

**OFFICIAL INFORMATION  
OF THE CZECH NATIONAL BANK**

of 5 August 2020

**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<sup>1)</sup> for the purposes of the initial and ongoing assessment of those terms as regards
  - a) natural persons engaged by financial services providers subject to supervision by the Czech National Bank pursuant to Act No. 6/1993 Coll., on the Czech National Bank, as amended (hereinafter “financial services providers”);
  - b) persons with a qualifying holding in financial services providers;<sup>2)</sup>
  - c) financial holding entities, insurance holding entities and mixed-activity financial holding entities.<sup>2)</sup>
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 provides information about its approach to assessing the trustworthiness and competence of persons, which approach is based (among other things) on guidelines of the European Supervisory Authorities (e.g. *Guidelines on system of governance*, EIOPA, 2013, *Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector*, EBA, EIOPA and ESMA, 2016, and *Guidelines on the assessment of the suitability of members of the management body and key function holders*, EBA and ESMA, 2018).
3. With regard to their explicit regulation in legal rules,<sup>3)</sup> the rules regarding trustworthiness set out in this Official Information shall fully apply to members of the statutory and supervisory (control) body, members of the management board or other similar body (hereinafter “members of the management body”), senior officers, persons in key functions, persons with a qualifying holding in a financial services provider, persons in the management of a branch, a financial holding entity, an insurance holding entity and a mixed-activity financial holding entity, and employees directly involved in or responsible for the distribution of selected products on the financial market.

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<sup>1)</sup> 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”).

<sup>2)</sup> In the case of legal entities, the trustworthiness and competence of members of their management bodies shall be assessed according to this Official Information. Cf. *Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector*, EBA, EIOPA and ESMA, 2016, p. 22, Article 10.4.

<sup>3)</sup> Cf. e.g. Article 4(5)(d) and (e), Article 5(4)(c), Article 8(3)(a), Article 8b(1)(d) and (e), Article 20(9)(a) and (b) and Article 26g(6) of Act No. 21/1992 Coll., on Banks, as amended, or Article 7a(1), Article 13(6)(d), Article 20(2), Article 21(2), Article 25(1)(a) and (b), Article 32(6)(d), Article 36(6)(d), Article 43(1)(a) and (b), Article 48(1)(d) and Article 92(1) of Act No. 277/2009 Coll., on Insurance, as amended.

As regards other persons assisting financial services providers in carrying on their activities (e.g. employees providing corporate loans, employees engaged in risk management or internal control with the exception of persons in key functions and employees active in information technology), the Official Information in the area of trustworthiness shall apply appropriately and specifically with respect to the performance of their activities. The specific conditions of their trustworthiness shall be set by the financial services providers.<sup>4)</sup>

4. The rules regarding competence set out in this Official Information shall apply to members of the management body, branch managers, senior officers, persons in key functions and persons in an executive managerial position of a financial holding entity, an insurance holding entity and a mixed-activity financial holding entity. Employees directly involved in or responsible for the distribution of selected products on the financial market are governed by individual sector-specific acts requiring them to demonstrate general knowledge and professional expertise and skills. As regards other persons assisting financial services providers in carrying on their activities, the specific conditions of their competence are defined by the financial services providers.

The rules set out in the Official Information in the area of competence represent only the minimum requirements for knowledge, professional experience and managerial experience. Therefore, when the assessing sufficiency of competence, it is always necessary to take account of the position executed and the scope of the powers, the character, scope and complexity of the activities performed by the financial services provider and the collective competence of the given body as a whole. The procedure for assessing the competence of persons in selected financial services providers is set out in more detail in the aforesaid guidelines issued by the EBA, ESMA and EIOPA.

5. The Official Information cannot be applied if any of the legal regulations governing financial market undertakings contains different definitions of the terms *trustworthiness* and *competence* that are in contravention of this Official Information.
6. 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, in justified cases, it shall consider some other facts not mentioned in this Official Information, too.<sup>5)</sup> The Czech National Bank expects financial services providers to proceed in accordance with this Official Information in their own assessment of trustworthiness and competence of the relevant persons.

