

### **GUIDELINES FOR FILING AN APPLICATION WITH THE NATIONAL BANK OF SERBIA FOR PRELIMINARY BANK FOUNDING PERMIT, BANK OPERATING LICENCE AND CONSENT TO ACTS OF THE FOUNDING ASSEMBLY**

The conditions for establishing a bank are set out in Articles 15 to 20 of the *Law on Banks (RS Official Gazette, Nos 107/2005, 91/2010 and 14/2015)* – hereinafter: Law, and Sections 2 to 20, Sections 22 to 25, Sections 31 to 40, 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.

Banks are established as joint-stock companies and may be founded by one or more domestic or foreign, legal or natural persons that provide funds for the bank’s initial capital. The bank’s initial capital consists of the founder’s pecuniary contribution of no less than EUR 10,000,000 in the dinar equivalent, at the official middle exchange rate on the date of payment. The contribution may also be non-pecuniary (things and rights for the purpose of the bank’s operations), once the minimum pecuniary portion has been provided.

The stages of establishing the bank are the following:

**1) granting of the preliminary bank founding permit** (decision on the application is made within 90 days from the day of receipt of a duly completed application);

**2) granting of the bank operating licence** – application for bank operating licence is submitted within no more than 60 days from the day of receiving the preliminary bank founding permit (decision on the application is made within 30 days from the day of receipt of a duly completed application);

**3) granting of consent to acts and/or decisions adopted at the bank’s founding assembly meeting (articles of association, appointment of president and members of the bank’s managing and executive boards, programme of activities for the three-year period, bank’s business policy and decision on the first issue of shares)** – the founding assembly meeting must be held no later than 30 days from the day of receipt of the decision granting the bank operating licence. Acts are submitted for consent to the National Bank of Serbia within 5 days from their adoption (decision on application for consent to the above acts is made within 60 days from the day of their receipt);

**4) registration** – founders submit an application to the Business Registers Agency for entry of the bank in the register of business entities within 30 days from the day of obtaining the consent to acts of the founding assembly. The bank acquires legal personality and is considered established as of the moment of its entry into the register of business entities.

### 1) GRANTING OF THE PRELIMINARY BANK FOUNDING PERMIT

#### I. APPLICATION AND DOCUMENTS

Along with the application for preliminary bank founding permit (submitted using form – Annex 1 to the Decision), bank founders also submit to the National Bank of Serbia (hereinafter: NBS) documents classified into two groups.

**The first group** are documents submitted regardless of the type of founder (hereinafter: **documents supporting the application**) and comprise:

- 1) founding act and proposed articles of association of the bank (Annex 1.1 and Annex 1.2);
- 2) statement by each founder declaring that they will pay the pecuniary portion of initial capital to the temporary account with the NBS, and/or that they will transfer non-pecuniary assets to the bank's initial capital, specifying the exact amount of the respective founder's contribution and/or the estimated value of things and rights invested by the respective founder, including the date and signature certified by a stamp (at the time of transfer of non-pecuniary assets to the initial capital, document is submitted which proves that the founder owns the things and/or rights invested, as is the report on the assessment of their value prepared by an authorised appraiser and the confirmation of the competent authority that these things and rights are not encumbered with mortgage and/or right of pledge) – (Annex – Statement);
- 3) bank's proposed business policy and strategy for the period of three years and programme of activities for the first business year (Annex 1.3 and Annex 1.4);
- 4) bank's proposed risk management strategy and policies and proposed capital management strategy (Annex 1.5);<sup>1</sup>
- 5) documents and evidence from Sections 31 to 40 of the Decision – for nominated members of the bank's managing and executive boards, including in particular:
  - a. proposal of decision of the bank's competent body on the appointment of the nominated person as member of the managing board (Annex 1.6 and Annex 1.7);
  - b. photocopy and a scan reading<sup>2</sup> of a valid identity document of that person (ID card or passport);
  - c. data on the composition of the bank's managing board (number of board members, number of persons independent of the bank, details of the person fluent in the Serbian language if the managing board is made up of foreign natural persons only, number of members having appropriate work experience in the area of finance<sup>3</sup>) – Annex 1.8;
  - d. evidence issued by a competent authority that no investigation has been initiated against such person and/or that such person has not been convicted by a final judgement of an offence that would make him/her unfit for discharging the function of a member of the bank's managing or executive board, and/or evidence of not having been convicted of such offence and evidence that no protective measure has been imposed against such person which would prohibit him from performing the activity fully or partly corresponding to the activity of the

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<sup>1</sup> The bank is required to adopt the above strategies and policies at its first managing board meeting and to submit them to the NBS.

