

### **GUIDELINES FOR FILING AN APPLICATION WITH THE NATIONAL BANK OF SERBIA FOR PRIOR CONSENT TO THE ACQUISITION OF OWNERSHIP IN A BANK – “PURCHASE” OF A BANK LICENSED BY THE NATIONAL BANK OF SERBIA**

Acquisition of ownership in a bank is regulated by Articles 94 through 101 of the *Law on Banks (RS Official Gazette, Nos 107/2005, 91/2010 and 14/2015)* – hereinafter: Law and Sections 3 through 7, Section 14, paragraph 1, indent 6, Sections 15 through 21 and Sections 42, 46 and 47 of the *Decision on Implementing the Provisions of the Law on Banks Relating to Granting of a Preliminary Bank Founding Permit, Bank Operating Licence and Consents and Approvals by the National Bank of Serbia (RS Official Gazette, Nos 82/2015 and 29/2018)* – hereinafter: Decision.

**Before acquiring direct or indirect ownership in a bank** which carries 5% to 20%, over 20% to 33%, over 33% to 50% and over 50% of voting rights in that bank, a person (**foreign or domestic natural or legal person**) is required to make an application to the National Bank of Serbia (hereinafter: NBS) for prior consent to the acquisition of ownership in such bank (hereinafter: application).

The application must include data on the number, type and total nominal value of shares to be acquired, as well as on the total percentage of voting rights carried by those shares. The application has to be submitted along with documents which vary depending on whether the founder is a natural or legal person and/or on the type of legal person in the specific case.

Also, the application must include data on persons related to the acquirer in the manner specified in Article 95 of the Law, and on the level of participation acquired by each of those persons. The NBS is required to assess the fulfilment of the prescribed requirements for all persons related in one of the manners laid down by Article 95 of the Law, which will individually acquire 5% or more of the total voting rights in the concerned bank, and it may, if necessary, assess the fulfilment of the prescribed requirements for other persons (persons which individually acquire less than 5% of the voting rights in the bank, but which together acquire over 5%). Given that it is presumed that such persons act as a single acquirer, failure of any of these persons to meet the requirements will result in the refusal of the application with respect to all persons. Persons presumed to be acting as a single acquirer under Article 95 of the Law are the following:

- 1) a legal person and persons participating in the management of such legal person or its subordinated company;
- 2) a legal person and persons directly appointed and dismissed by a management body of such legal person or its subordinated company;
- 3) a legal person and representatives and liquidation administrators of such legal person or of its subordinated company;
- 4) family members;
- 5) legal persons in which the persons specified in item 4) of this paragraph participate in management or hold controlling participation;
- 6) legal persons – members of the same group of companies;

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- 7) persons participating in management of the same legal person;
- 8) persons holding controlling participation in the same legal person;
- 9) lender and recipient of a loan for the purchase of shares of the bank or bank holding company;
- 10) person that is instrumental in obtaining financing for the other person to purchase shares of the bank or bank holding company, and such other person;
- 11) the authoriser and the proxy;
- 12) two or more legal or natural persons not in the relation specified in items 1)–11) of this paragraph, but related in such a way that deterioration or improvement of the financial position of one person may cause deterioration or improvement of the financial position of the other person or persons and where, based on documentation, the NBS assesses there is a possibility of the transfer of losses, profit or creditworthiness.

For the purpose of acquiring ownership, it is presumed that a person acts in concert with another person as a single acquirer even if it is not in any of the relationships specified above, provided that each such person acts in concert with the same third person as a single acquirer in the manner established in items 1)–12).

Along with the application, an applicant is required to submit the prescribed documentation, which must be original or certified copies, while certificates of non-conviction and other certificates of certain facts issued by competent authorities must not be older than six months. If the original documentation is not in the Serbian language, a translation into Serbian certified by a court interpreter must be submitted, except in the case of financial statements of legal persons in the English language. If the original document is in a foreign language in respect to which it is impossible to obtain a translation by a certified court interpreter in the Republic of Serbia, translations into the English language and into the Serbian language, certified by a court interpreter, will be submitted (the document has to be translated into English by a certified court interpreter in the home country and its authenticity also needs to be confirmed by the home-country authority in charge of certification, while the translation from English into Serbian has to be done by a court interpreter in the Republic of Serbia).

