Federal Financial Supervisory Authority

Guidance Notice on management board members pursuant to the German Banking Act (Kreditwesengesetz – KWG), the German Payment Services Supervision Act (Zahlungsdienstenaufsichtsgesetz – ZAG) and the German Capital Investment Code (Kapitalanlagegesetzbuch – KAGB)

Bonn/ Frankfurt am Main, 4 January 2016 (as last amended on 31 January 2017)

This Guidance Notice is intended for all credit institutions and financial services institutions supervised by Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin) under the Banking Act (Gesetz über das Kreditwesen – KWG) and all payment and electronic money institutions supervised by BaFin under the Payment Services Supervision Act (Zahlungsdienstenaufsichtsgesetz – ZAG). This Guidance Notice is also intended for undertakings supervised by BaFin under the Capital Investment Code (Kapitalanlagegesetzbuch – KAGB).

The Banking Act, the Payment Services Supervision Act and the Capital Investment Code impose stringent requirements regarding the qualifications of a management board member. The major significance of these requirements is reflected in the fact that BaFin will only issue a licence to conduct banking business and e-money business and to provide financial services and payment services and also the licences under the Investment Code if the management board members fulfil the professional and personal requirements stipulated in the respective law and BaFin may withdraw this licence if these requirements are no longer fulfilled. The provisions of the Banking Act and the Payment Services Supervision Act are essentially consistent, if not always identical. The relevant provisions of the Banking Act apply within the scope of the Capital Investment Code.


The second edition of this Guidance Notice outlines the professional and personal requirements for persons appointed as management board members under the relevant supervisory legislation. It provides an overview of the associated notification obligations, including the documents which must be submitted. It considers in detail the expanded
requirements for management board members resulting from the changes to the Banking Act. This Guidance Notice also specifies for the first time the requirements for management board members covered by the Capital Investment Code. For all of these supervisory areas, the issues notified in previous Guidance Notices have been updated on the basis of the supervisory authority’s practical experience.

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I. Notification requirement and necessary documents

1. General guidance on notification requirements

Unless stipulated otherwise in this document, the notifications required under the Banking Act and the Payment Services Supervision Act and any documents to be appended to these notifications have to be issued in duplicate. One copy has to be submitted to BaFin and a further copy to the locally competent Regional Office of the Deutsche Bundesbank. The German Reports Regulation and the German ZAG Reports Regulation provide more detailed information and serve as the basis for the following comments.

The credit institutions which are members of a cooperative auditing association (genossenschaftlicher Prüfungsverband) or which are audited by the auditing body of a savings bank and giro association (Sparkassen- und Giroverband) are to send the notification and any documents to be appended via their association, together with an extra copy intended for that association. BaFin has the declaration of consent from the respective association which is required under the AnzV for all of the credit institutions licensed as of the date of this Guidance Notice’s entry into force.

Since 4 November 2014, the European Central Bank (ECB) has served as the supervisory authority for significant German credit institutions within the scope of the Single Supervisory Mechanism (SSM). The ECB supervises these significant institutions on the basis of national supervisory legislation, except where European law is directly applicable.

The notification obligations and the statutory requirements for management board members are stipulated in the Banking Act for significant German institutions. Significant institutions submit notifications concerning the appointment and resignation of management board members – including all of the documents to be appended – to BaFin and the Deutsche
Bundesbank. BaFin notifies the ECB of notified changes to the management body of the significant institution. The documents submitted by the significant institutions are processed/forwarded for the purposes of informing the ECB.

The European Central Bank is responsible for assessing the professional suitability, the reputation and the available time of a management board member and will notify the institution of the result of its assessment directly. This assessment is made on the basis of the provisions of the Banking Act. However, the ECB is not bound by an existing national interpretation or administrative practice.

The European Central Bank, BaFin and the Deutsche Bundesbank shall be notified of other activities of a management board member of a significant institution and of any direct participating interests (see I.6.).

A single copy of the notifications required of undertakings under the Capital Investment Code (KAGB undertakings) and any documents to be appended to these notifications shall be submitted to BaFin.

For the clear allocation of the notification and the necessary documents, the name of the institution or the KAGB undertaking and the BAK number shall be indicated as the reference.

The BAK number is not essential for notifications under the Capital Investment Code. However, where possible the reference number should be indicated.