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<sup>4)</sup> The general requirements for trustworthiness and competence of employees of financial services providers are laid down in the legal rules regarding their governance systems or establishing the duty to act prudently and with professional care (cf. e.g. Article 17(4)(a) of Decree No. 163/2014 Coll., on the performance of the activities of banks, credit unions and investment firms, as amended, Article 12a(1)(m) and Article 30(2)(d) item 3 of Act No. 256/2004 Coll., on Capital Market Undertakings, as amended, Article 20(2)(g), Article 21(2), Article 47(2)(h) and Article 48(2) of Act No. 240/2013 Coll., on Management Companies and Investment Funds, as amended, Article 53(2) of Act No. 427/2011 Coll., on Supplementary Pension Savings, as amended, Article 6(1) of Act No. 277/2009 Coll., on Insurance, and Annex 4, item I.1.f.3, of Decree No. 306/2016 Coll., implementing certain provisions of the Insurance Act).

<sup>5)</sup> Cf. judgment of the Supreme Administrative Court file no. 9 Afs 29/2007 of 31 May 2007, for instance.

## **II. Final Provisions**

1. This Official Information captures the legal status existing as of 1 August 2020. 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 the CNB Bulletin. The Official Information of the Czech National Bank dated 3 December 2013 regarding the interpretation of the terms trustworthiness and competence (published in CNB Bulletin under number 14/2013) shall cease to be in force as from the date of promulgation of this Official Information.

Vice-Governor

Marek Mora

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

## **Information on the interpretation of the terms trustworthiness and competence**

### **I. Trustworthiness**

#### 1. General rules

**The applicable legal regulations usually 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 2004.<sup>1)</sup> 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”). In some regulations the term is defined as “provision for proper performance of activities pursuant to this Act”, but this definition does not provide a detailed guide either and the application thereof should be based on the content of the term *trustworthiness* described below.

Trustworthiness is generally a criterion that takes into account:

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

Trustworthiness of a person for the purposes of assessment on the financial market consists mainly in his/her **lack of a criminal record** and in his/her **professional, business integrity**. The lack of a criminal record forms part of trustworthiness.

When assessing the condition of trustworthiness, account is taken of how the persons engaged by financial services providers have behaved during their previous professional or business activities, in particular, whether they have ever been convicted of a criminal offence; whether, in connection with the execution of their profession, employment, position or business activities (hereinafter “profession”), a penalty or an administrative penalty (hereinafter a “penalty”) has ever been lawfully imposed on them for an offence or other administrative delict (hereinafter an “offence”), 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 principles of fair business dealings and economic competition.

The assessment of trustworthiness is based on:

- the information and underlying documents submitted by the assessed person;
- publicly available sources (e.g. published decisions on penalties imposed);
- the Czech National Bank’s own findings (e.g. information established while exercising supervision and its own investigations of financial services providers);
- or, as the case may be, from some other facts known to it in a given case relating to the

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<sup>1)</sup> Cf. judgment of the Supreme Administrative Court file no. 7 A 109/2002 of 12 March 2004, for instance. More recent documents include *Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector*, EBA, EIOPA and ESMA, 2016, p. 23, Article 10.9, and *Guidelines on the assessment of the suitability of members of the management body and key function holders*, EBA and ESMA, 2018, p. 11, Article 26(a).

activities performed by the assessed person.

**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 news.<sup>2)</sup>**

However, this is without prejudice to the applicants' or the assessed persons' 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 applicant or the assessed person 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 documents submitted by the applicant or the assessed person 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 application or revoke consent to the performance of activities.<sup>3)</sup>

The Czech National Bank expects financial services providers to have internal processes in place that will lead their employees to notify them of facts relating to their trustworthiness. Financial services providers shall proceed from information which they are able to obtain with reasonable efforts.

Suitable verification standards include:

- obtaining an extract from the Criminal Register at the beginning of an employee's engagement and requesting other information relating to trustworthiness (inspiration can be drawn from the forms contained in the Czech National Bank's licensing decrees modified appropriately according to the assessed persons' responsibilities) in the form of an affidavit;
- putting employees of financial services providers under the obligation to report changes in this information and confirm that the information is up-to-date in the form of an affidavit at appropriate intervals (usually every year, but no less than every two years).

