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Regulation No 343

## **Regulation on the Assessment of the Suitability of Credit Institution and Investment Firm Officials**

Issued pursuant to  
Paragraph two of Section 50 and  
Paragraph 1.<sup>1</sup> of Section 57 of the Credit Institution Law and  
Paragraph eight of Section 8 and Paragraph six of  
Section 45 of the Law on Investment Firms

### **1. General Provisions**

1. The Regulation establishes:

1.1. the procedure for the assessment of officials by credit institutions and investment firms registered in the Republic of Latvia and branches of foreign credit institutions, and branches of investment firms (hereinafter jointly referred to as the "institution");

1.2. the corrective measures to be applied by the institutions in cases where the officials referred to in Paragraph 1.1 of this Regulation do not meet the requirements for the position in question.

2. The terms used in the Regulation:

2.1. official – a member of the executive board or the supervisory board or a key function holder;

2.2. key function holder – a person (employee) whose position enables him/her to exercise significant influence over the activities of the institution, but who is not a member of the institution's supervisory board or executive board (e.g. managers of activities specific to the institution, managers of branches or subsidiaries established by the institution in another Member State, managers of a branch of a foreign credit institution and a branch of an investment firm, heads of support and internal control functions, including the risk manager, the person responsible for conformity control of the operation, the head of the internal audit service, the person responsible for fulfilment of the requirements for the prevention of money laundering and terrorism and proliferation financing, a procurement holder, the company controller);

2.3. assessment of suitability – an assessment of a person's suitability for the requirements of the position, taking into account the person's reputation, knowledge, skills, and experience, individually and collectively, including the person's ability to perform his/her duties with integrity and independence of judgement, and the person's ability to devote sufficient time to the performance of his/her duties;

2.4. CRD institution – a credit institution and an investment firm referred to in Article 1(2) and (5) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (hereinafter referred to as "Regulation 2019/2033");

2.5. relevant institution – a credit institution and an investment firm, except a small and non-interconnected investment firm as defined in Section 32 of the Law on Investment Firms;

2.6. significant CRD institution – another systemically important institution or a global systemically important institution as defined under the Credit Institution Law, as well as an investment firm referred to in Article 1(2) and (5) of Regulation 2019/2033.

3. The institution shall comply with the requirements of this Regulation on an individual basis and at the level of the consolidation group or on a sub-consolidated basis in accordance with its organisational structure and the size, nature, complexity, and specificity of its activities.

4. A CRD institution which is considered to be the parent company shall ensure that appropriate policies and procedures are in place for the assessment of the suitability of relevant officials in all subsidiaries included in the consolidation group in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (hereinafter referred to as the "consolidation group"), taking into account the requirements of the laws and regulations of the country in which the relevant subsidiary is situated, and shall supervise their implementation, including ensuring the exchange of information between the companies in the consolidation group on the persons for whom an assessment of suitability is carried out, taking into account the organisational structure and the size, nature, complexity, and specificity of the activities of each subsidiary, as well as the laws and regulations applicable to it. The CRD institution which is considered to be the parent company and the subsidiaries that are part of the consolidation group shall ensure and monitor the implementation of the relevant group-level policies also in their subsidiaries that are established abroad or that are not bound by the laws and regulations transposing the requirements of the 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, taking into account Paragraph two of Section 50.<sup>9</sup> of the Credit Institution Law.

5. The institution shall assess the suitability of an official in accordance with the criteria and guiding principles set out in this Regulation, taking into account the requirements and criteria set out in the Credit Institution Law, the Law on Investment Firms, and the laws and regulations on the establishment of the management system .

6. The assessment of the suitability of officials is the responsibility of the institutions, without prejudice to the assessment carried out by Latvijas Banka for supervisory purposes.

## **2. Assessment of Suitability**

### **2.1. General principles for the assessment of suitability**

7. The institution shall ensure that its officials have at all times impeccable reputation, the necessary competence and sufficient knowledge, skills, and experience to carry out their daily duties in accordance with the standards set out in the institution's corporate values.

8. The institution shall ensure that the members of the supervisory board and executive board act independently (independence of mind) in the performance of their duties, taking into account the criteria referred to in Paragraph 54 of this Regulation.

9. In assessing the independence (being independent) of the members of the supervisory board, the institution shall take into account the requirements for independent members of the supervisory board set out in the laws and regulations on the establishment of the management system, as well as the criteria referred to in point 89 of Guidelines EBA/PN/2021/06; ESMA35-36-2319 of 2 July 2021 of the European Banking Authority and the European Securities and Markets Authority "Guidelines on the assessment of the suitability of members of the management body and key function holders" (hereinafter also referred to as the "Guidelines"). The institution shall carefully analyse any situation referred to in the criteria which does not in itself exclude the possibility of independence of a member of the supervisory board.

10. The institution shall carry out an assessment of suitability of officials before they take up their duties.

11. The institution shall request from the officials information confirming their compliance with the requirements for the performance of their duties and with the criteria and guiding principles set out in this Regulation.

12. The institution shall ensure that officials are individually suitable for the duration of their duties.

13. The institution shall ensure that the members of the supervisory board and executive board are collectively suitable and have sufficient knowledge, skills, and experience to be familiar with the types and specificities of the institution's activities and risk strategy.

14. Subject to Paragraphs 12 and 13 of this Regulation, the institution shall monitor the suitability of officials on an ongoing basis.

15. Where the institution becomes aware of information that raises doubts about the knowledge, experience, or reputation of an official, the institution shall assess how that person's suitability is and may be affected, taking into account all known and relevant information for the assessment of suitability about the relevant events or circumstances, irrespective of the time and place in which they occurred.

16. The institution shall document the assessment of the individual and collective suitability of the members of the supervisory board and executive board, as well as the assessment of the suitability of key function holders and the results thereof.

## **2.2. Assessment of the suitability of members of the supervisory board and executive board**

17. The institution shall carry out an initial assessment of the suitability of the members of the supervisory board and executive board in the following cases:

17.1. before an application is submitted to Latvijas Banka for a licence to commence the operation of the institution;

17.2. upon nominating a new member of the supervisory board or executive board, including in the context of an acquisition or increase of a qualifying holding.

18. When assessing the individual suitability of the members of the supervisory board and executive board, the institution shall assess the persons':

18.1. reputation;

18.2. suitability of the knowledge, skills, and experience to perform the duties of the position;

18.3. ability to act in accordance with the institution's corporate values and standards of professional conduct and ethics, including the ability to act independently to critically assess and, where necessary, challenge decisions taken and to effectively oversee the decision-making process, insofar as this is relevant to the specific duties of the member of the supervisory board or executive board;

18.4. ability to devote sufficient time to the performance of their duties (including within committees), but a significant CRD institution shall additionally assess the compliance of the limitations on the number of positions of the members of the supervisory board and executive board with the requirements of Section 26.<sup>1</sup> of the Credit Institution Law and Section 9 of the Law on Investment Firms.

19. The institution shall take into account the specific eligibility requirements of each position when assessing the suitability of the members of the supervisory board and executive board, which shall be reflected in the process of the assessment of suitability. In assessing the individual compliance of each member of the supervisory board and executive board with the criteria referred to in Paragraph 18 of this Regulation, the institution shall take into account that, for each of the criteria, the requirements for a member of the supervisory board may be different from those for a member of the executive board.

