk profile.

b. The position to be held by the person in question

As has already been mentioned above (point 4.3.1), it is the undertaking which is best placed to determine what knowledge, experience and skills are required for a given position at the undertaking. The NBB expects the undertaking to carry out this exercise thoroughly, and analyses the responsibilities relating to a given position and the knowledge, experience and skills which are particularly required as precisely as possible. For this purpose, the undertaking must review the position's specific activities, without attaching any importance to the formal job title. In certain cases, the Insurance Supervision Law also lays down requirements (for instance with regard to members of the audit committee and risks committee).

Here, as an illustration, are a few examples of this variable:

- when assessing the skills of an applicant for the position of chairman of the statutory governing body, the emphasis should be first and foremost on suitability for acting as chairman and for strategic management work;
- the (assessment of) of a director's fitness varies depending upon whether the position to be held is executive or non-executive. In theory a non-executive director needs less detailed and practical knowledge than an executive director, but it is all the more important for him or her to be able to test the way that the executive directors are managing the undertaking;
- when assessing the skills of an applicant for a position as responsible person of an independent control function, care should be taken to ensure that he/she has some authority, organisational, oral and written communication skills. He/she must have a strong ability to synthesise or even popularise knowledge in order to extract from technical observations the elements that are really relevant for the undertaking or the group and be able to explain them clearly to the members of the board of directors and management committee. He/she must also have good team management and organisational skills. More precisely:
 - when assessing the skills of an applicant for a position as Chief Risk Officer (CRO), particular attention should be paid to (i) the applicant's overall view of the risks of an insurance or reinsurance undertaking, (ii) the applicant's independence of judgement and (iii) the weight that the applicant is able to place in the decision-making process within the undertaking;
 - when assessing the skills of an applicant for a position as responsible person of internal audit, care should be taken to ensure that the person has, beyond the necessary skills in internal audit methodology, general knowledge of the undertaking's material activities as well as a transversal vision;
 - when assessing the skills of an applicant for a position as responsible person of the actuarial function, care should be taken to ensure that he/she has knowledge and practice of actuarial and financial statistics and mathematics commensurate with the nature, magnitude and complexity of the risks inherent in the business and that he/she can demonstrate an ability to 'popularise' any points of attention identified;
 - when assessing the skills of an applicant for a position as Compliance Officer, care should be taken to ensure that he/she has proven legal knowledge in the insurance sector, that he/she can clearly explain any points of attention identified and that he/she meets the specific requirements mentioned in point 4.4.2.2.
- with positions operating at the level of a parent company, in order to have the necessary overall understanding of all of the group's activities, fitness in relation to the activities both of the parent company and of all the subsidiaries will be needed. This does not necessarily mean that people employed by a parent company must have a detailed knowledge of the activities of all of the subsidiaries.

4.4.2.5 Professional behaviour

“Professional behaviour” relates to observable behaviour, whence, in day-to-day activities, come the standards and values involved in engaging in the profession. More particularly this is the behaviour required in order to guarantee adherence to the regulations applicable to the insurance and reinsurance sector and, more broadly speaking, in order to protect the interests of both the undertaking and its customers, counterparts, counterparties and other stakeholders, along with the community as a whole. Professional behaviour must come from the person him or herself, but it is also determined by the environment in which the person operates (especially in terms of professional ethics and undertakings’ own internal codes of conduct).

To a certain extent, professional behaviour is learned, mainly through experience. As a general rule, we can consider that a person behaves professionally if there are no hints to the contrary. If the person in question has, in the past, been in contact with the supervisory authority, this prior relationship plays a role.

In terms of “professional behaviour”, we need to look first of all at independence and secondly at the amount of time invested.

a. Independence and conflicts of interest

As already explained in Circular 2016_31, the undertaking must have in place an appropriate policy for identifying, reporting, managing and preventing conflicts of interest. Unless expressly provided otherwise by law, having a conflict of interest does not necessarily mean that a person subject to a suitability assessment is not suitable. In order for a conflict of interest to arise, it must be material and not, or only insufficiently, manageable.

Without prejudice to the above and the provisions of general company law as far as conflicts of interest are concerned, in terms of “independence,” a distinction can be made between (i) independence of mind, (ii) the independence required for the purposes of preventing or managing conflicts of interest, and finally (iii) independence within the meaning of Article 526ter of the Companies Code (“formal independence”).

As far as the first concept (independence of mind) is concerned, any person who falls within the scope of the Law is deemed to be able to make a conscious decision, objectively and independently, in the interests of both the company and its stakeholders, after having carefully weighed up all the information and opinions available, and independently of any outside influence.

With regard to the second concept (prevention and management of conflicts of interest), we can further refer specifically to the obligations and undertakings which these persons are bound to adhere to on the basis of on the one hand the applicable legal texts on the exercise of external functions³⁸ (see below) and, on the other hand, the legal provisions concerning loans, credits and guarantees to leaders, shareholders and affiliated persons, as explained in NBB Circular_2017_21.

