



Frequently Asked Questions - Assessment and authorisation of members of corporate bodies

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Individual assessment of suitability for the exercise of functions

1. What is the individual assessment of suitability for the exercise of functions?

The individual assessment of suitability for the exercise of functions is an assessment of an eligible person aiming at ensuring that such person meets, at all times, the conditions to ensure the sound and prudent management of an institution, with a view, in particular, to safeguarding the financial system and the interests of their customers, depositors, investors and other creditors. It evaluates whether an eligible person complies with the legal requirements to exercise his or her functions (reputation, professional qualification and experience, independence and time commitment).

2. Who is responsible for the individual assessment of suitability for the exercise of functions?

The assessment of suitability is primarily the responsibility of the institutions. Institutions must ensure an eligible person complies at all times with the applicable legal requirements, taking the measures they consider appropriate to remedy any weaknesses identified. Banco de Portugal independently assesses whether eligible persons comply with the legal suitability requirements, specifically as regards the authorisation process for the exercise of functions. The documents Banco de Portugal collects when directly supervising institutions may trigger a reassessment. Measures taken by Banco de Portugal do not relieve institutions of their responsibility to ensure at all times that eligible persons comply with the applicable legal requirements. In the case of members of management or supervisory bodies appointed by the State to exercise functions in institutions benefiting from State aid, the assessment of their suitability to exercise their functions is primarily the responsibility of the State.

3. Are the requirements for being a member of a management body the same as those for being a member of a supervisory body?

The legal suitability requirements for members of management and supervisory bodies are reputation, professional qualification and experience, independence and time commitment. A person must comply with these requirements in order to exercise functions in these bodies. In addition, the majority of members of supervisory bodies, including the Chair, must always be formally independent. In the case of the Chair of the supervisory body, this is an additional individual requirement, incremental to the aforementioned suitability requirements. The individual suitability requirements to exercise functions should not be confused with the legal requirement stating that the supervisory body must be composed of a majority of formally independent members. This latter requirement pertains to the proper functioning of the body as a whole and is not an individual requirement for the exercise of functions (with the exception of the Chair of the supervisory body).

4. Do the requirements for being a member of a management or supervisory body depend on the type of institution in question?

Although a common framework is established in the Legal Framework of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades Financeiras), special legislation, should it exist, must be consulted relating to each type of institution to verify whether there are any special requirements that may apply.

5. Are there special requirements for being a member of a management body of an institution supervised by Banco de Portugal which is also a public sector company?

Yes. In order to be a member of a management body of an institution supervised by Banco de Portugal which is also a public sector company, in addition to the Legal Framework of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades Financeiras), and the specific legislation applicable to the type of institution in question, special rules applicable to the State corporate public sector and public managers must be taken into account. See: Public Manager Statute, Decree-Law No 71/2007 of 27 March 2007; Rules applicable to the corporate public sector and State-owned enterprises, Decree-Law No 133/2013 of 3 October 2013.

Collective assessment of management or supervisory bodies

1. What is the collective assessment of the management body or supervisory body?

In addition to the individual suitability of the members of management and supervisory bodies, institutions must ensure at all times that these bodies are collectively suitable to exercise their tasks. The collective assessment must be included in the assessment report of the members of the management and supervisory bodies to be submitted to Banco de Portugal. Institutions must ensure the management and supervisory bodies have, as a whole, persons with the relevant qualification and experience, as well as sufficient time commitment to ensure these bodies fully exercise their tasks. Institutions must promote diversity in the composition of their management bodies, both as regards gender and, for example, qualifications and skills. Institutions must ensure the bodies are composed of a group of persons capable of bringing different perspectives to the assessment and decision-making process. The collective assessment may result in the weaknesses of specific members of the body in question being compensated by the strengths of other members, especially in terms of professional qualification and experience and time commitment (provided a minimum level of compliance with these requirements is ensured). In regard to reputation, the assessment is exclusively conducted on an individual basis. The collective supervisory body of an institution must have a majority of formally independent members, including its Chair. The institution must undertake an adequate assessment of its management and supervisory bodies in order to be aware, and enable the bodies responsible for appointing the members of the management and supervisory bodies, namely the general meeting, to be aware, of the strengths and weaknesses of its structures. The institution must verify whether, and to what extent, the qualification, experience or time commitment of certain members compensates for the weaknesses of others, without overlooking the adoption of measures to remedy the weaknesses identified (e.g. through academic or institutional training). This assessment must be included in the assessment report of the members of the management and supervisory bodies to be submitted to Banco de Portugal. Instruction of Banco de Portugal No 12/2015 contains a matrix which enables the institution to objectively carry out and formalise the collective assessment of management and supervisory bodies. The matrix is designed for a collective assessment of the skills accumulated in the institution's corporate bodies and is assessed as a whole. Thus, the less favourable qualification of any member relating to aspects analysed in the matrix may not have an impact on the individual assessment of his or her suitability to exercise the functions the institution intends him/her to perform. A collegiate body should bring together persons with different characteristics, namely with varying degrees of knowledge of the issues in question and differing professional experience, within or outside the institution.