20. The institution may use the template in Annex 1 to the Guidelines to carry out the assessment of the collective suitability of the members of the supervisory board and executive board.

21. When assessing the individual suitability of the members of the supervisory board and executive board, the institution shall simultaneously assess the collective suitability of the members of the supervisory board and executive board and shall take into account the institution's policy on diversity in the composition of the supervisory board and executive board.

22. The institution shall reassess the individual suitability of the members of the supervisory board and executive board whenever:

22.1. this becomes necessary due to the occurrence of certain circumstances or events (e.g. when the supervisory board or executive board member concerned takes up new duties or significant tasks or when there are reasonable concerns about the individual or collective unsuitability of the supervisory board or executive board members concerned, including a significant change in the reputation of the supervisory board or executive board members concerned or of the institution as a whole, or the non-compliance of the supervisory board or executive board members concerned with the institution's policy for preventing conflicts of interest, or when the nature and complexity of the institution's activities change);

22.2. a member of the supervisory board or executive board is re-elected;

22.3. there is a change in the duties to be performed by a member of the supervisory board or executive board or in the competence required to perform those duties, or new members of the supervisory board or executive board are nominated for appointment, or areas of competence and duties are reallocated or otherwise changed among members of the supervisory board or executive board;

22.4. it is necessary to ensure the periodic assessment of the individual suitability of the members of the supervisory board and executive board referred to in the laws and regulations on the establishment of the management system;

22.5. there are reasonable grounds to suspect that the institution has been or is being involved in money laundering and terrorism and proliferation financing, or an attempt to engage in such activities, or that the institution is at increased risk of being involved in such activities, in particular in situations where the institution:

22.5.1. has failed to put in place an adequate internal control system to monitor and mitigate the risks of money laundering and terrorism and proliferation financing (e.g. as identified by supervisory findings in on-site or off-site inspections or supervisory dialogue, or as indicated by sanctions imposed);

22.5.2. has breached the requirements for the prevention of money laundering and terrorism and proliferation financing in the last five years, as a result of which the supervisory authority has imposed sanctions or administrative measures on the institution;

22.5.3. has substantially changed its economic activity or business model and, as a result of such activities, the institution's risk of money laundering and terrorism and proliferation financing has increased significantly.

23. The institution shall reassess the collective suitability of the members of the supervisory board and executive board whenever:

23.1. an individual member of the supervisory board or executive board ceases or commences his/her duties for the institution or is re-elected, or has a change in the scope of his/her duties or responsibilities within the supervisory board or executive board;

23.2. this becomes necessary due to the occurrence of certain circumstances or events, such as a change in the nature, complexity, or specificity of the institution's activities, a significant change in the institution's risk strategy, or a significant structural change in the institution or the consolidation group of which it is a member;

23.3. there is a change in the duties to be performed by a member of the supervisory board or of the executive board or in the competence required to perform those duties, or new members of the supervisory board or of the executive board are nominated for appointment, or areas of competence and duties are reallocated or otherwise changed among members of the supervisory board and of the executive board;

23.4. it is necessary to ensure the periodic assessment of the collective suitability of the members of the supervisory board and executive board referred to in the laws and regulations on the establishment of the management system;

23.5. there are reasonable grounds to suspect that the institution has been or is being involved in money laundering and terrorism and proliferation financing, or an attempt to engage in such activities, or that the institution is at increased risk of being involved in such activities, in particular in situations where the institution:

23.5.1. has failed to put in place an adequate internal control system to monitor and mitigate the risks of money laundering and terrorism and proliferation financing (e.g. as identified by supervisory findings in on-site or off-site inspections or supervisory dialogue, or as indicated by sanctions imposed);

23.5.2. has breached the requirements for the prevention of money laundering and terrorism and proliferation financing in the last five years, as a result of which the supervisory authority has imposed sanctions or administrative measures on the institution;

23.5.3. has substantially changed its economic activity or business model and, as a result of such activities, the institution's risk of money laundering and terrorism and proliferation financing has increased significantly.

24. Where an institution carries out an assessment of suitability in the cases set out in Paragraphs 22.1, 22.3, 22.5, 23.2, 23.3, or 23.5 of this Regulation, it may do so in a limited

manner based on an assessment of whether the event giving rise to the reassessment of suitability has affected the individual and collective suitability of the member of the supervisory board or executive board.

25. Deficiencies in the collective suitability of the members of the supervisory board or executive board (or the committees they establish) are not sufficient grounds to conclude that any individual member is unsuitable for office.

26. The institution shall take into account the individual and collective performance of each member of the supervisory board and executive board, as well as relevant events requiring a reassessment of suitability, when ensuring the ongoing monitoring of the individual and collective suitability of the members of the supervisory board and executive board.

27. In assessing the individual or collective performance of the members of the supervisory board and executive board, the supervisory board or the nomination committee, if one has been established, shall specifically assess:

27.1. the effectiveness of the working processes of the supervisory board and executive board, including the effectiveness of information exchange and management reporting, taking into account the reports provided under the internal control system and any proposed follow-up actions or recommendations;

27.2. the effective and prudent management of the institution, including whether the members of the supervisory board and executive board have acted in the best interests of the institution, while ensuring compliance with the requirements for the prevention of money laundering and terrorism and proliferation financing;

27.3. the adequacy of the number of meetings of the supervisory board and executive board, the level of participation, the time devoted, and the intensity of involvement in the meetings;

27.4. the weaknesses identified in relation to individual and collective suitability, taking into account the institution's business model, risk strategy, and changes thereto;

27.5. the ability of the members of the supervisory board and executive board to act independently, including the requirement that decision-making is not dominated by one person or group of persons;

27.6. compliance of the members of the supervisory board and executive board with the institution's policy for preventing conflicts of interest;

27.7. compliance of the composition of the supervisory board and executive board with the objectives set out in the institution's diversity policy;

27.8. events that may have a significant impact on the individual or collective suitability of the members of the supervisory board and executive board, including events relating to changes in the institution's business model or strategy or significant structural changes in the institution or the consolidation group;

27.9. reasonable suspicion that money laundering, terrorism and proliferation financing, or other financial crimes are being or have been committed, or that there is an increased risk of such activities in relation to the institution, including following such findings by internal or external auditors or Latvijas Banka, or another competent institution regarding the institution's control system for the prevention of money laundering and terrorism and proliferation financing and its adequacy.

28. In assessing the individual or collective performance of the members of the supervisory board and executive board in accordance with Paragraph 27 of this Regulation, the institution shall analyse all information at its disposal and take into account the duties and reporting lines assigned to the member of the supervisory board or executive board within the institution and, where applicable, the group, in order to determine whether any material fact or finding that there is no link between their individual role and duties on the supervisory

board or executive board should apply to one or more responsible members of the supervisory board or executive board. In this case, the duties assigned to a member of the supervisory board or executive board shall be determined taking into account all relevant documents, including governance policies and procedures defining responsibilities and reporting lines, the available results of the assessment of suitability, and additional information provided, job descriptions, as well as minutes of meetings of the supervisory board, executive board, and committees.