As regards the third concept (formal independence within the meaning of Article the Companies Code 526ter of the Companies Code), it should be stressed that it is for the undertaking to ensure that all the legal criteria provided in that article are met. Given the nature of these criteria, the NBB will focus on them as part of its supervision of the undertaking's overall governance. As regards the required absence of any "significant business relationship", however, the NBB is of the opinion that the significance must be assessed from the point of view of both the undertaking and the person concerned, and that in the latter case the existence of a commercial relationship between the person and the undertaking concerned is incompatible with a qualification as an independent director. This does not prevent keeping certain basic financial products (e.g. supplementary group insurance, compulsory fire/motor insurance, etc.) under agreements concluded at arm's length. Furthermore, the NBB considers that, in financial conglomerates, where the bank and the insurance undertaking have significant business relationships, a structure should be put in place to manage potential conflicts of interest, for example by ensuring that the board of directors of the insurance undertaking

³⁸ See also the Royal Decree of 20 June 2012 approving the regulation of the National Bank of Belgium of 6 December 2011 on exercise of external functions by managers of regulated companies and Circular PPB-2006-13-CPB-CPA of 13 November 2006 on exercise of external functions by managers of regulated companies.

includes at least one independent director within the meaning of Article 526ter of the Companies Code who does not sit on the board of directors of the bank or the parent company.

b. Amount of time invested

All directors and senior managers should be able to devote sufficient time to the performance of their duties in the undertaking³⁹. This also applies in periods of sharply increased activity, such as reorganisations, crisis situations, mergers, etc. The NBB asks the undertakings to document the roles, tasks and required skills of the different functions within the statutory governing body, including the expected time to be devoted to each function. Undertakings may require the persons concerned to confirm that they will effectively abide by the time commitment proposed by the undertaking.

The cumulation of functions may not only lead to conflicts of interest on the part of the person concerned, but may also have an impact on the time devoted to the function for which the suitability assessment is carried out.

Therefore, undertakings are required to draw up an internal policy on external functions. In doing so, account must also be taken of qualitative restrictions, and of the NBB Regulation and Circular on exercise of external functions by managers of regulated companies.

Also, in the assessment of sufficient time commitment of a member, undertakings should take at least the following into account:

- a) the number of directorships in financial and non-financial companies held by that member at the same time, taking into account possible synergies when they are held within the same group, including when acting on behalf of a legal person or as an alternate of a member of the management body;
- b) the size, nature, scope and complexity of the activities of the entity where the member holds a directorship and, in particular, whether or not the entity is a non-EU entity;
- c) the member's geographical presence and the travel time required for the role;
- d) the number of meetings scheduled for the management body;
- e) the directorships in organisations which do not pursue predominantly commercial objectives held by that member at the same time;
- f) any necessary meetings to be held, in particular, with competent authorities or other internal or external stakeholders outside the management body's formal meeting schedule;
- g) the nature of specific position and the responsibilities of the member, including specific roles such as CEO, chairperson, or chair or member of a committee, whether the member holds an executive or non- executive position, and the need of that member to attend meetings in the companies listed in point (a) and in the institution;
- h) other external professional or political activities, and any other functions and relevant activities, both within and outside the financial sector and both within and outside the EU;
- i) the necessary induction and training;
- j) any other relevant duties of the member that institutions consider to be necessary to take into account when carrying out the assessment of sufficient time commitment of a member; and
- k) available relevant benchmarking on time commitment.

³⁹ See inter alia Article 83 of the Insurance Supervision Law.

4.4.2.6 Track record

For the purposes of the fitness assessment, attention will also be paid to relevant precedents, e.g. the question of whether, in an undertaking in which major financial problems have been found and which have led to intervention by the public authorities, the person holds or has held a position which falls within the scope of the Insurance Supervision Law, or significantly influences or has influenced policy, or owns or has owned a significant interest.

4.4.2.7 The collective expertise of the undertaking's statutory governing body and management committee

In principle, an assessment of fitness always deals with an individual. However, when the assessment relates to a directorship (whether executive or not) or membership of the management committee, account must also be taken of the composition and operation of the body as a whole. This means that there must be checks on whether the fitness within the body is sufficiently guaranteed with this person, in view of his or her knowledge and specific experience, skills and professional behaviour. In this respect, Article 273(3) of Delegated Regulation 2015/35 provides that "*[t]he assessment of whether members of the administrative, management or supervisory body are fit shall take account of the respective duties allocated to individual members to ensure appropriate diversity of qualifications, knowledge and relevant experience to ensure that the undertaking is managed and overseen in a professional manner.*"

a. Collective expertise criteria

In accordance with the EIOPA Guidelines, the board of directors and the management committee of an insurance or reinsurance undertaking must collectively have knowledge and experience of at least:

- a. insurance and financial markets;
- b. the undertaking's strategy and business model;
- c. the governance system;
- d. financial and actuarial analysis;
- e. the regulatory context and requirements.

These are minimum criteria. Other criteria can also be taken into account depending on the specificities of the undertaking (e.g. management of international groups and risks relating to group structures, expertise in internal models, etc.). Such criteria must be specified in the undertaking's suitability policy (see point 4.5.1).

These criteria concern both the members of the management committee, who must make the appropriate decisions taking into account the business model, risk appetite and the markets in which the undertaking operates, and the members of the board of directors, who must decide on strategy and be able to monitor the decisions taken by the management committee in a constructive manner. Nevertheless, while the members of the management committee will collectively need to possess a high degree of management skills, the members of the board of directors must be able to understand and challenge the management practices applied and decisions adopted by the management committee.

b. Self-assessment and competency matrices

Effective implementation of compliance with the above-mentioned collective expertise criteria is primarily the responsibility of the undertaking. In order to be able to effectively assess compliance with the collective expertise criteria for the members of the management committee and board of directors, undertakings are invited to develop a "skills matrix". Another methodology considered more appropriate may also be used. The undertaking also assumes responsibility for identifying gaps by conducting a self-assessment of its board of directors and management committee on an ongoing basis.

c. Motivation vis-à-vis the NBB

When submitting its dossier to the NBB, the undertaking must provide, as part of the replies to Title II of Part B of the suitability form:

- (i) the above-mentioned "competence matrix",
- (ii) a brief substantiated statement on how the appointee will contribute to the collective expertise needs, and
- (iii) if gaps have been identified, the result of the self-assessment that has been carried out.

