

Circular

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Standards on expertise and professional integrity for management committee members, directors, heads of independent control functions and senior managers of financial institutions

Scope

Credit institutions, stockbroking firms, payment institutions, electronic money institutions, settlement institutions and institutions equivalent to settlement institutions, (re)insurance companies, (mixed) financial holding companies, insurance holding companies and certain branches.

Summary/Goals

This circular provides additional details about the way in which the supervisory authority interprets the “fit and proper” legal requirements for financial institutions with regard to persons who hold certain positions. It also specifies the way in which the supervisory authority will proceed to carry out its own assessment of the expertise and professional integrity of these persons.

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Dear Sir or Madam,

In accordance with the various supervisory laws, directors, members of the management committee, heads of independent control functions and senior managers of financial institutions must have the expertise and professional integrity required for their positions. The assessment of these persons' suitability is often described as assessing whether they are “fit and proper”.

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

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

In the meantime a number of these initiatives have culminated in regulatory or policy documents which need to be applied nationally. In particular, we can mention the following developments in the banking and insurance sector:

– Banking sector:

- A draft directive amending the original Capital Requirements Directive (CRD)¹, often referred to as “CRD IV” for short, will contain new “fit and proper” rules. In actual fact, some of these rules already appear in Belgian regulations.
- The European Banking Authority (EBA) has published “Guidelines on the assessment of the suitability of members of the management body and key function holders” (EBA/GL/2012/06 of 22 November 2012). This document provides for a possible extension of the “fit and proper” provisions to so-called “key function holders”.

– Insurance sector:

- The transposition of the Solvency II directive² will introduce new “fit and proper” rules.
- Pending the entry into force of Solvency II, the European Insurance and Occupational Pensions Authority (EIOPA) will be publishing provisional guidelines, amongst other things on “fit and proper” requirements.

The aforementioned developments have encouraged the NBB to take a close look at its own “fit and proper” policy and to elaborate its framework. This circular has also been drawn up on the basis of a series of “fit and proper” principles which are applicable in other European Union Member States.

The purpose of this circular is to explain how the NBB will be implementing the “fit and proper” legal provisions, and to provide guidelines on the way in which the Bank will proceed in future for “fit and proper” assessments. This circular deals with aspects relating both to the content of the assessments and to the assessment process itself.

This circular replaces and cancels communication CBFA_2009_20 of 8 May 2009.

PART 1. Introduction

1.1 Background and aim of the circular

In the aftermath of the financial crisis one of the key issues has been the need to ensure good governance of financial institutions. A debate on this subject has emerged, both internationally and nationally, about the criteria for the suitability of persons who assume responsibility at the highest level at financial institutions. Indeed, it is essential that financial institutions have the right people in the right places in order to guarantee their integrity and their smooth operation. It is necessary to ensure that these people have both the expertise and the professional integrity required for their duties. In other words, they must undergo an in-depth assessment to ensure that they are “fit and proper”.

In order to follow on from the lessons learned from recent developments and bring greater clarity to the “fit and proper” legal provisions, the NBB, as a prudential supervisory authority, has decided to improve

¹ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

² Directive 2009/138/EEC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

the framework of its current “fit and proper” policy, by publishing a circular dealing with the suitability of members of the management committee, directors, heads of independent control functions and senior managers.

For prudential supervision purposes, the term “fit and proper” covers two aspects. It can be seen from the point of view of the requirement for “adequate organisation and internal control” for the institution as a whole, but also from that of individual assessments for a specific range of personnel. With regard to the first aspect, an adequate staff recruitment, assessment and training policy for all of an institution’s employees can be considered to be part of good governance³. With regard to the second aspect, we can talk about a kind of “a priori” prudential supervision, to the extent that the supervisory authority needs to give its prior agreement when persons who fall within the scope of the law intend to take up their positions for the first time, without prejudice to the institution’s own specific responsibilities in this area.

So this circular deals mainly with the second aspect of the “fit and proper” supervision, even though it clearly does cover topics which also affect the first aspect, for instance as far as the collective composition of the management body, conflicts of interest within the institution and the ongoing nature of the “fit and proper” obligations are concerned.

Although the circular is partly builds further on past guidelines and precedents from the case law, it does also shed new light on some aspects.

The broad principles underlying the prior “fit and proper” supervision are as follows:

- The concepts of expertise (fit) and professional integrity (proper) should be understood in the wider sense in order to look at whether a person has the qualities required for a given position; this is only the case when this person has the necessary qualities and characteristics to satisfactorily fulfil all of the duties and obligations relating to this position.
- Within the institution there needs to be a structured framework for assessing the suitability of members of the management committee, directors, heads of independent control functions and senior managers. This framework needs to be applied consistently.
- The NBB, acting in its capacity as prudential supervisory authority, has its own power of appraisal in order to judge whether the persons appointed have the required qualities. It must make proper use of this power, in other words using accurate, factual data as a basis, assessing these properly and drawing a reasonable conclusion therefrom.
- The “fit & proper” status of the persons appointed must be subject to ongoing attention both from the institution and from the supervisory authority.

