

- Official Gazette of the Republic of Slovenia, No. 50/17 of 15 September 2017 (in force since 1 October 2017)

Pursuant to Article 75 of the Banking Act (Official Gazette of the Republic of Slovenia, Nos. 25/15, 44/16 [ZRPPB], 77/16 [ZCKR] and 41/17; hereinafter: the ZBan-2), and the first paragraph of Article 31 of the Bank of Slovenia Act (Official Gazette of the Republic of Slovenia, Nos. 72/06 [official consolidated version] and 59/11), the Governing Board of the Bank of Slovenia hereby issues the following

REGULATION **on holders of qualifying holdings in banks and savings banks**

1. Article 1 **(content of regulation)**

(1) This regulation sets out in detail certain content of the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, which were issued by the European supervisory authorities and whose application was set out by the Regulation on the application of the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (Official Gazette of the Republic of Slovenia, No. 34/17):

- (a) the detailed content of the criteria for assessing the suitability of a future qualifying holder in a bank or savings bank (hereinafter: bank);
- (b) the detailed content of the request for the granting of an authorisation to acquire a qualifying holding, with the documentation and information that must be enclosed in the request for the granting of an authorisation to acquire a qualifying holding;
- (c) the detailed content and method of submission of notifications of a qualifying holder to the Bank of Slovenia.

(2) Wherever this regulation makes reference to the provisions of other regulations, these provisions shall apply in their valid wording at the time in question.

2. Article 2 **(definition of terms)**

(1) For the purpose of this regulation the following definitions shall apply:

- (a) the “management” is the management as defined in Article 10 of the Companies Act (Official Gazette of the Republic of Slovenia, Nos. 65/09 [official consolidated version], 33/11, 91/11, 32/12, 57/12, 44/13 [constitutional court judgement], 82/13, 55/15 and 15/17; hereinafter: the ZGD-1);
- (b) “control” is the relationship between a controlling undertaking and a subsidiary as defined in the second paragraph of Article 56 of the ZGD-1, or a similar relationship between a natural person and a legal person;
- (c) a “group” is a group as defined in Article 63 of the ZGD-1.

(2) The following terms used in this regulation shall have the same meanings as in the ZBan-2 or Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176 of 27 June 2013, p 1; hereinafter: Regulation (EU) No 575/2013), and in regulations issued on their basis:

- (a) a banking group referred to in point 1 of the first paragraph of Article 7 of the ZBan-2;

- (b) a Member State referred to in point 3 of the first paragraph of Article 7 of the ZBan-2;
- (c) a supervisory authority referred to in point 16 of the first paragraph of Article 7 of the ZBan-2;
- (d) an immediate family member referred to in point 21 of the first paragraph of Article 7 of the ZBan-2;
- (e) a competent authority referred to in point 23 of the first paragraph of Article 7 of the ZBan-2;
- (f) a third country referred to in point 28 of the first paragraph of Article 7 of the ZBan-2;
- (g) a management body referred to in point 29 of the first paragraph of Article 7 of the ZBan-2;
- (h) the senior management referred to in point 30 of the first paragraph of Article 7 of the ZBan-2;
- (i) a directorship referred to in the second paragraph of Article 36 of the ZBan-2;
- (j) a future qualifying holder referred to in the first paragraph of Article 60 of the ZBan-2;
- (k) a future joint qualifying holder referred to in the second paragraph of Article 60 of the ZBan-2;
- (l) a qualifying shareholders' agreement referred to in the third paragraph of Article 60 of the ZBan-2;
- (m) a parent undertaking referred to in point 15 of Article 4(1) of Regulation (EU) No 575/2013;
- (n) a subsidiary referred to in point 16 of Article 4(1) of Regulation (EU) No 575/2013;
- (o) a financial holding company referred to in point 20 of Article 4(1) of Regulation (EU) No 575/2013;
- (p) a mixed financial holding company referred to in point 21 of Article 4(1) of Regulation (EU) No 575/2013;
- (q) a mixed-activity holding company referred to in point 22 of Article 4(1) of Regulation (EU) No 575/2013;
- (r) a financial sector entity referred to in point 27 of Article 4(1) of Regulation (EU) No 575/2013;
- (r) a qualifying holding referred to in point 36 of Article 4(1) of Regulation (EU) No 575/2013;
- (s) a close link referred to in point 38 of Article 4(1) of Regulation (EU) No 575/2013;
- (t) a group of connected clients referred to in point 39 of Article 4(1) of Regulation (EU) No 575/2013;
- (u) the consolidated basis referred to in point 48 of Article 4(1) of Regulation (EU) No 575/2013;
- (v) the sub-consolidated basis referred to in point 49 of Article 4(1) of Regulation (EU) No 575/2013.