### **2.3. Assessment of the suitability of key function holders**

29. The institution shall identify key function holders in accordance with the relevant regulatory requirements and the nature, complexity, and specificity of the institution's activities.

30. The institution shall carry out an assessment of the suitability of key function holders before their appointment and, where necessary, repeatedly (e.g. where the institution has doubts about the knowledge, experience, or reputation of the key function holder or about such a person in relation to an event, including a change in the duties to be performed or in the competence required to perform them).

31. The institution shall carry out an assessment of the suitability of key function holders in the following cases:

31.1. before an application is submitted to Latvijas Banka for a licence to operate as an institution;

31.2. upon nominating a new key function holder;

31.3. whenever it becomes necessary due to the occurrence of certain circumstances or events (e.g. where there are reasonable concerns about the unsuitability of a key function holder, including a material change in that person's reputation);

31.4. when ensuring the adequacy of the staff referred to in the laws and regulations on the establishment of the management system, as well as the exercise of the executive board's functions with regard to ensuring that the staff of the institution are suitably qualified and sufficiently experienced;

31.5. where there are reasonable grounds to suspect that the institution has been or is being involved in money laundering and terrorism and proliferation financing, or an attempt to engage in such activities, or that the institution is at increased risk of being involved in such activities, in particular in situations where the institution:

31.5.1. has failed to put in place an adequate internal control system to monitor and mitigate the risks of money laundering and terrorism and proliferation financing (e.g. as identified by supervisory findings in on-site or off-site inspections or supervisory dialogue, or as indicated by sanctions imposed);

31.5.2. has breached the requirements for the prevention of money laundering and terrorism and proliferation financing in the last five years, as a result of which the supervisory authority has imposed sanctions or administrative measures on the institution;

31.5.3. has substantially changed its economic activity or business model and, as a result of such activities, the institution's risk of money laundering and terrorism and proliferation financing has increased significantly.

32. The institution shall base its initial assessment and reassessment of the suitability of key function holders on the same criteria of reputation, integrity, ability to act in accordance with the corporate values and standards of professional conduct and ethics of the institution and sufficient knowledge, skills, and experience to perform the duties of the job as used for the assessment of the members of the supervisory board and executive board of the institution,

while taking into account the specificity of the individual job responsibilities and role appropriate to the position.

33. The institution shall ensure that the supervisory board and executive board or the nomination committee, if established, are informed of the results of the assessment of suitability prior to the submission of the documents to Latvijas Banka.

34. If the institution concludes that the candidate is unsuitable for the performance of his/her duties, it shall implement appropriate corrective measures and inform Latvijas Banka thereof.

#### **2.4. Policy on the assessment of the suitability of officials**

35. The institution shall establish a policy on the assessment of the suitability of officials, taking into account the key principles of the institution's internal control system, including the specificities of the institution's governance system, corporate values, and standards of professional conduct and ethics, as well as the risk strategy. The institution shall document any changes to the policy and shall review at least annually the effectiveness of the implementation of the principles set out in the policy.

36. The institution shall ensure that its policy on the assessment of the suitability of officials is made freely available to all staff of the institution.

37. The institution shall, where appropriate, request and take into account information received from the departments of the institution (e.g. internal control functions, human resources, and legal departments, as well as the committees established within the institution, including the nomination committee, if established) when developing its policy on the assessment of the suitability of officials.

38. The institution shall include at least the following information in its procedures for the selection, initial appointment, and reappointment of members of the supervisory board and executive board, as well as in its succession planning procedures and in its policy on the assessment of the suitability of members of the supervisory board and executive board:

38.1. the person or department responsible for the assessment of the suitability of officials within the institution;

38.2. the procedure for the assessment of the suitability of the members of the supervisory board and executive board;

38.3. appropriate criteria for the assessment of the suitability of the members of the supervisory board and executive board, taking into account the basic principles referred to in this Regulation, including the amount of knowledge, skills, and experience necessary for a member of the supervisory board or executive board to be assessed as sufficiently suitable in the light of the duties to be performed by that member;

38.4. the information and statements that the member of the supervisory board or executive board is required to provide to the institution in assessing the suitability of the members of the supervisory board and executive board;

38.5. the procedure for the institution to inform the shareholders before the election of a member of the supervisory board of the requirements for that position and compliance of the member to be elected with those requirements;

38.6. the cases in which the suitability of the members of the supervisory board and executive board should be reassessed and the steps to be taken to identify such cases;



38.7. criteria for succession planning, taking into account the requirements regarding the individual and collective suitability of the members of the supervisory board and executive board;

38.8. the requirement that the members of the supervisory board and executive board notify the institution in writing of any material changes and events affecting the assessment of the suitability of the members of the supervisory board and executive board (in addition, an annual written notification of such changes or a statement that no such changes have occurred during the preceding year may be required);

38.9. the process of documenting the selection, initial appointment, and reappointment of candidates, as well as the succession planning and the assessment of suitability;

38.10. the procedure establishing in which cases and when it is necessary to inform Latvijas Banka in accordance with the laws and regulations, including for the purpose of approving the suitability of candidates for the supervisory board and executive board.

39. In addition to Paragraph 38 of this Regulation, a significant CRD institution shall include in its policy on the assessment of the suitability of the members of the supervisory board and executive board an additional assessment of the implementation of the principles for ensuring diversity in the composition of the supervisory board and executive board referred to in Paragraph 89 of this Regulation in the selection process for the members of the supervisory board and executive board.

40. The institution shall include at least the following information in its procedures for the selection, initial appointment, and reappointment of key function holders, as well as in its succession planning procedures and in its policy on the assessment of the suitability of key function holders:

40.1. the positions for which an assessment of the suitability of key function holders is to be carried out, including the considerations used to assess the position as having the potential to exercise a significant influence on the conduct of the institution's business;

40.2. the person or department responsible for the assessment of the suitability of key function holders within the institution;

40.3. appropriate criteria for the assessment of the suitability of key function holders, taking into account the basic principles referred to in this Regulation, including the amount of knowledge, skills, and experience necessary for a key function holder to be assessed as sufficiently suitable in the light of the duties to be performed;

40.4. the situations in which a reassessment of the suitability of key function holders is required, as well as the measures to identify such situations;

40.5. criteria for succession planning;

40.6. the process of documenting the selection and appointment of candidates, as well as the succession planning and the assessment of suitability;

40.7. the procedure establishing in which cases and when it is necessary to inform Latvijas Banka in accordance with the laws and regulations, including for the purpose of approving the suitability of the key function holder.

41. The supervisory board of the institution, or the nomination committee if one is established, shall review the policy referred to in Paragraphs 38 and 40 of this Regulation regularly, but at least annually, taking into account any significant changes that affect or may affect the implementation of the policy, and shall monitor the effectiveness of its implementation.

### **3. Criteria for the Assessment of the Suitability of Officials**

#### **3.1. Reputation, integrity, and compliance with the institution's corporate values and standards of professional conduct and ethics**

42. The officials of the institution must be of good repute, conform to the corporate values and standards of professional conduct and ethics of the institution, and perform their duties with honesty and integrity regardless of the nature, size, specificity, and complexity of the institution's activities.

