

OFFICIAL INFORMATION
OF THE CZECH NATIONAL BANK

of 3 December 2013

regarding the interpretation of the terms *trustworthiness* and *competence*

I. Applicability and Purpose

1. Through this Official Information, the Czech National Bank provides an interpretation of the terms *trustworthiness* and *competence*¹⁾ of the persons engaged by financial services providers from the sectors of credit institutions, insurance industry, capital market and payment systems, who are subject to supervision of the Czech National Bank pursuant to Act No. 6/1993 Coll., on the Czech National Bank, as amended. The Official Information applies not only to the persons assessed by the Czech National Bank within the scope of administrative or analogous proceedings, but also to other persons with whose assistance financial services providers perform their activities.
2. In most of the legal regulations governing the financial market, the terms *trustworthiness* and *competence* are what is known as “uncertain legal concepts”. The Czech National Bank therefore informs about its approach to assessing the trustworthiness and competence of persons, which is based (among other things) on guidelines of the European Supervisory Authorities (e.g. Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC, 3L3 Committee/ESAs, 2008,²⁾ Guidelines on the assessment of the suitability of members of the management body and key function holders, EBA, 2012³⁾) and the recommendations of international organizations in the field of regulation and supervision over the financial market (e.g. Principles for enhancing corporate governance, BCBS, 2010,⁴⁾ *Fit and Proper Assessment – Best Practice*, IOSCO, 2009⁵⁾, *Supervisory Standard on Fit and Proper Requirements and Assessment of Insurers*, IAIS, 2005⁶⁾).
3. The Official Information cannot be applied where the applicable legal regulations contain different definitions of the terms *trustworthiness* and *competence*. Different definitions of the terms *trustworthiness* and *competence* are part of the regulations on insurance intermediaries and independent loss adjusters, regulation of employees of insurance and reinsurance companies who are directly involved in underwriting of insurance or

¹⁾ In the area of financial markets regulation different terms may exist. Nevertheless, such terms have the same meaning (e.g. “trustworthiness and competence”, “trustworthiness, competence and character”, “competence, trustworthiness and experience”, “trustworthiness and experience” or “trustworthiness and adequate experience”).

²⁾ http://www.esma.europa.eu/system/files/08_543.pdf.

³⁾ <http://www.eba.europa.eu/documents/10180/106695/EBA-GL-2012-06--Guidelines-on-the-assessment-of-the-suitability-of-persons-.pdf>.

⁴⁾ <http://www.bis.org/publ/bcbs176.pdf>.

⁵⁾ <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD312.pdf>.

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http://www.iaisweb.org/_temp/Supervisory_standard_on_fit_and_proper_requirements_and_assessment_of_insurers.pdf.

reinsurance contracts, or in intermediary activities, which are carried out by them, small-size providers of payment services and electronic money small-size issuers.⁷⁾

4. The information of the Czech National Bank (being the supervisory authority over the financial market) on the interpretation of the terms *trustworthiness* and *competence* is given in the annex to this Official Information. However, the Czech National Bank does not rule out that, with regard to the circumstances of a specific case, it may be legitimate to consider some other facts not mentioned in this Official Information, too.⁸⁾

II. Final Provisions

1. This Official Information captures the legal status existing as of 1 December 2013. However, in view of any potential amendments to the applicable legislation, the current legal status needs to be taken into account when applying this Official Information.
2. This Official Information becomes effective as of the day of its publication in CNB Bulletin. The Official Information of the Czech National Bank dated 21 May 2010 regarding the interpretation of the terms *trustworthiness* and *competence* (published in CNB Bulletin under number 12/2010) shall become invalid from the effective day of this Official Information.

Vice-Governor

Ing. Mojmír Hampl, MSc., Ph.D., signed

Annex: Information on the interpretation of the terms *trustworthiness* and *competence*

Regulation and International Cooperation on Financial Market Department
Responsible:
JUDr. Dr. Ossendorf, Ph.D., LL.M., tel. 224 413 583

⁷⁾ Article 2 (a), Article 18 and Article 19 of Act No. 38/2004 Coll., on insurance intermediaries and on independent loss adjusters, as amended and Article 37 (1) (d) to (f) and Article 54 (1) (b) and (c) of Act No. 284/2009 Coll., on payment systems..