2. Who is responsible for the collective assessment of management or supervisory bodies?

The collective assessment of collegiate bodies is primarily the responsibility of the institution and thereafter that of Banco de Portugal or the European Central Bank, as supervisory authority. The assessment of Banco de Portugal or the European Central Bank does not relieve institutions of their responsibilities.

Policies and procedures of institutions

1. What should the policy for selecting and assessing members of management or supervisory bodies and key function holders contain?

Institutions must, both initially and on an ongoing basis, assess whether the members of their management and supervisory bodies and key function holders comply with the applicable suitability requirements. For that purpose, they must have in place a robust selection and assessment policy which complies with the applicable legal requirements and is consistent with international best practices. Institutions are responsible for ensuring their selection and assessment policy: is approved by the general meeting; covers members of the management and supervisory bodies and key function holders in a single document or separate documents; identifies which positions are considered key functions and assesses at least the persons responsible for the risk management, compliance and internal audit functions, as well as the persons responsible for the functions which may be considered as such in regulation issued by Banco de Portugal; promotes diversity as regards gender and the qualifications and skills needed to exercise the functions, establishing clear targets for the representation of the underrepresented gender; identifies the persons responsible for assessing the suitability of members of management and supervisory bodies and key function holders (who may or may not be the same persons). Institutions must ensure impartiality, consequently the person responsible for the assessment may not be the person being assessed and, in the case of an assessment of the members of management and supervisory bodies, the person responsible for the assessment may not be an executive member of the management body; identifies the assessment procedures adopted; identifies the suitability requirements, which must include at least the following: reputation, professional qualification and experience, independence and time commitment; identifies the documents and evidence a person being assessed submits to the institution, breaking down the evidence for each requirement to be assessed; includes rules on prevention, communication and resolution of conflicts of interest; identifies the situations where a suitability reassessment is carried out, including: measures adopted to identify these situations, including an obligation to notify the institution in the event of a material change in the situation of the persons assessed; an obligation on the part of the members of management and supervisory bodies and key function holders to notify the institution, immediately or at least on an annual basis, in the event of any change that might affect compliance with the suitability requirements; includes the vocational training provided to the members of management and supervisory bodies and key function holders, in a single document or separate documents; establishes that the results of any assessment or reassessment must be part of a report which, in the case of assessment of persons for elective posts, is put at the disposal of the general meeting as part of the respective preparatory information; takes into account the requirements, in terms of professional qualification and experience and time commitment, for the different positions, promoting a description of the positions which includes, at least, minimum requirements of professional qualification and experience and time commitment. It is the duty of the institutions to select the persons responsible for assessing the members of management and supervisory bodies and key function holders, taking into account the specificities of selecting and assessing these persons for the exercise of their functions. In order to promote impartiality of analysis, the assessment of the suitability of members of management and supervisory bodies may be carried out, for example, by one or more non-executive members of the management body, members of the supervisory body or shareholders, or by a committee appointed for the purpose by the shareholders and comprised of formally independent members.