This circular has a threefold goal:

- *First and foremost*, the NBB wishes to clarify what it means by “*expertise*” and “*professional integrity*”. It wishes to lay down guidelines so that institutions have a frame of reference which they can use to apply the legal “fit and proper” provisions. This means that institutions can use these standards as a basis in order to define their own assessments of suitability more precisely.

³ This conception is the starting point for various sections of the Internal Governance circular (Circular PPB-2007-6-CPB-CPA of 30 March 2007 - CBFA's prudential expectations on financial institutions' sound governance)

- *Furthermore*, the NBB wishes to offer a clear explanation of what it expects from institutions in the field of “fit and proper” assessments of members of the management committee, directors, heads of independent control functions and senior managers.
- *Finally*, the NBB wishes to communicate transparently about its “fit and proper” policy, in order to rationalise, as far as possible, the assessments of suitability it carries out, both in terms of content and of procedure.

The circular does not set out to assign the obligations imposed upon institutions by the supervisory laws to the persons in question. Rather its aim is to convince these people that they are doing an extremely important job, and that they need to help to ensure that institutions fulfil the obligations which are incumbent upon them. They need to be aware of both their duties and their social responsibilities, and to reflect this awareness in the way that they go about their work.

1.2 Structure of the circular

This circular comprises nine parts.

After a definition of the terms used (**PART 2**), the scope and the legal framework are defined (**PART 3**). **PART 4** delimits the responsibilities for assessments of suitability. The emphasis is on the respective roles played by the financial institution, the person in question and the supervisory authority.

PART 5 sets out the guidelines on the content of standards for the assessment of expertise and professional integrity. The specific implementation of assessments of suitability firstly by the financial institution and secondly by the supervisory authority, is discussed in **PART 6** and **PART 7**.

PART 8 contains explanations about the standard “fit and proper” forms to be used by financial institutions. Finally, **PART 9** explains how these forms should be used for positions held at the date of this circular.

PART 2. Terminology

A good understanding of the terminology used is essential in order to guarantee that this circular is applied properly and consistently. Below we specify how the NBB interprets the various terms.

2.1 Main concepts

There are two assessment standards which lie at the heart of this circular: expertise and professional integrity. For the sake of convenience, they are grouped together under the term “suitability”.

1) Expertise (fitness):

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

2) Professional integrity (propriety):

Professional integrity relates to a person's honesty and integrity.

A person is considered to be professionally honourable (proper) if there is no evidence to the contrary and nor is there any reasonable doubt about the person in question's good reputation. In other words, we can start out from the principle that the person will perform the task entrusted to him or her honestly, ethically and with integrity.

The concepts defined above should be understood in their widest senses. **PART 5** of the circular (see below) includes detailed guidelines about the way in which the NBB, as a supervisory authority, wishes to apply the concepts of "expertise" and "professional integrity".

2.2 Other concepts

Financial institutions (or, institutions): companies which are subject to supervision by the NBB and which fall within the scope of this circular (see below, **PART 3, point 3.1**);

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

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

Executive directors: members of the management body entrusted with the task of managing the company's activity (management function);

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

Senior managers: the group of persons, whether or not directors, whose function within the institution implies that they exercise at the highest level a direct and decisive influence at the highest level on the management of the company's activity⁴;

Supervisory authority: the National Bank of Belgium acting in its capacity as prudential supervisory authority;

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

PART 3. Scope - Legal framework

3.1 Institutions covered

The scope of this circular covers the following Belgian financial institutions:⁵

- credit institutions
- branches of non-EEA credit institutions
- stockbroking firms
- branches of non-EEA stockbroking firms

⁴ Please see also the explanation of the concept of "senior management" in the circular on outside employment (circular PPB-2006-13-CPB-CPA of 13 November 2006 on the holding of external positions by officers of regulated companies), especially as far as the recommendation of a formal decision to draw up a list of persons who must be classified as senior managers is concerned.

⁵ The legal references will be added as soon as the "fit and proper" legal provisions have been updated in the various supervisory laws.

- payment institutions
- electronic money institutions
- settlement institutions and institutions equivalent to settlement institutions
- branches of foreign settlement institutions and of foreign institutions which are equivalent to settlement institutions
- insurance companies
- reinsurance companies
- branches of non-EEA insurance companies
- financial holding companies
- insurance holding companies
- mixed financial holding companies

The list above clearly shows the cross-sector nature of this circular. By giving the various institutions the same guidelines on assessments of suitability, the NBB is maintaining its consistent attitude towards the financial sector.