⁸⁾ Cf. judgment of the Supreme Administrative Court file no. 9 Afs 29/2007 of 31 May 2007, for instance.

Information on the interpretation of the terms trustworthiness and competence

I. Trustworthiness

1. General rules

The applicable legal regulations require persons engaged by financial services providers to be trustworthy.

The term *trustworthiness* corresponds with the term “good repute”, which was used by some legal regulations in relation to approval of persons in the years 2001 to 2004¹⁾. The content of the two concepts is practically identical, since both of them are based on the same provisions of the applicable directives (“*good repute*”, “*gut beleumdet*“, “*honorabilité*“).

Trustworthiness is a criterion that takes into account:

- the compliance with legal and ethical rules; and
- the moral profile and integrity.

Trustworthiness of a person consists both in his/her **integrity** and in his/her **professional, business integrity**. Integrity²⁾ forms part of trustworthiness.

When assessing the condition of trustworthiness, the Czech National Bank takes into account, in particular, whether the persons engaged by financial services providers have ever been convicted of a criminal offence; whether, in connection with the execution of their profession, employment, position or business activities, a penalty has ever been lawfully imposed on them for an administrative delict, or a duty to pay damages; whether they have always discharged their duties vis-à-vis the supervisory or state inspection authority while executing their position; and whether they have always observed the fair business dealings and economic competition.

When assessing trustworthiness, the Czech National Bank proceeds:

- from the underlying documents submitted by the applicant;
- from its own findings (e.g. information established while exercising supervision, etc.);
- or, as the case may be, from some other facts known to it in a given case.

During the proceedings within the scope of which the Czech National Bank assesses the trustworthiness of persons, it proceeds from the principle of absence of negative news³⁾.

However, this is without prejudice to the applicants’ obligation to submit for the proceedings all of the underlying documents required from them by the applicable legal regulations or that the Czech National Bank itself may request from them. It is primarily the responsibility of the applicants themselves to submit all of the underlying documents that will enable the Czech National Bank to assess their fulfilment of the statutory conditions. Should the underlying

¹⁾ Cf. judgment of the Supreme Administrative Court file no. 7 A 109/2002 of 12 March 2004, for instance.

²⁾ The reference to integrity shall usually be understood as a reference to the fact that the assessed person has never been lawfully convicted of a criminal offence. Cf. judgment of the Supreme Administrative Court file no. 5 As 29/2003 of 30 September 2004, for instance.

³⁾ In relation to that, cf. *Guidelines for the Prudential Assessment of Acquisitions and Increases in Holdings in the Financial Sector Required by Directive 2007/44/EC* (CEBS/2008/214, CEIOPS-3L3-19/08, CESR/08-543b), page 10, for instance.

documents submitted by the applicant not enable the Czech National Bank to arrive at any conclusion as to whether the assessed person has fulfilled the conditions, the Czech National Bank shall turn down the application⁴⁾.

2. Specific conditions

2.1. Lack of trustworthiness

The **Czech National Bank shall not deem the following persons** engaged by financial services providers **to be trustworthy**, in particular:

- a) persons who have ever been lawfully convicted of a intentional criminal offence, or of a criminal offence against property, or of a negligently committed economic criminal offence (unless they shall be regarded as not to have been convicted);
- b) persons on whom – in the last 10 years – a penalty has been lawfully imposed for an offence or for some other administrative delict due to breaching a statutory duty in connection with the execution of their employment, position or business activities exceeding CZK 20,000; or adequate sum in foreign currency or prohibition of activities, or a duty to pay damages for having committed a culpable (intentionally or negligent) serious or repeated breach of a statutory duty;
- c) persons who – in the last 10 years – have deliberately given false or incomplete testimony in administrative proceedings, or who have deliberately given false information in an affidavit with respect to an administrative authority, or who have otherwise obstructed the exercise of supervision or inspection in the financial market field, providing such breaches have been established through a lawful decision;
- d) persons who – in the last 10 years – have seriously violated the ethics of business relations or economic competition, misused confidential information including personal data of other persons, breached commercial or banking secrecy or some other obligation to maintain confidentiality, providing such breaches have been established through a lawful decision; or
- e) persons in respect of whom – in the last 10 years – a decision on bankruptcy has been issued, an insolvency petition has been dismissed by a court of law due to the fact that their assets were insufficient to cover the costs of insolvency proceedings, a decision has been issued to declare bankruptcy or to cancel bankruptcy due to the fact that the debtor's assets were entirely insufficient to cover the costs of bankruptcy proceedings.⁵⁾