The notifications and all documents and declarations to be appended must be submitted in German. The following deviating provisions apply to significant institutions directly supervised by the ECB. Where documents are not issued in German, a certified translation or a translation prepared by a publicly appointed or sworn interpreter or translator will be required in addition to the original version. The relevant BaFin division may waive the translation of English-language documents.

Significant institutions directly supervised by the ECB may submit the notification as well as all documents to be appended in either German or in English. This is without prejudice to the use of language as agreed upon between the ECB and the institution.

The notifications prescribed by the Banking Act, the Payment Services Supervision Act and the Capital Investment Code shall be submitted without delay. As a rule, BaFin will no longer assume that a notification has been submitted without delay if a period of four weeks has been exceeded following the decision made by the relevant body. The documents which have to be submitted under I.3.b (3) and I.3.b (4)
(Certificates of good conduct for official purposes, except from the Central Trade and Industry Register (Gewerbezentralregister)) must have at least been applied for within the above-mentioned time limit.

BaFin may require further documents and information if this appears necessary in an individual case.

BaFin will not assume the costs associated with the required documents.

On their websites, BaFin and the Deutsche Bundesbank provide the following forms which are to be used for the individual notifications and for the declarations to be made:

**Banking Act (cf. Reports Regulation):**

- PVG- Personnel changes relating to management board members (see I.3., I.4., I.5., AnzV- Annex 1)
- PVZ- Details of reputation, available time and additional mandates (see I.3.b.(2), I.3.b.(5), I.3.b.(6), AnzV- Annex 2a)
  - Declaration concerning criminal proceedings and proceedings for administrative offences, decisions under trade law and insolvency or enforcement proceedings
  - Declaration concerning familial relationships
  - Declaration concerning business relationships
  - Details of additional mandates as a management board member or as a member of administrative and supervisory bodies
  - Details of available time
- NT- Secondary activities of management board members (see I.6., AnzV Annex 6)
- BG- Participating interests of management board members (see I.6., AnzV Annex 7)

**Capital Investment Code:**

- Personnel changes relating to management board members (see I.3., I.4., I.5.)
- Details of reputation (see I.3.b.(2) )
  - Declaration concerning criminal proceedings and proceedings for administrative offences, decisions under trade law and insolvency or enforcement proceedings
  - Declaration concerning familial relationships
  - Declaration concerning business relationships
- Secondary activities of management board members (see I.6.)
- Participating interests of management board members (see I.6.)

**Payment Services Supervision Act (cf. ZAG Reports Regulation)**

- Details of reputation (see I.3.b.(2), ZAGAnzV annex 4)
- Secondary activities of management board members (see I.6., ZAGAnzV annex 5)
- Participating interests of management board members (see I.6., ZAGAnzV annex 6)
2. **Group of persons subject to notification requirement**

An intention to make an appointment, its realisation, its withdrawal (Banking Act) or a change of this intention to appoint (Banking Act) a management board member shall be reported without delay. The institution or the KAGB undertaking must submit this notification.

Management board members within the meaning of the Banking Act and the Payment Services Supervision Act are those natural persons who are appointed according to law, articles of association, articles of incorporation or a partnership agreement to manage the business of and represent an institution organized in the form of a legal person or a commercial partnership.

Management board members within the meaning of the Capital Investment Code are those natural persons who are appointed according to law, articles of association, articles of incorporation or a partnership agreement to manage the business of and represent a capital management company as well as natural persons who actually manage the business of the capital management company without being formally appointed as management board members.

This notification obligation also applies for the appointment of an acting management board member to fulfil the function of a management board member if the latter is unable to do so.

In its long-standing administrative practice, BaFin has refrained from forwarding appointment notifications submitted by the relevant association of auditors for credit cooperatives' board members serving in an honorary capacity. However, notice must be provided of an intention to appoint a part-time management board member.

The renewal of a management board member's time-limited appointment does not require notification. This also applies for the significant institutions directly supervised by the ECB.

Insofar as a management board member is reappointed within the scope of corporate transformations, this is subject to notification. Transformation and corporate law determine in which cases a new appointment takes place.

3. **Notification obligation in case of an intention to make an appointment**

Already the intention to appoint a management board member is subject to notification. Only a sufficiently specific intention to appoint a management board member will require notification. This will be the case if the relevant body of the institution has made a decision to this effect, even if this is subject to the decision of other bodies or feedback from BaFin.