II. CRITERIA FOR ASSESSMENT OF SUITABILITY OF FUTURE QUALIFYING HOLDER

3. Article 3 (reputation of future qualifying holder)

(1) The Bank of Slovenia shall conduct the assessment of the reputation of a future qualifying holder on the basis of an assessment of its integrity and professional competence in the management of the bank in which it will acquire a qualifying holding (hereinafter: the target bank), and the direction of its business.

(2) In the assessment of the integrity of the future qualifying holder, the Bank of Slovenia shall take account of the facts and circumstances in connection with the future qualifying holder and any of the members of its management, including the existence of:

- (a) definitive and non-definitive convictions or indictments and criminal prosecutions in connection with criminal offences, in particular:
 - pursuant to laws governing banking, insurance, markets in financial instruments, securities, payment instruments, the functioning of companies, bankruptcy and insolvency, and consumer protection, and pursuant to other regulations in connection with the activity of the future qualifying holder or the target bank,

- in connection with dishonesty, fraud or financial and economic crime, including money laundering, terrorist financing, market manipulation, insider trading, usury, corruption and tax evasion;
 - (b) final decisions and initiations of proceedings in connection with misdemeanours for reason of breaches of regulations governing the areas referred to in point (a) of the second paragraph of this article, including all significant findings and enforcement actions on the basis of controls and investigations in connection with the aforementioned, whether pronounced or in progress;
 - (c) information on refused, withdrawn, terminated or revoked registrations, authorisations and memberships of professional bodies, on dismissals or requested resignations from directorships, and on disciplinary measures, including all information on administrative proceedings in connection with the aforementioned;
 - (d) any other findings or evidence of operations that lack transparency or fail to comply with the principles and rules of good business practice and business ethics.
- (3) In the assessment of the professional competence of the future qualifying holder in the management of the target bank and the direction of its business, the Bank of Slovenia shall take account of the professional competence and past experience of the future qualifying holder, in particular:
- (a) its experience and results in the performance of financial activities that are comparable to banking, and the governance of undertakings in the aforementioned area;
 - (b) the professional competence of the members of its management and their experience in directing the business or supervising the direction of the business of a bank or an undertaking of similar size and activity to a bank, or other comparable business; and
 - (c) the governance policy and practices of the future qualifying holder, and, where appropriate, other undertakings in the group.
- (4) When the future qualifying holder is a supervised financial undertaking of a Member State or a supervised financial undertaking of a third country, or a member of the management body of or a qualifying holder in such an entity, for the purposes of the assessment of the reputation of the future qualifying holder the Bank of Slovenia shall obtain an opinion from the competent authority or supervisory authority of the Member State or third country with regard to the circumstances referred to in the first to third paragraphs of this article.

4. Article 4

(reputation of persons who as a result of the acquisition of a qualifying holding will have the opportunity to manage the bank or to otherwise influence its operations)

- (1) The persons whom the future qualifying holder intends to appoint as members of the management body of the target bank, or who as a result of the acquisition of a qualifying holding could influence its operations, shall have the requisite reputation, which the Bank of Slovenia shall assess on the basis of their integrity and professional competence in the management of a bank.
- (2) In the assessment of the circumstances referred to in the first paragraph of this article, the provisions of Article 3 of this regulation shall apply *mutatis mutandis*.