2.2. Serious doubts about trustworthiness

The **Czech National Bank shall have serious doubts about the trustworthiness of the following persons** engaged by financial services providers, in particular:

- a) persons who have ever been lawfully convicted of a negligently committed criminal offence in connection with the execution of their profession, employment or position (unless they shall be regarded as not to have been convicted);

⁴⁾ In relation to that, cf. judgment of the High Court in Prague file no. 6 A 50/2000 (“should the applicant fail to mention any facts relevant to the decision-making process, or mention such facts in an incomplete manner, the Commission cannot be reasonably required to establish such facts itself”).

⁵⁾ Cf. Article 10 (2) b) point 3 of the Capital Market Undertakings Act no. 256/2004 Coll. as amended and Article 8 b) of Insurance Act no. 277/2009 Coll. as amended.

- b) persons on whom – earlier than in the last 10 years – a penalty was lawfully imposed for an offence or for some other administrative delict due to breaching a statutory duty in connection with the execution of their employment, position or business activities exceeding CZK 20,000; or adequate sum in foreign currency or prohibition of activities, or a duty to pay damages for having committed a culpable (intentionally or negligent) serious or repeated breach of a statutory duty;
- c) persons who – earlier than in the last 10 years – deliberately gave false or incomplete testimony in administrative proceedings, or who deliberately gave false information in an affidavit with respect to an administrative authority, or who otherwise obstructed the exercise of supervision or inspection in the financial market field;
- d) persons who – earlier than in the last 10 years – seriously violated the ethics of business relations or economic competition, misused confidential information including personal data of other persons, breached commercial or banking secrecy or some other obligation to maintain confidentiality, providing such breaches were established through a lawful decision;
- e) persons in respect of whom – earlier than in the last 10 years – a decision on bankruptcy was issued, an insolvency petition was dismissed by a court of law due to the fact that their assets were insufficient to cover the costs of insolvency proceedings, a decision was issued to declare bankruptcy or to cancel bankruptcy due to the fact that the debtor's assets were entirely insufficient to cover the costs of bankruptcy proceedings;
- f) persons to whom a court of law or administrative authority has ever lawfully refused to grant consent to their election, nomination or appointment to a position, or the acquisition of increase of qualifying holding or control, where such consent is required in relation to such an election, nomination or appointment to a position or the acquisition of increase of qualifying holding or control, or persons in respect of whom such consent has ever been lawfully revoked, if this has occurred in connection with the assessment of their trustworthiness;
- g) persons whose authorization to conduct business has ever been lawfully suspended or revoked for reasons other than at their own request;
- h) persons whose application for membership of a regulated market organizer, of a professional union, chamber or association of financial services providers (including abroad) has ever been turned down, or on whom a disciplinary punishment has ever been imposed by such a community for having breached statutory duties, or who have ever been expelled from such a community;
- i) persons who were the statutory body, members of the statutory body, members of the supervisory body or management board, persons authorized to act on behalf of a legal entity based on some other fact, or persons who considerably affected the conduct of a legal entity or played a significant role, at the time when such acts were committed as a result of which:
 - a penalty was lawfully imposed on the legal entity for a serious administrative delict, or a duty to pay damages for having committed a serious or repeated breach of a statutory duty in connection with the operation of this legal entity in the financial market; or
 - the legal entity's application for membership of a regulated market organizer, of a professional union, chamber or association of financial services providers

(including abroad) was turned down, or a disciplinary punishment was imposed on the legal entity by such a community for having breached statutory duties, or the legal entity was expelled from such a community;