The NBS is required to decide on the prior consent application for the acquisition of ownership in a bank within **60 days from the day of receipt of the duly completed application**.

### **I. DOCUMENTATION**

**Along with the application, a NATURAL PERSON – ACQUIRER has to submit the following documents:**

- 1) photocopy and a scan reading of a valid identity document of that person (ID card or passport);<sup>1</sup>

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<sup>1</sup> Scan reading of a biometric ID card of domestic citizens does not have to be certified, while foreign citizens submit a certified copy of the passport.

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2) dated and signed professional biography of that person, containing the data on his professional engagement and educational qualifications (Annex 1.10);

3) completed and certified questionnaire for natural persons acquiring/increasing their ownership in the bank on the form provided in Annex 2 to the Decision;

4) certificates issued by competent authorities from all relevant records confirming that the person has not been convicted of criminal and other offences and certificates proving that no proceedings have been initiated against that person for any of those offences (for domestic citizens – certificate issued by a competent commercial, magistrates, basic and higher court with criminal offence department and statement from criminal records of the ministry in charge of internal affairs and, for foreign citizens – certificate issued by the competent authority/ies of the person’s last country of permanent residence);

4a) list of associates with their non-conviction certificates or, if due to reasonable cause such certificates are not possible to obtain – a statement of the founder given under full financial and criminal liability, confirming that its associates have not been convicted;

5) evidence confirming that the person is a tax obligor, i.e. that he regularly settles his tax and other liabilities (decision issued by a competent authority stating the founder’s tax liabilities on all grounds, for domestic natural persons – certificate of a competent authority – Public Revenue Secretariat, with data on whether the nominated person is a tax obligor and whether he has settled his due liabilities under the local sources of public revenue in the territory of the town of the person’s residence and a certificate of a competent authority – Ministry of Finance (tax administration) about settled tax liabilities under other tax obligations; for foreign natural persons – certificate of a competent authority about settled tax liabilities in the country of residence of the nominated person and the country of origin, if the latter is different from the country of residence; If the competent authority in the foreign country does not issue such tax certificates or if there is no obligation to pay taxes – the nominated person shall submit a statement, issued under full financial and criminal liability, certified by a competent certification authority, in which he shall present all the circumstances; a Statement of the Credit Bureau or a Statement from the relevant credit registry abroad; If the competent authority of the foreign country does not issue such statements – the nominated person shall submit a statement issued under full financial and criminal liability, certified by a relevant certification authority, in which he shall present all the circumstances);<sup>2</sup>

6) letter of authorisation, empowering the banks with which the founder holds his assets and/or does business to submit to the NBS, at its request, all data regarding the founder’s operations, and/or the balance of his assets with those banks;

7) proof of payment of the fee for deciding on the application in the amount of RSD 80,000.00 and proof of payment of the republic administrative fee in the amount of RSD 870.00 (Annex 1.12).

If, due to reasonable cause, the acquirer is unable to obtain non-conviction certificates for his associates, he may instead submit a statement issued under full financial and criminal liability, confirming that his associates have not been convicted. The National Bank of Serbia may ask the founder at any point to submit non-conviction certificates for those persons or demand such evidence directly from the competent authority.

**I.I Additional documents for a NATURAL PERSON – ACQUIRER WHO IS A FOUNDER AND/OR MEMBER OF A PRIVATE INVESTMENT FUND OR A PERSON UNDER FOREIGN LAW, comprising, in addition to documents listed under I, the following:**

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<sup>2</sup> In order for assets owned by the natural person to be included in the assessment of the asset position of such person, in addition to evidence of ownership of such assets, such person must also submit evidence that it is a tax obligor in respect of such ownership.

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- 1) documents containing data about when such fund or a person under foreign law was founded, where its head office is, which type of fund it is and in which countries it operates or invests, as well as data about the founder and/or fund member, or the founder, trustee, custodian, beneficiary, if designated, and the person holding a dominant position in the management of a person under foreign law, about its investment policy and goals, including any restrictions as to the manner in which such policy and goals can be changed, about members owning the largest number of fund units and about whether the fund already holds participation in another bank, including the opinion of the competent regulatory authority of that bank;
- 2) contract with an authorised bank from a country that applies international standards for the prevention of money laundering and terrorism financing on depositing pecuniary assets of the fund or persons under foreign law, designated for the realisation of a transaction for acquiring ownership in a bank;
- 3) other documents deemed necessary by the National Bank of Serbia.