5. Article 5

(financial soundness of future qualifying holder)

- (1) The Bank of Slovenia shall conduct the assessment of the financial soundness of the future qualifying holder on the basis of an assessment of its financial position, which should allow it to finance the acquisition of the qualifying holding and to maintain the financial stability of the future qualifying holder and the target bank in a way that does not endanger the latter's operations.

- (2) In the assessment of the financial soundness of the future qualifying holder, the Bank of Slovenia shall determine:
- (a) whether the future qualifying holder's performance over the last three years has been successful and stable, and
 - (b) whether it can be concluded that the financial position of the future qualifying holder after acquiring the qualifying holding would allow for the implementation of the target bank's business plan for the next three years, having regard for the size of the qualifying holding that the future qualifying holder intends to acquire in the target bank, and the activities of the future qualifying holder and the undertakings in the group to which the qualifying holder belongs.
- (3) In the assessment of the circumstances referred to in the second paragraph of this article, the Bank of Slovenia shall in particular assess:
- (a) the financial strength of the future qualifying holder on the basis of true and fair financial statements;
 - (b) the source and availability of the funds for the acquisition of the qualifying holding;
 - (c) the financial impact of the acquisition of the qualifying holding on the future qualifying holder;
 - (d) the future qualifying holder's capacity to obtain financing in the future;
 - (e) the future qualifying holder's internal governance arrangements;
 - (f) the transparency of the structure of the future qualifying holder's investments in equity;
 - (g) the transparency and stability of the future qualifying holder's ownership structure.
- (4) When the future qualifying holder is a supervised financial undertaking of a Member State or a supervised financial undertaking of a third country, for the purposes of the assessment of the financial soundness of the future qualifying holder the Bank of Slovenia shall obtain an assessment of its financial position from the competent authority or supervisory authority of the Member State or third country.

6. Article 6

(impact on target bank's compliance with prudential requirements and rules)

- (1) The acquisition of the qualifying holding may not adversely impact the target bank's compliance with the prudential requirements and rules set out by the ZBan-2, Regulation (EU) No 575/2013 and other regulations that banks are required to observe.
- (2) In the assessment of the impact referred to in the first paragraph of this article, the Bank of Slovenia shall in particular examine whether:
- (a) the target bank will be capable of meeting the prudential requirements with regard to capital, liquidity, internal governance arrangements and large exposure limits, both on an individual basis and on a consolidated basis at the level of the banking group;
 - (b) there is a likelihood that the effective supervision of the target bank, the effective exchange of information between the competent authorities or supervisory authorities, and the allocation of powers and responsibilities between the aforementioned authorities will be hindered or prevented;
 - (c) suitable internal governance arrangements, including reliable reporting procedures and accounting procedures, will be put in place and consistently implemented at the target bank that, particularly when as a result of the acquisition of the qualifying holding the target bank will become part of a group, provide for the identification, measurement, monitoring and supervision of transactions between undertakings in the group;
 - (d) the future qualifying holder will be willing and able to provide capital or liquidity support to the target bank, should this be necessary in order to ensure compliance with prudential requirements or to expand the operations of the target bank, and will be able to implement any other appropriate solution to meet the target bank's needs for additional capital.

(3) In the assessment of the circumstances referred to in the second paragraph of this article, the Bank of Slovenia shall in particular take account of:

- (a) the future qualifying holder's intentions in connection with the qualifying holding;
- (b) its strategic plan in connection with the management of the qualifying holding;
- (c) its plans in connection with the target bank's financial position;
- (d) its business plan in connection with the target bank's future activities and internal governance arrangements, including its position in the group when as a result of the acquisition of the qualifying holding the target bank will become part of a group;
- (e) the commitments given by the future qualifying holder in connection with the provision of capital or liquidity support to the target bank.