2. What should the policy on prevention, communication and resolution of conflicts of interest contain?

Institutions are responsible for adequately identifying, managing and assessing the materiality of actual or potential conflicts of interest regarding the members of their management and supervisory bodies, key function holders and other staff. For the purpose, institutions must have in place a policy for preventing, communicating and resolving conflicts of interest, which should be duly documented and approved, and apply the relevant legal rules for prevention and resolution of conflicts of interest. The policy on prevention, communication and resolution of conflicts of interest must allow institutions to: identify actual or potential conflicts of interest of members of the management and supervisory bodies and other staff working at the institution; assess the materiality of the conflicts of interest identified; select and apply appropriate measures to mitigate the risk of undue influence from the internal analysis and decision-making procedure, if a risk of conflict of interest were to materialise. Thus, the policy on prevention, communication and resolution of conflicts of interest should at least: apply to members of management and supervisory bodies, key function holders and other staff working at the institution; set out the obligation for the institution to continuously assess the existence of actual or potential conflicts of interest, including any situation which might be construed as a conflict of interest by a third party; set out the obligation of communication to the institution of any situation covered by the policy and guidelines in order to avoid situations of actual or potential conflicts of interest which were not communicated; identify the information submitted to the institution in order to assess the existence of actual or potential conflicts of interest; lay down a procedure to be carried out prior to the acceptance of functions outside the institution in addition to the functions performed at the institution; lay down a procedure on the acceptance of endowments; lay down measures to prevent and mitigate risks associated with the existence of conflicts of interest, which must be sufficient in order for a third party, once the method is applied, not to question the objectivity and impartiality of the analysis used in the decision-making process of the body where the person being assessed performs his or her functions. Institutions must be able to justify to Banco de Portugal why the criteria used to assess the materiality of actual or potential conflicts of interest are appropriate from a prudential point of view. Institutions must also justify why they consider a specific actual or potential conflict of interest is material and, if they consider it material, why the measures taken are sufficient to mitigate the risk inherent in a conflict of interest. Institutions are responsible for ensuring the policy on prevention, communication and resolution of conflicts of interest is effectively applied at all times and to take appropriate measures to mitigate any risk of conflict of interest which may be identified. In their assessment of the suitability of the members of management and supervisory bodies and key function holders to exercise their functions, institutions must identify and assess the materiality of the candidates' conflicts of interest, whether actual or potential, and, where applicable, select and apply appropriate measures to mitigate the risks inherent in the conflicts of interest identified.

3. What should the suitability assessment report contain?

Institutions must ensure the assessment report resulting from the application of the selection and assessment policy contains, in each specific case: a clear identification of the person(s) being assessed, and a detailed description of the functions they intend to perform; a specific assessment of each of the legal requirements applicable to the person(s) being assessed, in order for a third party to understand the reason why they comply with these requirements, and should

therefore be considered suitable for the exercise of these functions; in the exercise of functions in a collective body, a collective assessment of the body where the person(s) intend(s) to perform functions, taking into account the appointment of the person(s) in terms of the requirements of professional qualification and experience and time commitment. The overall assessment of the collective bodies should not include alternates, to the extent that alternates will not perform any actual functions in the body in question. Should this situation change, with an alternate carrying out actual functions, a further overall assessment of the body in question must be carried out. The overall assessment of the collective body must be carried out even if no renewal takes place, but only the appointment of one or more new members replacing a sitting member. The institution must be able to justify the extent to which the new member(s) influence(s) the overall composition of the collective body, in such a way that the new composition proposed for the body promotes a sound and prudent management of the institution. Institutions are responsible for ensuring that the effective implementation of their selection and assessment policy allows them to verify whether a specific person is adequate for the functions he or she intends to perform, taking into account the legal requirements and other requirements laid down by the institution, as well as the need to ensure the institution is managed in a sound and prudent manner. Institutions must provide a detailed description of the tasks entailed in the exercise of a specific function and a description of the minimum requirements for its exercise, in order to adequately apply their selection and assessment policy. Institutions must be able to justify to Banco de Portugal, from a prudential perspective, all the decisions taken when preparing and implementing the selection and assessment policy.

4. Who is responsible for preparing the assessment report?

The persons responsible for assessing the suitability of members of management and supervisory bodies and key function holders (who may or may not be the same persons) must be impartial. The person responsible for the assessment must not be the person being assessed and, in the case of an assessment of the members of management and supervisory bodies, the person responsible for the assessment may not be an executive member of the management body. In order to promote impartiality of analysis, the assessment of the suitability of members of management and supervisory bodies may be carried out, for example, by one or more non-executive members of the management body, members of the supervisory body or shareholders, or by a committee appointed for the purpose by shareholders and comprised of formally independent members.

