

**DECREE No 6
of Národná banka Slovenska
of 12 June 2012**

**on how to demonstrate compliance with conditions for an authorisation to
act as a management company**

Národná banka Slovenska, in accordance with Section 28(17) of Act No 203/2011 on collective investments (hereinafter referred to as the “Act”), has adopted this Decree:

§ 1

(1) Compliance with the condition under Section 28(2)(a) of the Act shall be demonstrated through submission of

- (a) an extract not older than three months from the commercial register where the entity applying for the authorization for activities of a management company is a joint-stock company;
- (b) a document evidencing that the share capital has been paid up, i.e. the contribution manager’s written declaration of settlement of contributions by individual members¹ where the applicant is the founder.

(2) Where the applicant is the founder, compliance with the condition under Section 28(2)(b) of the Act shall be demonstrated through submission of documents confirming provenance of contributions to the share capital of the prospective management company and documents confirming provenance of other financial resources of the prospective management company

(a) as concerns a natural person

1. an overview of the applicant’s assets and financial standing as at the day preceding the day on which the application for an authorization to conduct activities of a management company (hereinafter referred to as the “application”) is filed;
2. a written document about the provenance, volume, and structure of the funds that are to form the share capital of the prospective management company, including the information about the amount of own resources intended to be a part of the share capital and documents proving the above facts;
3. statements concerning the applicant’s bank accounts kept with banks,² branches of foreign banks,³ and foreign banks⁴ as at the day preceding the day on which the application is filed;
4. a document concerning the income of the applicant who is a payer of the tax on income of natural persons under a separate regulation,⁵ i.e. tax returns or annual withholding tax settlements concerning the income from a dependent activity for at least three years immediately preceding the filing of the application or by another

¹) Section 60(4) of the Commercial Code, as amended.

²) Section 2(1) of Act No 483/2001 on banks (and amending certain laws).

³) Section 2(5) and (8) of Act No 483/2001, as amended by Act No 659/2007.

⁴) Section 2(7) of Act No 483/2001.

⁵) Act No 595/2003 on income tax, as amended.

- similar document; as concerns a foreigner,⁶ a similar document about the natural person's income for the three years immediately preceding the filing of the application shall be submitted;
5. the applicant's written declaration stating that the funds provided as a contribution to the share capital of the prospective management company have not been generated through criminal activities;⁷
- (b) as concerns a natural person - entrepreneur
1. an overview of the applicant's assets and financial standing as at the day preceding the filing date of the application;
 2. an extract not older than three months from the commercial register or the trade register or another licence held by the applicant to conduct business; as concerns a foreign national,⁶ a similar document not older than three months and issued by the competent authority shall be submitted;
 3. a written document about the provenance, volume, and structure of the funds that are to form the share capital of the prospective management company, including the information about the amount of own resources intended to be a part of the share capital and documents proving the above facts;
 4. statements concerning the applicant's bank accounts kept with banks,² branches of foreign banks,³ and foreign banks⁴ as at the day preceding the day on which the application is filed;
 5. the applicant's income tax returns⁵ for at least three years immediately preceding the filing of the application, including a document confirming compliance with tax obligations; where a foreign national is the applicant,⁶ a similar document about the natural person – entrepreneur's income for the three years immediately preceding the filing of the application shall be submitted; where the applicant has been conducting business for a period shorter than three years as at the filing date of the application, the applicant shall submit income tax returns or similar documents about the natural person – entrepreneur's income only for the period that has elapsed from the commencement of business activities;
 6. the applicant's financial statements audited by an auditor, where they are subject to such audits, for the three accounting periods immediately preceding the filing of the application; where the applicant has been conducting business for a period shorter than three years as at the filing date of the application, they shall submit only the financial statements for the period that has elapsed from the commencement of business activities; where financial statements are to be audited and have not been audited by an auditor as at the filing date of the application, unaudited financial statements are to be submitted;
 7. the applicant's written declaration stating that the funds provided as a contribution to the share capital of the prospective management company have not been generated through criminal activities;⁷
- (c) as concerns a legal entity
1. an overview of the applicant's assets and financial standing as at the day preceding the filing date of the application;
 2. an extract not older than three months from the commercial register or another document issued by the competent authority and evidencing establishment of the legal

⁶) Act No 404/2011 on the temporary residence of foreigners (and amending certain laws)