If there is no satisfactory answer, the NBB will hold the undertaking accountable. Where applicable, this may mean that the new applicant cannot be accepted onto the statutory governing body (board of directors or management committee).

It may also mean that one or more persons who hold positions are not sufficiently fit, due to the statutory governing body's new composition and distribution of tasks. The undertaking must address this deficiency either by extending the fitness of the remaining directors or by appointing a new director who has the specific fitness required.

The lack of specific knowledge and experience on the part of a person within a body made up of a number of people does not necessarily lead to a refusal, provided that other people within the body are able to make up for this deficiency. Nevertheless, each member must have a certain basic knowledge of the fields listed in point 4.4.2.2), as each member holds the same degree of responsibility.

4.4.3 PROPRIETY

Article 273(4) of Delegated Regulations 2015/35 provides that "[t]he assessment of whether a person is proper shall include an assessment of that person's honesty and financial soundness based on evidence regarding their character, personal behaviour and business conduct including any criminal, financial and supervisory aspects relevant for the purposes of the assessment."

4.4.3.1 The scope of the concept of propriety

As indicated in the introduction, whether or not a person is judged to be proper depends upon his or her integrity and honesty. This is a characteristic which can be specifically analysed on the basis of a person's history.

More specifically, the person's background allows us to check whether it can reasonably be supposed that s/he will carry out the task entrusted to him or her honestly, faithfully, independently, ethically and with integrity.

A distinction needs to be made between the professional disqualification technique, which is an automatic mechanism (there is no room for appraisal by the NBB) and the wider-ranging assessment of professional integrity (to which, on the other hand, the NBB's power of appraisal does apply, manifesting itself amongst other things in the application of weighting factors relating to relevance and importance (see point 4.4.1). Even so, there is a link between the two, in the sense that, in some specific situations relating to offences which give rise to professional disqualification, the NBB sets out to make use of its power of appraisal so strictly that we can call it a "near-automatic" assessment.

1) Professional disqualification

The Insurance Supervision Law contains, by way of reference to the Banking Law, a list of convictions which, when a person is liable to them, in any case mean that, for a very specific period of time, s/he is unable to hold a position that falls within the scope of the Law. As a supervisory authority, the NBB is unable to tolerate any exemptions or system of exceptions in this respect, nor can there be any exemption with regard to these convictions.

2) Power of assessment of the NBB

Nevertheless, the assessment of a person's professional integrity cannot be limited solely to a lack of such "disqualifying" convictions. The concept of propriety must also be understood in the wider sense, in the sense that other details in the person's background may affect his or her propriety. Criminal proceedings and the intervention of the NBB as an administrative authority are independent of one another in that they pursue separate objectives and may thus lead to a different appraisal of the facts. The assessment of propriety is not necessarily the same as either the criminal classification of behaviour or acts or the outcome of criminal proceedings. Indeed, it is not based upon the concept of "guilt" in the criminal sense of the word, but rather on an appraisal of the facts and the actions taken, the goal being to determine whether persons subject to a suitability assessment who fall within the scope of the Law do indeed have the qualities required in order to carry out their duties and fulfil the responsibilities pertaining thereto.

On the basis of the standard form used by the NBB (see the annexe), undertakings can see to which details should be paid special attention as part of a propriety assessment. Specifically, the questions relate to 5 broad areas:

- criminal, civil or administrative convictions of any kind;
- judicial, administrative or regulatory investigations in progress;
- disciplinary action or action by a supervisory authority;
- measures related to the applicant's past financial performance and financial strength; and
- problems of lack of transparency.

a. Events in a person's background which are covered by the list of offences leading to professional disqualification

An admission of guilt, even though no conviction has been formally handed down by the authority with jurisdiction for the matter, must also have the same consequences as an actual conviction, and the person involved may indeed not be considered to be proper.

Where any proceedings are in progress or pending against a person who is to be assessed, the NBB deems that this person may not be considered to be proper when:

- the person in question has admitted the underlying facts; or,
- the person in question already has a first conviction in this respect, even if channels of appeal against this conviction still remain open.

b. Financial track record

A person's financial behaviour is relevant as part of an assessment of his or her propriety in that it may have an impact upon his or her reputation. We expect persons who fall within the scope of the Law to manage their affairs in a sound and prudent manner. They must be able to prove that the holding of their positions is not negatively influenced by anything in their financial backgrounds.

It must nevertheless be pointed out that the fact that a person has limited financial resources cannot negatively influence/will not negatively influence his or her suitability to hold a position.

Taking account of the weighting factors set out in point 4.4.1, for the purposes of a propriety assessment, it is recommended to pay attention to both personal and professional financial backgrounds. The following situations can be given as examples:

- the person in question has had major personal financial problems (e.g. recurring "gambling" issues, getting repeatedly into debt, etc.) which has led to legal, recovery or collection proceedings;

- a suspension of payments, insolvency, bankruptcy, restructuring of debts or an arrangement with creditors has been requested or ordered with regard to the person in question;
- the person in question has already been involved in fiscal procedures, or his or her involvement is to be expected;
- the person in question has been sentenced to settle outstanding debts on grounds of liability for the bankruptcy of a company or a legal entity;
- suspension of payments or bankruptcy has been requested or ordered for a company, an undertaking or any other body at which the person holds or has held a position that would fall within the scope of the Law, or influences or has influenced policy in another significant way, or owns or has owned a significant interest.