### LEGAL PERSON – ACQUIRER

**(1) If the acquirer of ownership in a bank is a domestic or foreign legal person,<sup>3</sup> along with the application, it is required to submit the following documents:**

1) act of registration of the acquirer with the competent authority, and/or articles of association or other act governing the organisation and operations of such acquirer;

2) list of all persons holding participation in the acquirer within the meaning of Article 2 of the Law (qualified, significant or controlling)<sup>4</sup> – down to natural persons, with the basic data on such persons, percentages of their ownership and/or participation in the acquirer and identity details of members of management and/or supervisory bodies of the acquirer;

2a) certificates of competent authorities issued on the basis of all non-conviction records of those persons in terms of criminal or other offences, including the beneficial owner of those persons, as well as certificates that no procedure for any criminal offence has been instituted against those persons, including the beneficial owner of those persons;

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<sup>3</sup> If bank founder is a local government unit, documents prescribed for legal persons are submitted.

<sup>4</sup> Qualifying participation exists when one person has: 1) direct or indirect right or ability to exercise 5% or more of voting rights in a legal person, and/or direct or indirect ownership of 5% or more of capital of such legal person; or 2) the ability to effectively exercise influence over the management of a legal person or over the business policy of such legal person.

Significant participation exists when one person has: 1) direct or indirect right or ability to exercise 20% or more of voting rights in a legal person, and/or direct or indirect ownership of 20% or more of capital of such legal person; or 2) the ability to effectively exercise significant influence over the management of a legal person or over the business policy of such legal person.

Controlling participation exists when one person has: 1) direct or indirect right or ability to exercise 50% or more of voting rights in a legal person, and/or direct or indirect ownership of 50% or more of capital of such legal person; or 2) the ability to elect at least half of the members of the managing board or other management body in such legal person; or 3) the ability to effectively exercise dominant influence over the management of a legal person or over the business policy of such legal person (see Article 2, paragraphs 12 through 14 of the Law).

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2b) list of associates with their non-conviction certificates or, if due to reasonable cause such certificates are not possible to obtain – a statement of the founder given under full financial and criminal liability, confirming that his associates have not been convicted;

3) reports on audit of financial statements of such person for the last two years prepared by a certified auditor,<sup>5</sup> in accordance with regulations of such person’s home country, and its financial statements for the period from the date of the latest audit report until the end of the semester preceding the semester in which the application is submitted;

4) completed and certified questionnaire for legal persons acquiring/increasing their ownership in the bank on the form provided in Annex 3 to the Decision;

5) letter of authorisation, empowering the banks with which the acquirer holds its assets and/or does business to submit to the NBS, at its request, all data regarding the acquirer’s operations, and/or the balance of its assets with those banks;

6) proof of payment of the fee for deciding on this application in the amount of RSD 80,000.00 and proof of payment of the republic administrative fee in the amount of RSD 870.00 (Annex 1.12).<sup>6</sup>

7) evidence confirming that the person has settled his tax liabilities (decision issued by a competent authority of the country where the head office of that legal person is located, confirming that tax liabilities on all accounts have been settled in accordance with the abovesaid for domestic and foreign natural persons) and a Statement of the Credit Bureau or a Statement from the relevant credit registry abroad. If the competent authority of the foreign country does not issue such statements – the nominated person shall submit a statement of his legal representative, issued under full financial and criminal liability, certified by a relevant certification authority, in which he shall present all the circumstances.

If, due to reasonable cause, the acquirer is unable to obtain non-conviction certificates for his associates, he may instead submit a statement issued under full financial and criminal liability, confirming that his associates have not been convicted. The National Bank of Serbia may ask the founder at any point to submit non-conviction certificates for those persons or demand such evidence directly from the competent authority.

