



# THE POLISH FINANCIAL SUPERVISION AUTHORITY

Deputy Chairman  
Wojciech Kwaśniak

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Warsaw, 17 April 2013

To the Management Boards and Supervisory  
Boards of domestic banks

Dear Sirs,

On 22 November 2012 the European Banking Authority (EBA) published its *Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders* (hereinafter — the Guidelines)<sup>1</sup>. This document specifies the process, criteria and minimum requirements for assessing the suitability of management board and supervisory board members and persons holding key functions in a credit institution (a bank). **According to the Guidelines, their regulations should be implemented by supervisory bodies and credit institutions, according to the principle of *comply or explain*, by 22 May 2013.**

The scope of application of the Guidelines is broad and does not cover merely an assessment of persons managing a credit institution (in the Polish conditions, the management board of a bank) but also an assessment of persons appointed in a credit institution to supervise the managing (a bank's supervisory board), as well as an assessment of key function holders in the day-to-day management of a credit institution (e.g. heads of a bank's organisational units responsible for risk management, liquidity management, controlling or internal audit).

According to the Guidelines, the suitability subject to assessment pertains to the reputation of persons being assessed and to their professional qualifications. Detailed assessment criteria are given for the aspects of suitability mentioned with regard to supervisory board and management board members. The Guidelines' addressees are, in principle, the appropriate supervisory authorities of Member States, although their regulations are addressed both to those authorities and to the credit institutions (banks) they supervise. It must be emphasised that the Polish Financial Supervision Authority's current supervisory practice regarding the issues regulated by the Guidelines is, to the extent that national regulations make this possible, basically consistent with the Guidelines. This applies in particular to processes, criteria and minimum assessment requirements which are applied when considering cases of granting consent to the appointment of a president (member) of the management board of a bank. Because of applicable provisions of Polish law, the competencies of the Polish Financial Supervision Authority currently do not include assessing the suitability of members of supervisory boards or key function holders in banks. However, in the light of the proposed legal solutions at EU level (CRD IV), this state of affairs will probably change in the future. The Guidelines'

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<sup>1</sup> In accordance with the Guidelines, "suitability" is understood to mean an evaluation of both a person's reputation and their professional qualifications. Moreover, in keeping with the Guidelines and the Polish conditions, in the further part of this letter "management body" has been replaced by "management board and supervisory board".

regulations addressed to banks will, however, be formally implemented by the Polish Financial Supervision Authority in an appropriate recommendation concerning the best practices of sound and prudent bank management, which will also cover, apart from the document discussed, the *EBA Guidelines on Internal Governance - GL 44*. This recommendation is expected to be issued in the second half of this year and will – in line with the PFSA’s practice to date – be preceded by consultations with the banking sector.

Until the proposed recommendation comes into effect, banks should pay particular attention to the basic questions described below which are regulated in the Guidelines, concerning the solutions in banks regarding internal governance, intended to ensure sound and prudent bank management.

The Guidelines emphasise that banks above all are responsible for assessing the suitability of management board and supervisory board members as well as key function holders, although the suitability of management and supervisory board members should be both individual – in relation to each particular member of those bodies – and collective – in relation to the management board or supervisory board as a whole. Banks should also ensure appropriate identification of key functions whose holders need to be assessed for their suitability, and should define the assessment criteria for those functions. An assessment should be made both at the stage of selecting management and supervisory board members and key function holders (appointing, employing, entrusting with obligations etc.) and in the execution of their obligations. The assessment should also be made according to the principles and procedure specified in the bank’s internal regulations (policies).

The suitability assessment should be of crucial importance in selecting management and supervisory board members and key function holders. This means that a particular person should be assessed prior to being appointed to the management or supervisory board or entrusted with a key function, and also that no one should be appointed or entrusted if the suitability assessment is negative. With regard to existing management or supervisory board members or key function holders in a bank, a re-assessment should be made each time circumstances occur that justify verifying such a person’s suitability, especially when their scope of duties changes, or information is disclosed which could negatively affect their reputation, or when internal or external regulations specifying the minimum qualifications required to hold a particular function are amended. If the re-assessment of the suitability of a management or supervisory board member or key function holder is negative, the bank should immediately inform the supervision authority about this and take measures to restore the situation where all management and supervisory board members and key function holders meet the suitability criteria. It is a bank’s duty to notify those bodies appointing or recalling supervisory board members (the general meeting or meeting of representatives in the case of a cooperative bank, where that body replaces the general meeting) about the requirements concerning the suitability of supervisory board members.

As stated above, the assessment of suitability should refer both to professional qualifications and the reputation of the persons being assessed. The assessment of professional qualifications should take into account the bank’s current situation – its profile and the range and scale of its operations. Moreover, the expected level and character of professional qualifications could differ in the case of management board members as opposed to supervisory board members. The assessment of a person’s reputation has an absolute character to it, in the sense that management and supervisory board members and key function holders should demonstrate their good reputation, irrespective of the bank’s current conditions or the nature of the position or function held in the bank.

This letter is addressed to the management and supervisory boards of all domestic banks. However, its content should also be made known as soon as possible to those banks' ownership bodies, i.e. general meetings or meetings of representatives. Banks affiliating cooperative banks are asked to pass on the content of this letter to the affiliated cooperative banks.

I would also like to ask you to send – by 22 May 2013 – information on solutions in operation or planned in your banks (along with a time schedule for implementation) aimed at carrying out the regulations of the Guidelines described above, or to explain reasons for not implementing them.

Yours faithfully,  
Deputy CHAIRMAN  
of the Polish Financial Supervision Authority  
*Wojciech Kwaśniak*