c. Other track record

Taking account of the weighting factors set out in point 4.4.1, attention also needs to be paid to the following events in a person's background:

- any other criminal, disciplinary, civil and administrative convictions incurred (e.g. violations of preventive money laundering laws, consumer laws, tax laws, etc.);
- any ongoing cases in these areas, and especially a person's involvement in investigations or disciplinary proceedings being carried out by the NBB or other supervisory authorities;
- any amicable arrangements ("termination of prosecution on payment of a sum of money") or settlements concluded in relation to offences under financial or other legislation;
- any other facts which, irrespective of their legal classification, are likely to cast doubt upon a person's propriety. Undertakings should for example consider the following:
 - any evidence that the person has not been transparent, open, and cooperative in his or her dealings with competent authorities;
 - refusal, revocation, withdrawal or expulsion of any registration, authorisation, membership, or licence to carry out a trade, business, or profession;
 - the reasons for any dismissal from employment or from any position of trust, fiduciary relationship, or similar situation, or for having been asked to resign from employment in such a position;
 - disqualification by any relevant competent authority from acting as a member of the management body, including persons who effectively direct the business of an entity; et
 - any other evidence that suggests that the person acts in a manner that is not in line with high standards of conduct.

This list must apply both directly (with regard to the person) and indirectly (with regard to a company, an undertaking or any other body at which the person holds or has held a position that falls within the scope of the Law, or influences or has influenced policy in another significant way, or owns or has owned a significant interest). In this latter case, the person's degree of involvement must certainly be weighed up.

4.5 ASSESSMENT OF SUITABILITY BY THE UNDERTAKING

As already explained, it is primarily up to the undertaking to assess the fitness and propriety of the persons subject to the suitability assessment. In order to do so, the undertaking must draw up a suitability policy, develop an assessment procedure and ensure that the NBB is informed of the result of its assessment.

Although in principle the assessment of suitability takes place either before the person takes up the position or when s/he changes his or her position, when any information appears in the course of a function which is likely to influence a person's fitness and propriety, the undertaking must analyse it without delay.

4.5.1 SUITABILITY POLICY / FIT & PROPER POLICY

The undertaking should develop and implement a “suitability policy” or “fit & proper policy” which, in application of the EIOPA Guidelines and Circular 2016_31, includes at least the following:

- a) a description of the procedure for identifying functions requiring notification to the NBB and the procedure for notification to the NBB;
- b) a description of the procedures for assessing fitness and propriety of the members of the board of directors and management committee and the responsible persons of independent control functions and branch managers, when they are selected and thereafter on an ongoing basis;
- c) a description of the criteria to be used in assessing fitness and propriety of the members of the board of directors and management committee and the responsible persons of independent control functions and branch managers;
- d) a description of the foreseeable cases which give rise to a reassessment of the fit and proper requirements; and
- e) a description of the procedure for assessing the skills, knowledge, and fitness and propriety of other relevant staff members who are not subject to the legal assessment requirements imposed by the NBB, when their profile is examined for the specific function, but also on an ongoing basis.

In addition, depending on the nature, size, complexity and risk profile of the undertaking, the policy should also include a description of the process for planning renewal of the members of the management committee.

This suitability policy must be consistent with the overall corporate governance framework, corporate culture and risk appetite of the undertaking and be clear, well documented and transparent to all staff within the undertaking.

It must be adopted by the board of directors and updated periodically. If the undertaking has an appointment committee, it is appropriate for that committee to actively contribute to the development of the suitability policy.

The principle of proportionality applies. Significant undertakings should have a more sophisticated suitability policy, while less significant undertakings can implement a simpler policy. However, this policy should ensure that the above criteria are met.

4.5.2 BEFORE TAKING UP A POSITION: SUITABILITY ASSESSMENT PROCEDURE AND COMMUNICATION OF RESULTS TO THE NBB

In addition to developing a suitability policy, the board of directors is responsible for conducting the suitability assessment for the persons covered by this chapter and for communicating the results of its assessment to the NBB. If the undertaking has an appointment committee, it is appropriate for that committee to actively contribute to the assessment of suitability.

It is the responsibility of the undertaking's compliance function to ensure compliance with the legal requirements on suitability.

The undertaking is best placed to determine what specific expertise is required for a function within the undertaking.

In terms of procedure, the NBB expects undertakings to set down a detailed job description in writing clearly stating the way in which the suitability standard works in practice for each position that falls within the scope of the Insurance Supervision Law. It is recommended that undertakings should use the guidelines on assessment standards as laid down in this chapter, as a frame of reference for drawing up the function profiles.

The concrete level of evaluation depends on the function envisaged. Nevertheless, in all cases, the "due diligence" type assessment must cover all the criteria developed in this chapter, i.e.:

1. fitness:

- a. knowledge and experience;
- b. skills;
- c. professional behaviour (independence, conflicts of interest and availability);
- d. track record;
- e. for members of the board of directors and management committee, collective expertise;

2. propriety.

Undertakings should document the results of the suitability assessment against these criteria. Where there is concern as to the suitability of an applicant for a position within the board of directors or the management committee or as responsible person of an independent control function or as branch manager, an assessment of how that concern affects that person's suitability should be made.

Where the undertaking has completed the investigation and wishes to consider the person's application for the particular position, it is advisable to record this internal selection decision in writing. The decision should contain not only the selection decision but also any considerations upon which it is based. Where applicable, any agreements which have been reached in order to improve the person in question's fitness on certain points should also be mentioned. Selection decisions stating the grounds for them can be extremely useful as a source of information for the assessment of suitability which is subsequently carried out by the NBB.