<sup>2</sup> Scan reading of the biometric ID card of domestic nationals does not have to be certified; certified copy of the passport is submitted for foreign nationals.

<sup>3</sup> At least three members of the managing board must have appropriate experience in the field of finance – for further detail, see pages 9 and 10 of these Guidelines.

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bank (for domestic nationals, certificate issued by a competent commercial, magistrates, basic and higher court and statement from criminal records of the ministry in charge of internal affairs and, for foreign nationals, certificate issued by the competent authority (authorities) of the person's latest country of permanent residence);

- e. completed and certified Questionnaire for the Person Nominated as Member of the Managing and Executive Board of the Bank, using the form provided in Annex 5 to the Decision;
- f. letter of reference containing substantiated opinion on the business reputation, expertise, abilities and moral qualities of the nominated person provided by minimum two persons based on their professional contacts with the nominated person. The letter of reference may be written by the nominated person's employer, members of management bodies of a member of the banking group to which the bank belongs and to the managing or executive board of which the person is nominated, by persons who managed or still manage another bank or a financial sector person, by scientific workers, university professors, persons who manage or used to manage authorities in charge of supervising banks or other financial sector persons, as well as by persons who, owing to their successful work in the fields of banking and finance, gained professional and personal reputation, but it may not be written by managers of the bank to whose managing board the person is nominated;
- g. evidence that the nominated person completed academic or professional career studies of suitable grade level and profile (diploma and/or certificate of completed studies) and/or, if it is not possible to reliably ascertain whether such evidence is appropriate, an act issued by a domestic higher education institution on the recognition of the diploma of a foreign education institution, as well as evidence of professional training of the nominated person, if any;
- h. evidence of work experience on the basis of which it can be established that the nominated person meets the prescribed requirements for appointment;<sup>4</sup>

6) evidence that the conditions specified in Article 94, paragraph 4 of the Law are met, if the bank founder is a foreign bank or a foreign financial sector person subject to supervision by the home-country regulatory authority, in particular: (1) that the home-country regulatory authority performs supervision on a consolidated basis in the manner which meets the conditions prescribed by the NBS, (2) that there is adequate cooperation between the NBS and the regulatory authority of the applicant's home country<sup>5</sup> and (3) if the bank is founded as a subsidiary of a foreign bank or other foreign financial sector person, it is also necessary to submit a confirmation that the competent regulatory authority of the home country has granted approval to the foreign person regarding participation in the establishment of a bank in the Republic of Serbia, and/or confirmation issued by such regulatory or other competent authority that no such approval is necessary, as well as confirmation issued by such regulatory authority that it performs supervision on a consolidated basis);

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<sup>4</sup> Evidence means a certificate issued by the nominated person's employer, specifying jobs or functions such person performed and containing a description of their activities, duties and, particularly, decision-making authority, as well as the period when these activities were performed (in months and years).

<sup>5</sup> If the NBS does not have a concluded agreement on cooperation with the competent regulatory authority of the founder's home country, this condition is deemed to be fulfilled if the regulatory authority notifies the NBS of the intention of the person under its supervision to set up a bank in the Republic of Serbia.

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7) proof of payment of the application processing fee of RSD 220,000.00 and proof of payment of the republic administrative fee of RSD 870.00 (Annex 1.9).<sup>6</sup>

**The second group of documents** are **additional documents** submitted along with the **documents supporting the application**. This group of documents differs depending on whether the founder is a natural or a legal person as well as depending on the type of legal person in each given case.

### **I. Additional documents for a NATURAL PERSON – FOUNDER include:**

- 1) photocopy and a scan reading of a valid identity document of that person (ID card or passport);<sup>7</sup>
- 2) dated and signed professional biography of that person, containing data on his prior professional engagement and educational qualifications (Annex 1.10);
- 3) completed and certified questionnaire for natural persons acquiring/increasing their ownership in the bank using the form provided in Annex 2 to the Decision;
- 4) certificates issued by competent authorities from all records that such person has not been convicted of criminal or other offences, and certificates that no proceedings have been initiated against such person for any of such offences (for domestic nationals, certificate issued by a competent commercial, basic, higher and magistrates court and statement from criminal records of the ministry in charge of internal affairs and, for foreign nationals, certificate issued by the competent authority of the person's latest country of permanent residence);
  - 4a) list of associates with their non-conviction certificates;
- 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>8</sup>
- 6) letter of authorisation, empowering the banks with which the founder holds its assets and/or does business to submit to the National Bank of Serbia, at its request, all data regarding the founder's operations and/or the balance of its assets with those banks (Annex – Letter of Authorisation).