(2) IF THE ACQUIRER IS A DOMESTIC OR FOREIGN LEGAL PERSON – FOUNDER AND/OR MEMBER OF A PRIVATE INVESTMENT FUND OR A PERSON UNDER FOREIGN LAW, in addition to documents specified under (1), it shall also submit:

- 1) documents containing data about when such fund or a person under foreign law was founded, where its head office is, which type of fund it is and in which countries it operates or invests, as well as data about the founder and/or fund member, or the founder, trustee, custodian, beneficiary, if designated, and the person holding a dominant position in the management of a person under foreign law, about its investment policy and goals, including any restrictions as to the manner in which such policy and goals can be changed, about members owning the largest number of fund units and about whether the fund already holds participation in another bank, including the opinion of the competent regulatory authority of that bank;

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<sup>5</sup> If the founder is not an auditee according to home-country regulations, it must procure special audit of financial statements for the needs of this procedure,

<sup>6</sup> If the founder is a local government unit, it is not required to pay the fee and the republic administrative tax.

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- 2) contract with an authorised bank from a country that applies international standards for the prevention of money laundering and terrorism financing on depositing financial assets of the fund or persons under foreign law, designated for the realisation of a transaction for the acquisition of ownership in a bank;
- 3) other documents deemed necessary by the National Bank of Serbia.

**(2) If the acquirer of ownership is a foreign bank or another financial sector person, along with the documents under (1), it shall also submit the following:**

- 1) an overview of liquidity movements in the three months preceding the month in which the application is submitted;
- 2) an overview of the maturity structure of receivables and liabilities at the end of the quarter preceding the month in which the application is submitted;
- 3) operating licence or adequate evidence of registration for performing financial activities, including data about the issuance and validity of the licence or registration, and data on the name and head office of the competent authority that issued the licence or performed the registration;
- 4) evidence that in the country of the head office or registration, or in the country where the foreign bank operates, such foreign bank or another financial sector person is under the supervision of a competent authority and that it applies regulations pertaining to the prevention of money laundering and terrorism financing;
- 5) description of internal procedures pertaining to the prevention of money laundering and terrorism financing (customer due diligence, submitting data to competent authorities about suspicious transactions and persons, keeping records, internal controls, etc.) and description of systems for detection and prevention of money laundering and terrorism financing;
- 6) written statement of a responsible person on whether the foreign bank or another foreign financial sector person maintains a business relationship or executes transactions through a shadow bank, a foreign bank or another financial institution from a foreign country that does not apply standards in the area of the prevention of money laundering and terrorism financing, or whether it allows or has allowed such persons to use its accounts;
- 7) evidence of the fulfilment of requirements specified in Article 94, paragraph 4 of the Law, in particular: (1) that the regulatory authority of the acquirer’s home country performs supervision of the acquirer on a consolidated basis in the manner which meets the conditions prescribed by the NBS,<sup>7</sup> (2) that there is adequate cooperation between the NBS and the regulatory authority of the acquirer’s home country,<sup>8</sup> and (3) if the bank is founded as a subsidiary of a foreign bank, it is also necessary to submit a certificate that the competent regulatory authority has granted approval regarding the acquisition of ownership in a bank in the Republic of Serbia and/or certificate of the competent regulatory authority or another competent

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<sup>7</sup> Evidence of the fulfilment of this requirement means an excerpt from the regulations of the home country which can be used to establish that supervision on a consolidated basis is performed by a competent regulatory authority or a certificate of that regulatory authority that it performs supervision on a consolidated basis, stating the manner of performing supervision.

<sup>8</sup> If the NBS has not concluded an agreement on cooperation with the competent regulatory authority of the acquirer’s home country, it will be presumed that this requirement is fulfilled if the regulatory authority notifies the NBS of the intent of the person under its supervision to acquire ownership in a bank in the Republic of Serbia.

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institution or authority of the home country verifying that such approval is not necessary, and the certificate of that regulatory authority that it performs supervision of the acquirer on a consolidated basis.