7. Article 7

(prevention of anti-money laundering and terrorist financing)

(1) In the assessment of the suspicion of money laundering and terrorist financing, the Bank of Slovenia shall determine whether:

- (a) there are grounds for suspecting that the future qualifying holder has been or is involved in:
 - money laundering operations or attempts as defined in the first paragraph of Article 2 of the Prevention of Money Laundering and Terrorist Financing Act (Official Gazette of the Republic of Slovenia, No. 68/16; hereinafter: the ZPPDFT-1),
 - terrorist financing operations or attempts, or terrorist activities or attempted terrorist activities as defined in the second and third paragraphs of Article 2 of the ZPPDFT-1;
- (b) there are grounds for suspecting that in connection with the acquisition of the qualifying holding a criminal offence of money laundering or terrorist financing as defined in point (a) of the first paragraph of this article has been or will be committed;
- (c) the acquisition of the qualifying holding will increase the risk of money laundering or terrorist financing referred to in Article 13 of the ZPPDFT-1.

(2) In the assessment of the circumstances referred to in the first paragraph of this article, the Bank of Slovenia shall take account of the findings from the assessment of the integrity of the future qualifying holder in connection with the area of money laundering and terrorist financing referred to in the second paragraph of Article 3 of this regulation, and shall in particular assess:

- (a) the source of the funds for financing the activities of the future qualifying holder, including the source of the funds for financing the acquisition of the qualifying holding;
- (b) the manner of execution and traceability of the financial transactions for the acquisition of the qualifying holding, including persons that participate in the execution of these financial transactions;
- (c) the *de facto* beneficial owner of the future qualifying holder as defined in Article 33 of the ZPPDFT-1;
- (d) the anti-money laundering and terrorist financing standards in the future qualifying holder's country of establishment or country of residence;
- (e) persons with close business links or personal links with the future qualifying holder, including its *de facto* beneficial owners.

(3) For the purpose of the assessment of the suspicion of money laundering and terrorist financing, the Bank of Slovenia shall consult the Office of the Republic of Slovenia for the Prevention of Money Laundering and other bodies responsible for anti-money laundering and terrorist financing.

8. Article 8

(application of principle of proportionality)

(1) In the assessment of the suitability of a future qualifying holder the Bank of Slovenia shall take account of the principle of proportionality, which means that the following are taken into account in the assessment of whether the criteria set out in Articles 3 to 7 of this regulation have been met:

- (a) the future qualifying holder's country of establishment (a Member State, an equivalent third country in which supervised financial sector entities are subject to a supervisory regime that is determined to be equivalent under the conditions set out by the sectoral EU directives and regulations, or a third country);
- (b) the nature of the future qualifying holder (a natural person or a legal person, a supervised financial sector entity in a Member State or equivalent third country, or another entity);
- (c) the activity of the future qualifying holder and the undertakings in the group if the future qualifying holder is part of a group, and the financial relations between undertakings in the group;
- (d) the complexity of the future qualifying holder's ownership structure and corporate governance structure;
- (e) the purpose of the acquisition of the qualifying holding;
- (f) the size of the qualifying holding that the future qualifying holder intends to acquire;
- (g) the specifics of the acquisition of the qualifying holding (a transaction between persons within the same group, or between persons that are not part of the same group);
- (h) the impact on the management of the bank in which the qualifying holding is to be held;
- (i) the existence of documentation and information from previous assessments of the suitability of the qualifying holder;
- (j) any other facts and circumstances.

(2) The first paragraph of this article notwithstanding, the principle of proportionality shall not apply in the assessment of the integrity of the future qualifying holder and persons who as a result of the acquisition of the qualifying holding will have the opportunity to manage the bank or to otherwise influence its operations referred to in the second paragraph of Article 3 and Article 4 of this regulation.