- j) persons who were the statutory body, members of the statutory body, members of the supervisory body or management board, persons authorized to act on behalf of a legal entity based on some other fact, or persons who considerably affected the conduct of a legal entity or played a significant role, or persons who controlled such a legal entity, for a period of up to three years:
 - before a decision on bankruptcy was issued in respect of this legal entity, or before an insolvency petition was dismissed due to the fact that its assets were insufficient to cover the costs of insolvency proceedings;
 - before bankruptcy was declared in respect of the assets of this legal entity, or before composition was permitted; or
 - before the legal entity's authorization to conduct business was lawfully suspended or revoked for reasons other than at its own request, or before conservatorship was implemented in this legal entity;
- k) persons against whom prosecution was commenced for criminal offences referred to in paragraphs 2.1 (a) and 2.2 (a) above, and such prosecution is still under way;
- l) persons against whom offence proceedings or some other proceedings regarding an administrative delict were commenced for breaching a statutory duty in connection with the execution of their employment, position or business activities, with the exception of such offence proceedings or some other proceedings regarding an administrative delict for which pecuniary penalties exceeding CZK 20,000 or adequate sum in foreign currency may be imposed, and such proceedings are still under way; or
- m) persons who were the statutory body, members of the statutory body, members of the supervisory body or management board, or persons authorized to act on behalf of a legal entity based on some other fact, or persons who considerably affected the conduct of a legal entity or played a significant role, or persons who controlled such a legal entity, if proceedings were commenced against this legal entity regarding any acts committed at the time of the assessed persons' engagement pursuant to subparagraph i) above, and such proceedings are still under way.

In cases of serious doubts about the trustworthiness of persons engaged by financial services providers, the Czech National Bank shall take into account, in particular:

- the intensity of the assessed person's culpability (intentionally, negligent, accidental);
- whether such conduct occurred repeatedly;
- the seriousness and consequences of such conduct;
- the period of time that has elapsed since the occurrence of such conduct;
- whether the assessed person demonstrably and sufficiently drew the Czech National Bank's attention to the existence of such a shortcoming prior to its establishment by the Czech National Bank itself;
- whether the assessed person ensured rectification of the shortcoming; and
- the reasons and circumstances in which the aforementioned facts occurred.

In cases of serious doubts about the trustworthiness of persons engaged by financial services providers pursuant to subparagraphs i), j) and m) above, the Czech National Bank shall also take into account whether and in what manner the assessed person participated in the conduct of the legal entity.

In accordance with the aforementioned criteria, when assessing persons engaged by financial services providers, the Czech National Bank shall distinguish between whether the aforesaid facts constitute a lack of trustworthiness (or, as the case may be, a lack of competence – see below) or whether they have no impact on these conditions. For the purposes of assessing the aforementioned criteria, the assessed person must submit or (if so instructed) suggest the appropriate evidence to the Czech National Bank.

In the opinion of the Czech National Bank, the circumstances unrelated to trustworthiness include, in particular, facts of purely procedural nature (e.g. elements of filings) or objective nature that the assessed persons could not have affected or averted (e.g. force majeure) even using due care, or circumstances nowise related to any breach of a statutory or moral duty by the assessed person (e.g. an application turned down due to the applicant's insufficient age, insufficient capacity, professional experience, etc.).

II. Competence

1. General rules

The applicable legal regulations require persons engaged by financial services providers to be competent.⁶⁾

When interpreting the said term, it is particularly necessary to consider what is known as a “Euro-conformist interpretation”. In relation to that, the applicable directives stipulate that the assessed persons must have sufficient knowledge and be sufficiently experienced (“*sufficient knowledge, skills and experience*“, “*ausreichende Kenntnisse, Fähigkeiten und Erfahrung*“, “*expérience suffisantes*“, “*des connaissances, des compétences et de l’expérience nécessaires*“).

In the opinion of the Czech National Bank, competence is a criterion that takes into account:

- knowledge;
- sufficient experience in the financial market (professional experience in the financial market);
- in the case of senior officers⁷⁾ also sufficient experience in management (managerial experience); and
- operation in the financial market.

Sufficiency of professional qualifications is examined by the Czech National Bank in relation to a specific position, scope of competence of the assessed person and the number of persons that the assessed person manages or, as the case may be, that fall within the assessed person’s management competence. The Czech National Bank also considers the character, scope and complexity of the activities performed by the financial services provider and its overall personnel equipment. The proper execution of the assessed person’s position should not be obstructed by his/her professional, business or any other analogous activities, particularly activities performed for another financial services provider with an analogous line of business, unless the applicable legal regulation sets out otherwise⁸⁾, or overall scope and nature of activities carried out by that person.