**(3) If the acquirer of ownership in a bank is: 1. an international development bank which, pursuant to the decision governing capital adequacy of banks, has been assigned a credit risk weight of 0%; 2. a foreign bank, another foreign financial sector person, international financial organisation or another legal person that, in the latest ranking prior to the submission of the application for preliminary permit, has been awarded no less than BBB- long-term credit rating as graded by Standard&Poor’s or Fitch and/or no less than Baa3 long-term credit rating as graded by Moody’s – instead of the documents under (1), it is required to submit:**

1) act of registration of the acquirer with the competent authority, and/or articles of association or other act governing the organisation and operations of such acquirer;

2) list of all persons holding participation in the acquirer within the meaning of Article 2 of the Law (qualified, significant or controlling participation)<sup>9</sup>, with the basic data on such owners;

3) completed and certified questionnaire for legal persons acquiring/increasing their ownership in the bank on the form provided in Annex 3 to the Decision;

4) evidence on the acquirer’s rating, together with the opinion of the rating agency.

5) proof of payment of the fee for deciding on this application in the amount of RSD 80,000.00 and proof of payment of the republic administrative fee in the amount of RSD 870.00 (Annex 1.12).

**(4) If the legal person that intends to acquire a significant or controlling participation in a bank is a domestic or foreign legal person acquiring participation in the bank for the account of another person, and/or a person engaged in acquiring, holding or managing stakes in legal persons for the account of another person – all of the above documents must be submitted by that founder, as follows:**

- for persons providing the acquirer with the funds for the purchase of the bank’s shares, and/or persons for whose account the participations in the bank are acquired, held or managed;

- if the NBS deems it necessary, in addition to the above documents, documents which directly relate to the acquirer must also be submitted;

- if the founder is acquiring participation in a bank on its own, for its own account, and provides funds for the purchase of the bank’s shares from own sources, only the documents relating to that founder must be submitted.

**(5) If the acquirer of ownership in a bank is the Republic of Serbia or autonomous province, instead of the documents under (1), the decision of the competent authority on the acquisition of ownership in the bank must be submitted, specifying the number, type and the total nominal value of acquired shares, as well as the total percentage of voting rights carried by those shares.**

**Every legal person – acquirer of ownership under (1) through (5), which is a member of a group of companies or a banking group, in addition to the documents stipulated for such acquirer, is required to also submit the following:**

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<sup>9</sup> See footnote 4.

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- 1) data on group structure, including a detailed organisational scheme of the group and data on persons holding a significant and/or controlling participation in the group, as well as data on types of activities in which the group and its members are engaged;
- 2) reports on audit of consolidated financial statements of the group for the previous two years prepared by a certified auditor in accordance with regulations of the home country of the ultimate parent company of the group;
- 3) projection of the expected mutual influence of the bank, banking group whose member the bank is to become and members of the group;
- 4) risk management, internal audit and internal controls procedures of the banking group.

### ADDITIONAL DOCUMENTATION

The acquirer (natural or legal person) intending to acquire **over 20% to 33%** of voting rights in the bank, in addition to the documentation stipulated for such acquirer, is required to submit to the NBS the programme of activities for the next year. The acquirer intending to acquire **over 33% to 50%** of voting rights in the bank, in addition to documentation stipulated for such acquirer, is required to submit to the NBS the programme of activities for the next two years, while the acquirer intending to acquire **over 50%** of voting rights in the bank, in addition to documentation stipulated for such acquirer, is required to submit to the NBS the programme of activities for the next three years. Notwithstanding the above, if the acquirer intends to acquire **50% or less voting rights** in the bank, but due to the bank's ownership structure is to become the largest single shareholder, such acquirer is required to submit to the NBS the programme of activities for the next three years.

**The programme of activities** (Annex – Programme of activities) must contain in particular the business strategy and/or objectives and guidelines pertaining to the bank whose shares are acquired.

In addition to documents listed above, the acquirer intending to acquire 5% to 20%, more than 20% to 33%, more than 33% to 50% or more than 50% of voting rights in a bank shall also submit to the NBS the contract stipulating the rights and obligations of participants in the process to acquire ownership in a bank which, among other, shall contain: provisions regarding the prevention of money laundering and terrorism financing, data about the transaction and its execution, data about the source of pecuniary assets for the planned investment (recapitalisation), as well as a contract with the authorised bank on depositing assets intended for the realisation of the transaction, if the applicant is a person whose assets originate from a private investment fund or a person under foreign law.

If, based on the entire documentation and evidence, it is not possible to establish all facts relevant for making a decision on the application for prior consent, the NBS may also request other documents it deems necessary.