Nevertheless, as is explained further on in the circular (see below, **PART 5, point 5.2.3, 1)**), for each assessment of suitability, the nature, size, complexity, risk profile and organisational structure of the institution within which the person in question will be working will still be taken into account. As a supervisory authority, the NBB believes that there are no pressing reasons which provide grounds for an application of different assessment standards for different components of the financial sector.

3.2 Persons/positions covered

This circular deals with the scope and assessment of the "fit and proper" status of persons who hold or wish to hold the following positions within financial institutions:

- member of the management committee (whether a director or not⁶);
- director;
- head of an independent control function. The assessment must in all cases relate to the persons with the most senior operational responsibility⁷ for these supervisory functions;
- executive officer. In these cases the NBB will only get involved by way of prior authorisation when the position is taken up in institutions which have no management committee or in certain branches.

These persons/positions are referred to below as "*persons/positions which fall within the scope of the law*" or "*persons/positions covered*" or, to keep things short, "*persons/positions*".

As can be seen from the list above, the NBB should not, in principle, get involved by way of prior authorisation for institutions which have a management committee when other senior managers (in other words senior managers who are neither directors nor members of the management committee) take up their positions. Naturally, this does not mean that these do not need to be "fit and proper". Indeed, the principles of this circular are also applicable to them provided that they do not relate to prior authorisation from the NBB. As, in principle, the NBB will not be carrying out its own assessment of the suitability of the person in question, institutions do not always have to inform the supervisory authority by using the forms appended to this circular.

⁶ A mixed composition (directors/non-directors) is allowed for certain types of holding company.

⁷ The level classified as "MC -1".

3.3 Cross-border context

In order to apply the circular within a cross-border context, we need to make a distinction between the following two situations:

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

Persons who hold or wish to hold the positions listed in point 3.2 at institutions which are authorised or registered by the competent supervisory authority of a State of the European Economic Area and which operate in Belgium either through a branch or pursuant to the freedom to provide services do not fall within the scope of this circular.

- 2) Belgian financial institutions which operate abroad through a branch (“outward passporting”) or branches established in Belgium of financial institutions governed by the law of a non-EEA member State: the circular DOES apply in this case.

On the other hand, the circular most certainly does apply to persons who work for institutions authorised in Belgium and operating abroad through a branch, and to persons who work for branches established in Belgium of financial institutions which are governed by the law of a non-EEA member State. The persons covered in this case are the senior managers of the branch and the local heads of the independent control functions.

3.4 Group context

The application of the circular within a group context can be explained as follows. Both in terms of the parent company governed by Belgian law and all regulated Belgian subsidiaries, the persons in question must be fit to hold their positions and must thus meet the “fit and proper” standards. If a person holds a position both with the parent company and the subsidiary which falls within the scope of the law, two separate assessments need to be carried out.

PART 4. Delimitation of responsibilities in relation to the assessment of suitability

4.1 Starting point

It is incumbent upon financial institutions to select and retain the persons who are fit and proper to hold the positions which fall within the scope of the law. So the main responsibility for showing that these persons are fit and proper also falls upon the institution in question. It must make every effort to check a person’s suitability, e.g. by carrying out an assessment. Amongst other things, the assessment process must be based upon information provided by the person who is to be assessed.

If the result of the assessment of suitability is positive, the institution must in turn send the NBB full, reliable information about the person’s suitability. Based upon this information, supplemented by details collected by the supervisory authority on its own initiative, the NBB will carry out its own assessment of the suitability of the person in question. This assessment deals not only with ensuring that the person is actually “fit and proper” but also with the procedure used to assess the institution in question. The greater the margin of assessment for a given detail (e.g. as far as skills are concerned – see below, **point 5.2.1, 2**), the greater the weight the NBB may give to this internal procedure put into place by the institution and the Bank may thus merely check that this assessment procedure offers the necessary guarantees.

Further details are given below about the way in which the NBB sees the responsibilities of the institution, the person who is to be assessed and the supervisory authority (in other words itself) for the purposes of assessments of suitability (see below, **points 4.2 and 4.3**). There is a specific passage on the implications of the ongoing nature of the “fit and proper” provisions for each of these three participants (see below, **point 4.4**).

4.2 The responsibilities of the financial institution and the person who is to be assessed

As has already been explained, it is incumbent, first and foremost, upon the financial institution to assess the expertise and professional integrity of persons who fall within the scope of the law. The management body is responsible for the appropriate recruitment, assessment and training policy designed, amongst other things, to support these assessments. If the institution has an appointment committee, it is appropriate for this committee to make an active contribution to the taking of responsibility by the institution and thus to draw up appropriate internal rules for the assessment of suitability. It is up to the institution's compliance function to monitor adherence to the "fit and proper" legal requirements. The institution is best placed to determine what specific expertise is required for a position at the company.

