

**PRUDENTIAL APPROVAL PROCEDURE OF KEY
FUNCTION HOLDERS IN INVESTMENT FIRMS**

**VERSION APPLICABLE TO DIRECTORS, MEMBERS OF THE
AUTHORISED MANAGEMENT AND HEADS OF INTERNAL
CONTROL FUNCTIONS AS FROM 15.02.2018**

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A. Introduction

This prudential approval procedure of key function holders in investment firms (the "Procedure") sets out the CSSF's requirements as regards authorisation applications and notifications of resignation and revocation of key function holders.

1. The requirements stated in this Procedure are driven in particular by points 17, last indent and 105, first paragraph of *Circular CSSF 12/552 on central administration, internal governance and risk management*, as amended ("Circular CSSF 12/552"), the *guidelines on the assessment of the suitability of members of the management body and key function holders* published by the European Banking Authority ("Guidelines EBA/GL/2012/06")¹, *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms* ("CRD IV") and the Law of 5 April 1993 on the financial sector, as amended ("LFS").
2. This Procedure applies to the institutions as defined in Chapter 2 of Circular CSSF 12/552, with the exception of credit institutions.
3. This Procedure applies to the key functions listed in point 1 of Circular CSSF 12/552, i.e. the directors and the members of the authorised management as well as the key function holders, namely the chief compliance officer, the chief risk officer and the chief internal auditor.
4. For the purposes of this Procedure, "relevant person" means any person who must be appointed to one of the key functions listed above.
5. By departure of a person holding a key function, it must be understood, in particular, the resignation or the revocation of a key function holder. Any departure must be notified, without delay, to the CSSF by providing the information listed in Part C below.
6. As regards the requirements relating to the assessment process of key function holders to be put in place internally by institutions, the reader is, moreover, requested to refer to the box in point 17 of Circular CSSF 12/552 and to Guidelines EBA/GL/2012/06 on the EBA's website. The EBA guidelines are the general framework that institutions must apply and comply with in this regard.
7. Authorisation applications must be accompanied by a comprehensive and detailed authorisation file in respect of the relevant person which must be drawn up in accordance with Part B below.

Any file that does not comply with the requirements of quality and comprehensiveness set out in this Procedure will be deemed incomplete and may be rejected automatically.

B. Appointment of new directors, authorised managers and heads of internal control functions at investment firms

Institutions' internal procedures

8. Institutions must have guiding principles, policies and procedures governing the appointment and succession to key functions. These principles and policies must ensure (i) a variety and a sufficiently wide range of knowledge, skills and experience within the board of directors and the authorised management and (ii) that each relevant person is fit and proper to fulfil his/her functions.
9. In accordance with the box in the last indent of point 17 of Circular CSSF 12/552 and Guidelines EBA/GL/2012/06, institutions must assess each relevant person that is to be appointed to a given key function. This assessment must comply with Guidelines EBA/GL/2012/06 and must document the conclusions of the board of directors or, where appropriate, of the nomination committee as regards professional standing, knowledge, skills, experience and personal qualities of each relevant person individually.
10. On any appointment or departure of a director or authorised manager, the institution must also consider its impact on the board of directors or the authorised management as whole. The institution must assess whether the diversity and the collective knowledge, skills and experience within these bodies remain adequate considering the institution's business model and the nature, size and complexity of its activities and inherent risks.

¹Guidelines EBA/GL/2012/06 will be repealed and replaced by the "Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU" (EBA/GL/2017/02) as from 30 June 2018.

11. The principles, policies, procedures and assessments must be documented in writing. Institutions must be able to provide these written assessments, as well as the guiding principles, policies and procedures they have laid down in this respect, at the first request of the CSSF.

Procedures vis-à-vis the CSSF

12. Following the internal assessment of a relevant person for his/her first appointment within a given institution, the institution in question is required to provide the CSSF with an authorisation file on the relevant person, comprising at least the following documents and information:
 - a. A declaration of honour filled in with due care and signed by the relevant person (cf. last version of this document on the CSSF website);
 - b. A certified copy of the identity card or passport of the relevant person;
 - c. An extract from the criminal record, not older than 3 months, of the Grand Duchy of Luxembourg and, where different, of the last country of main residence of the relevant person;
 - d. A curriculum vitae including, in a comprehensive and detailed manner:
 - i. first and last names, place and date of birth, address and nationality of the relevant person;
 - ii. all the positions held by the relevant person throughout his/her professional life by indicating each time the names and activities of the employers, a description of the responsibilities and the tasks carried out, the date of commencement of employment and the date of termination of employment, including reasons for termination, starting with the most recent one;
 - iii. a comprehensive list of mandates and other functions currently held by the relevant person, both remunerated and non-remunerated, specifying the average time (hours/month) required to discharge himself/herself of liability under each of these mandates;
 - iv. the mandates and other functions previously held in relation to a regulated activity;
 - v. the current and previous authorisations issued by a financial sector supervisory authority of any country as well as the nature, the scope and the duration of the authorisation;
 - vi. the additional available time (hours/month) that the relevant person deems necessary to dedicate to the position applied for.The curriculum vitae must be comprehensive and precise in order to demonstrate and illustrate the knowledge (based, in particular, on studies), the skills and the experience of the relevant person in relation to the intended function², as well as its availability for the requested mandate.
 - e. A confirmation by the institution that this appointment:
 - i. has been duly approved by the board of directors (or, where appropriate, the nomination committee) of the institution;
 - ii. complies with the guiding principles and the policies governing the appointment and succession to key functions laid down by the institution pursuant to points 17 and 18 of Circular CSSF 12/552;
 - iii. complies with the institution's internal policy on conflicts of interest and the requirements of point 25 and sub-chapter 7.2., respectively, of Circular CSSF 12/552;
 - iv. has been preceded by an assessment of the relevant person and accompanied by a reassessment of the board as a whole, in accordance with Guidelines EBA/GL/2012/06.
 - f. Any information or negative fact in relation to the relevant person in the institution's possession, stating, where appropriate, the reasons why it has considered these elements as insignificant for the contemplated appointment.
13. In case of renewal of a mandate about to expire, any change regarding the scope or nature of the mandate of a person already authorised, or any other event likely to trigger a reassessment according to Guidelines EBA/GL/2012/06 and points 9 and 10 of this Procedure, the institution must refer to that initial authorisation and provide the CSSF with a file containing, at a minimum, those documents and information that are new with respect to the initial authorisation file as well as the confirmations required in point 12 (e & f).
14. The appointments to the positions of director and authorised manager require express prior approval by the competent authority. Consequently, the entry into office of the relevant persons can only take effect after receipt of this formal approval from the competent authority.