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<sup>6</sup> The Republic of Serbia, autonomous provinces and local government units as bank founders are not required to pay the application processing fee or the republic administrative fee.

<sup>7</sup> See footnote 2.

<sup>8</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 taxpayer in respect of such ownership.

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If, due to reasonable cause, the natural person – founder 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 – FOUNDER 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:

- 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.

**II. Additional documents for a LEGAL PERSON – FOUNDER include:**

**(1) If bank founder is a domestic or foreign legal person:<sup>9</sup>**

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

2) list of all persons holding participation in the founder within the meaning of Article 2 of the Law (qualifying, significant or controlling participation)<sup>10</sup> – down to natural persons, with the basic data on such persons, percentages of their ownership and/or participation in the founder and identity details of members of management and/or supervisory bodies of the founder;

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<sup>9</sup> If bank founder is a local government unit, documents prescribed for legal persons are submitted.

<sup>10</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 to 14 of the Law).

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2a) certificates of competent authorities issued on the basis of all records of the non-conviction of those persons for 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;

2b) list of associates with their non-conviction certificates;

3) reports on audit of financial statements of such person for the last two years prepared by a certified auditor,<sup>11</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 using the form provided in Annex 3;

5) letter of authorisation, empowering the banks with which the founder holds its assets and/or does business to submit to the National Bank of Serbia, at its request, all data regarding the founder's operations, and/or the balance of its assets with those banks (Annex – Letter of Authorisation).

6) 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 founder is unable to obtain non-conviction certificates for its associates, it may instead submit a statement issued under full financial and criminal liability, confirming that its 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 bank founder 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;
- 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;

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<sup>11</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.

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3) other documents deemed necessary by the National Bank of Serbia.

**(3) If the bank founder is a foreign bank or another foreign financial sector person, in addition to documents accompanying the application and additional documents listed under (1), it shall also submit the following:**

1) overview of liquidity movements in the three months preceding the month in which the application is submitted;

2) 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) confirmation that the competent regulatory authority has granted approval to the foreign person regarding participation in the establishment of a bank in the Republic of Serbia, or confirmation issued by such regulatory authority or other competent institution or authority of the country of origin that no such approval is necessary;

4) confirmation issued by a competent regulatory authority that it performs supervision on a consolidated basis;

5) 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;

6) 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;

7) 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;

8) 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.

**(4) If the bank founder is: 1. an international development bank which, pursuant to the decision governing capital adequacy, is assigned a credit risk weight of 0%; 2. foreign bank, other foreign financial sector person, international financial organisation or other legal person assigned, in the latest ranking prior to the submission of the application for preliminary permit, 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 documents specified under (1), such founder submits:**

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

2) list of all persons holding a participation in the founder within the meaning of Article 2 of the Law (qualifying, significant or controlling participation),<sup>12</sup> along with basic data on such owners;

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<sup>12</sup> See footnote 10.

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

4) evidence on the founder's rating, together with the opinion of the rating agency.

**(5) If the founder intending to acquire a significant or controlling participation is a domestic or foreign legal person acquiring participation in the bank for the account of other person and/or a person engaged in acquiring, holding or managing stakes in a legal person for other person's account – such founder submits all of the above documents (documents supporting the application and additional documents), in particular:**

- for persons providing such founder with the funds to be paid in as the initial capital of the bank and/or persons for whose account the activities of acquiring, holding or managing the participation in the bank are performed;

- if the NBS deems this necessary, documents relating directly to the founder are also submitted;

- if the founder is acquiring participation in a bank independently on its own behalf and provides funds to be paid up as initial capital of the bank from own assets, documents are submitted in respect of that founder only.