⁷) Act No 297/2008 on the prevention of money laundering and terrorist financing (and amending certain laws), as amended

- entity; a legal entity having its registered office abroad shall submit an extract not older than three months from the relevant register or other records;
3. a written document about the provenance, volume, and structure of the funds that are to form the share capital of the prospective management company, including the information about the amount of own resources intended to be a part of the share capital and documents proving the above facts;
 4. the applicant's financial statements audited by an auditor where financial statements are to be audited and the auditor's statements and annual reports or other similar reports approved by the general meeting or another competent body of the applicant in respect of three accounting periods immediately preceding the filing date of the application; the applicant having their registered office abroad shall submit annual reports or other similar reports only where they are to be drawn up under the legal regulations of the country concerned; where the applicant is a member of the consolidated group, they shall submit also the audited financial statements and the auditor's statements for three accounting periods immediately preceding the filing date of the application; where the applicant was established within the period of three years before the filing date of the application, they shall submit the above documents only for the period that has elapsed from the date of establishment; where the applicant's financial statements are to be audited and have not been audited by an auditor as at the filing date of the application, the applicant shall submit unaudited financial statements;
 5. statements concerning the applicant's bank accounts kept with banks,² branches of foreign banks,³ and foreign banks⁴ as at the day preceding the filing date of the application;
 6. the applicant's written declaration stating that the funds provided as a contribution to the share capital of the prospective management company have not been generated through criminal activities;⁷
 7. the applicant's rating provided that the rating has been prepared in respect of the three immediately preceding years.

(3) Where the applicant is a joint-stock company, compliance with the condition under Section 28(2)(b) shall be demonstrated through submission of documents confirming the provenance of the share capital and the provenance of other financial resources of the prospective management company, while proceeding reasonably in compliance with clause 2(c).

(4) Compliance with the condition under Section 28(2)(c) of the Act shall be demonstrated through submission of

- (a) documents under paragraph 2 in respect of the persons with qualified participation in the prospective management company;
- (b) a list of the natural persons with qualified participation in the prospective management company, stating their full names, permanent residence addresses, percentages of interests in the share capital of the prospective management company and relevant voting rights in the company along with written declarations of such natural persons on compliance with the conditions under Section 28(10) of the Act and criminal record check certificates not older than three months in respect of such natural persons; in the case of a foreign national,⁶ an equivalent clean criminal record certificate issued by a competent authority in the country of the person's permanent residence or a competent authority of the country in which the person usually resides shall be submitted;

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- (c) a list containing the full names and permanent residence addresses of the persons⁸ close to the natural persons with qualified participation in the prospective management company, who have, as at the filing date of the application, employment or other similar relationship with another management company, a foreign management company, a branch of a foreign management company, or a financial institution under Section 3(r) of the Act, while stating its business name, legal form, identification number, and registered office;
 - (d) a list of the legal entities with qualified participation in the prospective management company, stating their business names, legal forms, identification numbers, registered offices, registered capital amounts, and percentages of their interests in the share capital of the prospective management company;
 - (e) a list containing the full names and permanent residence addresses of the persons⁸ close to the members of the statutory body of the legal entity with qualified participation in the prospective management company, who have, as at the filing date of the application, employment or other similar relationship with another management company, a foreign management company, a branch of a foreign management company, or a financial institution under Section 3(r) of the Act, while stating its business name, legal form, identification number and registered office;
 - (f) a list of the legal entities with their business names, legal forms, identification numbers, registered offices, registered capital amounts, and percentages of their interests in the registered capital of the legal entities and voting rights in the legal entities in which
 1. a natural person with qualified participation in the prospective management company has qualified participation or is a member of their statutory bodies or control bodies or the person guarantees, with a significant part of his/her assets, fulfilment of their liabilities, the extent to which the natural person guarantees fulfilment of their liabilities, and the documents proving those facts;
 2. a legal entity with qualified participation in the prospective management company has qualified participation or is a member of their statutory bodies or control bodies or guarantees, with a significant part of its assets, fulfilment of their liabilities, the extent to which the legal entity guarantees fulfilment of their liabilities, and the documents proving those facts;
 - (g) a list of the legal entities with their business names, legal forms, identification numbers, and registered offices and a list of the natural persons with their full names and permanent residence addresses who control the founder of or a shareholder with qualified participation in the prospective management company, and the information about the manner in which such control is carried out;
 - (h) a written document providing information about the administrative sanctions imposed on the applicant through a valid and enforceable decision within administrative proceedings or other similar proceedings during the last three years preceding the filing date of the application; where the applicant is a joint-stock company, such information is to be submitted also in respect of its shareholders with qualified participation;
 - (i) a written document stating whether the grant to the applicant of a licence or other authorization to conduct business has been refused through a valid and enforceable decision during the last three years and the written document on withdrawal of any licence; where the applicant is a joint-stock company, such information is to be submitted also in respect of its shareholders with qualified participation.