## 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 an intentional criminal offence, or of a criminal offence against property, or of a negligently committed economic criminal offence (unless they are regarded as not having been convicted);
- b) persons on whom – in the last five years – a fine for an offence, or a prohibition of activities, or a duty to pay damages has been lawfully imposed due to a serious or repeated breach of a statutory duty in connection with the execution of their profession;
- c) persons who – in the last five years – have deliberately given false or incomplete testimony in offence or other administrative proceedings, or who have given false information in an affidavit with respect to an administrative authority, or who have

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<sup>2)</sup> In relation to that, cf. *Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector*, EBA, EIOPA and ESMA, 2016, p. 23, Article 10.10., for instance.

<sup>3)</sup> 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”).

otherwise obstructed the exercise of supervision in the financial market field, providing a final decision has been taken on such breaches;

- d) persons who – in the last five 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 a final decision has been taken on such breaches; or
- e) persons in respect of whose assets – in the last five years – a decision on bankruptcy has been issued, where such a decision has not been accompanied by permission for a discharge of debt;<sup>4)</sup>
- f) persons who – in the last five years – have been members of the management body of a legal entity,
  - in respect of whose assets a decision on bankruptcy has been issued or bankruptcy has been declared,
  - in respect of whose assets an insolvency petition has been dismissed due to the fact that the assets of that legal entity were insufficient to cover the costs of insolvency proceedings, or
  - in respect of whose assets bankruptcy has been cancelled due to the fact that the assets were entirely insufficient;
- g) persons whose authorisation to conduct business has – in the last five years – been revoked for breach of the conditions set forth in the law governing financial market undertakings;<sup>5)</sup> or
- h) persons who were members of a management body of a legal entity in the past, where that entity was convicted by a final court decision of a criminal offence committed intentionally, or of a property or economic offence committed through negligence (unless they are regarded as not having been convicted).

Subparagraphs (e) and (f) shall not apply where an insolvency court has cancelled the bankruptcy otherwise than through a decision on the cancellation thereof after a ruling on the satisfaction of claims was complied with, or otherwise than due to the fact that the debtor's assets were entirely insufficient, or a court has dismissed the insolvency petition otherwise than due to the fact that the debtor's assets were insufficient to cover the costs of bankruptcy proceedings.

Subparagraph (f) shall not apply to persons who were appointed to a position while the legal entity was in bankruptcy or persons who have obtained, in proceedings opened under the act governing special court proceedings, a declaration that they performed their previous position with due care.

Subparagraph (h) shall not apply to persons who were appointed to a position in the legal entity after the criminal offence had been committed, or who provably did not take part in the offence (e.g. voted against the action leading to the offence in the management body concerned) and tried to avert its consequences (e.g. through behaviour minimising its impacts) or contributed

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<sup>4)</sup> In the area of the provision or intermediation of consumer credit, the exemption relating to permission for a discharge of debt cannot be applied (cf. Article 72(2)(b) and (c) item 1 of Act No. 257/2016 Coll., on Consumer Credit, as amended).

<sup>5)</sup> This does not include the case where the assessed person has not paid a renewal fee because he/she has decided to express the suspension of some of his/her activities on the financial market in such a manner (analogously to suspension at own request);

to its investigation (e.g. through filing a criminal complaint).

The five-year time test given in subparagraphs (b)–(g) shall be extended to 10 years in the case of members of the management bodies of banks, credit unions, insurance companies and pension management companies due to the systemic importance of these financial services providers for the financial stability of the Czech Republic. The beginning of the time test set forth below for serious doubts about trustworthiness shall be moved accordingly in this case.

## **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 (unless they are regarded as not having been convicted) and the criminal offence is an offence referred to in Article 2.1.(a);
- b) persons in respect of whom any of the facts referred to in Article 2.1.(b) and (d)–(g) occurred earlier than in the last five years;
- c) persons who gave false or incomplete testimony in offence or other administrative proceedings, or who 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, where this does not involve cases referred to Article 2.1.(c);
- d) persons in respect of whose assets a decision on bankruptcy has been issued in the last five years, providing that decision was accompanied by permission for a discharge of debt;<sup>6)</sup>
- e) 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;
- f) persons whose authorisation to conduct business has ever been lawfully suspended or revoked for reasons other than at their own request, or who themselves requested the suspension or revocation of their authorisation during such ex-officio proceedings;
- g) persons whose application for membership of (participation in) a regulated market organiser, a professional union, chamber or association of financial services providers (including abroad) has ever been turned down for reasons relating to trustworthiness, 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, or whose membership (participation) has ever been suspended;
- h) persons who were members of the management body, persons authorised to act on behalf of a legal entity based on some other fact, or persons who considerably affected

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<sup>6)</sup> In the area of the provision or intermediation of consumer credit, this subparagraph shall not apply (cf. Article 72(2)(b) and (c) item 1 of Act No. 257/2016 Coll., on Consumer Credit, as amended).