**(6) If the bank founder is the Republic of Serbia or autonomous province, in addition to documents supporting the application, the founder also submits the decision of the competent authority on participation in the establishment of a bank, specifying the amount of pecuniary assets to be paid in as initial capital and the value of non-pecuniary assets, according to the assessment of an authorised appraiser, to be transferred to the initial capital.**

**Each legal person – founder from (1) to (5), which is a member of a group of companies or a banking group is required, in addition to documents supporting the application and additional documents envisaged for such founder, to submit the following:**

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.

If, based on all documentation and evidence, it is not possible to establish all facts relevant for deciding on the application for a preliminary bank founding permit, the NBS may request other documentation it deems necessary.

Documents submitted to the NBS must be in the form of an original or certified photocopy (certification confirming authenticity of the photocopy of the document is done by a competent authority of the home country). Certificates issued by competent authorities confirming that a person has not been convicted and/or certificates confirming that no criminal, misdemeanour or economic offence proceedings are conducted against the person must not be older than six months. If the original documentation is not in the Serbian language, a certified translation into Serbian is also submitted, rendered by a court-sworn translator,

except in case of financial statements of legal persons in the English language. If the original document is in a foreign language for which it is impossible to obtain the translation by a court-sworn translator in the Republic of Serbia, translations into English and Serbian are submitted, certified by a court-sworn translator (translation into English is rendered by a court-sworn translator in the home country and the authenticity of the document must be confirmed by the home-country authority in charge of certification, while the translation of the document from English into Serbian is rendered by a court-sworn translator in the Republic of Serbia).

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

This is a complex and lengthy procedure during which the NBS assesses the fulfilment of conditions relating to:

#### 1) bank founders and/or persons that are to hold participation in the bank:

##### - business reputation:

- a. assessment is made of the business reputation of the (1) founders – natural and legal persons, (2) persons holding a significant or controlling participation in the legal person – founder, and (3) members of management bodies of the legal person – founder which acquires a significant<sup>13</sup> or controlling<sup>14</sup> participation in a bank, and also in case of acquisition of a qualifying participation in the bank, if the NBS deems this necessary;<sup>15</sup>
- b. business reputation of a natural person is assessed in respect of his overall work experience and engagement, and/or management or supervision of other legal persons, as well as business results of legal persons managed by such natural person, on the basis of a non-conviction certificate issued by 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 specified in the Questionnaire<sup>16</sup> (evidence of the regular settlement of tax liabilities on all accounts, as well as other liabilities);
- c. business reputation of a legal person is assessed in respect of its overall operations, as well as in respect of ownership and/or management of other legal persons, taking into account the circumstances specified in the Questionnaire;<sup>17</sup>

**The founder / prospective acquirer does not have good business reputation if:**

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<sup>13</sup> See footnote 10.

<sup>14</sup> See footnote 10.

<sup>15</sup> See footnote 10.

<sup>16</sup> **Questionnaire** for natural persons acquiring/increasing ownership in the bank (answers to the questions from the questionnaire are given assuming full criminal and financial liability).

<sup>17</sup> **Questionnaire** for legal persons acquiring/increasing ownership in the bank (answers to the questions from the questionnaire are given assuming full criminal and financial liability).

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- 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 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.

- appropriate financial position (legal persons):

- a. a founder is deemed to have an appropriate financial position if it is able to finance its contribution to the bank's capital or to recapitalise the bank when needed – which is established on the basis of data from financial statements;
- b. an appropriate financial position is considered to be that of an international development bank which, pursuant to the decision governing capital adequacy, is assigned a credit risk weight of 0%, and that of a foreign bank, other 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 preliminary permit, 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.

- appropriate asset position (for natural persons) – a founder is deemed to have an appropriate asset position if he is able to finance from his own assets (excluding borrowed assets) his contribution to the bank's capital or to recapitalise the bank when needed (the following conditions refer to ownership of both **pecuniary and non-pecuniary** assets in the prescribed amount), as follows:

- a. for a natural person intending to acquire a qualifying 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, and non-pecuniary assets in the same amount, or in the amount no less than double the amount needed to purchase the bank's shares, or to recapitalise the bank, if the pecuniary assets he owns are insufficient to purchase the shares, or to recapitalise the bank, if this is a condition for the acquisition;
- b. for a natural person intending to acquire a 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

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owns non-committed pecuniary assets needed to purchase the bank's shares, or to recapitalise the bank when needed, and non-pecuniary assets in double the amount, or in 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, if this is a condition for the acquisition;

- c. for a natural person intending to acquire a 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 no less than triple the amount.<sup>18</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.