The documents submitted to the NBS must be originals or certified copies (the authenticity of the copy will be certified by the competent body in the country of origin). Certificates of non-conviction and/or certificates that no criminal, misdemeanour or economic offence proceedings are instituted against these persons must be not older than six months and must have been issued by the competent authorities. If the original documentation is not in the Serbian language, a translation into Serbian certified by a court interpreter must be submitted, except in the case of financial statements of legal persons in the English language. If the original document is in a foreign language in respect to which it is impossible to obtain a



translation by a certified court interpreter in the Republic of Serbia, translations into the English language and into the Serbian language, certified by a court interpreter, are to be submitted (it is required that the document be translated into English by a certified court interpreter in the home country and its authenticity also needs to be confirmed by the home-country authority in charge of certification, while the translation from English into Serbian must be done by a court interpreter in the Republic of Serbia).

### II. ASSESSMENT OF THE FULFILMENT OF REQUIREMENTS WHEN DECIDING ON THE APPLICATION

This is a complex procedure in which the NBS assesses the fulfilment of requirements relating to:

#### 1) **good business reputation:**

- a. business reputation of the following persons is assessed: (1) acquirer – natural and legal persons, (2) persons with a significant or controlling participation in the legal person – acquirer, and (3) members of management bodies of the legal person – acquirer acquiring significant<sup>10</sup> or controlling<sup>11</sup> participation in the bank, and if the NBS deems it necessary, also in the case of acquiring qualified<sup>12</sup> participation in the bank;
- b. business reputation of a natural person is assessed in relation to his total work experience and engagements, and/or management of other legal persons or supervision of those persons, as well as in relation to achieved business results of legal persons managed by that natural person, on the basis of non-conviction certificates of competent authorities and other facts (a certificate of the interior ministry, competent basic court, higher court – special divisions, competent commercial or misdemeanour court, or certificate of a competent authority for foreign natural and legal persons), taking into account the circumstances stated in the Questionnaire<sup>13</sup> (evidence of the regular settlement of tax liabilities on all accounts, as well as other liabilities). The business reputation assessment also includes the reputation of the acquirer’s associates, i.e. their non-conviction certificates;
- c. business reputation of a legal person is assessed based on its overall operations, as well as on its ownership and/or management of other legal persons and, particularly taking into account the circumstances stated in the Questionnaire.<sup>14</sup> The business reputation assessment also includes the reputation of the acquirer’s associates, i.e. their non-conviction certificates.

#### **The acquirer does not have good business reputation if:**

- a. this person, its associate or its beneficial owner has been convicted by a final judgement of criminal offences against the economy, property, legal procedures, public order, the judiciary or malfeasance, or of criminal offences of money laundering or terrorism financing, or of criminal

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<sup>10</sup> See footnote 4;

<sup>11</sup> See footnote 4;

<sup>12</sup> See footnote 4;

<sup>13</sup> **Questionnaire** for natural persons acquiring/increasing their ownership in the bank (questions in the questionnaire are answered under full criminal and financial liability).

<sup>14</sup> **Questionnaire** for legal persons acquiring/increasing their ownership in the bank (questions in the questionnaire are answered under full criminal and financial liability).

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offences for which unconditional prison sentence is pronounced, or of similar or comparable criminal offences in accordance with the regulations of a foreign country;

b. If in the past ten years these persons have committed a severe violation or a repeated violation of regulations governing the prevention of money laundering and terrorism financing.

An associate means:

- any natural person who is a member of the management body in a legal person whose beneficial owner, within the meaning of the law governing the prevention of money laundering and terrorism financing, is the bank founder or a prospective acquirer or in which the bank founder, or a prospective acquirer, is a member of the management body;
- any natural person who is the beneficial owner of the legal person in which the founder, or the prospective acquirer, is a member of the management body;
- any natural person who, together with the founder, or the prospective acquirer, holds beneficial ownership over that same legal person.