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 offence, 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
  - a remedial measure to rectify serious shortcomings in their activities was imposed on the legal entity;
  - a penalty or remedial measure was not imposed on the legal entity,<sup>7)</sup> but a serious shortcoming was identified, which was documented while exercising supervision (e.g. in the form of an inspection report) and which would justify the imposition of a penalty or remedial measure; or
  - the legal entity's application for membership of (participation in) a regulated market organiser, of a professional union, chamber or association of financial services providers (including abroad) was turned down for reasons relating to trustworthiness, 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;
- i) persons who were members of the management body, persons authorised 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 authorisation 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;
- j) 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;
- k) persons against whom proceedings regarding an offence or proceedings to impose a remedial measure were commenced for having committed a serious or repeated breach of a statutory duty in connection with the execution of their profession, and such proceedings are still under way; or
- l) persons who were members of the management body or persons authorised 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 h) above, and such proceedings are still under way.

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<sup>7)</sup> For example, a penalty or remedial measure was not imposed because the offence subject to the penalty had lapsed, or because the serious shortcoming identified as requiring the remedial measure had been rectified by the legal entity.



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 (intentional, negligent), or whether the person was punished or a duty to pay damages was imposed on him/her without fault;
- whether such unlawful conduct occurred repeatedly;
- the seriousness and consequences of such unlawful conduct;
- the period of time that has elapsed since the occurrence of such unlawful conduct;<sup>8)</sup>
- 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, or at least attempted, rectification of the shortcoming; and
- the reasons and circumstances in which the aforementioned facts occurred (e.g. connection with trustworthiness, imputability of unlawful conduct of a legal entity towards a particular natural person).

In this context, for example, it can be concluded that personal bankruptcy resolved by a discharge of debt which is not related to a profession or business, does not necessarily imply untrustworthiness of the assessed person.<sup>9)</sup> In cases of serious doubts about the trustworthiness of persons engaged by financial services providers pursuant to subparagraphs h), i), and l) 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 (whether, for example, he/she actively voted for or, conversely, voted against and prevented the adoption of an unlawful decision or conduct or, even if only through his/her passivity, enabled or supported such unlawful decision or conduct).

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 financial services provider or the assessed person must submit or suggest the appropriate evidence to the Czech National Bank.

The presence of any of the serious doubts about trustworthiness leads to an assumption that the assessed person is untrustworthy. The Czech National Bank shall therefore regard the assessed

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<sup>8)</sup> Unlawful conduct older than 10 years shall be relevant only exceptionally and usually in the case of persons with greater significance for the stability of the financial market. However, particularly serious unlawful conduct, especially where repeated and where the other activities performed by the assessed person would not provide guarantees of rectification, shall be taken into account.

<sup>9)</sup> For example, a situation where the person concerned suddenly becomes seriously ill, loses his/her income and rapidly spends his/her usual financial reserves and thus becomes bankrupt, should not result in the loss of his/her trustworthiness. Likewise, where the assessed person has fully repaid his/her debts as part of a permitted discharge of debt, this fact can (as part of the assessment of the other circumstances) be regarded as termination of the reason for his/her untrustworthiness.

Against that, where the person concerned is dealing with the discharge of his/her debts (e.g. consumer credit) by taking on further debts which he/she is highly unlikely to be able to repay and he/she is highly likely to ultimately become bankrupt, his/her professional or business competence to provide (any) financial services advice can reasonably be ruled out. In the area of the provision or intermediation of consumer credit, the exemption relating to permission for a discharge of debt cannot be applied (cf. Article 72(2)(b) and (c) item 1 of Act No. 257/2016 Coll., on Consumer Credit, as amended).

person as untrustworthy if it does not have and, in the course of its assessment, does not receive sufficient information and underlying documents to be able to disprove the aforesaid doubts after having enabled the financial services provider (or the assessed person, where he/she is a party to the proceedings or where appropriate for other reasons) to comment.