Both the institution and the person who is the subject of the assessment of suitability must ensure that the information given to the NBB during a second stage is complete and accurate (see also below, **point 7.3.2**).

4.3 The responsibilities of the supervisory authority

When a new person is deemed fit by the financial institution, authorisation from the NBB will follow where applicable. For the purposes of its own assessment it will first of all use the information supplied by the institution and by the person in question as a basis.

This information is collected using standard forms designed especially for this purpose (see below, **PART 8**). Obviously the NBB is free to ask for any additional information and, where applicable, to interview the person in question. More detailed explanations about the NBB's assessment procedure are given further on in the circular (see below, **PART 7**).

The longer that a person has held a position, the more practical information the institution and the NBB will have about the way that the person works within the institution (e.g. by looking at reports made by the management body, audits, etc.) The institution and the NBB both have a responsibility to double-check this information, where applicable.

4.4 The ongoing nature of the "fit and proper" provisions

The legal requirement always to have persons who are suitable to hold the positions which fall within the scope of the law is an obligation which all financial institutions must fulfil at all times. The persons in question must, at any time, "be" skilled and act with professional integrity.

The ongoing nature of the "fit and proper" requirements has implications for the responsibility of the person in question, the institution and the NBB as a supervisory authority.

1) The person in question

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

Persons who already hold positions must immediately inform the institution of any event which is likely to influence their "fit and proper" status.

2) The institution

When a institution deems that doubts might arise about the "fit and proper" status of a person who holds a position, the NBB expects it to take steps as quickly as possible and to make every effort to take a close look at these doubts. The institution must also notify the NBB immediately thereof.

In order to guarantee the constant suitability of the persons in question, the NBB recommends the following good practices:

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

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

3) The supervisory authority

The “fit and proper” status of persons who fall within the scope of the law is under constant scrutiny by the supervisory authority. Whenever the latter becomes aware of any information which raises doubts about the suitability of a person who currently holds a position, the NBB will immediately carry out a more in-depth examination and, if required, a reassessment.

PART 5. Guidelines on “fit and proper” standards

This part of the circular gives guidelines on the way in which the “fit” and “proper” assessment standards can specifically be implemented, although they are not intended to be exhaustive.

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

5.1 Weighting factors to be used in the assessment process

Any available information which can be used to back up a “fit and proper” file is always used and weighted by the supervisory authority according to its relevance and importance in relation to the person’s current or future responsibilities. There are a number of weighting factors, which means that the same importance does not need to be paid to all of the components of the file. Without prejudice to the more specific ones set out in **points 5.2 and 5.3**, the NBB always takes into account the following general weighting factors:

1) The seriousness of the information in the light of the prudential supervision goals:

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

2) How old the information is:

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

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

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

4) The combination of available information

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

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

5.2 Expertise – Fitness

5.2.1 The general scope of the fitness concept

The definition of the concept of expertise (see above, **PART 2, point 2.1**) shows that the term covers a number of areas, including appropriate knowledge and experience, skills and professional behaviour.

These three components are complementary, and an analysis of each of them helps to give an overview of the expertise of a particular person. For instance, a person who has the knowledge required for a given position but who is unable to pass it on and generate it within the institution does not have the required expertise.

1) Appropriate knowledge and experience

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

Irrespective of the specific knowledge and experience which may be required for a given position (see below, **point 5.2.1, 3, b**), the NBB expects persons who fall within the scope of the law to have knowledge and experience in:

- the regulatory framework which applies to the institution in question;
- the management of an institution, and more particularly:
 - the strategic planning and understanding of an institution's business strategy;
 - risk management (identification, assessment, follow-up, monitoring and mitigation of an institution's main risks);
 - team management;

- assessing the effectiveness of steps taken by an institution with a view to the creation of effective governance, oversight and controls;
- the interpretation of financial information about an institution and, on this basis, the identification of key issues and appropriate controls and measures.

The successful completion of relevant training and the possession of relevant professional experience can show that there is appropriate knowledge and experience.

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

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

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

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

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

On the basis of its own experience, the NBB deems that relevant professional experience should, in most cases, cover a period of at least five years, although, for smaller institutions, three years of professional experience may suffice. The holding of several short-term positions (for instance temporarily standing in for another person) does not allow an automatic conclusion to be drawn that there is relevant professional experience over a sufficient period of time. Given the speed at which changes can take place in the financial world, the training and experience need to be relatively recent. The guideline here is that there should not be more than three years between the time of the assessment of suitability and the most recent training/experience.

2) Skills

“Skills” refer to what an individual is capable of doing. They help the person in question to behave in a specific way in certain situations (for instance in negotiation processes or when taking a decision). In theory skills can be learned, just like knowledge. Knowing which skills are important for a given position is a question which the institution in question must first of all answer. It is important here to take account of the variables which are explained below (see below in **this point, 3**).