⁸) Section 116 of the Civil Code

(5) As concerns the natural persons nominated as members of the board of directors, the supervisory board, authorized representatives, senior employees reporting directly to the board of directors and responsible for professional activities under the Act, investment management, exercise of a compliance function, exercise of an internal audit function, and exercise of a risk management function under the Act (“nominated persons”), compliance with the condition under Section 28(2)(d) of the Act shall be demonstrated through submission of:

- (a) documents on the attained education and professional experience of nominated persons, confirming compliance with the conditions under Section 28(8) and (9) of the Act;
- (b) brief professional CVs of nominated persons;
- (c) clean criminal record certificates not older than three months in respect of such natural persons; a foreign national⁶ shall submit an equivalent confirmation of a clean criminal record issued by a competent authority in the country of the person’s permanent residence or a competent authority of the country in which the person usually resides;
- (d) nominated persons’ written declarations stating that they comply with the conditions set out in Section 28(10) of the Act.

(6) Compliance with the condition under Section 28(2)(e) through (g) of the Act is to be demonstrated by submission of a graph showing the qualified participation structure of the shareholder with qualified participation in the prospective management company, a graph showing the structure of the group with close links that includes the shareholder with qualified participation in the prospective management company, and a list of relevant supervisory authorities; a shareholder with qualified participation in the prospective management company who is a foreign person shall submit a declaration stating that the shareholder complies with all conditions under Section 28(2)(f) and (g) of the Act.

(7) Compliance with the condition under Section 28(2)(h) of the Act is to be demonstrated through submission of a document confirming that the registered office of the prospective management company and its headquarters will be situated within the territory of the Slovak Republic, i.e.:

- (a) the memorandum of association or the deed of incorporation where the applicant is the founder;
- (b) draft articles of association where the applicant is the founder or the company’s articles of association and their amendments where the applicant is a joint-stock company;
- (c) an extract from the commercial register where the applicant is a joint-stock company;
- (d) the certificate of title, a lease agreement, or an agreement on entering into a lease agreement in future that evidence commencement of ownership or a lease relationship in respect of the real estate where the registered office and headquarters of the prospective management company are to be situated; or
- (e) another similar document evidencing compliance with the requirement under Section 28(2)(h) of the Act.

(8) Compliance with the condition under Section 28(2)(i) of the Act is to be demonstrated through submission of

- (a) draft articles of association where the applicant is the founder;
- (b) the articles of association and their amendments where the applicant is a joint-stock company.

(9) Compliance with the condition under Section 28(2)(j) of the Act is to be demonstrated through submission of the applicant's declaration stating that the shareholder in the prospective management company is not an entity which is in liquidation, which is subject to a bankruptcy order, or it is not less than five years since any such bankruptcy proceedings were concluded, and not sooner than one year after the settlement of liabilities under the bankruptcy proceedings in accordance with a court-approved timetable.

(10) Compliance with the condition under Section 28(2)(k) of the Act is to be demonstrated through submission of