² In accordance with Guidelines EBA/GL/2012/06, these requirements must not limit the election of the staff representatives to the board of directors. Particular emphasis must then be given to appropriate introductory and continuous training.

C. Departure of a director, authorised manager or head of internal control function from an investment firm

15. In case of resignation of a key function holder, the institution must notify the resignation to the CSSF at the earliest opportunity. The notification must include all the reasons stated by the resigning person and a copy of the resignation letter. Moreover, the institution must specify whether or not and the time limits within which the institution plans to replace the resigning person, in accordance with internal governance rules and the principles and policies concerning the appointment and succession to key functions.
16. In case of revocation of a key function holder, the institution must immediately inform the CSSF by providing a detailed and comprehensive justification of this decision and by attaching to its notification a copy of the letter of revocation or dismissal addressed, where applicable, to the relevant person. The institution must indicate all the arguments having had an impact on this decision or having been put forward vis-à-vis the person concerned.

D. Transmission of applications to the CSSF

17. The complete original applications and notifications, including all the requested information and documents sub B or C, are to be sent to the CSSF by registered mail. The applications are to be considered complete only when they include all the information, documents and material required. Any incomplete file may be rejected.
18. Any appointment, resignation or revocation of a person holding a key function must be transmitted to the CSSF immediately and without delay.

E. Processing of applications and notifications

19. Applications and notifications pertaining to directors and authorised managers of investment firms:
 - a. The institutions will transmit their applications to the CSSF in strict compliance with Parts B, C and D of this Procedure. The files will be assessed by the CSSF.
 - b. The CSSF may decide to summon the heads of the institution as well as the relevant person to a meeting. Files will be assessed by the CSSF by taking into account the criteria set out in Chapters III and IV of Guidelines EBA/GL/2012/06.
 - c. The CSSF will endeavour to communicate its response to the institution by letter within one month of the receipt of the complete application.
 - d. Following the receipt of a complete application, the CSSF may contact the institution and/or the relevant person to require additional information in order to complete the file. Such an application has the effect of suspending and restarting the ordinary authorisation or acceptance periods referred to in this Procedure. A new one-month period begins on the date of receipt of the additional information by the CSSF. The CSSF will inform the institution of the suspension of the authorisation or acceptance periods.
 - e. The authorisation of a relevant person will be communicated by the CSSF to the applying institution at the end of the assessment process. In accordance with generally applicable deadlines of Luxembourg administrative law, the application is deemed to be refused in the absence of a response from the CSSF within three months.
 - f. In accordance with the non-contentious administrative procedure (PANC), the intention of the CSSF to refuse or withdraw a relevant person's authorisation will be communicated to the person with all the relevant legal and factual elements on which the CSSF intends to base its decision. The relevant person will have the opportunity to express his/her views on the proposed decision and grounds for it. A negative final decision will indicate, where applicable, the procedures, means and time limits applicable to the parties concerned to bring an action.
20. Appointment of the heads of internal control functions at investment firms:
 - a. The files submitted by the institutions must comply with the requirements of Parts B, C and D of this Procedure. The assessment of the files will be done by the CSSF.
 - b. The CSSF's acceptance of the appointment of the head of an internal control function is tacit. The appointment is deemed to be accepted in the absence of a response from the CSSF within one month from the date of receipt of the complete application.
 - c. However, the CSSF reserves the right to reconsider this tacit acceptance, at any time, in particular when information casting doubt on the good repute or the professional competences of the head of an internal control function is brought to its attention.

F. Application of Article 38-2(2) of the LFS

21. With the exception of the representatives of the Luxembourg State, the members of management bodies of CRR investment firms³, that are significant in Luxembourg as they meet the criteria set out in Article 38-2(3) of the LFS, must comply with the limitations provided for in Article 38-2(2) of the LFS as regards the number and the nature of the mandates and functions which may be held at the same time.
22. This strict limitation of the number of mandates and functions is complementary to the general availability requirements deriving from Article 38-2(1)(b) of the LFS.

G. Effect of this Procedure

This Procedure cancels and replaces the previous version with effect from 15.02.2018. Authorisation files that may be pending on this date must be completed, at the request of the CSSF, in order to meet the new requirements.

³ An investment firm within the meaning of point 2 of Article 4(1) of Regulation (EU) No 575/2013 ("CRR").