- whether business activities of the founder could trigger a material risk to safe and sound and lawful bank management and/or whether they could have a negative impact on the bank's ability to ensure that its operations are in compliance with law, regulations and acts of the National Bank of Serbia – in particular, assessment is made of whether business and other activities in which the founder or its associates are involved are such that the risks associated with them could adversely affect operations of the bank and/or preclude the founder from exerting 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;

- whether there are indications that the bank is founded and/or participation acquired for the purpose of money laundering or terrorism financing – an assessment is made of:

- a. whether it is possible to determine the source of funds founders intend to invest in the bank's capital;
- b. whether founders or their related persons were ever linked with money laundering or terrorism financing, according to information submitted by the anti-money laundering and terrorism financing authority and other information available to the NBS;

The following circumstances may also be indicative:

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<sup>18</sup> In case of acquisition of a controlling participation, the founder – natural person must have pecuniary assets in the full amount needed for funding its founding contribution 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.

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- 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;
- 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.

- whether acquisition of ownership in financial sector persons and management of such persons is the founder's strategic goal evident from its business policy documents and/or business practice (this condition applies only to founders acquiring a significant or controlling participation and/or founders who due to a fragmented ownership structure would become the bank's largest single shareholder).

If the bank's founder 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 other persons' account**, the fulfilment of the above conditions is assessed in respect of persons providing such founder with the funds to be paid in as the initial capital of the bank 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 conditions in respect of the founder as well if it deems this necessary.

If the founder is acquiring participation in a bank **independently on its own behalf** and provides funds to be paid up as initial capital of the bank from own assets, the fulfilment of the above conditions is assessed in respect of that founder.

### 2) **founding act and proposed articles of association**, as follows:

- founding act – may be in the form of a founding decision or founding contract, must have the elements prescribed in Article 13 of the Law (Annex 1.1), specified date and place of signing, signatures of all founders must be certified by the authority competent for certification of signatures, manuscripts and transcripts, while pages of the founding act must be bound in a way that prevents their subsequent removal and replacement;

- proposed articles of association – must contain elements prescribed by Article 14 of the Law (Annex 1.2). The NBS assesses compliance of the proposed articles of association with the founding act as well as whether elements and/or data in the proposed articles of association are determined in such a way that it may reasonably be expected that an effective system of bank management and an effective system of

internal controls will be established ensuring ongoing monitoring of risks to which the bank is or may be exposed.

### 3) persons nominated as members of the bank’s managing and executive boards:

Pursuant to the Law, the managing board has at least five members. Of this, at least a third must be persons independent of the bank, at least three members must have appropriate experience in the field of finance and at least one member must be fluent in the Serbian language and have permanent residence in the Republic of Serbia. A member of the bank’s managing board may not at the same time be a member of the bank’s executive board. The bank’s executive board consists of at least two members, including the president, and all executive board members must be full-time permanent employees of the bank. At least one member of the bank’s executive board must be fluent in the Serbian language and have permanent residence in the Republic of Serbia, and all members of the executive board must have temporary residence in the Republic of Serbia. Persons nominated as members of the bank’s managing or executive board must meet the prescribed requirements relating to:

- a. **business reputation** – assessed in respect of their overall work experience and engagement, and/or management or supervision of other legal persons, as well as business results of legal persons under their management (here, in addition to the prescribed certificates<sup>19</sup> of no conviction issued by competent authorities and other facts, circumstances specified in the Questionnaire are also taken into account).<sup>20</sup> The business reputation of persons nominated as members of the bank’s managing and executive board also depends on the reputation of associates of those persons as set out in these Guidelines;
- b. **appropriate qualifications** – meaning such level of education that enables the nominated person to competently discharge the function for which they are nominated as well as to efficiently manage risks in the bank’s operations, i.e.:
  - (1) that the nominated person has completed at least the first level of **academic studies (Bachelor’s degree) lasting no less than four years** within the meaning of the law governing higher education, in areas relevant for banking operation, and that they have acquired **appropriate work experience, in particular:**
    - person nominated as member of the managing board with appropriate experience in the field of finance (at least three members of the managing board must meet this condition) – minimum **three years** of work experience in a financial sector legal person, within management bodies, in management positions relevant for the performance of core activity of such legal person, in positions related to advisory services to management bodies of such legal person and/or jobs requiring involvement in designing the legal person’s business policy or strategy, or minimum **six years** of work experience in the fields of finance and banking, during which

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<sup>19</sup> Certificates issued from all records by competent authorities stating that such person has not been convicted of criminal and other offences, and certificates stating that no proceedings have been initiated against such person for any of such offences (MIA, commercial, magistrates, basic and higher court with special departments according to place of permanent residence for domestic nationals; for foreign nationals, appropriate certificates issued by competent authorities).