In the opinion of the Czech National Bank, the circumstances unrelated to trustworthiness include, in particular, facts of purely procedural nature (e.g. a discontinuation of administrative proceedings due to missing 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 time capacity, professional experience, etc.).

The Czech National Bank adds that criminal proceedings themselves cannot prejudice the assessed person (Article 40(2) of the Charter of Fundamental Rights and Freedoms), as they only signal a need to examine whether the factual circumstances that led to the proceedings do not simultaneously affect the assessed person's trustworthiness. This shall apply *mutatis mutandis* to offence and other opened administrative proceedings that have not been closed by a final decision.

## II. Competence

### 1. General rules

**The applicable legal regulations usually require persons engaged by financial services providers to be competent, i.e. to have sufficient knowledge and experience for the purposes of executing a certain position or post.**

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”). Some legal regulations contain their own specific definitions of the required expertise. In other cases, the Czech National Bank applies the general rules given below. The rules also describe specific requirements in some sectors.<sup>10)</sup>

**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);<sup>11)</sup>
- in the case of senior officers<sup>12)</sup> also sufficient experience in management (managerial experience); and
- previous operation in the financial market.

Sufficiency of professional qualifications is examined in relation to the specific position or post, the 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 character, scope and complexity of the activities performed by the financial services provider and its overall staffing, especially the competence of the other members of the body concerned (collective competence), is also considered. In addition, 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 otherwise,<sup>13)</sup> or overall scope and nature of activities carried out by that person.

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<sup>10)</sup> Specific requirements regarding expertise apply, for example, in the area of insurance distribution to persons subject to an exemption pursuant to Article 3(2) of Act No. 170/2018 Coll., on Insurance and Reinsurance Distribution, and persons pursuant to Article 4 of this Act. Unlike the other persons dealing with clients during insurance distribution, these persons must comply with certain requirements for expertise but are not required to pass a professional examination (Article 55(2) of the aforesaid Act).

<sup>11)</sup> Professional experience is the performance of activities for fixed weekly working hours pursuant to the Labour Code or for full weekly working hours common for the given activity and consisting in genuine professional work related materially to the financial market.

<sup>12)</sup> The reference to a senior officer shall be understood as a reference to a natural person who effectively manages the business conducted by a financial services provider. The specific designation of senior officers and their specifications differs in the legal regulations depending on the financial services provider. The designations used include, for example, “senior officer”, “statutory board member” and “executive member of the management board”.

<sup>13)</sup> Cf. Article 517(2) of the Act no. 240/2013 Coll. on Management Companies and Investment Funds.

Managerial experience and professional experience are assessed in a material manner. Thus, it is necessary to ensure that the submitted documents attest to their both managerial and professional experience. It is irrelevant whether such experience has been acquired in the Czech Republic or abroad.

The assessment of competence is based on:

- the information and underlying documents submitted by the assessed person;
- publicly available sources (e.g. the information published by the financial services provider);
- the Czech National Bank's own findings (e.g. information established while exercising supervision, a personal interview with the assessed person);
- or, as the case may be, from some other facts known in a given case in connection with the activities performed by the assessed person.

When assessing competence, 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) is also taken into account.

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 knowledge of persons is assessed 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).

### 2.1 Required knowledge of senior officers

**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 at least partially relating to the given position or post (for exceptions thereto see below). The professional experience of persons who have completed only a Bachelor's degree programme or higher vocational education should be at least one year longer, and the professional experience of persons who have completed only secondary education with a school-leaving examination should be at least two years longer. When assessing knowledge, it shall also be taken into account whether the senior officer of the financial services provider has passed any specialised examination or completed any specialised course that is utilisable 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, a Bachelor's degree programme, higher vocational education or secondary education with a school-leaving examination is stipulated by the Act on Universities<sup>14)</sup> and the School Act.<sup>15)</sup>

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 Qualification.<sup>16)</sup> In the event of doubts about the

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<sup>14)</sup> Act No. 111/1998 Coll., on universities, as amended.

<sup>15)</sup> Act No. 561/2004 Coll., on education (the School Act), as amended.

<sup>16)</sup> Act No. 18/2004 Coll., on the recognition of professional qualification, as amended.

education completed, it is the responsibility of a financial services provider or the assessed persons to eliminate the specific doubts.