### **2) adequacy of financial position (for legal persons):**

- a. an acquirer is considered to be in an adequate financial position if it is able to finance the purchase of the bank's shares, or to recapitalise the bank when needed – which is established based on data in financial statements;
- b. an adequate financial position is considered to be that of: (1) an international development bank which is, pursuant to the decision governing capital adequacy, assigned a credit risk weight of 0%, and (2) a foreign bank, other foreign financial sector person, international financial organisation or other legal person that has been awarded, in the latest ranking prior to the submission of the application for prior consent, no less than BBB- long-term credit rating as graded by Standard&Poor's or Fitch and/or no less than Baa3 long-term credit rating as graded by Moody's;

**3) adequacy of asset position (for natural person)** – an acquirer is considered to have an adequate asset position if it is able to finance from its own assets (excluding borrowed assets) the purchase of the bank's shares, or to recapitalise the bank when needed (the following requirements assume the possession of both **pecuniary and non-pecuniary** assets in the prescribed amount), as follows:

- a. if he intends to acquire qualified participation in the bank (threshold of at least 5% to 20% of voting rights and/or ownership), if in his bank accounts such person owns non-committed pecuniary assets needed to purchase the bank's shares, or to recapitalise the bank when needed, as well as non-pecuniary assets in the same amount, or in the amount no less than double the amount needed to purchase the bank's shares if the pecuniary assets he owns are insufficient to purchase the shares, or to recapitalise the bank when needed, if this is a condition for the acquisition;
- b. if he intends to acquire significant participation in the bank (threshold of at least 20% to 50% of voting rights and/or ownership), if in his bank accounts such person owns non-committed pecuniary assets needed to purchase the bank's shares, or to recapitalise the bank when needed, as well as non-pecuniary assets worth double the amount, or the amount no less than triple the amount needed to purchase the bank's shares if the pecuniary assets he

owns are insufficient to purchase the shares, or to recapitalise the bank when needed, if this is a condition for the acquisition;

- c. if he intends to acquire controlling participation in the bank (threshold of at least 50% of voting rights and/or ownership), if in his bank accounts such person owns non-committed pecuniary assets needed to purchase the bank’s shares, or to recapitalise the bank when needed, and non-pecuniary assets worth triple the amount.<sup>15</sup>

If the bank founder is a natural person who is the founder and/or member of a private investment fund, or a person under foreign law organised for the purpose of asset disposal and management (a trust etc.), and the assets for the intended investment originate from that fund or a person under foreign law – it shall be deemed that the asset position of such person is adequate if this person can finance an investment in the bank’s capital, or recapitalise the bank when needed, solely from the pecuniary assets owned by the fund or a person under foreign law, which is ready to deposit such assets with an authorised bank in the country that applies standards for the prevention of money laundering and terrorism financing in order to execute those transactions.

If the bank founder is a private investment fund or a person under foreign law, the financial status shall be assessed based on the assets that constitute the property of the fund or the person under foreign law, by applying the described founder criteria.

**4) whether the acquirer’s business activities could trigger a material risk to safe and sound and lawful management of the bank, and/or have a negative impact on the bank’s ability to ensure that its operation is in compliance with law, regulations and acts of the NBS** – it is assessed in particular whether business and other activities of the acquirer or its associates are such that the risks associated with them could affect bank operations negatively, or preclude the founder from having a long-term positive impact on the bank’s operations or from ensuring the transparency of the banking group whose member the bank is to become;

**5) whether there are indications that the bank is founded for the purpose of money laundering or terrorism financing** – the following is assessed:

- a. if it is possible to determine the source of assets with which the acquirer intends to finance the purchase of the bank’s shares;
- b. if, according to the information provided by the anti-money laundering and terrorism financing authority and other information available to the NBS, the acquirer or persons related to it were associated with money laundering or terrorism financing;

The following circumstances may also be indicative:

– the founder or the prospective acquirer has permanent or temporary residence or performs business activities in a foreign country which has strategic shortcomings in its system for the prevention of money laundering and terrorism financing, or assets for the realisation of the transaction originate from that country;

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<sup>15</sup> In case of the acquisition of a controlling participation, the founder – natural person must have pecuniary assets in the full amount needed to purchase the bank’s shares and non-pecuniary assets triple that amount, and no alternative has been envisaged with regard to a higher census for non-pecuniary assets in case the founder does not own the full amount of pecuniary assets required for the purchase of shares.