The minutes of the board of directors (or, where appropriate, of the appointment committee) relating to the internal selection of the person concerned must be communicated to the NBB as an annex to the suitability file. Both the undertaking and the person who is the subject of the suitability assessment must ensure that the information subsequently provided to the NBB is complete and accurate.

4.5.3 IN THE PERFORMANCE OF DUTIES: PROCEDURE FOR REASSESSMENT OF INDIVIDUAL AND COLLECTIVE SUITABILITY

As already indicated above, the suitability requirements is of an ongoing nature. In order to ensure ongoing suitability of persons falling within the scope of the Insurance Supervision Law, it is important that undertakings should develop reassessment procedures specifically designed to ensure that such persons remain fit. These procedures for reassessing individual and collective fitness should be implemented not only periodically but also when there are particular signals.

1) Periodic reassessment

The board of directors or the appointment committee where there is one should assess the composition and functioning of the governing and management bodies, inter alia as regards individual and collective suitability of the members. To this end, the board of directors or appointment committee should periodically evaluate on the one hand the structure, size, composition and performance of the statutory governing body, and on the other hand the knowledge, skills, experience and degree of involvement of, on the one hand, the individual members of the statutory governing body, and, on the other hand, the statutory governing body as a whole.

This periodic reassessment should take place once a year for significant undertakings and every two years for less significant undertakings. The main principles of the reassessment procedure should be reflected in the suitability policy.

If, as a result of periodic reassessment, significant shortcomings are identified with regard to the individual or collective suitability of the persons concerned, undertakings must take corrective action. Corrective measures may include, as an indication, adapting responsibilities between members of

the management committee or the board of directors; replacing certain members; recruiting additional members; possible measures to mitigate conflicts of interest; training certain members; etc.

Furthermore, as soon as shortcomings have been identified, undertakings must inform the NBB immediately. It is the primary responsibility of the person concerned and the undertaking to report without delay to the supervisory authority any new fact likely to influence suitability: it is their responsibility to provide the NBB with correct and complete information at all times so that the latter can form a correct picture of the suitability of the person concerned. Failing this, the NBB may, where appropriate, disqualify the person concerned, which implies that the person is no longer considered fit⁴⁰.

2) Reassessment on the basis of particular signals

In addition to a periodic reassessment, whenever the undertaking is informed of an element that is likely to have an influence on the individual suitability assessment of a person subject to fitness and propriety assessment or the collective suitability assessment of a managing body, it must carry out an ad hoc reassessment and inform the NBB immediately.

4.6 ASSESSMENT OF SUITABILITY BY THE NBB

4.6.1 MOMENT OF THE ASSESSMENT

The NBB shall assess the suitability of persons who wish to perform a function which falls within the scope of the Insurance Supervision Law prior to the actual taking up of the function. However, the NBB will also carry out an assessment if facts and/or circumstances give cause to do so.

The effective scope and details of the assessment vary according to when it takes place.

4.6.1.1 Before taking up a position

This assessment takes place either when the application for authorisation or registration of an undertaking is made or when an already authorised or registered undertaking has plans to appoint a person to a position which falls within the scope of the Insurance Supervision Law. In this latter case, it may be either a person who already works at the undertaking or a person from outside.

The assessment of suitability before the position is taken up relates to a very specific stage in the process.

4.6.1.2 In the performance of duties

As part of the ongoing prudential supervision carried out by the NBB, an analysis is also carried out to ensure that the persons subject to the Insurance Supervision Law are fit and proper whenever there are new facts and/or changes in circumstances which provide reasonable grounds for a reassessment or on a periodic basis.

1) Reassessment on the basis of particular signals

The NBB must reassess fitness and propriety of the persons covered by the Insurance Supervision Law whenever there are new facts and/or changes in circumstances which provide reasonable grounds for a reassessment. It is incumbent upon the NBB to determine when there are reasonable grounds.

In practice, the NBB will rely on any signals which shed doubt about the way that a person operates and can thus provide grounds for checking whether the person in question is sufficiently suitable to hold the position in question. These signals can be very different. A few examples of possible signals are: the issuing of criminal, civil, administrative or disciplinary proceedings, or developments in proceedings which are already underway, an unexpected change in the undertaking's results, concerns about the business model applied, concerns about the honest and controlled management

⁴⁰ See inter alia the explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, 2017-2018, Doc. 54 - 2682/001, p. 24.

of the undertaking, the extension of the undertaking's activities abroad, the subcontracting of (key) tasks, the systematic lack of a reaction or a delayed reaction to requests for information made by the supervisory authority, significant staff turnover, poor administration, (repeated) breaches of laws and regulations. Where applicable, it is a combination of signals which cause the supervisory authority to doubt a person's suitability.

When criminal, administrative, civil or disciplinary proceedings are issued against a person who holds a position and this is likely to cast doubt upon whether this person is fit and proper, the NBB will first of all approach the statutory governing body of the undertaking. It will remind the latter of its responsibilities and will ask it – in the light of the accusations made against the person in question – if it wishes to maintain its trust in this person. The undertaking must obtain full transparency from the person in question with regard to the accusations against him or her. The supervisory authority will carry out its own assessment and will take account of the reasoning of the statutory governing body and of the nature of the accusations.

If the NBB carries out a reassessment, it will essentially deal with the actions and operation of the person in question in practice. For this purpose, the NBB uses factual data gathered over a given period of time (mode of operation), so that the assessment is less of a snapshot. Amongst other things, the NBB will check how the person in question has applied his or her knowledge and skills, and to what extent the taking of decisions and the management of the undertaking shows professional behaviour (or not).