43. In assessing reputation, integrity, and compliance with the institution's corporate values and standards of professional conduct and ethics, the institution shall take into account the following factors:

43.1. evidence that the official has not acted openly and responsibly in his/her communications with the supervisory or competent authorities (for example, by failing to cooperate or to provide truthful information, including by deliberately misleading supervisory or competent authorities);

43.2. the fact that the official's registration, membership, or licence has been refused, cancelled, or suspended in any professional or commercial field;

43.3. the reasons for which the official has been subject to disciplinary action, including being found unfit to hold the office of director or manager of the company, removal from a position of responsibility;

43.4. the official has been deprived of the right to carry out certain types of commercial activity, including being a member of the executive board or supervisory board of a company which is not an institution within the meaning of Paragraph 1 of this Regulation, or a key function holder;

43.5. any other conduct by an official that may indicate that the official acted in bad faith or in a manner inconsistent with corporate values and standards of professional conduct and ethics.

44. An official's failure to comply with the institution's corporate values and standards of professional conduct and ethics may be considered a factor affecting the official's reputation and integrity.

45. An official shall not be considered to be of good repute if his/her personal conduct, the conduct of business or association with another person raises reasonable doubts as to his/her ability to ensure a sound and prudent governance of the institution.

46. An official shall be considered to be of good repute in the absence of evidence to the contrary and of any reasonable doubt as to his/her good repute.

47. The assessment of the official's reputation, integrity, and compliance with the institution's corporate values and standards of professional conduct and ethics shall take into account all relevant information available for the assessment of suitability. It shall also take into account the restrictions on obtaining information imposed by the laws and regulations in force, irrespective of the country of origin of the information.

48. Without prejudice to fundamental personal rights, the assessment of the reputation and integrity of an official shall take into account the official's criminal record, including the nature of the case (charge) and the penalty imposed, the level of the official's involvement, the stage of the proceedings if the case is pending (investigation, prosecution, judgement, decision, appeal), and the impact of any rehabilitation measures. The assessment of the reputation and integrity of an official shall also take into account any extraneous circumstances of the offence or penalty (sanction), including mitigating and aggravating circumstances, the period since the offence was committed, and the conduct of the official

during that period, as well as the relevance of the offence or penalty, taking into account the official's duties and role in the functioning of the institution.

49. The assessment of the suitability of an official shall also take into account the cumulative effect of a number of minor incidents which, taken individually, do not compromise the official's reputation, integrity, and compliance with the institution's corporate values and standards of professional conduct and ethics, but which, taken together, may have a significant impact on them (cumulative effect).

50. In assessing the reputation and integrity of an official, the institution shall take particular account of the following factors:

50.1. a criminal conviction or a civil or administrative judgement (including a conviction under appeal) in a serious case (that affects the reputation of the official or the institution or has a significant impact on the financial stability of the institution) has entered into force against the official or the official has been a subject in a criminal case or a serious civil or administrative case (that affects the reputation of the person or the institution or has a significant impact on the financial stability of the institution), in particular:

50.1.1. for offences in or related to the financial market sector, including violations of the laws and regulations in the field of the prevention of money laundering and terrorism and proliferation financing, market manipulation, or insider dealing, usury, corruption;

50.1.2. for offences involving dishonesty, fraud, or financial crime;

50.1.3. for tax offences;

50.1.4. for offences relating to commercial activities, insolvency proceedings, liquidation, or protection of consumer rights;

50.2. any supervisory authority or competent authority has established other misconduct by the official in the field of institutional activities or insurance or in any of the areas referred to in Paragraph 50.1.1 of this Regulation;

50.3. an investigation has been initiated or has taken place into a breach of laws and regulations and a penalty has been imposed on the official by any law enforcement, supervisory, or competent authority. The institution shall also take into account other relevant, reliable, and reliably sourced information (e.g. under whistleblowing procedures) which may have an impact on the reputation of the official.

51. In assessing the suitability of an official, the institution shall take into account the official's past and current professional and business conduct and the potential impact of that conduct on the reputation, integrity, and compliance with the institution's corporate values and standards of professional conduct and ethics, including:

51.1. information about the person's inclusion in a debtors' list (e.g. tax debtors' register) or negative information in a credit register;

51.2. the financial performance of companies owned or controlled by the official in which the official has or has had a qualifying holding with particular reference to any insolvency or liquidation proceedings and whether and how the official has contributed to the situation giving rise to those proceedings;

51.3. a declaration of insolvency of a natural person;

51.4. civil, administrative, or criminal proceedings, large investments or commitments, in so far as they may have a significant effect on the financial stability of the official or of a company owned or controlled by him/her, including a company in which he/she has a qualifying holding.

### **3.2. Independence of members of the supervisory board or executive board**

52. The independence of mind of members of the supervisory board and executive board is a set of certain actions and personal qualities that include not only the ability to perform their duties actively and independently, but also the ability to make sound, considered, and objective decisions in their day-to-day activities.

53. An independent member of the supervisory board is a person who has no actual or, for a specified period of time in the past, any relationship with the institution and its supervisory board and executive board members that could influence the member's ability to take sound, considered, and objective decisions, or impair his/her ability to take decisions independently. A member of the supervisory board who has been declared independent in accordance with the criteria set out in point 89 of the Guidelines shall not at the same time be deemed to be capable of acting independently if he/she does not meet the criteria set out in Paragraph 54 of this Regulation.

54. In assessing the ability of each member of the supervisory board and executive board to act independently, the institution shall consider whether the following criteria are met:

54.1. the person has the character required for the performance of the duties of the job, including:

54.1.1. the confidence and ability to effectively evaluate and, where necessary, challenge decisions proposed by other members of the supervisory board or executive board;

54.1.2. the ability to ask questions and facilitate discussion at meetings of the institution's supervisory board or executive board;

54.1.3. the ability to refrain from making ineffective collective decisions (groupthink);

54.2. the person is not in a conflict of interest situation or, if one is identified, it is managed appropriately and effectively in accordance with the institution's policy on the management of conflict of interest situations and does not affect the person's ability to perform the duties of the position objectively and independently.

55. In assessing the character required for the performance of the duties referred to in Paragraph 54.1 of this Regulation, the institution shall take into account the current or past performance of the member of the supervisory board or executive board concerned, in particular within the institution itself.

56. When assessing actual or potential conflicts of interest of a member of the supervisory board or executive board referred to in Paragraph 54.2 of this Regulation, the institution shall assess their materiality in accordance with the procedures laid down in the institution's policy on the management of conflict of interest situations.

57. The institution shall inform Latvijas Banka of an identified actual or potential conflict of interest situation of a member of the supervisory board or executive board that may affect the ability of that person to act independently, as well as of the appropriate measures to manage or prevent such a situation.

58. Where a member of the supervisory board or executive board of the institution is at the same time a shareholder, participant, or other office holder (employee) of the institution or any other related company or is a customer of the institution or any other company which is part of the same consolidation group as the institution, such status shall not in itself be deemed to be inconsistent with the ability to act independently, provided that it does not conflict with the criteria referred to in Paragraph 54 of this Regulation and is in accordance with the requirements referred to in the laws and regulations on the establishment of the

management system with regard to the institution's policy for managing conflict of interest situations, as well as other relevant laws and regulations.