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- the founder or the prospective acquirer is an off-shore legal person within the meaning of the law governing the prevention of money laundering and terrorism financing, or it is a person holding a participation in an off-shore legal person, or a member of the management body of an off-shore legal person;
- the founder or the prospective acquirer maintains a business relationship or executes transactions through a shadow bank within the meaning of the law governing the prevention of money laundering and terrorism financing, or through another similar institution for which it can be reasonably assumed that it could allow the use of its accounts by a shadow bank;
- whether according to the regulations of the country of permanent or temporary residence, or the country where the head office is located or in which the person operates, the founder or the prospective acquirer has internal acts, keeps records and applies internal control procedures pertaining to the detection and prevention of money laundering and terrorism financing or activities related thereto, and whether it under supervision of a competent authority at home or abroad.

The National Bank of Serbia assesses in particular whether the founder or the prospective acquirer is an official, a member of the close family of an official or a close associate of an official within the meaning of the law governing the prevention of money laundering and terrorism financing.

**6) whether the acquisition of ownership in financial sector persons and management of those persons represent the acquirer’s strategic goal evident in its business policy documents and/or business practice** – this requirement is set only for acquirers intending to acquire a significant or controlling participation and/or of the acquirer that, due to fragmented ownership, would become the bank’s largest single shareholder.

If the acquirer of ownership in the bank is a domestic or foreign legal person acquiring ownership **for the account of another person, and/or a person engaged in acquiring, holding or managing stakes in legal persons for the account of another person**, the fulfilment of the above requirements will be assessed in respect of persons providing such acquirer with the funds for the purchase of the bank’s shares, and/or in respect of persons for whose account participations in the bank are acquired, held or managed, and the National Bank of Serbia may assess the fulfilment of these requirements in respect of the acquirer as well, if it deems it necessary. If the acquirer is acquiring participation in a bank **on its own, for its own account** and provides funds to purchase the bank’s shares – the fulfilment of the above requirements will be assessed in respect of that acquirer.

### NOTES:

The decision granting prior consent to the acquisition of ownership in a bank specifies the deadline in which the acquirer may acquire ownership for which the consent was given, which is up to one year from the date of submission of the decision for **natural persons**, and for **legal persons** up to the adoption of the first subsequent annual financial statements, and/or revised financial statements of those legal persons. If the submitter of the request fails to acquire ownership within the deadline specified by the NBS’s decision granting prior consent to the acquisition of ownership in a bank, the consent will cease to be valid.

The acquirer has an obligation to notify the NBS of the acquisition of ownership in respect of which the consent was granted within 15 days from the date of acquisition.

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Pursuant to the provisions of the Law relating to the acquisition of ownership, a person is understood to hold **indirect ownership of a bank** if the direct owner has acquired the bank’s shares for the account of such person, or if such person acts with the direct owner as a single acquirer within the percentage of the direct owner’s stake in the bank, as well as in other cases where the NBS assesses that there is a possibility for such person to exercise ownership rights in the bank effectively using the ownership of the direct owner.

The bank has an obligation to regularly provide and update documentation on changes in the ownership structure of shareholders holding participation in the bank.

### **ACQUISITION OF OWNERSHIP WITHOUT THE CONSENT OF THE NBS**

A person may acquire ownership in a bank without the consent of the NBS, if such ownership is acquired through inheritance, legal succession or other acquisition independent of the acquirer’s will. The person who acquired ownership in the described manner may not exercise any influence on the management or business policy of the bank in which it has acquired ownership or exercise voting rights based on such ownership until it has been granted the consent of the NBS for such acquisition.

Such person is required to submit to the NBS an application for subsequent consent to the acquisition within 30 days following the day of the acquisition of ownership in the described manner, or it must inform the NBS within that time period of the alienation of ownership. The NBS decides on the application in the manner and within the deadline specified for granting prior consent to the acquisition of ownership in a bank.

The application has to be submitted along with the proof of acquisition of ownership in the bank, both in respect of the legal basis for the acquisition (inheritance, legal succession, etc.) and the actual acquisition (entry of ownership into the Central Securities Depository and Clearing House).

If the NBS issues a decision refusing to grant subsequent consent to the acquisition of ownership, by the same decision it will prohibit the person referred to in that paragraph from exercising any rights carried by shares based on which such ownership was acquired, and order the person to alienate such ownership in the amount and within the deadline specified by such decision.