A reassessment may relate to one or more people at the same time. It will be tailored to the specific circumstances, in the sense that it will depend upon the grounds for it. If concerns about the undertaking culture have provided grounds for a reassessment, it is possible that several members of the statutory governing body of the undertaking may be involved. If, on the other hand, the grounds for the assessment are concerns about specific activities in which the undertaking engages (a specific product or market, or a particular internal control line) and which are part of a specific person's tasks, it will probably focus on this person in particular.

It has already been mentioned above that the arrival of a new director does not automatically lead to the reassessment of members who already sit on the undertaking's board of directors. A change to the composition of the statutory governing body, whether or not this follows the arrival of a new person, may on the other hand be reasonable grounds for a reassessment. Amongst other things, this may be the case if a person who has a certain expertise resigns and no (temporary) replacement is sought or found, or if the people sitting on the statutory governing body change their positions (e.g. if they switch from non-executive to executive director status).

2) Reassessment in the absence of particular signals

The NBB may also reassess the individual and collective suitability of the members of the managing bodies and the individual suitability of the responsible persons of independent control functions in the absence of specific signals in accordance with its general risk-based approach. In practice, such reassessment can take various forms: periodic checks at a frequency to be determined, reassessment during an inspection (governance or other), reassessment carried out as part of a horizontal thematic analysis, etc.

4.6.2 ASSESSMENT PROCEDURE

4.6.2.1 Before taking up a position

In accordance with the Insurance Supervision Law, undertakings must inform the NBB in advance of any proposed appointment, reappointment, or dismissal of the persons who fall within the scope of the Law. When a person changes position, this must be considered as a new appointment, and it is also considered to be a change of position when there is a significant new distribution of tasks within the statutory governing body.

The NBB aims to provide its approval of the proposed appointment within a reasonable period of time, preferably and in principle within one month. However, given the fact that suitability assessments can, depending on the case, lead to additional verifications (e.g. conducting 1 or even several interviews, consulting other [foreign] supervisors, consulting specified references, requesting additional information from judicial or other authorities, etc.), which in turn involves additional

analytical work for the supervisor, this may lead the specific examination of the file to also require more time. In such cases, the NBB applies the guideline that a decision must be communicated no later than within 4 months.

These indicative time frames start from the moment when the duly completed forms are sent to the NBB; they are suspended when the NBB requires additional information from the undertaking until the information is provided. Undertakings are asked to take these indicative time frames into account in order to send the written documentation using the standard forms in good time.

In principle, the appointment may not become effective and may not be made public until the NBB has made a ruling. The undertaking may contact the NBB through the usual channels shortly after sending the duly completed forms in order to find out whether or not the NBB considers the case as time-consuming. If the case is considered to be time-consuming, the appointment may, in exceptional circumstances, take place subject to a condition precedent, and may be made public provided that this condition is mentioned.

When a proposed appointment relates to a person who is being proposed for the first time for a position which falls within the scope of the Law, the NBB first consults the FSMA. The FSMA sends any relevant factual information to the NBB within one week from receipt of the request for an opinion.

4.6.2.2 In the performance of duties

An assessment must come with firm guarantees but it is up to the supervisory authority to examine whether a reassessment of a given person is appropriate. As a prudential supervisory body, the NBB has an ongoing competence to carry out both a suitability reassessment of individual and collective skills.

Thus the NBB may decide to reassess the suitability of the managers concerned following findings or analyses made in the course of its supervision of a particular undertaking. Such reassessment may, for example, result from reports or findings showing a negative or reluctant attitude towards generally accepted good practices (e.g. regarding the transparent and complete flow of information to the statutory governing body), repeated or deliberate non-compliance with supervisory recommendations, an established lack of availability to attend meetings, provision of incomplete or incorrect information to the supervisor or shareholders, a non-cooperative attitude towards the supervisor, etc.⁴¹.

As has already been pointed out above, the stage in the process and the grounds for a reassessment will always depend upon the specific circumstances, so it is impossible to provide an exhaustive list of the cases in which a reassessment may or may not take place; it is up to the NBB to make the final appraisal.

In the event of a reassessment of a person, the NBB shall indicate to the undertaking what information it wishes to receive. The NBB may request information on periodic reviews carried out by the undertaking.

When the NBB carries out a reassessment, it also calls upon the person to take part, and if the interested party refuses to accede to this request, the NBB first of all informs the undertaking of this. If this still does not lead to a satisfactory result, the supervisory authority may then order measures which are legally binding upon the undertaking; in extreme cases, it may even order the undertaking to replace the person.

Depending on the specific circumstances, an undertaking's breach of prudential or other regulation may support the supervisory finding that a person is no longer fit. This may be the case, for example, where it is established that the person has failed to take the necessary steps that may reasonably be expected to prevent, remedy or bring to an end the breach of the rules.

⁴¹ See inter alia the explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, 2017-2018, Doc. 54 - 2682/001, p. 24.