Managerial experience and professional experience in the financial market are assessed by the Czech National Bank in a material manner. Thus, it is the responsibility of the assessed persons themselves to ensure that the submitted documents attest to their both managerial and professional experience in the financial market. It is irrelevant whether such experience has been acquired in the Czech Republic or abroad.

When assessing competence, the Czech National Bank proceeds:

⁶⁾ In the case of Act No. 277/2009 Coll., on the insurance industry (hereinafter the “Act on Insurance”), the term “competence” is not mentioned in the Act on Insurance at all; however, as a precondition for trustworthiness, it is set out in Article 8 (3) that “the existing experience ... represents a precondition for the proper management of an insurance company, reinsurance company or their branches.” At the same time, the Act on Insurance imposes an obligation on the assessed person to submit a document attesting to the education completed by him/her and to his/her existing experience (Article 11 (7) and (8) of the Act on Insurance).

⁷⁾ The reference to a senior officer shall be understood as a reference to a natural person who manages the business conducted by a financial services provider both in formal and factual terms. The specific designation of senior officers and their specifications differs between financial services providers. Designations used are: “senior officer”, “management board member”, “executive officer of the bank”, executive officer” or “board member”.

⁸⁾ Cf. Article 517 (2) of the Act no. 240/2013 Coll. on Management Companies and Investment Funds.

- from the underlying documents submitted by the applicant;
- from its own findings (e.g. information established while exercising supervision, etc.);
- from a potential interview with the assessed person (in the cases when the assessment takes the form of administrative proceedings, within the framework of a mandatory verbal hearing);
- or, as the case may be, from some other facts known to it in a given case.

When assessing competence, the Czech National Bank also takes into account the period of time that has elapsed since the termination of the assessed person's execution of the relevant position (i.e., acquisition of managerial experience or professional experience in the financial market). Generally, it holds true that the longer the period for which the assessed person has not been executing the relevant position (i.e., acquiring managerial experience or professional experience in the financial market), the higher the requirements should be as regards the length of such experience.

As it has already been said above, some of the cases in which the assessed person is regarded as untrustworthy or, as the case may be, in which there are doubts about the assessed person's trustworthiness, may be relevant to the assessment of competence, too.

2. Required knowledge

The Czech National Bank assesses the knowledge of persons on a case-by-case basis, always taking into account the other conditions of competence (the length of the relevant managerial experience and professional experience in the financial market).

In particular, the Czech National Bank shall deem such persons to possess sufficient knowledge to execute a senior officer position at a financial services provider who have completed a Master's degree programme (for exceptions thereto see below). When assessing knowledge, it shall also be taken into account whether the senior officer of the financial services provider has passed any specialized examination or completed any specialized course that is utilizable for his/her position. When assessing education, it shall be irrelevant whether it has been completed at a domestic or foreign university. Who may be regarded to have completed a Master's degree programme is stipulated by the Act on Universities⁹⁾.

If the assessed person completed his/her education in another Member State of the European Union, the graduation from a university corresponds to Degree Five pursuant to Article 4 (1) of the Act on Recognition of Professional Qualification¹⁰⁾. In the event of doubts about the education completed, the Czech National Bank shall instruct the applicant to eliminate the specific doubts.

In relation to investment intermediaries, Article 30 (3) (b) (4) and Article 30 (4) (e) of Act No. 256/2004 Coll., on capital market undertakings, as amended, shall be applied and their senior officers or, as the case may be, an investment intermediary who is a natural person, shall be required to have completed secondary education only. Who may be regarded to have completed secondary education (secondary education, secondary education with a certificate of apprenticeship, or secondary education with a school-leaving examination) is stipulated by the School Act¹¹⁾. In the case of foreign education, under Article 4 (5) of the Act on Recognition of Professional Qualification the completion of a secondary school corresponds

⁹⁾ Act No. 111/1998 Coll., on universities, as amended.

¹⁰⁾ Act No. 18/2004 Coll., on the recognition of professional qualification, as amended.