## **2.2 Required knowledge of distributors of products on the financial market**

In the case of an employee directly involved in or responsible for the distribution of products on the financial market,<sup>17)</sup> he/she shall demonstrate their general knowledge by providing a school-leaving examination (in case of foreign education by providing a third degree qualification as stipulated in Article 4(3) of the Act on Recognition of Professional Qualification in the form of a document on having completed education required in the Member State of origin for admission to university or an institution of a similar level) or confirmation of achievement of formal higher education, and pass a professional exam with an accredited person demonstrating professional expertise and skills (the application of knowledge in practice).<sup>18)</sup> If this employee is the senior officer of a financial services provider, he/she must also comply with the requirements for a senior officer.

## **3. Required experience**

### **3.1. Managerial experience**

Managerial experience is assessed on a case-by-case basis, always taking into account the other conditions of competence.

When assessing managerial experience, in particular the following is taken into account:

- 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.

**The Czech National Bank shall deem such persons to possess sufficient managerial experience** who, for a period of at least 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, organisational structure and business line of such a legal entity).

### **3.2. Professional experience**

The professional experience required for engagement by financial market providers is assessed on a case-by-case basis, always taking into account the other conditions of competence.

The assessment of professional experience 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

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<sup>17)</sup> Article 74(1) of Act No. 427/2011 Coll., on Supplementary Pension Savings, as amended, Articles 8 and 23 of Act No. 257/2016 Coll., on Consumer Credit, as amended, Article 14a of Act No. 256/2004 Coll., on Capital Market Undertakings, as amended, and Article 55(3) of Act No. 170/2018 Coll., on Insurance and Reinsurance Distribution.

<sup>18)</sup> Article 84(2) and (3) of Act No. 427/2011 Coll., on Supplementary Pension Savings, as amended, Article 60(2) and (3) of Act No. 257/2016 Coll., on Consumer Credit, as amended, Article 14b(2) and (3) of Act No. 256/2004 Coll., on Capital Market Undertakings, as amended, and Article 56(2) and (3) of Act No. 170/2018 Coll., on Insurance and Reinsurance Distribution.

executed by the assessed person within the framework of his/her existing experience.

Professional experience is considered to be the activities performed not only for financial services providers, but also for other persons for whom the assessed person has performed activities relating to the financial market (legal advice, auditing, risk management or financial management, for example), always, however, in the context of a specific position or post.

**The Czech National Bank shall deem such persons to possess sufficient professional experience 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).

In view of the dynamic development of the financial market, any professional experience 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 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 possesses sufficient experience with performance of activities necessary for proper performance of the function of 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 (control) or management bodies, particularly in management company, investment fund, pension company, pension fund or of a foreign entity engaged in management as under Article 5(1) of AMCIF or administration as under Article 38(1), (2) and (4) of AMCIF or, as the case may be, performed the activities of an investment broker 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 manager 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.<sup>19)</sup> 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 (control) or management bodies of entities operating in the area of comprehensive property management<sup>20)</sup> of the said type of assets.

When the manager of the investment fund or the foreign fund performs activities stated in Article 11(1)(c) to (f) of AMCIF (selected investment services), the persons engaged in these

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<sup>19)</sup> For instance, in the case of an investment fund that invests predominantly in 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.

<sup>20)</sup> Article 1409 et seq. of the Civil Code no. 89/2012 Coll.

activities shall, according to Article 33 and Article 507, meet the requirements stated in Article 14 et seq. of Act No. 256/2004 Coll., on Capital Market Undertakings, as amended, and also, as the case may be, Decree No. 319/2017 Coll. on professional qualifications for distribution on the capital market.

When assessing persons, the Czech National Bank takes into account whether the conditions prescribed in Article 21(4) and 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.

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

#### 4. Previous operation in the financial market

Within the scope of assessing the professional experience of persons engaged by financial services providers, the Czech National Bank also examines the results of the previous operation of the relevant persons in the financial market.

**The Czech National Bank shall have serious doubts about professional experience** particularly in respect of a person who, in the past, was a member of the statutory body, an executive member of the management board, a person in a key function or a senior officer, or a member of the supervisory (control) body of a financial services provider and, within the scope of his/her competence, failed to ensure the establishment, or control of the establishment and maintenance, of:

- functional and efficient organisation, 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, 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;

- procedures for control activities, 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.