<sup>20</sup> **Questionnaire** for the person nominated as member of the managing and executive board of the bank (answers to questions from the questionnaire are given assuming full criminal and financial liability).

period the nominated person distinguished him/herself as an expert or scientific worker in these fields (e.g. by active participation in special projects or professional gatherings and/or in the capacity of a member of scientific or research staff at a university or scientific institute),

- other persons nominated as managing board members – minimum **six years** of work experience in management positions in a company;

- persons nominated as executive board members – in addition to work experience required for managing board members, appropriate work experience also means minimum **three years** of work experience in managing activities of financial sector persons which are not directly related to its core activity, but have an impact on it<sup>21</sup>– if this person is appointed to the bank’s executive board with at least three members, if the bank’s articles of association envisage that this person is responsible for such activities and if the NBS assesses that such work experience is relevant considering the type and scope of the activities in question and the size of the organisational unit and the number employees which the person managed; or,

- (2) that the person nominated as member of the bank’s managing or executive board has completed **the first level of academic or professional career studies (lasting three years)** and has minimum **ten years** of **work experience** in the field of financial markets, management of operating risks of legal persons in the financial sector, strategic planning, corporate governance, business policy or strategy making etc. which the NBS assessed as corresponding to managerial jobs in a bank, member of a banking group or other legal person in the financial sector.

If, based on the evidence and documentation pertaining to education and experience of the nominated person, it is not possible to assess the ability of such person to efficiently manage risks to the bank (his knowledge of the bank’s risk profile and regulations governing risk management and internal controls systems), this fact may also be established based on an interview with that person on the premises of the National Bank of Serbia, records of which are then prepared.

**c. requirements to be met only by the person nominated as managing board member independent of the bank** (a third of managing board members must meet these requirements):

- (1) does not hold direct or indirect ownership in the bank, member or the banking group to which the bank belongs or legal person which is the bank’s shareholder, nor did it hold such ownership during the year preceding the day of submission of the application;
- (2) is not employed in a member of the banking group to which the bank being founded will belong or in the bank’s shareholder, nor was it employed in any of these persons during the year preceding the day of submission of the application;
- (3) that it is not a member of a management body of another member of the banking group to which the bank being founded will belong, nor was it member of such management body during the year preceding the day of submission of the application;

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<sup>21</sup> E.g. human resource management activities.

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- (4) it is not a member of a management body of a person related to the bank being founded;
- (5) it does not have debt liabilities in excess of RSD 100,000 to a member of the banking group to which the bank being founded will belong.

**4) bank's proposed business policy and strategy, programme of activities, proposed risk management strategy and policies and proposed capital management strategy** – assessment is made of the following:

- proposed business policy and strategy of the bank for a three year period – whether, based on the activities the bank is to engage in, the expected sources of financing, target group of clients, planned potential capital increases of the bank and sources of funding for such increases, plan for the expansion of operations and organisational network of the bank as well as other elements, the bank may reasonably be expected to develop its operations over the next three years in such a way that its risk profile complies at all times with its established risk propensity (Annex 1.3);

- bank's programme of activities for the first business year – whether the elements of the plan (in particular those pertaining to terms under which the bank will collect and extend funds, especially deposits and loans, terms under which it will approve loans to related persons and persons related to the bank, measures to be taken in the event of any liquidity problems and projections of balance sheet and income statement) are based on prudent assumptions and realistic estimates (Annex 1.4);

- bank's proposed risk management strategy and policies and proposed capital management strategy – whether these proposals contain all prescribed elements and whether based on these proposals it may reasonably be expected that the bank will set up an appropriate risk management system (Annex 1.5).

**5) ownership and management structures of the bank and structure of the banking group** whose member a bank is to become, as follows:

- whether the proposed ownership and management structures of the bank enable effective prudential supervision of the bank's operations;
- whether the structure of the banking group whose member the bank is to become is transparent and whether it allows unimpeded supervision of the group on a consolidated basis;
- whether these structures enable appropriate external and/or internal audit.