As an example, we might mention skills such as the ability to communicate, good judgement, risk detection, an organisational ability, the ability to work with other people, suitability to act as chairman, etc.

For the supervisory authority it is not a matter of assessing skills one-by-one; rather the assessment will look at the way in which the institution has taken the “skills” component into account in its own internal process of evaluating the applicant (for instance by organising assessments). The “skills” component can also be discussed at an interview (see below, **point 7.4**).

For small institutions, the NBB will not assess this component separately unless there are facts or circumstances which provide grounds for this.

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

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

In addition to the specific applications of proportionality set out above (see **this point, 1 and 2**), the following two variables must, in any case, be borne in mind:

a. The characteristics of the institution in question

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

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

The institution's *size or scale* may refer to a number of aspects, including:

- the number of workers;
- the assets for which an institution is responsible;
- the institution's potential systemic importance.

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

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

As has already been mentioned above (see above, **PART 4, point 4.2**), it is the institution which is best placed to determine what knowledge, experience and skills are required for a given position at the company. The NBB expects the institution to carry out this exercise thoroughly, and analyses the responsibilities relating to a given position and the knowledge, experience and skills which are particularly required as precisely as possible. For this purpose, the institution must review the position's specific activities, without attaching any importance to the formal job title. In certain cases, the legislation also lays down requirements (for instance with regard to members of the audit committee).

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

- when assessing the skills of an applicant for the position of Chief Risk Officer (CRO), special attention must be paid to the independence of his or her judgement and to how influential the interested party can be in the taking of decisions within the institution;
- when assessing the skills of an applicant for the position of chairman of the management body, the emphasis should be first and foremost on suitability for acting as chairman and for strategic management work;
- the (assessment of) the expertise required of a director varies depending upon whether the position to be held is executive or non-executive. In theory a non-executive director needs less detailed and practical knowledge than an executive director, but it is all the more important for him or her to be able to test the way that the executive directors are managing the company;

- with positions operating at the level of a parent company, in order to have the necessary overall understanding of all of the group’s activities, expertise in relation to the activities both of the parent company and of all the subsidiaries will be needed. This does not necessarily mean that people who work for a parent company must have a detailed knowledge of the activities of all of the subsidiaries.

4) Professional behaviour

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

To a certain extent, professional behaviour is learned, mainly through experience. As a general rule, we can consider that a person behaves professionally if there are no hints to the contrary. If the person in question has, in the past, been in contact with the supervisory authority, this prior relationship plays a role, and in this case contact will need to be made with people with whom the interested party has been professionally in contact in the past (“references”). For small institutions, in theory references do not need to be contacted, unless the NBB should deem this to be necessary.

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

a. Independence

Without prejudice to the provisions of general company law as far as conflicts of interest are concerned, in terms of “independence” we can make a distinction between the spirit of independence, the independence required for the purposes of preventing or managing conflicts of interest, and finally formal independence within the meaning of Article 526ter of the Companies Code.

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

With regard to the second concept, we can refer to the obligations and undertakings which these persons are bound to adhere to on the basis of the legal provisions on engaging in outside employment⁸, on the principle relating to strategic goals, corporate values and policy on conflicts of interest set out in the circular on internal governance, and the requirement for an internal policy on conflicts of interest applied by the institution within which these concepts are implemented.

As far as the holding of an independent directorship within the meaning of Article 526ter of the Companies Code is concerned, we should underline the fact that it is incumbent upon the institution to ensure that all of the legal criteria set out in the aforesaid article are fulfilled. As far as the required absence of any “*significant business relationship*” is concerned, the NBB does, however, believe that the significance should be assessed from the point of view of both the institution and the interested party, and that in this latter case, the existence of a commercial relationship between the person and the financial institution in question is incompatible with classification as an independent director. This does not prevent

⁸ Articles 27, 61, § 2, 5, 64, 3, and 80, § 1, 2, of the Law of 22 March 1993; Article 70 of the Law of 6 April 1995; Article 21, 3, of the Royal Decree of 20 December 1995; Articles 15 and 36 of the Royal Decree of 26 September 2005; Article 4, § 4, second paragraph, of the Royal Decree of 12 August 1994; Article 25 of the Law of 16 February 2009; Article 90, § 4, of the Law of 9 July 1975; Article 91 *ter*1, third paragraph, of the Law of 9 July 1975; Article 15, § 2, of the Royal Decree of 21 November 2005.

the holding of certain basic financial products (for instance a current account, a savings account, a supplementary group insurance policy, compulsory fire / motor vehicle, etc. insurance policies) as part of agreements concluded under market conditions.

b. Amount of time invested

The holding of a number of positions simultaneously cannot only lead to conflicts of interest for the person in question but may also mean that the latter is unable to spend enough time on the position for which the suitability test is being carried out.