4.6.3 INFORMATION FOR THE ASSESSMENT TO BE CARRIED OUT BY THE SUPERVISORY AUTHORITY

4.6.3.1 Sources of information for the supervisory authority

In order to obtain as full a picture as possible of a person's suitability, the supervisory authority will use a wide range of sources of information, such as inter alia:

- the current standard form, duly filled in and signed by both the undertaking and the person (see the annexe), including any information which the supervisory authority may, if necessary, obtain from any references mentioned on it;
- the suitability assessments carried out by the undertaking, including the assessment of the collective composition of the managing body concerned (see Part B of the suitability form and transmission of the minutes of the board of directors on the appointment concerned);
- any information and background which the NBB, as a prudential supervisory authority, may have;
- the undertaking's suitability, the function profile which the undertaking has drawn up for the position, and the board of directors' selection decision the minutes of which must be annexed to the suitability form;
- the opinions of the FSMA and/or other supervisory authorities;
- any information obtained from the judicial authorities;
- where applicable, the periodic reassessment of the person carried out by the undertaking (and recorded in writing), on the basis of the applicable function profile, including any considerations which led to this reassessment;
- any other information which the undertaking may have and which may be important for the purposes of assessing a person's fitness and propriety;
- any public information.

The NBB shall have the power to require any information that it considers necessary for the purpose of assessing the suitability of a person⁴². It is appropriate for undertakings to report important changes to their suitability / fit & proper policies to the NBB by default.

4.6.3.2 Deliberate withholding or incorrect transmission of information

The NBB expects the undertaking and the person who is to be assessed to send full, accurate information using the standard forms. If there is any doubt as to the relevance or importance of a piece of information, the information must be sent, or contact must be made with the NBB through the usual channels. Any convictions, of any kind whatsoever, must nevertheless always appear on the forms, and it is up to the supervisory authority alone to judge the relevance or importance for the purposes of the fitness and propriety assessment.

If it is found that there has been a breach of this kind it will have a negative impact on the assessment by the supervisory authority. The NBB considers any failure to send relevant, important information as a supervisory antecedent. The NBB may detect this breach on the basis of other sources of information.

Any deliberate withholding of information will lead to an immediate refusal, given the inherent problem of trust relating to this breach.

4.6.4 INTERVIEW TECHNIQUE

For the purposes of an assessment of suitability, the NBB may choose to hold an interview with the person. It will do this, amongst other things, if it thinks that a discussion with the interested party is

⁴² Article 36/19 of the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium.

desirable or necessary in order to gain a full, accurate picture of his or her fitness and propriety. The NBB will thus apply a risk-based approach and will take account of the undertaking's nature, size and risk profile, the planned position and any other details which might raise questions about the information supplied by both the undertaking and the person. As a rule, an interview will always take place for new appointments to the function of CEO (or equivalent function) or chairman of the board of directors of the significant undertaking. In all other cases, interviews can also be used as a tool for assessing fitness and propriety, depending on specific needs. If concerns remain after the initial interview, a second specific interview may be held around the remaining concerns.

The interview panel shall consist of a minimum of two members. The composition of the panel will depend on the nature of activities and function the individual wishes to exercise, as well as on the nature, scale and complexity of the institution's risks and activities. If the post is CEO or chairman of the board of directors in a significant undertaking, at least one member of the panel must have sufficient seniority or hierarchical level. In all other cases, the NBB shall decide on the exact composition of the interview panel on an ad hoc basis. During this interview, the supervisory authority will check whether the picture which the undertaking has given regarding the person's fitness and propriety matches the way in which the person presents him or herself during the interview, where applicable taking into account any other supervisory information and background relating either to the undertaking or to the person.

The interview also gives the supervisory authority an opportunity to make sure that the interested party has been properly informed of both its own and the undertaking's expectations. Where applicable, the NBB will draw the undertaking's attention to areas (e.g. a lack of knowledge about a specific subject) where additional efforts need to be made.

In principle, the interview shall take place without the undertaking concerned being present, although the NBB may decide otherwise.

If the interview should raise or confirm any doubts about the applicant's suitability, or bring up a certain number of points which require improvement, the NBB will send this assessment of the interview in writing both to the chairman of the undertaking's statutory governing body and to the interested party.

When a person leaves a position, it can be especially useful for the NBB to conduct an "exit interview" in order to obtain further details about the circumstances in which the person is leaving the position or the governance of the undertaking in general.

4.6.5 RESULT AND CONSEQUENCES OF THE ASSESSMENT

Once the assessment of suitability is complete (either before or during the holding of a very particular position, as the case may be), the supervisory authority informs without delay both the undertaking of the result of the assessment and, where applicable, any underlying conclusions. In the communication which it sends to the undertaking, the NBB will make a clear distinction between the fit and proper parts of the assessment. If the assessment is negative, the person may contact the NBB for feedback.

Pursuant to the Insurance Supervision Law, the NBB decides whether to approve the proposal for appointment of the person concerned. The NBB may also decide that a positive decision is accompanied by recommendations, conditions or obligations. Because suitability is of an ongoing nature, the supervisor has the possibility to continuously monitor effective compliance with such recommendations, conditions or obligations and, if necessary, to carry out a reassessment (see point 4.6.1.2). Where concerns cannot be adequately addressed by means of these tools, a negative decision will need to be taken.

If the intended decision could adversely affect the rights of the appointees or the supervised entity, some fundamental principles and rights have to be observed:

- The NBB shall base its decision only on objections on which the persons who are the subject of the proceedings are able to comment;
- The NBB shall take into account all relevant circumstances and may hear witnesses and experts if it deems it necessary and take evidence;

- The appointee has the right to be heard.

4.6.5.1 Positive decision with recommendation

Where all the fit and proper requirements have been met, but an issue has been identified and needs to be addressed, the NBB may include recommendations or set out expectations in the fit and proper decision itself. The use of such non-binding instruments is also meant to encourage best practices in the undertakings and point to desirable improvements.

4.6.5.2 Positive decision with condition

The NBB may also impose conditions. A condition is a requirement imposed on the supervised undertaking (while it may also have direct implications on the appointee) in place of what would otherwise be a negative decision.