If the bank founder is a foreign bank or a foreign financial sector person subject to supervision by a home-country regulatory authority, in addition to the above conditions, the following conditions must also be met:

- the regulatory authority of the founder's home country performs supervision on a consolidated basis in the manner which meets the conditions prescribed by the NBS;

- there is adequate cooperation between the NBS and the regulatory authority of the founder's home country;

- if the bank is founded as a subsidiary of a foreign bank or other foreign financial sector person, that the competent regulatory authority of the home country has granted approval to the founder regarding participation in the establishment of a bank in the Republic of Serbia, or that no such approval is necessary under the regulations of such country.

The NBS decides on the application for preliminary bank founding permit within 90 days from the day of receipt of the duly completed application. If prospective bank founders fail to submit to the NBS an

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application for bank operating licence within 60 days after being granted a preliminary permit, such preliminary permit ceases to be valid.

Bank founders whose application for preliminary permit has been dismissed or denied, or whose preliminary permit ceased to be valid, may not resubmit such application in the course of one year following the dismissal or rejection, and/or termination of validity of the preliminary permit.

After being granted preliminary permit, and prior to entering the bank in the register of business entities, bank founders may, in the name of the bank being founded, perform only those activities that relate to the fulfilment of conditions necessary for the issuing of operating licence and entry in the register.

### **NOTE:**

If, in deciding on the application for preliminary bank founding permit, the NBS establishes that the nominated member of the bank's managing or executive board does not have appropriate qualifications or experience and/or good business reputation, it will notify the bank founders thereof and request them to nominate, within a timeframe it establishes as of the date of submitting the notification, other member of the bank's managing or executive board and to submit relevant evidence for such person. If bank founders fail to act pursuant to the NBS' request or the NBS establishes that the nominated members do not possess appropriate qualifications or experience and/or good business reputation, the NBS will reject the application for preliminary permit.

If data that are assessed change after the issuance of the preliminary permit (of which bank founders are required to promptly inform the NBS), except in case of change relating to person nominated as member of the bank's managing or executive board (in which case the NBS will act in the above manner), the NBS will set aside the decision on issuance of the preliminary permit if the conditions for issuing such permit are no longer met.

## **2) GRANTING OF THE BANK OPERATING LICENCE**

### **Documents**

After being granted preliminary permit, bank founders will apply with the NBS for an operating licence within 60 days from the day of issuance of the preliminary permit. The NBS will decide on this application within 30 days from the day of receipt of a duly completed application. In order for the NBS to assess fulfilment of conditions relating to initial capital, business premises and equipment needed for the bank's operations, appointment of the external auditor and organisational structure and human resource capacity of the bank, bank founders will submit the following documents and evidence:

1) order for payment of funds which constitute the pecuniary portion of initial capital to the temporary account with the NBS, and/or certificate of transfer of non-pecuniary assets into the bank's initial capital;

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2) statement by each founder as to the origin of those assets, including the date and signature certified by a stamp;

3) document on the basis of which it can be established that appropriate business premises have been ensured which the bank will own or use based on a long-term rental or lease contract (e.g. title deed, rental contract, sale contract, gift contract, lease contract), including data on the surface area, location and purpose of such premises and other relevant data proving that these premises allow for smooth performance of operations of the bank in accordance with its proposed business policy and strategy, as well as access to all data and information relevant for the exercise of the supervisory function by the NBS;

4) acts of competent authorities issued in the inspection procedure and/or other documents evidencing that business premises meet legal requirements relating to technical equipment, work safety, and environmental protection and enhancement;<sup>22</sup>

5) list of equipment obtained (particularly equipment relating to the bank's information system) to enable smooth conduct of operations of the bank pursuant to its proposed business policy and strategy and access to all data and information relevant for the exercise of the supervisory function by the National Bank of Serbia (Annex – Specification of IT resources);

6) documents which establish technical features of the obtained equipment as well as the manner in which the equipment was obtained and the length of time for which it is obtained (e.g. sale, gift, rental or lease contract and/or other document evidencing the manner in which the equipment is obtained and the period for which it is obtained), including the description of preparedness of such equipment for smooth start-up of the bank's operations;

7) contract of appointment of an external auditor included in the list of external auditors defined and published by the NBS;

8) evidence based on which it can be established that the organisational structure and human resource capacity of the bank comply with the bank's founding act and proposed articles of association and that they are appropriate from the standpoint of the bank's proposed business policy and strategy and/or programme of activities, as well as that the proposed staffing plan and schedule is aligned with the planned expansion of operations and organisational network of the bank, as follows:

- proposed organisational structure of the bank,
- proposed classification of jobs, by employee, including qualifications and work experience required for each job,
- planned staffing schedule for all classified jobs (Annex – Proposed organisational structure, job classification and planned staffing schedule).

