

POLISH FINANCIAL SUPERVISION AUTHORITY

Vice-Chairman
Wojciech Kwaśniak

DLB/DLB_WL1/700/54/1/2016

Warsaw, 19 May 2016

Management Boards and Supervisory Boards of domestic banks

Dear Sirs,

The Act of 5 August 2015 on Macroprudential Supervision over the Financial System and Crisis Management in the Financial System, implementing the solutions provided for in CRD IV, introduced to the Banking Law Act (Article 22aa) new requirements that should be met by the members of the management boards and supervisory boards of banks.

The requirements include:

- 1) qualifications, i.e. members of the management board and supervisory board must possess sufficient knowledge, skills and experience to perform their functions and duties and to safeguard proper performance of these duties,
- 2) limited number of directorships that may be held at the same time in different entities by one member of the management board or one member of the supervisory board,
- 3) ability to act with independence of mind,
- 4) adequacy from the point of view of the need to secure the necessary qualifications of a given body as a whole (collective qualifications).

Pursuant to the Banking Law Act, the responsibility for ensuring compliance with these requirements lies with the bank. In accordance with Article 22(2) and Article 22a(1) of the Banking Law Act, when appointing or dismissing members of the management board and members of the supervisory board, the annual general meeting and the supervisory board respectively take into account the assessment of compliance of the members being appointed or dismissed with the requirements in question. It should be stressed that the obligation to ensure that members of the management board and members of the supervisory board comply with the requirements set out in Article 22aa of the Banking Law Act is of continuous nature, which means that the bank's role cannot be limited only to making the assessment prior to the appointment or dismissal of members of its governing bodies. The principles of exercising the obligations imposed on banks in the discussed scope, including in particular the criteria for the assessment of compliance with the qualification requirements were set out in the Guidelines on the assessment of the suitability of

members of the management body and key function holders, published on 22 November 2012 by the European Banking Authority. Banks were recommended to follow these guidelines in a letter of 17 April 2013 from the Vice-Chairman of the KNF (ref. no. DLB/DLB_WL1/703/2/1/2013). Banks should adhere to these guidelines until the KNF adopts Recommendation Z, whose draft was presented for public consultation in December 2015.

When analysing the basic principles related to the bank's assessment of compliance with the qualification requirements set out in the Banking Law Act for members of the management board and members of the supervisory board, first of all it should be noted that the bank should make the assessment in the following situations:

- 1) when it intends to entrust the position of member of the management board or member of the supervisory board, the candidates should be assessed,
- 2) when the scope of duties of a given member of the management board or member of the supervisory board changes,
- 3) every time when there are reasonable doubts as to the qualifications of a given member of the management board or member of the supervisory board.

The reassessment of one person may consist of only a verification of whether this person still complies with the qualification requirements if specific circumstances important from the point of view of the assessment (e.g. change in the scope of duties) arise. The responsibility for proper selection and assessment of compliance with the requirements set out for members of the supervisory board and members of the management board lies with the bank's bodies competent for taking staffing decisions, i.e. the annual general meeting (meeting of representatives) and the supervisory board respectively. Of course this does not mean that the entire assessment process must be conducted by these bodies alone. If possible and where it is in accordance with the organisational solutions adopted at the bank, the process may also involve the participation of internal units of the bank (e.g. HR, compliance unit, management board bureau) and external companies (advisory firms). The key issue is to ensure that the bodies responsible for the assessment (bodies taking decisions on the assessment) are provided with accurate, exhaustive and well-documented materials. That is why situations and tools that could raise doubts about the completeness or accuracy as well as impartiality of the assessment should be avoided. In particular, the assessment should not be based only on self-assessment (mutual assessment) or declarations of members of a given body and emphasis should be placed on making the verification of the collected information and evaluations as objective as possible. Also entrusting the assessment solely to the subordinates of the assessed persons does not seem well in line with the principles of preventing conflicts of interest. The issues raised above should be settled and described in detail in the respective internal regulations of the bank.

Please note that in accordance with the aforesaid EBA guidelines and the draft of Recommendation Z, the key function holders (or prospective key function holders) are also subject to a similar assessment.

Pursuant to Article 22(3) and Article 22a(2) of the Banking Law Act, forthwith upon appointing the supervisory board or the management board or upon changing their composition, the bank is

obliged to notify the KNF of this fact and about the compliance of the persons mentioned in the notification with the requirements set out in Article 22aa of the Banking Law Act. The provision cited above stipulates expressly that the notification of compliance should result from an assessment made by a competent body of the bank. Therefore, the notification cannot be limited only to a declaration of compliance with the requirements or information about positive assessment result. The notification should present the circumstances and criteria taken into account in the assessment process as well as the circumstances and criteria omitted in the process and a justification of the assessment result in the light of these circumstances and criteria. Only when the notification provided to the KNF concerns a dismissal of a member of the management board or a member of the supervisory board which does not result from a re-assessment or when the result of the assessment made in connection with the dismissal does not differ from the previously notified assessment, it is admissible to limit the notification to a statement saying that the previous assessment of the person in question remains unchanged. Bearing in mind the fact that the assessment of compliance with the requirements set out in Article 22aa of the Banking Law Act should be made prior to appointing a given person as member of the management board or member of the supervisory board, in the case of functions that require KNF's approval (i.e. president of the management board of the bank or member of the management board responsible for risk relevant to the bank's operations) the assessment should also be made prior to applying to the KNF for the approval, while the notification referred to above should be appended to the application.

This letter is addressed to the management boards and supervisory boards of all domestic banks; however, its contents should be communicated to the annual general meetings or meetings of representatives of the banks at the next opportunity. Banks affiliating cooperative banks are kindly requested to forward this letter to the affiliated cooperative banks.

Kind regards,

Vice-Chairman of the Polish Financial Supervision Authority

Wojciech Kwaśniak