59. The institution shall ensure that a sufficient number of independent members are appointed to the supervisory board to meet the requirements set out in the laws and regulations on the establishment of the management system.

60. In assessing the independence status of the members of the supervisory board, the institution shall use the criteria set out in point 89 of the Guidelines. If a member of the supervisory board is subject to one or more of the criteria referred to in point 89 of the Guidelines, this does not automatically mean that the member is not independent, but the institution must be able to justify the reasons why the situation identified in those criteria does not affect the member's ability to make objective and considered judgements and decisions independently.

61. If a member of the supervisory board of the institution concerned is also a shareholder, participant, or customer of the institution and his/her shareholding or the aggregate amount of his/her transactions as a customer does not exceed an amount that would give rise to a material conflict of interest, such a status shall not in itself be considered to be incompatible with the independence criteria, in so far as it does not conflict with the criteria referred to in point 89 of the Guidelines. The institution concerned shall include the situations referred to in this paragraph in its policy on the management of conflict of interest situations.

### **3.3. Knowledge, skills, and experience**

62. In assessing the knowledge, skills, and experience of the officials of the institution, account shall be taken of the type of the institution's activities and its nature, size, and complexity and of the relevant duties of the official. The extent of and requirements for knowledge, skills, and experience assessed for a member of the executive board may differ from those assessed for a member of the supervisory board.

63. Members of the supervisory board and executive board of the institution shall have sufficient knowledge, skills, and experience, which shall include an understanding of the business and risk strategy of the institution, not only in accordance with their individual job responsibilities, but also in accordance with the need to ensure the collective suitability of the supervisory board and executive board.

64. Members of the supervisory board and executive board of the institution shall be familiar with the internal control system of the institution, their roles and responsibilities within that system, the structure of the consolidation group of which the institution is a member and potential conflicts of interest both within the institution and the consolidation group and shall ensure that the corporate values and standards of professional conduct and ethics of the institution and of the supervisory board and executive board are upheld.

65. In assessing the knowledge, skills, and experience of officials, account shall be taken of their role, job responsibilities, and the qualifications required for the position, as well as academic knowledge acquired through training and practical professional experience gained in previous positions. The assessment shall take into account the skills and knowledge acquired and put into practice by the officials in their professional capacity.

66. The institution may use the list set out in Annex 2 to the Guidelines in assessing the skills of officials, taking into account the role and function of each individual member of the supervisory board or executive board.

67. In assessing the academic background of officials, particular account shall be taken of the level of education and qualifications acquired and whether they are related to credit institutions and financial services or to other sectors relevant to the specific nature and type of activity of the institution concerned. Education in finance, economics, law, accounting and auditing, administration, financial sector supervision, information technology, and quantitative methods (e.g. statistics, econometrics, quantitative modelling) is considered to be related to credit institutions and financial services.

68. In assessing the knowledge, skills, and experience of a member of the supervisory board or executive board, particular account shall be taken of theoretical and practical experience related to:

68.1. financial markets;

68.2. the legal framework and regulatory requirements of institutions;

68.3. the strategic planning and an understanding of the institution's business strategy or business case (business plan) and its execution;

68.4. risk management (identification, assessment, monitoring, control, and mitigation of key risks, including environmental, social, and governance risks and risk factors);

68.5. accounting and auditing;

68.6. the measures taken to assess the effectiveness of the credit institution's or other financial institution's performance and to ensure effective management, supervision, and control;

68.7. analysing the financial information of the credit institution or other financial institution, identifying key issues based on that information, and implementing appropriate controls and measures;

68.8. requirements for the prevention of money laundering and terrorism and proliferation financing.

69. In order to assess whether a member of the executive board has sufficient practical and professional experience in a managerial role, short-term project engagements or temporary positions may also be taken into account, but cannot be considered as sufficient experience. Practical and professional experience gained in previous positions should be evaluated with particular attention to:

69.1. the nature of the management position and its place in the structure of the company;

69.2. the time worked;

69.3. the nature and complexity of the company in which the position is held, including its organisational structure;

69.4. the scope of competence, decision-making powers, and job responsibilities;

69.5. technical knowledge of the activities and risks of the company in which the position is held;

69.6. the number of staff under their authority.

70. A member of the supervisory board has sufficient experience if it allows to ensure constructive review of the appropriateness of decisions, challenge those decisions where necessary, as well as effectively oversee the institution's executive board, internal control functions, and other management structures. This experience may have been gained in academic, administrative, or other positions and in the management, supervision, or control of financial institutions and other companies.

71. Officials responsible for compliance with the requirements for the prevention of money laundering and terrorism and proliferation financing shall have sound knowledge, skills, and relevant experience in identifying and assessing money laundering and terrorism and proliferation financing risks, including an understanding of the institution's policies and procedures for risk management and an understanding of the extent to which the institution's business model exposes it to the risk of money laundering and terrorism and proliferation financing.

### **3.4. Ability to devote sufficient time to the performance of one's duties**

72. The institution shall assess and monitor the ability to devote sufficient time to the performance of duties (time commitment) of each member of the supervisory board and executive board, including within committees, if established, in the provision and monitoring of the institution's risk management and in the implementation of the institution's business and risk strategy. A significant CRD institution shall additionally assess and monitor the compliance of the limitation of the number of positions of the relevant member of the supervisory board or executive board with the requirements of Section 26.<sup>1</sup> of the Credit Institution Law and Section 9 of the Law on Investment Firms, taking into account the limits on the total number of positions of the supervisory board and executive board members set out in the Appendix to this Regulation.

73. A member of the supervisory board and executive board of an institution must be able to devote sufficient time to the performance of his/her duties, even in circumstances of increased work intensity (e.g. in the event of institutional reorganisation).

74. In assessing the ability of a member of the supervisory board or executive board to devote sufficient time to the performance of his/her duties, the institution shall take into account at least:

74.1. the actual positions held by the member of the supervisory board or executive board in financial and non-financial corporations, taking into account possible interlinkages between these positions (e.g. within a consolidation group);

74.2. the scope, nature, complexity, and specific nature of the activities of the corporation in which the member of the supervisory board or executive board holds a leading position, in particular where that corporation is not established in a Member State;

74.3. the time required for the performance of their duties, as well as the time required for travel to enable them to carry out their duties in person;

74.4. the number of meetings of the supervisory board or executive board planned by the institution;

74.5. positions of the member of the supervisory board or executive board in associations, foundations, and other organisations which operate on a non-profit basis (e.g. non-profit or charitable organisations, professional associations);

74.6. any other meetings scheduled for the supervisory board or executive board with other internal or external stakeholders in addition to the regularly scheduled meetings;

74.7. the specific nature and duties of the position of the member of the supervisory board or executive board (for example, the status of the Chief Executive Officer or Chairperson and whether the specific nature of the position requires the person concerned to hold other positions in the corporations referred to in Paragraph 74.1 of this Regulation in addition to his/her position in the institution);

74.8. any other external professional or political activities of the member of the supervisory board or executive board, including any other functions and significant activities in the financial and non-financial sectors within and outside the European Union;

74.9. the training and other measures required on taking up the position or the nomination of the member of the supervisory board or executive board for additional work in another position;

74.10. any other activities and situations that would be considered relevant in assessing the ability of the member of the supervisory board or executive board to devote sufficient time to the performance of his/her duties.