5) Background

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

5.2.2 The collective composition of the institution's management body

In theory, an assessment of expertise always deals with an individual. However, when the assessment relates to a directorship (whether executive or not) on a body made up of a number of persons, account must also be taken of the composition and operation of the management body as a whole. This means that there must be checks on whether the expertise within the body made up of a number of persons is sufficiently guaranteed with this person, in view of his or her knowledge and specific experience, skills and professional behaviour.

Here are a few examples as an illustration:

- When a director leaves, his or her successor must have the appropriate additional expertise according to the new composition of the management body. If this is not the case, the supervisory authority will ask the institution how it plans to address this deficiency in terms of expertise.

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

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

- Within an management body, specific knowledge and skills may vary from one person to another. For instance, a CEO must be able to offer critical opinions about the work of the CFO, which requires a certain degree of knowledge of this field, but the CFO must obviously be able to show more specific (financial) knowledge.
- The lack of specific knowledge and experience on the part of a person within a body made up of a number of people does not necessarily lead to a refusal, provided that other people within the body are able to make up for this deficiency. Nevertheless, each member must have a certain basic knowledge of the fields listed in point **5.2.1, 1)**, as each member holds the same degree of responsibility.

In this respect, it needs to be remembered that institutions are bound by law to inform the NBB of any distribution of tasks between members of the management body and of any significant changes thereto.

5.3 Professional integrity – Propriety

5.3.1 The scope of the propriety concept

As explained above (see above, **PART 2, point 2.1**), whether or not a person is judged to be proper depends upon his or her integrity and honesty. This is a characteristic which can be specifically analysed on the basis of a person's history.

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

A distinction needs to be made between the professional disqualification technique, which is an automatic mechanism (there is no room for appraisal by the NBB) and the wider-ranging assessment of professional integrity (to which, on the other hand, the NBB's power of appraisal does apply, manifesting itself amongst other things in the application of weighting factors relating to relevance and importance as set out above in point **5.1**). Even so, there is a link between the two, in the sense that, in some specific situations relating to offences which give rise to professional disqualification, the NBB sets out to make use of its power of appraisal so strictly that we can call it a "near-automatic" assessment (see below **this point, 2, a**).

1) Professional disqualification

The various supervisory laws⁹ contain a list of convictions which, when a person is liable to them, in any case mean that, for a very specific period of time, s/he is unable to hold the positions which fall within the scope of the law. As a supervisory authority, the NBB is unable to tolerate any exemptions or system of exceptions in this respect, nor can there be any exemption with regard to these convictions.

2) The NBB's power of appraisal

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

On the basis of the standard form used by the NBB, institutions can see to which details should be paid special attention as part of a propriety assessment (see appendix **1**). Any convictions - of any kind whatsoever - must always appear on the forms (see also below **point 7.3.2**).

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

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

⁹ Articles 19 and 79, §1, first paragraph, 5 of the Law of 22 March 1993, Article 61 of the Law of 6 April 1995, Articles 13 and 68 of the Law of 21 December 2009, Articles 9 and 36 of the Royal Decree of 26 September 2005, Articles 90 and 91 *ter* 1 of the Law of 9 July 1975, Article 17 of the Law of 16 February 2009, Article 4, §4 of the Royal Decree of 12 August 1994 and Article 15, §1 of the Royal Decree of 21 November 2005.

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

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

b. Financial background

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

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

Taking account of the weighting factors set out in point 5.1, for the purposes of an integrity assessment, the NBB recommends paying attention to both personal and professional financial backgrounds. The following situations can be given as examples:

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

c. Other events in a person’s background

Taking account of the weighting factors set out in point 5.1, attention also needs to be paid to the following events in a person’s background:

- any other criminal, disciplinary, civil and administrative convictions;
- any ongoing cases in these areas, and especially a person’s involvement in investigations or disciplinary proceedings being carried out by the NBB or other supervisory authorities;
- any amicable arrangements (“termination of prosecution on payment of a sum of money”) or settlements concluded in relation to offences under financial or other legislation;
- any other facts which, irrespective of their legal classification, are likely to cast doubt upon a person’s professional integrity.

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

PART 6. Assessment of suitability by the financial institution

Although in theory the assessment of suitability takes place either before the person takes up the position or when s/he changes his or her position, when any information which is likely to influence a person's "fit and proper" status arises during the holding of a position, the institution must analyse it without delay.

6.1 Before taking up a position: function profiles and recruitment policy

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

The institution carries out a "due diligence" investigation, the specific level of which depends upon the planned position. It is recommended that the scope and practical operation of the "due diligence" investigation should be specified in the institution's recruitment policy.

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

A properly documented recruitment policy, job descriptions accurately drawn up by the institution and selection decisions stating the grounds for them can be extremely useful as a source of information for the assessment of suitability which is carried out by the NBB subsequently (see below, **PART 7, point 7.3**).