5. Who is subject to Banco de Portugal's authorisation process for the exercise of functions?

Members of the management and supervisory bodies of all entities subject to Banco de Portugal's supervision are subject to the authorisation process for the exercise of functions and to the respective assessment. Members of the management and supervisory bodies of the following entities are subject to the above-mentioned authorisation process: credit institutions: banks; savings banks (banking and affiliated); Central Mutual Agricultural Credit Bank and the mutual agricultural credit banks; credit financial institutions; mortgage credit institutions; other undertakings classified by law as credit institutions; financial companies, including investment firms: dealers; brokers; wealth management companies; foreign-exchange or money-market mediating companies; other undertakings which, in meeting the definition of investment firms, are classified as such according to the law; credit financial institutions; investment firms; financial leasing companies; factoring companies; mutual guarantee companies; investment fund management companies; regional development companies; exchange offices; credit securitisation fund management companies; microcredit financial companies; other undertakings which, in meeting the definition of financial companies, are classified as such according to the law; holding companies when shareholdings, either directly or indirectly, confer on them the majority of the voting rights in one or more credit institutions or financial companies, or which have a qualifying holding in such companies and are not supervised by the Portuguese Insurance Institute, as established in Article 117 of the RGICSF; payment institutions and electronic money institutions, under the terms of the Legal Framework for Payment Systems and Electronic Money (Decree-Law No 242/2012 of 7 November 2012, especially Articles 6 and 12). The following persons are also subject to authorisation to exercise functions: managers of branches of credit institutions having their head office in Portugal and established in European Union Member States; managers of branches of credit institutions having their head office in Portugal and established in third countries; managers of branches or representative offices in Portugal of credit institutions that are not authorised in other European Union Member States, and that are subject to all the suitability and experience requirements established by law for the members of the management bodies of credit institutions having their head office in Portugal. The authorisation process for the exercise of functions and the respective assessment covers all members of the management body, whether executive or non-executive, and all members of the supervisory body and their alternates. The Chair and Secretary of the general meeting of the institutions subject to Banco de Portugal's supervision, as well as the managers of branches located in Portugal, of credit institutions having their head office in a European Union Member State are not subject to the authorisation process, only to special registration with Banco de Portugal.

6. What documents should be submitted to Banco de Portugal for the authorisation process for the exercise of functions?

The following documents should be submitted to Banco de Portugal for the authorisation process for the exercise of functions: questionnaire, as in the annex to Instruction of Banco de Portugal No 12/2015, duly completed and signed; detailed curriculum vitae; simple photocopy, front and back, of an identity document (Citizen Card, identity card or equivalent document); valid and up-to-date criminal record certificate, issued by the competent authority of the country of nationality or by the competent authority of the country of residence, should they differ; assessment report by the institution on the member of the management or supervisory body as referred to in Article 30-A of the Legal Framework of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades Financeiras – RGICSF); simple photocopy of a document proving the appointment of the person(s) concerned (e.g. copy of the minutes of the general meeting), except in the cases of prior authorisation as referred to in Article 30-B (3) of the RGICSF; assessment of the requesting institution as to the collective composition of the management and supervisory bodies, considering the professional qualification and experience and time commitment of their members to exercise their functions,

under the terms of Article 30 (4) of the RGICSF; up-to-date version of the institution's Articles of Association. In addition to the aforementioned items, the application must contain the access code for the online permanent commercial corporate certificate of the institution in question. Where applicable, the provisions of Instruction of Banco de Portugal No 102/96 on the establishment of branches and carrying out of activities under the freedom to provide services should also be observed. See: Instruction of Banco de Portugal No 12/2015

7. When should the authorisation process for the exercise of functions begin?

The authorisation request for persons appointed ex novo (i.e. persons who are performing functions in institutions supervised by Banco de Portugal for the first time and persons who begin exercising new functions in a supervised institution) does not have to be presented within a given timeframe. However, persons appointed ex novo may only begin to exercise functions after authorisation. In the case of reappointments, the authorisation request to exercise functions must be presented within 15 working days of the reappointment decision date.