75. A significant CRD institution shall document not only the role, job responsibilities, and professional qualifications (e.g. knowledge, skills, and experience) of each member of the supervisory board and executive board, but also the amount of time required to perform the duties.

76. An institution other than a significant CRD institution may only document the time taken to carry out duties by distinguishing the supervisory board from the executive board.

77. The institution shall ensure that each member of the supervisory board and executive board is informed of the estimated time required to carry out his/her duties.

78. The institution shall keep records of the assessment of the adequacy of the time spent by each member of the supervisory board and executive board in the performance of his/her duties for the entire period during which that person is appointed as a member of the supervisory board or executive board. The institution shall ensure that the documentation is updated whenever any changes are identified and shall reassess the member of the supervisory board or executive board if the changes identified are such as to call into question, or have the potential to call into question, the ability of the member of the supervisory board or executive board to devote sufficient time to the performance of his/her duties.

### **3.5. Assessment of the collective suitability of members of the supervisory board and executive board**

79. Members of the supervisory board and executive board of the institution should be able to take appropriate decisions collectively, taking into account the nature and type of the institution's business and its risk strategy, including the risks that the institution wishes to take.

80. The collective suitability of members of the supervisory board of the institution shall be assessed separately from the collective suitability of members of the executive board.

81. Members of the supervisory board of the institution must collectively have sufficient experience to ensure that the decisions taken are properly and constructively reviewed, challenged where necessary and that the executive board, the internal control functions, and other management bodies of the institution are effectively supervised.

82. Members of the executive board of the institution must collectively have sufficient practical experience, knowledge, and skills in the governance of the institution.

83. Members of the supervisory board and executive board of the institution must collectively have sufficient expertise in all areas relevant to the institution's activities. Each member of the supervisory board and executive board must be able to give justified reasons for his/her views and be able to effectively influence the decision-making process of the supervisory board or executive board.



84. The supervisory board and executive board of the institution must be structured in such a way as to ensure the proper performance of duties. This means that the supervisory board and executive board collectively have the necessary understanding of their respective areas of responsibility, and the supervisory board and executive board members have the necessary skills to effectively manage and oversee the situation in the institution, taking into account:

84.1. the activities of the institution and the main risks to which it is exposed;

84.2. each area of activity of the institution;

84.3. key financial literacy skills, including financial markets, solvency issues, internal models used in the institution's business, environmental, social and governance risks and risk factors;

84.4. financial accounting and disclosure;

84.5. risk management, compliance, and internal audit;

84.6. information technology and security;

84.7. local, regional, and global financial markets, where relevant to the specific activities of the institution;

84.8. national regulation;

84.9. administrative skills and experience;

84.10. the ability to undertake strategic planning;

84.11. the governance framework of the consolidation and sub-consolidation group of which the institution is a member and the risks to which the group entity is exposed.

85. In assessing the suitability of individual members of the supervisory board and executive board, the institution shall also assess the collective suitability of the members of the supervisory board and executive board, as well as whether the composition of the specialised committees as a whole is appropriate. The institution shall separately assess the knowledge, skills, and experience that a member of the supervisory board and executive board brings to the collective suitability of the supervisory board and executive board and whether the overall composition of the supervisory board and executive board reflects a sufficiently broad range of knowledge, skills, and experience to understand the key risks of the institution's business.

86. In assessing the collective suitability of members of the supervisory board and executive board, the institution shall assess whether the supervisory board and executive board of the institution have demonstrated through their decisions a sufficient understanding of the risk of money laundering and terrorism and proliferation financing and how it affects the activities of the institution, and have demonstrated that this risk is adequately managed, including, where appropriate, through the implementation by the institution of the corrective measures set out in Chapter 8 of this Regulation.

#### **4. Diversity Policy**

87. The institution shall develop, document, and implement a policy on diversity in the composition of the supervisory board and executive board in order to promote diversity of views, experience, and skills in the daily functioning of the supervisory board and executive board through the appointment of members of the supervisory board and executive board of the institution. The institution shall, as far as possible, ensure that its supervisory board and executive board have appropriate representation of each gender and respect the principle of equal opportunities in the selection of the members of its supervisory board and executive board.

88. The institution shall ensure, as far as possible, that the diversity of the members of the supervisory board and executive board is implemented at least with regard to the following criteria:

88.1. education and professional experience;

88.2. gender;

88.3. age;

88.4. the geographical place of origin of individual members of the supervisory board and executive board, if the institution is an internationally active company and such criterion is not contrary to other laws and regulations.

89. A significant CRD institution ensures the implementation of a quantitative target for gender under-representation in the composition of its supervisory board and executive board in its diversity policy. The nominating committee of a significant CRD institution shall decide on the policies and procedures, including the planned actions and measures of the institution, to ensure that the quantitative target for gender under-representation on the supervisory board and executive board is met, as well as on corrective measures if the nominating committee determines that the predetermined target has not been met within the prescribed period.

90. A significant CRD institution shall document compliance with the objectives and tasks set out in the diversity policy when preparing the annual report on the composition of the supervisory board and executive board. Where the objectives or tasks set out in the diversity policy have not been fulfilled, the significant CRD institution shall document the reasons and the corrective measures to be taken to ensure that the objectives and tasks are fulfilled.

91. The institution's diversity policy may provide for staff representation on the supervisory board or executive board, which ensures additional know-how and experience exchange in the day-to-day management of the institution.

92. The institution shall ensure that the objectives set out in the diversity policy are taken into account in the appointment of a new member of the supervisory board or executive board and in the promotion to a member of the supervisory board or executive board of another employee of the institution and shall provide for substantially equal and gender non-discriminatory conditions and opportunities for all new candidates for appointment.

93. In setting diversity policy objectives, the institution shall take into account the results of diversity benchmarking published by Latvijas Banka, the European Banking Authority, or other relevant international organisations.

## **5. Appointment and Training of Members of the Supervisory Board and Executive Board**

94. The institution shall develop policies and procedures for the appointment process and training of the members of the supervisory board and executive board with a view to enhancing the understanding of newly appointed members of the supervisory board and executive board of the requirements of the laws and regulations governing the activities of the institution, the institution's business and risk strategy, the nature and organisation of its activities, the governance framework, and the role of the appointees within the institution.

95. The institution shall ensure that sufficient resources are available for the implementation of the appointment process and training of the members of the supervisory board and executive board.

96. The institution shall ensure that the appointed members of the supervisory board and executive board are provided with all information relevant for the performance of their duties no later than one month after they take up their duties and that training is provided no later than six months after they take up their duties.