9) proof of payment of the application processing fee of RSD 220,000.00 and proof of payment of the republic administrative fee of RSD 870.00 (Annex 1.11).<sup>23</sup>

If, based on the submitted documentation and evidence, it is not possible to establish all facts relevant for deciding on the application for bank operating license, the NBS may also request that the bank founder submits other documentation which the NBS deems necessary, while the fulfilment of conditions relating to provision of business premises may also be established by direct inspection of such premises.

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<sup>22</sup> These include cumulatively: act issued by a competent authority on the issuance of a certificate of occupancy (or records of technical acceptance and evidence that application for certificate of occupancy has been submitted, with the obligation to submit the decision on certificate of occupancy to the NBS upon its receipt) and records of the inspection authority within ministries in charge of safety at work and environmental protection and enhancement (or evidence that an application has been filed with such authority for establishing the fulfilment of the prescribed conditions, with the obligation to submit such inspection records immediately after such inspection).

<sup>23</sup> The Republic of Serbia, autonomous provinces and local government units as bank founders are not required to pay the application processing fee and the republic administrative fee.

### **3) GRANTING CONSENT TO ACTS OF THE FOUNDING ASSEMBLY**

The bank's founding assembly meeting will be held following receipt of the NBS's decision on issuance of an operating licence to the bank, within 30 days from the receipt of such decision at the latest. The founding assembly consists of bank founders. Bank founders exercise voting rights at the founding assembly proportionate to their respective contributions.

At the bank's founding assembly meeting, by a two-thirds majority of votes of bank founders, articles of association of the bank are adopted, president and members of the managing and executive board elected, bank's three-year business policy and strategy and programme of activities for the first business year adopted, and decision regarding the first issue of shares rendered.

Bank founders submit the acts adopted at the founding assembly meeting to the NBS for consent within five working days from their adoption.

Together with the application, the following acts adopted at the founding assembly meeting are submitted:

- decision on the appointment of president and members of the managing and executive boards of the bank;
- decision on adoption of the bank's articles of association;
- decision on adoption of the bank's business policy and strategy for the period of three years and programme of activities for the first business year;
- decision on the first issue of shares.

The NBS will grant its consent to acts of the founding assembly if it establishes:

- that the appointed president and members of managing and executive boards are persons whose qualifications, experience and business reputation were assessed by the NBS when deciding on the application for a preliminary bank founding permit or subsequently, in the event of change in circumstances after the granting of the preliminary permit;
- that bank's articles of association, business policy and strategy, as well as the programme of activities adopted by the founding assembly are identical to those which the NBS assessed when deciding on the application for a preliminary bank founding permit;
- that the decision on the first issue of shares was adopted in compliance with the bank's founding act and regulations.

The NBS decides on granting consent to acts of the founding assembly within 60 days from the day of receipt of the application.

### **4) BANK REGISTRATION**

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Bank founders are required to submit an application for entry of the bank into the register of business entities within 30 days from the day of obtaining the consent to acts of the founding assembly. Along with the application, the decision of the NBS on issuing the operating licence and consent to individual acts of the founding assembly should also be submitted. The bank acquires legal personality as of the moment of being entered in the register of business entities.

Bank founders are required to submit the decision on entry in the register of business entities to the NBS within five days following the day of receipt of such decision.

If nullity of registration of the bank's establishment is ascertained in the procedure determined by the law on the registration of business entities, such nullity will have no legal effect on legal transactions of such bank with third parties acting in good faith.

If nullity of registration of the bank's establishment is ascertained, the bank's shareholders become jointly responsible for the settlement of receivables of the bank's creditors.

### **NOTE:**

The bank will notify the NBS in writing or by e-mail of the start of its operations with clients, and specify which activities it has taken in relation thereto.