¹¹⁾ Act No. 561/2004 Coll., on the pre-school, primary, secondary, higher professional and other education (the School Act), as amended.

to Degree One of the qualification obtained. Analogous criteria apply to senior officers of a business representative of a payment institution.

If a person engaged by a financial services provider performs the activities of the persons regulated by Decree No. 143/2009 Coll., on the expertise of persons through which an investment firm performs its activities (hereinafter “Decree No. 143/2009 Coll.”), also the requirements set out in Article 9 to Article 15 of this Decree shall apply to him/her as regards the material content of his/her activities.

In case of distributor of products of retirement savings and supplementary pension savings (the Article 74 (1) of the Supplementary Pension Savings Act no. 427/2011 Coll. as amended, he/she shall demonstrate own general knowledge by providing a school-leaving examination (in case of foreign education by providing a third degree qualification as stipulated in the Article 4 (3) of the Act on Recognition of Professional Qualification) or confirmation of achievement of formal higher education, and pass a professional exam by an accredited person under the Article 84 et seq., of the abovementioned Act and Decree no. 215/2012 Coll. on professional qualifications for the distribution of certain products on the financial market.

3. Required experience

3.1. Managerial experience

The Czech National Bank assesses managerial experience on a case-by-case basis, always taking into account the other conditions of competence.

When assessing managerial experience, the Czech National Bank takes into account, in particular:

- the extent of powers and the content of the management activities of the assessed person in the positions that the assessed person executed within the framework of his/her existing experience; and
- the subject of the activities to be performed by the assessed person in the specific position that the assessed person intends to execute.

In particular, **the Czech National Bank shall deem such persons to possess sufficient managerial experience** who, for a period of two years, executed a managerial position in a legal entity where experience can be acquired adequate to the management of an entity in which the assessed person intends to operate (particularly in terms of the size, organizational structure and business line of such a legal entity).

3.2. Professional experience in the financial market

The Czech National Bank assesses the professional experience in the financial market on a case-by-case basis, always taking into account the other conditions of competence.

When assessing professional experience in the financial market, the Czech National Bank takes into account, in particular:

- the subject of the activities to be performed by the assessed person in the specific position that the assessed person intends to execute; and
- the subject of the activities performed by the assessed person in the specific position executed by the assessed person within the framework of his/her existing experience.

Professional experience in the financial market is understood by the Czech National Bank as the professional experience in the financial market pursuant to the provisions of Article 3 of

Decree No. 143/2009 Coll., and as analogous activities in the financial market (in particular, intermediation of instruments other than investment instruments).

The Czech National Bank shall deem such persons to possess sufficient professional experience in the financial market for senior officers at financial services providers who were acquiring such experience at least for a period of 3 years. In respect of the field of management companies, investment funds and pension companies, more specific criteria are further set out separately (see below).

If a person engaged by a financial services provider performs the activities of the persons regulated by Decree No. 143/2009 Coll., also the requirements set out in Article 16 and Article 17 of this Decree shall apply to him/her as regards the material content of his/her activities. The senior officer of a business representative of a payment institution is required to have acquired professional experience in the financial market of at least one year.

In view of the dynamic development of the financial market, any professional experience in the financial market acquired more than 10 years prior to the commencement of the execution of the relevant position shall be disregarded.

3.3. Professional experience in the field of management companies, investment funds and pension companies

Experience in the field of management and administration of investment funds and foreign investment funds (Article 21 (4) and (5) and Article 48 (4) of the Act no. 240/2013 Coll., on Management Companies and Investment Funds; hereinafter the “AMCIF”) constitutes **a specific area of necessary experience for senior officers.**

The Czech National Bank shall deem that the person possess sufficient experience with performance of activities necessary for a proper performance of the senior officer of the manager or administrator of the investment fund or foreign investment fund if that person at least for a period of three years, held professional positions, were members of the statutory, supervisory or management bodies, particularly in management company, investment fund, pension company, pension fund or of a foreign entity engaged in management as under the Article 5 (1) of AMCIF or administration as under the Article 38 (1) to (3) of AMCIF or, as the case may be, performed the activities of an investment broker¹²⁾ at an investment firm that was ensuring the execution of orders for an investment company or investment fund, or also performed the activities of a portfolio manager¹³⁾ at an investment firm that was ensuring the management of assets for an management company or investment fund or at other entities, where one can acquire similar management experience in management company or administrator of investment fund and foreign investment fund.