The NBB shall only impose a condition where this is necessary to ensure that the appointee satisfies the applicable fit and proper assessment criteria. Imposing a condition in such cases will be a more proportionate and less intrusive measure.

The NBB may impose conditions only if:

1. the NBB could adopt a negative decision but the shortcoming is easily remediable;
2. the condition is well-defined and can be fulfilled in a well-defined and relatively short time frame;
3. the content of the condition can be grounded on the basis of the assessment criteria as established in the Insurance Supervision Law and specified in this chapter.

The most common conditions include:

- an undertaking to follow specified training;
- divestiture of an external directorship or other function;
- for responsible persons of independent control functions (who are at a lower level than the management committee), probationary period at the end of which the NBB may decide whether or not to validate its initial positive decision. This means that, in this case, the insurance undertaking will have to appoint the person under a suspensive condition or appoint the person provisionally so that it can dismiss the person concerned from the post in the case that the NBB's assessment concludes that the person does not meet the suitability requirements for that post.

Where a conditional decision is issued, the undertaking must report to the NBB, in a timely manner, on the fulfilment of the condition.

Unlike non-compliance with an obligation or recommendation, non-compliance with a condition will automatically affect the fitness and propriety of the appointee, as failure to comply with a condition means that the appointee does not satisfy the applicable fit and proper assessment criteria.

4.6.5.3 Positive decision with obligation

The NBB decision can also include an obligation to provide specific types of information for the purposes of the ongoing fit and proper assessment or to take a specific action relating to fitness and propriety, affecting not the appointee but the whole supervised undertaking. Unlike a condition, non-compliance with an obligation will not automatically affect the fitness and propriety of the appointee.

The most common obligations include:

- reporting on pending legal proceedings;
- improvements required in written policies on conflicts of interest;
- improvements required in terms of collective suitability.

4.6.5.4 Negative decision and appeal

Where the conclusion of the suitability assessment carried out by the NBB is that the expertise and professional integrity of the person being assessed has not been sufficiently demonstrated and that it is not possible to remedy the deficiencies, the NBB will oppose the appointment or not approve the appointment of that person. The decision shall be notified to the undertaking concerned.

Due grounds for any negative assessment by the NBB relating to a person's fitness and propriety will always be given. In addition, the person concerned as well as the undertaking may contact the NBB for feedback. An appeal before the Council of State is also possible. The effective possibilities for appeal will always be specified in the notification letter.

Finally, it should be noted that the supervisor may also - irrespective of any formal positive, negative or conditional suitability decision – contact the institution to provide feedback on a submitted application. For example, if the institution should withdraw its application in the course of the supervisory authority's examination of the file, the NBB may - in the context of the institution's responsibility for assessing suitability (see point 4.3.1) on the one hand, and/or the broader governance perspective on the other - provide feedback on identified issues. Where necessary, the supervisor may also impose appropriate prudential measures to remedy certain deficiencies in the institution's suitability policy or governance.

5. NBB's standard forms

Assessments of suitability carried out by the NBB/ECB are based firstly on all of the information which must be sent by the institutions and persons who are to be assessed, and the NBB has designed a standard form for this purpose. This form allows financial institutions to inform and document the NBB/ECB, consistently and uniformly, about the expertise and professional integrity of persons who fall within the scope of the law.

When a standard form needs to be signed "by the institution in question", this should be understood as follows, subject to the provisions of the articles of association as regards representation of the statutory governing body:

- if the form concerns the chairman of the management body, it must be signed by two other non-executive directors;
- if the form concerns a member of the management committee or a responsible person of an independent control function, it must be signed by the chairman of the management body and the chairman of the management committee;
- if the form concerns the chairman of the management committee, it must be signed by the chairman of the management body;
- if the form concerns another member of the management body, it must be signed by the chairman of the management body.

5.1 THE TAKING UP OF THE POSITION

The first standard form concerns the taking up of a new position. It must be remembered that a change of position is also covered here.

The NBB has drawn up a specific standard form for each type of institution (Insurance and reinsurance, Bank "SI", Bank "LSI", and "other legal statuses"), which includes both the section on fitness and the section on propriety and must be signed by both the institution and the person in question. It is annexed to this handbook (see FORM 1 "NEW APPOINTMENT").

It should be stressed that the NBB will not start an assessment until it has received the duly completed standard form, which must be signed by both the person in question and the institution.

5.2 NEW ELEMENTS ABOUT THE FITNESS AND PROPRIETY OF A PERSON WHO ALREADY HOLDS A POSITION

Any new elements which might have an impact upon the fitness and propriety of a person subject to a suitability assessment must be sent to the supervisory authority without delay. The NBB provides a standard form for communicating such information (see **FORM 3 "NEW ELEMENTS"**), which must be signed by both the person in question and the institution.

5.3 LEAVING A POSITION

When a person leaves a position which requires a suitability assessment, the NBB wishes to receive some information about this. In this case a standard form must also be used (see **FORM 2 "EXIT"**), which must be signed by the institution.

In the event of the replacement of a person subject to a suitability assessment, two forms must be filled in: one concerning the person who is leaving the position (**FORM 2 "EXIT"**) and another concerning the person who wishes to take over in the position in question (**FORM 1 "NEW APPOINTMENT"**).

5.4 REAPPOINTMENT

When an institution wishes to reappoint a person to a position which requires a suitability assessment, a standard form also needs to be filled in (see **FORM 4 "REAPPOINTMENT"**), which must be signed by both the person in question and the institution.

ANNEXES

Annex 1: standard forms of the NBB (only available on www.nbb.be).