- (a) a written description of the technical equipment of the prospective management company with the data concerning computers (hardware, software), the information system, and the technical data processing system securing all operations of the management company;
- (b) draft internal regulations ensuring security of the data transfer system, the manner of data backups within the system, the systems and procedures intended to safeguard information security, integrity, and confidentiality;
- (c) the document evidencing the title or other entitlement to use the real estate within which the prospective management company will carry out its activities where the real property is a place other than the place of registered office or headquarters;
- (d) a business plan of the prospective management company for the period of three years a minimum following the year in which the application is filed;
- (e) the prospective management company's draft internal regulations and procedures intended to safeguard compliance with prudential business rules, which will specify, in particular:
 1. the rules of organization and organizational structure of the prospective management company;
 2. procedures for adequate and prompt settlement at no charge of complaints of investors under Section 38 of the Act and clients under a separate regulation;⁹
 3. the program of activities aimed against money laundering;¹⁰
 4. internal inspection mechanism functioning;
 5. the going concern strategy under Section 32(3) of the Act;
 6. strategies and procedures for identification of the risks associated with a failure to comply with the obligations set out by the Act or separate regulations under Section 35(1) of the Act;
 7. the risk management policy under Section 101 of the Act and the measures and procedures for its implementation;
 8. valuation of the assets in a unit trust, including the measures and procedures intended to secure a suitable, transparent, and realistic valuation of positions of the financial derivative transactions concluded outside the regulated market ([over-the-counter derivatives](#)) under Section 107(3) of the Act;
 9. the measures that are to be applied in case of a conflict of interest under Section 44(1) of the Act;
 10. procedures preventing abuse of confidential information, including conclusion of special transactions under Section 39(1) of the Act;
 11. a strategy for exercise of voting rights under Section 46(1) of the Act;

⁹) Section 71e of Act No 566/2001 on securities and investment services (and amending certain laws) (the Securities Act), as amended by Act No 209/2007.

¹⁰) Section 20(1) of Act No 297/2008.

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- (f) draft internal regulations and procedures of the prospective management company intended to secure compliance with operation rules that stipulate, in particular:
1. the rules for provision of information to investors, shareholders, and clients;
 2. the manner of functioning of the investment management system in a unit trust, including the procedures for adoption of investment decisions in respect of individual managed unit trusts;
 3. due diligence measures and procedures under Section 48(6) of the Act;
 4. a strategy for instruction execution under Section 49 of the Act, strategy for placing instructions under Section 50 of the Act, and an instruction allocation strategy under Section 51 of the Act;
 5. procedures for identification of payments made by investors and shareholders and failures occurring within payment identification under Section 13(3) of the Act;
- (g) information about planned ways of distribution of unit certificates;
- (h) a draft internal document retention regulation.

(11) As concerns the natural persons who are members of the statutory body of a financial holding company or a mixed financial holding company, compliance with the professional competence and trustworthiness requirements under Section 28(2)(l) of the Act is to be demonstrated through submission of

- (a) documents on attained education and professional experience of nominated persons, which confirm compliance with requirements under Section 28(9) of the Act;
- (b) brief professional CVs;
- (c) criminal record check certificates not older than three months in respect of such natural persons; in the case of a foreign national,⁶ an equivalent clean criminal record certificate issued by a competent authority in the country of the person's permanent residence or a competent authority of the country in which the person usually resides shall be submitted;
- (d) a written declaration of compliance with the conditions under Section 28(10) of the Act.

(12) Compliance with the eligibility condition under Section 28(2)(l) of the Act by the shareholders who control the financial holding company or mixed financial holding company is to be demonstrated through submission of

- (a) a list of the shareholders controlling the financial holding company or the mixed financial holding company and percentages of individual shareholders' interests in the company's share capital;
- (b) a list of legal entities with their business names, legal forms, identification numbers, registered offices, registered capital amounts, and percentages of their interests in the registered capital of the legal entities in which
 1. the natural person, who is a shareholder controlling the financial holding company or mixed financial holding company, holds the interest in the share capital or voting rights amounting to at least 10% or is a member of their statutory bodies or supervisory bodies and guarantees fulfilment of their liabilities with all his/her assets;
 2. the legal entity, who is a shareholder controlling the financial holding company or mixed financial holding company, holds the interest in the share capital or voting rights amounting to at least 10% or is a member of their statutory bodies or supervisory bodies and guarantees fulfilment of their liabilities with all its assets.

(13) Compliance with the condition under Section 28(2)(m) of the Act is to be demonstrated through submission of the documents proving compliance with the requirements under a

separate regulation¹¹ in respect of the scope of activities applied for under Section 27(3) of the Act.

§ 2

(1) The documents specified in Section 1 shall be submitted in compliance with separate legislation¹² as originals; where original documents cannot be submitted, their officially certified copies are to be furnished.

(2) Where an identification number is required, it is not to be stated in respect of the persons to whom no identification number has been assigned.

§ 3

This Decree enters into force on 1 July 2012.

Jozef Makúch [signed]
Governor

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¹¹⁾ Section 55(2) of Act No 566/2001, as amended.

¹²⁾ Section 16(4) and (5) of Act No 747/2004 on financial market supervision (and amending certain laws), as amended.