



POLISH FINANCIAL SUPERVISION AUTHORITY

Vice-Chairman

Wojciech Kwaśniak



Warsaw, 19 May 2016

DLB/DLB WL1/700/54/1/2016

BANK HANDLOWY w WARSZAWIE S.A.

Organisational Office

24 May 2016

KW/9/5885/2016

**Management and Supervisory  
Boards of domestic banks**

Dear Sir/Madam,

Upon the Act of 5 August 2015 on macroprudential supervision over the financial system and crisis management in the financial system, implementing the solutions adopted under CRD IV, requirements have been defined in the Banking Law (Article 22aa) to be fulfilled by members of management boards and supervisory boards of the bank. The requirements include:

- 1) qualifications, i.e. knowledge, skills and experience adequate to the functions and responsibilities performed, and guarantee of due performance of said responsibilities,
- 2) holding a limited number of functions as members of management boards or supervisory boards in other entities,
- 3) ability to follow independent judgment,
- 4) adequacy in terms of the need for a given body as a whole to have the necessary qualifications (collective qualifications).

The Banking Law provides that the obligation to ensure that these requirements are met rests with the bank. Pursuant to Article 22(2) and Article 22a(1) of the Banking Law, the general meeting, while appointing or removing members of a bank's supervisory board, and a supervisory board, while appointing or removing members of the bank's management board, take into account the assessment of fulfilment of the aforesaid requirements by persons thus appointed or removed. It needs to be emphasized that the obligation for members of management and supervisory boards to meet the requirements specified in Article 22aa of the Banking Law is of ongoing nature, which means that the bank's efforts intended to ensure that such requirements are complied with must not be limited to assessments made upon removal or appointment only. The rules of performance of the

bank's obligations in this respect, including in particular the criteria of assessing compliance with the qualification requirements, have been defined by the European Banking Authority in the Guidelines on the assessment of the suitability of members of the management body and key function holders of 22 November 2012. Application of said guidelines was recommended to banks in the letter of Vice-Chairman of the Polish Financial Supervision Authority dated 17 April 2013 (ref. no: DLBDLB WL 1/703/ 2/1/2013). The banks should apply the guidelines until the KNF adopts Recommendation Z, the draft of which KNF submitted for public consultation in December 2015.

With respect to the basic rules for assessing compliance with the qualification requirements by members of management and supervisory boards, as defined in the Banking Law, it should be noted in the first place that the bank should make the assessment in the following circumstances:

- 1) if it intends to appoint a member of the management or supervisory board - with respect to the person who is to take up the function,
- 2) if it intends to change the scope of responsibilities of a member of the management or supervisory board,
- 3) in each justified case where doubts exist as to a member of the management or supervisory board's having adequate qualifications.

Re-assessment of a person may be limited to investigating whether, given the circumstances essential for the assessment (e.g. changed scope of responsibilities), the person still meets the qualification requirements. Ensuring proper selection and assessment of the requirements to be fulfilled by members of management and supervisory board is the responsibility of the bank's bodies competent to decide on appointment of the members, i.e. the general meeting (meeting of representatives) and the supervisory board. Obviously, this does not mean that the entire assessment process must be carried out by such authorities on their own. Given the possibilities of the bank and organisational solutions adopted by the bank, the assessment process may be carried out by the bank's internal departments (e.g. IIR, *compliance* department, head office, etc.), and by third parties (consulting companies). It is of key significance that the bodies responsible for the assessment (taking decision on the assessment) have access to reliable, exhaustive and well-documented materials to aid the decision-taking. To this end, situations and tools that may raise doubts as to completeness and reliability as well as impartiality of the decision should be avoided in the assessment process. In particular, the assessment should not be based on self-assessment (reciprocal assessment) only, or declarations of members of the body, and efforts should be made to achieve the most objective verification of the information and feedback obtained. Also, assessment prepared only by personnel reporting to the assessed persons does not seem to be a solution that complies with the rules of preventing conflicts of interest. The above aspects should be resolved and described in detail in the relevant internal bylaws of the bank. It should be noted that, pursuant to the EBA guidelines, and the draft Recommendation Z, also persons holding (or are to hold) key functions in the bank should be assessed based on similar rules.

Pursuant to Article 22(3) and Article 22a(2) of the Banking Law, promptly after appointment of a supervisory board or a management board, or after changes in composition of said bodies, the bank is obliged to inform the Polish Financial Supervision Authority about this fact and about compliance by the persons concerned with the requirements of Article 22aa of the

Banking Law. Said provision clearly stipulates that the information on compliance with the requirements must be based on the assessment carried out by the competent body of the bank. For this reason, the information must not be restricted to a mere declaration that the requirements have been met, or that the assessment is positive. The information should present circumstances and criteria considered in the process of assessment as well as circumstances and criteria

omitted from the process, and the grounds for the results of the assessment in view of such circumstances and criteria. It is only with respect to information to be provided to the KNF in connection with removal of a member of the management board or supervisory board, if such removal does not result from re-assessment, or if the assessment carried out in connection with the removal yields results that are not different from previous communication, that the information can be limited to stating that the assessment of a person remains current. Given the fact that an assessment of compliance with the requirements specified in Article 22aa of the Banking Law should be made prior to a person's appointment as member of management or supervisory board, with respect to functions that require consent of the KNF (i.e. president of the management board of a bank or a member of the management board responsible for essential risks in the bank's activity), the assessment should also be made before an application for consent is filed with the KNF and the aforesaid information on the assessment should be attached to the application.

This letter is addressed to management and supervisory boards of all domestic banks, however, these comments should also be communicated during the upcoming general meetings or meetings of representatives of banks. Cooperative banking associations are requested to communicate the contents of this letter to their member banks.

VICE-CHAIRMAN  
of the Polish Financial Supervision Authority  
/illegible signature/  
Wojciech Kwaśniak