97. The policies and procedures for the appointment process and training of the members of the supervisory board and executive board of the institution shall include at least the following information:

97.1. the training objectives for the supervisory board and executive board separately, as well as the set of individual knowledge, experience, and skills required for the performance of the duties of each position and the planned participation of the members of the supervisory board and executive board in the committees of the institution;

97.2. the roles and responsibilities of the staff involved in providing the training, as well as the financial and labour resources planned by the institution for the training process and the training planned;

97.3. if possible, the organisation of the appointment process of the members of the supervisory board and executive board planned for the coming year (or longer);

97.4. information on the types of training available to members of the supervisory board and executive board and the opportunities to receive particular or specific internal or external training or advice.

98. The supervisory board of the institution, or the nomination committee if one has been established, shall, when developing policies and procedures for the appointment process and training of the members of the supervisory board and executive board, hear and take into account the views and information provided by the Human Resources Management Unit of the institution, as well as the views and information provided by other units of the institution which are relevant for the development of the relevant policies and procedures.

99. The institution shall identify areas where the members of the supervisory board and executive board individually and collectively require training, taking into account the views of the responsible staff of the institution.

100. The institution shall ensure that the policies and procedures for the appointment process and training of the members of the supervisory board and executive board are documented and updated at least annually to take account of significant changes in the institution's business, at least regarding the institution's governance structure, strategic objectives, new products introduced, or significant changes made to existing products. The institution shall review at least annually the quality of the measures and activities implemented and compliance with the policies and procedures for the appointment process and training of the members of the supervisory board and executive board.

## **6. Governance Requirements for the Evaluation of the Members of the Supervisory Board and Executive Board and for the Composition of the Supervisory Board and Executive Board**

101. The institution shall ensure that its supervisory board and executive board are composed of a sufficient number of supervisory board and executive board members appropriate to the organisational structure, scope, type, complexity, and specificity of the activities of the institution in accordance with the requirements of the Commercial Law and other laws and regulations governing the field of governance. The institution shall ensure that the number

of members of the supervisory board is balanced with the number of members of the executive board.

102. The institution shall establish an appropriate succession planning procedure for the members of the supervisory board and executive board in the event that all or several members of the supervisory board or executive board have to be removed from their duties at the same time, which shall include different types of temporary solutions to ensure continuity in the decision-making process of the institution, taking into account the basic principles for ensuring the suitability of the members of the supervisory board and executive board referred to in this Regulation.

103. The institution's supervisory board and the nomination committee, if established, shall provide support and be involved in the selection of candidates for membership of the supervisory board and executive board, shall cooperate with the staff member or the department responsible for assessing the suitability of officials, and shall:

103.1. develop a description of the role and skills required for each individual position;

103.2. carry out an assessment of the sufficient knowledge, skills, and experience required for each position on the supervisory board and executive board;

103.3. make an assessment of the expected ability of each member of the supervisory board and executive board to devote sufficient time to the performance of their duties;

103.4. assess the collective compliance of the members of the supervisory board and executive board with the objectives set out in the diversity policy.

104. The supervisory board of the institution and the nomination committee, if established, shall inform the shareholders of the results of the assessment of the suitability of potential candidates before the relevant shareholders' meeting at which the appointment or re-election of a member of the supervisory board or executive board is to take place.

105. The institution shall ensure that all information obtained from the assessment of the individual and collective suitability of the members of the supervisory board and executive board and the results of the assessment of suitability carried out are made freely available to its shareholders.

## **7. Monitoring Individual and Collective Suitability of the Members of the Supervisory Board and Executive Board**

106. The institution shall monitor the individual and collective suitability of the members of the supervisory board and executive board, using internal or external resources, by assessing the effectiveness of the individual and collective performance of the members of the supervisory board and executive board and taking into account any events that have led to a reassessment of the individual and collective suitability of the members of the supervisory board and executive board.

107. The assessment of the individual and collective effectiveness of the members of the supervisory board and executive board shall take into account at least:

107.1. the effectiveness of the work of the members of the supervisory board and executive board through the effectiveness of reporting tools and information flow;

107.2. the functioning of an effective and prudent governance structure for the institution, which also requires the members of the supervisory board and executive board to act in the long-term interests of the institution;

107.3. the ability of the members of the supervisory board and executive board to focus on the most important issues for the institution in their day-to-day work;

107.4. the frequency of meetings of the supervisory board and executive board, the level of attendance at such meetings, and the time devoted by individual supervisory board and executive board members to items on the agenda;

107.5. any changes to the supervisory board and executive board, including the impact of these changes on potential gaps in individual and collective suitability, taking into account the specificities of the institution's activities;

107.6. the predetermined performance targets for the supervisory board and executive board of the institution;

107.7. the ability of the members of the supervisory board and executive board to act independently, as well as compliance with the requirements of the laws and regulations on the establishment of the management system regarding the limitation of the dominance of an individual or a small group of individuals in the supervisory board and executive board, including in decision-making;

107.8. compliance of the supervisory board and executive board with the objectives set out in the institution's diversity policy;

107.9. any other event or circumstance that materially affects or may potentially affect the individual and collective suitability of the members of the supervisory board and executive board.

108. The institution shall carry out an assessment of the individual and collective suitability of the members of the supervisory board and executive board on a regular basis, but at least annually, and shall document any shortcomings and recommendations recorded in this assessment. Where the individual and collective suitability of the members of the supervisory board and executive board is assessed more than once a year, the institution shall document the reasons for such assessment.

109. The institution shall carry out at least once a year an evaluation of the individual and collective knowledge, skills, and experience of the members of the supervisory board and executive board and shall communicate the results thereof to the supervisory board as well as to the executive board as far as the latter is concerned.

110. The institution shall carry out at least once a year an evaluation of the organisational structure, size, composition, and operational effectiveness of the supervisory board and executive board and report the results to the supervisory board as well as to the executive board as far as the latter is concerned.

111. The executive board of the institution shall take into account the results of the assessment of its individual and collective suitability and shall ensure the implementation of the recommendations made. If these recommendations are not implemented, the executive board shall document this, including an explanation of the circumstances and reasons for non-implementation.

112. The institution shall inform Latvijas Banka, upon request, of the results of the annual assessment of the individual and collective suitability of the members of the supervisory board and executive board and shall, in all cases, inform Latvijas Banka of the results of any other related assessment carried out taking into account the occurrence of certain material circumstances or events.

## **8. Corrective Measures**

113. If the institution, in the course of the initial assessment of suitability, concludes that a person does not meet the requirements for appointment to the supervisory board or executive

board, the institution shall ensure that this person is not elected (appointed) to that position. If such a person has already been elected (appointed) to the position or the fact that the person does not meet the requirements for the position has come to light during the re-evaluation of suitability, the institution shall inform Latvijas Banka thereof and take corrective measures to ensure that the member of the supervisory board or executive board meets the requirements for the position or is replaced by another person.

114. The institution shall inform Latvijas Banka within no later than five working days of any identified individual or collective non-compliance of a member of the supervisory board or executive board with the requirements for the position, which has been identified during the assessment of suitability, as well as of any corrective measures taken or planned to remedy the identified non-compliance.

115. Failure of a member of the supervisory board or executive board to meet the criteria set out in Chapter 3.1 of this Regulation shall be considered as unavoidable non-compliance.