6.2 During the performance of a position: assessment procedure and periodic assessment

It has already been explained above that the suitability criterion was of an ongoing nature (see above, **PART 4, point 4.4**).

In order to guarantee the constant suitability of the persons who fall within the scope of the law, it is important for institutions to draw up assessment procedures which specifically aim to check that these persons remain fit. These procedures must clearly state what measures must be taken by the institution in the event of a negative assessment. It is advisable to record these assessments in writing. The written document should contain not only the final assessment but also any considerations which led to this assessment, including any agreements on points requiring improvement in relation to expertise. The constant nature of the "fit and proper" obligations should also appear in the institution's training policy.

PART 7. Assessment of suitability by the NBB

7.1 Stages in the assessment

Although the supervisory authority checks the suitability of persons who wish to hold a position which falls within the scope of the law before they effectively take up their positions, the supervisory authority will also carry out an assessment when the facts and/or circumstances provide grounds for this.

The specific scope and assessment methods vary depending upon the stage at which the assessment takes place.

7.1.1 Prior to the taking up of the position

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

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

7.1.2 During the performance of a position

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

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

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

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

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

It has already been mentioned above that the arrival of a new director does not automatically lead to the reassessment of members who already sit on the institution’s management body (see above, **PART 4, point 4.2.3, 3**). A change to the composition of the management body, whether or not this follows the arrival of a new person, may on the other hand be reasonable grounds for a reassessment. Amongst other things, this may be the case if a person who has a certain expertise resigns and no (temporary) replacement is sought or found, or if the people sitting on the management body change their positions (e.g. if they switch from non-executive to executive director status).

7.2 Assessment procedure

7.2.1 Prior to the taking up of the position

In accordance with the supervisory laws¹⁰, institutions must inform the NBB in advance of any proposed appointment, reappointment or revocation of an appointment of persons who fall within the scope of the law. When a person changes position, this must be considered as a new appointment, and it is also considered to be a change of position when there is a significant new distribution of tasks within the management body.

The NBB must give its agreement, within a reasonable period of time, to the proposed appointment. In this respect, it must make every effort to deal with all non-complex cases within a period of one month, and complex cases (for instance those requiring an interview) within a period of two months, and to consider a large majority of new appointments as non-complex. These indicative time frames start from the moment when the duly completed forms are sent to the NBB; they are suspended when the NBB requires additional information from the institution until the information in question is provided. Institutions are asked to take these indicative time frames into account in order to send the written documentation using the standard forms in good time.

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

When a proposed appointment relates to a person who is being proposed for the first time for a position which falls within the scope of the law, the NBB first consults the FSMA¹¹. The FSMA sends any relevant factual information to the NBB within one week from receipt of the request for an opinion¹².

7.2.2 During the performance of a position

An assessment must come with firm guarantees but it is up to the supervisory authority to examine whether a reassessment of a given person is appropriate. As a prudential supervisory body, the NBB may carry out a reassessment of a given person at any time

As has already been pointed out above (see above, **PART 7, point 7.1, 2**), the stage in the process and the grounds for a reassessment will always depend upon the specific circumstances, so it is impossible to provide an exhaustive list of the cases in which a reassessment may or may not take place; it is up to the NBB to make the final appraisal.

In the event of a reassessment of a person, the NBB will inform the institution what information it would like to receive.

The NBB may ask for information about any periodic assessments which have been carried out by the institution (see above, **PART 6, point 6.2**).

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

¹⁰ The legal references will be added as soon as the “fit and proper” legal provisions have been updated in the various supervisory laws.

¹¹ The legal references will be added as soon as the “fit and proper” legal provisions have been updated in the various supervisory laws.

¹² In this respect, it should be pointed out that, when carrying out its assessment, the BNB is not bound by any compliance officer accreditation which may, where applicable, have been obtained from the FSMA.

7.3 Information for the assessment to be carried out by the supervisory authority

7.3.1 Sources of information for the supervisory authority

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

- the current standard form, duly filled in and signed by both the institution and the person in question (see also below, **PART 8**), including any information which the supervisory authority may, if necessary, obtain from any references mentioned on it;
- any information and background which the NBB, as a prudential supervisory authority, may have;
- the institution's documented policy (processes and procedures) which is being used as a basis for the recruitment of the person in question and the function profile which the institution has drawn up for the position in question, along with the selection decision recorded in writing (see above, **PART 6, point 6.1**): the results of any assessments are a welcome source of information for the supervisory authority;
- the opinions of the FSMA and/or other supervisory authorities;
- any information obtained from the judicial authorities;
- where applicable, the periodic assessment of the person in question carried out by the institution (and recorded in writing), on the basis of the applicable function profile, including any considerations which led to this assessment;
- any other information which the institution may have and which may be important for the purposes of assessing a person's expertise and/or professional integrity;
- any public information.