The Czech National Bank in case of senior officers of the manager of the investment fund and the foreign investment fund shall further assess the experience with the (individual or collective) management of specific type of assets, on which the investment strategy of the investment fund is focused.¹⁴⁾ The Czech National Bank shall deem such persons to have acquired such experience if such persons, at least for a period of three years, held professional positions, as members of the statutory, supervisory or management bodies of a

¹²⁾ Article 2 (1) (b) of Decree No. 143/2009 Coll.

¹³⁾ Article 2 (1) (c) of Decree No. 143/2009 Coll.

¹⁴⁾ For instance, in the case of a investment fund that invests predominantly into real estate, professional experience shall be understood as experience in the real estate market. In the case of an investment fund with a “fragmented” investment strategy, the Czech National Bank shall take into account the proportional representation of the individual types of assets in the property of the said funds.

company engaged in comprehensive property management¹⁵⁾ of the said type of assets.

When the manager of the investment fund or the foreign fund perform activities stated in the Article 11 (1) c) to f) of AMCIF (selected investment services), the persons engaged in these activities shall, according to Article 507, meet the requirements stated in the Decree no. 143/2009 Coll.

When assessing persons, the Czech National Bank takes into account whether the conditions prescribed in the Article 21 (4) and the Article 48 (4) of AMCIF has been fulfilled (i.e., that sufficient experience with performance of activities necessary for proper performance of the senior officer has been obtained by at least two senior officers; and in case of the manager of the investment fund or the foreign investment fund, sufficient experience with management of assets, for which the investment strategy of the investment fund is focused on, has been obtained by at least two senior officers).

However, if the manager of the investment fund or the foreign investment fund manages the investment fund or the foreign investment fund whose investment strategy differs in essential aspects from the investment strategy of the majority of other investment funds or foreign investment funds managed by the same manager, it is, according to Article 21 (5), sufficient if experience with management of the assets, on which investment strategy of that fund is focused is obtained by at least two persons, who effectively direct the activities of the manager in relation to that fund.

Senior officer of the pension company shall have, according to the Article 39 (2) c) of the Act no. 427/2011 Coll. on Supplementary Pension Savings, as amended, sufficient experience with investment to the assets, on which investment policy of the pension participation, pension and transformed fund is focused, or shall have sufficient experience with the performance of the relevant positions related to the activities of pension company. Experience requirements for the senior officer of the pension company are therefore different from the experience requirements of the manager of the investment fund or the foreign investment fund (see above), as they are applied alternatively (either with investing into assets or performance of the appropriate position). However, it is not prohibited, while indeed beneficially for the pension company, for appropriate person to have both experiences.

4. Operation in the financial market

Within the scope of assessing the professional experience of senior officers of financial services providers, the Czech National Bank also examines the operation of the relevant persons in the financial market. **The Czech National Bank shall have serious doubts about the professional experience** of persons nominated as senior officers, particularly if such persons were members of the management of a financial services provider in the past and failed to ensure the establishment of:

- functional and efficient organization of the managed section, in particular as regards clear and complete delimitation of the powers, responsibilities and job descriptions of employees, the appropriateness and competence of subordinate employees, and an efficient system of information sharing;
- procedures for risk identification and management within the managed section, including the continuous measurement, monitoring and control of risks and the re-evaluation of the adequacy of the set procedures, and compliance with the regulatory rules, legal regulations, internal directives and limits;

¹⁵⁾ Article 1409 et seq. of the Civil Code no. 89/2012 Coll.

- procedures for control activities within the managed section, including the regular verification of the compliance therewith and adequacy thereof, and procedures for reducing the possibility of conflicts of interests (separation of incompatible positions) and for rectifying any shortcomings detected; and
- a functional information-flow system providing up-to-date, reliable and complete information essential for the decision-making within the legal entity, vis-à-vis the supervisory authority or vis-à-vis the auditor.

The circumstances taken into account by the Czech National Bank in cases of serious doubts about the trustworthiness of a person engaged by a financial services provider shall be taken into account when assessing the person's operation in the financial market, too.