8. What are the consequences of a negative individual assessment of a specific eligible person on the part of Banco de Portugal?

In the event of Banco de Portugal deciding a specific person does not comply with the legal suitability requirements to exercise functions, the authorisation is refused and the person in question may not legitimately exercise functions.

9. What are the consequences of a negative collective assessment of the management or supervisory bodies?

In the event of a negative assessment of a particular body as a whole, the institution is invited to propose a new composition for the body, ensuring that the weaknesses identified are remedied. If these weaknesses are not remedied, the body may be collectively rejected for failing as a whole to meet the required standards, especially in terms of professional qualification and experience or time commitment. However, this does not mean that certain persons who are part of the rejected body are prevented from being part of a new body to be proposed by the institution. In this respect, it should be noted that the existence of members in the management and supervisory bodies complying with the legal suitability requirements, at individual and collective level, thereby providing guarantees of sound and prudent management of the institutions concerned, is a requirement for the exercise of the respective activities and the absence thereof may be grounds for withdrawing the authorisation granted to the institution for the exercise of its activities.

10. Can the collective composition of a collegiate body be rejected if one of its members is negatively assessed by Banco de Portugal?

No. The fact that one eligible person is not authorised to exercise certain functions does not mean that the composition of the body as a whole is rejected. The collective assessment does not overlap with the individual assessment. The collective assessment allows the required diversity in the composition of the body to be analysed and weaknesses to be identified in terms of professional qualification and experience and time commitment, which may obstruct the proper functioning of the body as a whole. This assessment also considers the distribution of roles within the given bodies. The negative assessment of an eligible person triggers his or her non-authorisation, although the remaining members of the collective body may be accepted. It is therefore up to the institution to present a substitute member. In case the law or the institution's articles of association allow it, such a substitution might not even be required.

11. When should the special registration procedure begin?

Once authorisation to exercise functions is obtained, special registration of the eligible persons with Banco de Portugal should be requested within a timeframe of 30 days after the date on which the eligible person has started to exercise functions, by means of a request addressed by the credit institution to Banco de Portugal, which must specify the day on which tasks started to be exercised. The special registration must be requested along with the corresponding authorisation request in the case of: reappointments of all the members of the body; a request for authorisation to exercise functions as an alternate in a management or supervisory body. See: Legal Framework of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades Financeiras – RGICSF), Article 71 (1); Instruction of Banco de Portugal No 12/2015, Article 3.

12. When can the person appointed to exercise functions in a management or supervisory body of an institution subject to supervision by Banco de Portugal begin to exercise those tasks?

Functions can only start to be exercised once the respective authorisation process for the exercise of functions is concluded. Authorisation is a necessary condition for these functions to be exercised. See: Legal Framework of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades Financeiras – RGICSF), Article 30-B (4).

13. What is the purpose of the prior authorisation?

Prior authorisation allows the person to exercise functions immediately following his or her appointment. Prior authorisation is requested before the appointment of the eligible person by the competent body of the institution. Prior authorisation expires 60 days after being granted by Banco de Portugal (or the European Central Bank, in the event of the institution being considered significant under the Single Supervisory Mechanism) unless special registration for the exercise of functions is requested to Banco de Portugal. See: Legal Framework of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades

14. Must the appointment to a new position to be exercised in addition to a position already registered with Banco de Portugal be communicated? What information should be submitted to Banco de Portugal?

Yes. Appointment to a new position in an entity, whether subject or not to Banco de Portugal's supervision, in addition to a position already registered with Banco de Portugal, must be communicated at least 30 days in advance of the expected start date of exercise of functions. The documents to be submitted to Banco de Portugal in this context are: a complete report of all the functions performed by the interested party, indicating those which involve day-to-day management tasks; indication of the main business of the entities where functions are exercised, in the event of such entities not being subject to registration with Banco de Portugal; indication of any shareholding interest which may exist between the entity/entities where functions are exercised and that/those where the new functions are to be exercised; copy of the minutes of the meeting of the management body of the entity or entities subject to Banco de Portugal's supervision, in which the interested party exercises functions, proving that the body is aware of the planned accumulation of functions. See: Legal Framework of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades Financeiras – RGICSF), Article 71, Article 33; Instruction of Banco de Portugal No 12/2015, Article 7.