The supervisory authority is empowered to ask for any information which it may deem to be necessary for the purposes of assessing a person's suitability¹³. Although it is important for institutions to send the supervisory authority notice of any changes to their policies on recruitment and periodic assessments spontaneously and systematically, for instance appended to the institution's memorandum of good governance, changes of policy do not automatically lead to a reassessment.

7.3.2 Deliberate withholding or incorrect transmission of information

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

If it is found that there has been a breach of this kind it will have a negative impact on the assessment by the supervisory authority. The NBB considers any failure to send relevant, important information as a supervisory antecedent. The NBB may detect this breach on the basis of other sources of information. Any *deliberate* withholding of information will lead to an immediate refusal, given the inherent problem of trust relating to this breach.

¹³ Article 36/19 of the Law of 22 February 1998

7.4 Interview technique

For the purposes of an assessment of suitability, the NBB may choose to hold an interview with the person in question. It will do this, amongst other things, if it thinks that a discussion with the interested party is desirable or necessary in order to gain a full, accurate picture of his or her expertise and/or professional integrity. The NBB will thus apply a risk-based approach and will take account of the institution's nature, size and risk profile, the planned position and any other details which might raise questions about the information supplied by both the institution and the person in question. An interview will nevertheless always take place for an (applicant) executive director, the chairman of the management body or a chairman of a specialist committee set up by the management body of a financial institution which is of systemic importance.

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

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

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

The make-up of the interview panel depends on the nature of the position which the interested party wishes to hold, but it is usually made up of three people. When it is an (applicant) CEO or an (applicant) chairman of the management body / of a specialised committee working at a financial institution of systemic importance, at least one member of the panel will belong to the senior management of the NBB. For other positions which fall within the scope of the law, the NBB will decide on the exact make-up of the interview panel on an ad hoc basis.

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

7.5 Result and consequences of the assessment

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

In cases involving a reassessment of a person who is already in place and holding the position, the NBB may determine whether any steps need to be taken and, if so, what step is most effective. A period of grace may be granted (e.g. in order to go on a specific training course). The NBB may also order the institution itself to draw up a plan of approach in which it sets out what steps are to be taken and when, in order to avoid any repetition of the problems which have been detected in future. If the situation so requires, the supervisory authority may finally decide that the interested party may no longer take up the position.

Due grounds for any negative assessment by the NBB relating to a person's "fit and proper" status will always be given.

PART 8. Standard NBB forms

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

When a standard form needs to be signed “by the institution in question”, this should be understood as meaning:

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

8.1 The taking up of the position

The first standard form concerns the taking up of a new position. It must be remembered that a change of position is also covered here (see above, **PART 7, point 7.2.1**).

The NBB’s standard form deals both with the “fit” and the “proper” aspects, and must be signed by both the institution and the person in question. It appears in appendix to this circular (see **FORM 1 “NEW APPOINTMENT”**).

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

Unlike the forms which were in use until fairly recently, there are no longer separate forms for executive and non-executive directors.

8.2 New elements about the “fit and proper” status of a person who already holds a position

Any new elements which might have an impact upon the “fit and proper” status of a person who falls within the scope of the law must be sent to the supervisory authority without delay (see above, **PART 4, point 4.4**). The NBB provides a standard form for giving notice of these details (see **FORM 3 “NEW ELEMENTS”**), which must be signed by both the person in question and the institution.

It should be pointed out that this form must also be used for persons who were already in their positions at the time when the NBB decided to use the new forms.

8.3 Leaving a position

When a person leaves a position which falls within the scope of the law, the NBB wishes to receive some information about this. In this case a standard form must also be used (see **FORM 2 “EXIT”**), which must be signed by the institution.

In the event of the replacement of a person who falls within the scope of the law, two forms must be filled in: one concerning the person who is leaving the position (**FORM 2 “EXIT”**) and another concerning the person who wishes to take over in the position in question (**FORM 1 “NEW APPOINTMENT”**).

8.4 Reappointment

When an institution wishes to reappoint a person to a position which falls within the scope of the law, a standard form also needs to be filled in (see **FORM 4 “REAPPOINTMENT”**), which must be signed by both the person in question and the institution.

PART 9. Positions held at the date of this circular

As far as positions held at the date of this circular are concerned, the four forms in appendix must be used as follows. **FORM 1 “NEW APPOINTMENT”** must only be filled in when the position in question is renewed, as is clearly stated on **FORM 4 “REAPPOINTMENT”**. **FORM 2 “EXIT”** and **FORM 3 “NEW ELEMENTS”** must always be used.

Luc Coene
Governor

APPENDICES

- **FORM 1 “NEW APPOINTMENT”**
- **FORM 2 “EXIT”**
- **FORM 3 “NEW ELEMENTS”**
- **FORM 4 “REAPPOINTMENT”**