116. In taking the corrective measures referred to in Paragraph 113 of this Regulation, the institution shall assess the specific situation and the reasons for the non-compliance of the member of the supervisory board or executive board with the requirements for the position. Appropriate corrective measures that the institution may take with regard to the knowledge, skills, and experience of the person concerned, his/her ability to devote sufficient time to the performance of his/her duties and his/her independence, in so far as this does not conflict with the criteria and principles referred to in this Regulation, include clarifying or reallocating the duties of the member of the supervisory board or executive board among the other members of the supervisory board or executive board, replacing the member of the supervisory board or executive board, appointing an additional member of the supervisory board or executive board, the institution acting to prevent or manage conflict of interest situations, and the training of some or all members of the supervisory board and executive board in order to ensure sufficient qualifications and experience of the supervisory board and executive board collectively.

117. The institution shall ensure that any individual or collective non-compliance of the members of the supervisory board or executive board with the requirements for the position identified in the initial assessment of suitability is remedied before an application is submitted to Latvijas Banka for a licence to operate the institution, as well as before an application is submitted for approval for appointment or re-election of the members of the supervisory board or executive board in accordance with the procedure for submission of information and documents for the assessment of suitability of institutional officials set out by the regulations of Latvijas Banka.

## **9. Final Provision**

118. The Financial and Capital Market Commission's Regulation No 94 "Regulation on the Assessment of the Suitability of Members of the Executive Board and Supervisory Board and Key Function Holders" of 14 July 2020 (*Latvijas Vēstnesis*, 2020, No 139) shall be deemed invalid.

## **Reference to European Union directives and other international documents**

The Regulation comprises legal provisions arising from the following:

1) 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

2) 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/EU and Directive 2011/61/EU;

3) European Banking Authority and European Securities and Markets Authority Guidelines EBA/PN/2021/06; ESMA35-36-2319 "Guidelines on the assessment of the suitability of members of the management body and key function holders" of 2 July 2021.

Governor of Latvijas Banka

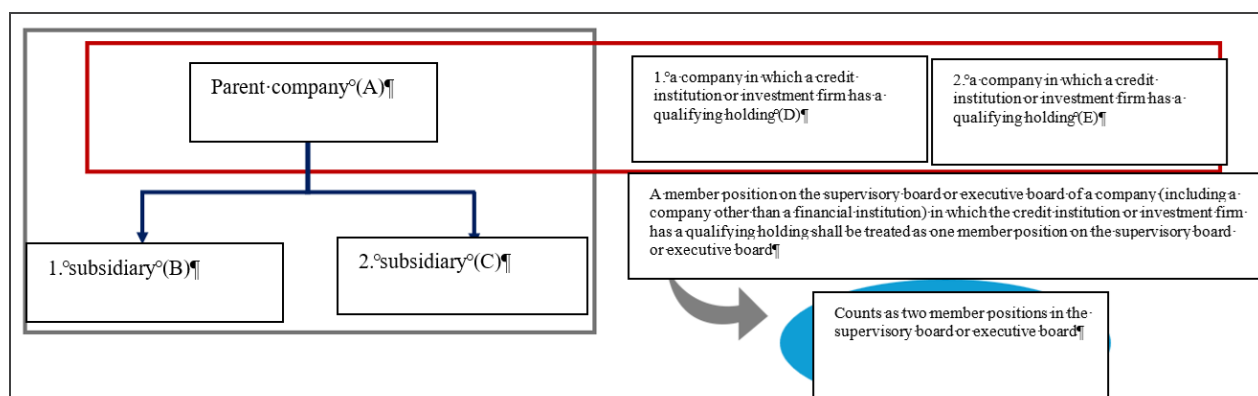
Mārtiņš Kazāks

### Limitations on the Total Number of Supervisory Board and Executive Board Member Positions in a Significant CRD Institution

The limitations on the total number of supervisory board and executive board member positions set out in Section 26.<sup>1</sup> of the Credit Institution Law and Section 9 of the Law on Investment Firms shall apply to significant CRD institutions.

When accounting for the member positions of the supervisory board and executive board, the conditions contained in Clauses 1, 2, and 3 of Paragraph three of Section 26.<sup>1</sup> of the Credit Institution Law and Clauses 1, 2, and 3 of Paragraph three of Section 9 of the Law on Investment Firms shall apply separately, as indicated in the Chart "Conditions for accounting for the member positions of the supervisory board or executive board".

#### Chart. Conditions for accounting for the member positions of the supervisory board or executive board



1. A subsidiary (B and C) shall be an institution in which the parent company (A) has the power to exercise significant influence or control (at least 50% of the capital or voting rights) over the management of the subsidiary. The term and criteria for control are derived from International Financial Reporting Standard 10.
2. An institution in which the parent undertaking (A) or a subsidiary (B and C) exercises significant influence (at least 20% of the capital or voting rights) shall be an affiliated institution within the group, unless other circumstances are demonstrated, in accordance with International Accounting Standard 28.
3. The parent company (A) and the subsidiary (B and C) may be financial or non-financial institutions respectively, but within the group at least one company must be a credit institution within the meaning of the Credit Institution Law or an investment firm within the meaning of the Law on Investment Firms.
4. A company in which the credit institution or investment firm has a qualifying holding (D and E) shall be a company in which the parent company (A) or a subsidiary (B and C) owns at least 10% of the capital or voting rights or exercises significant influence over the management of that company in accordance with point (36) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012.
5. A company in which a credit institution or investment firm has a qualifying holding (D and E) can be either a financial or a non-financial institution.
6. Companies in which the parent company (A) or a subsidiary (B and C) owns less than 10% of the capital or voting rights or has no significant influence on the management of the company concerned



shall be excluded from these conditions for counting positions, i.e. positions in them shall be counted as separate positions.

If a person is a member of the executive board or supervisory board of company A and of company D or E, the positions shall be counted together as two separate positions in the supervisory board or executive board. However, if a person is a member of the supervisory board or executive board of companies A, B, and C which substantially meet the conditions of Clause 1 of Paragraph three of Section 26.<sup>1</sup> of the Credit Institution Law or Clause 1 of Paragraph three of Section 9 of the Law on Investment Firms, such positions of a member of the supervisory board or executive board shall be considered as a single position of a member of the supervisory board or executive board. However, if a person is a member of the executive board of company A and a member of the supervisory board of company B or C, these shall be regarded as two positions (one executive board position and one supervisory board position).

As one position on the supervisory board or executive board shall also be deemed a position on the supervisory board or executive board in companies which meet the requirements of Clause 2 of Paragraph three of Section 26.<sup>1</sup> of the Credit Institution Law or Clause 2 of Paragraph three of Section 9 of the Law on Investment Firms. In this case, the accounting for positions shall be identical to the conditions provided for in Clause 3 of Paragraph three of Section 26.<sup>1</sup> of the Credit Institution Law or Clause 3 of Paragraph three of Section 9 of the Law on Investment Firms.

Notwithstanding the application of the requirements of Section 26.<sup>1</sup> of the Credit Institution Law and Section 9 of the Law on Investment Firms, credit institutions and investment firms shall at the same time comply with the requirements of Chapter 3.4 of this Regulation regarding the ability of the members of the supervisory board and executive board to devote sufficient time to the performance of their duties.

Governor of Latvijas Banka

Mārtiņš Kazāks