Article 9

(*mutatis mutandis* application of criteria for assessment of suitability of future qualifying holder)

The provisions of Articles 3 to 8 of this regulation on the criteria for assessing the suitability of a future qualifying holder shall also apply *mutatis mutandis* to participants in a qualifying shareholders' agreement and to future joint qualifying holders.

III. REQUEST FOR GRANTING OF AUTHORISATION TO ACQUIRE QUALIFYING HOLDING

Article 10

(request for granting of authorisation)

(1) A request for the granting of an authorisation to acquire a qualifying holding referred to in the first paragraph of Article 64 of the ZBan-2 shall be submitted to the Bank of Slovenia by the future direct and indirect qualifying holder. The future ultimate beneficial owner of a qualifying holding may submit the request for the granting of an authorisation on behalf of other future indirect qualifying holders on the basis of an authorisation submitted by them.

(2) The size of the indirect qualifying holding shall be determined on the basis of the control criterion and multiplication criterion set out in Section 6 of the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.

Article 11

(documentation enclosed in request for granting of authorisation)

- (1) The future qualifying holder shall enclose the documentation and information set out in Appendix 1 of this regulation and a completed KVALI questionnaire set out in Appendix 2 of this regulation in the request for the granting of an authorisation to acquire a qualifying holding, together with a completed FIN form set out in Appendix 3 of this regulation if the future qualifying holder is a natural person.
- (2) In accordance with the fifth paragraph of Article 64 of the ZBan-2 the Bank of Slovenia may require the submission of additional information or documents required for assessing the suitability of a future qualifying holder, irrespective of whether they are cited in Appendix 1 of this regulation.
- (3) The future qualifying holder may submit a draft of the required documentation for the granting of an authorisation to acquire a qualifying holding for review before the submission of the formal request for the granting of an authorisation to acquire a qualifying holding.
- (4) At the Bank of Slovenia's request, the future qualifying holder shall translate the request for the granting of an authorisation with all the required documentation into English for the purposes of a decision on the granting of an authorisation being made by the European Central Bank (hereinafter: the ECB).

Article 12

(*mutatis mutandis* application of provisions on documentation)

The provisions of Article 11 of this regulation on the documentation that must be enclosed in the request for the granting of the authorisation shall also apply *mutatis mutandis* to participants in a qualifying shareholders' agreement and to future joint qualifying holders.

IV. NOTIFICATION OF BANK OF SLOVENIA

Article 13

(sending of notifications)

- (1) If a qualifying holder who has obtained an authorisation to acquire a qualifying holding intends to dispose of shares such that the holding would fall below the lower limit of the range for which the authorisation applies, the qualifying holder shall send the Bank of Slovenia the written notification referred to in the fourth paragraph of Article 74 of the ZBan-2 at least one business day before the intended disposal of the shares. The intended change in the holding shall also be cited in the written notification.
- (2) An extract from the companies register or another relevant public register shall be enclosed by the qualifying holder in the written notification of any merger or demerger to which it is party and of any other change in status that it is sending to the Bank of Slovenia pursuant to the fifth paragraph of Article 74 of the ZBan-2.
- (3) A financial holding company, mixed financial holding company or mixed-activity holding company that in accordance with an authorisation to acquire a qualifying holding is in the position of parent undertaking with regard to a bank shall send the Bank of Slovenia the written notification referred to in the sixth paragraph of Article 74 of the ZBan-2 of any change in members of the management body, within five business days of the change.

V. FINAL PROVISIONS

Article 14 (cessation of application of regulation)

On the day that this regulation enters into force, the Regulation on the holders of qualifying holdings of banks and savings banks (Official Gazette of the Republic of Slovenia, No. 73/15) shall cease to be applied.

Article 15 (entry into force)

This regulation shall enter into force on the day after its publication in the Official Gazette of the Republic of Slovenia, and shall begin to be applied on 1 October 2017.

Ljubljana, 12 September 2017

Boštjan Jazbec
President, Governing Board of the Bank
of Slovenia