This notification has to indicate the date as of which the management board member is to be appointed.
a. **Necessary documents**

The following documents/declarations have to be appended to the notification:

- Curriculum vitae – see b.(1)
- Details of management board members' reputation – see b.(2)
- "Certificate of good conduct for presentation to a German authority", "European certificate of good conduct for presentation to a German authority" or "equivalent documents" from another country – see b.(3)
- Excerpt from the Central Trade and Industry Register – see b.(4)
- Details of additional mandates as a management board member and in administrative and supervisory bodies – see b.(5)
- Details of available time – see b.(6)

On its website, BaFin provides a "check list" which enables the notifying undertaking to check whether the documents to be appended are complete.

By submitting the information and declarations from the management board member which have to be appended to the notification, the notifying institution or the notifying KAGB undertaking confirms that the information submitted is accurate to the best of its knowledge.

If the management board member who is to be appointed has been, or is already a management board member or a member of the administrative or supervisory body of an undertaking supervised by BaFin, all of the documents/declarations to be presented in connection with this notification have to be re-submitted. BaFin may waive this requirement in individual cases. For certificates of good conduct for official purposes and excerpts from the Central Trade and Industry Register, please refer to I.3.b.(3) and I.3.b.(4).

b. **Specific documents required**

**1. Curriculum vitae**

A curriculum vitae has to be appended to the notification of intent. This curriculum vitae must be complete and truthful and must be personally signed and dated. It has to include the following details:

- surname, all first names, birth name
- date of birth, place of birth
- place of residence
- nationality
- a detailed description of relevant education and training
- the names of all undertakings for which the management board member currently works or has previously worked
- details of the nature and duration of the relevant activity, including secondary activities.
The curriculum vitae shall focus primarily on the positions held during the management board member's professional career. For these individual positions, the CV has to indicate not only the year, but also the month in which this position began or ended. In the description of positions held, in particular details of this person's powers of representation, his or her internal decision-making powers and the divisions within the undertaking overseen by him or her shall be provided. Job references for employment positions within the last three years prior to submission of the notification have to be appended to the curriculum vitae, if available. Within the scope of the Capital Investment Code and the Payment Services Supervision Act, job references must only be submitted as required by BaFin.

If a management board member has resided outside Germany within the last ten years, the period and country in question must be indicated. If the principal place of residence of the management board member and his or her place of work did not lie within the same country, this also has to be indicated. This information is relevant for BaFin insofar as this affects the register excerpts which must be submitted (see I.3.b.(3)).

(2) Details of the management board member's reputation

On the form "Details of reputation, available time and additional mandates", the management board member has to issue a personally signed and dated declaration providing information on any criminal proceedings and proceedings for administrative offences, decisions under trade law and insolvency or enforcement proceedings.

The declaration need not include previously pending criminal proceedings

- that were terminated for lack of sufficient evidence to support the suspicion of a criminal offence
- that were terminated because of a procedural bar
- which resulted in an acquittal
- by virtue of which an entry in the Federal Central Criminal Register (Bundeszentralregister – BZR) was deleted or cancelled, or
- that are not required to be disclosed according to section 53 of the German Federal Central Register Act (Bundeszentralregistergesetz – BZRG).

Entries which must be deleted from the Central Trade and Industry Register under section 153 of the German Industrial Code (Gewerbeordnung – GewO) need not be mentioned.

On the other hand, criminal proceedings terminated under sections 153 and 153a of the German Code of Criminal Procedure (Strafprozessordnung – StPO) have to be indicated. A termination under these provisions will not eliminate the assumption of innocence under criminal law; however, irrespective of this the circumstances of the case may give rise to indications for a lack of reputation, particularly in case of proceedings associated with punishable violations of relevant supervisory law, property- or insolvency-related criminal offences or tax offences.

Similar situations in other jurisdictions also have to be indicated.

In case of doubt, the relevant division of BaFin should be contacted.

These details have to be complete and accurate. In the case of any notifiable proceedings, copies of the rulings, decisions, sanctions, notices or other relevant documents have to be appended. BaFin reserves the right to obtain further information from the competent authorities, where necessary.
For an assessment of possible conflicts of interest, on the form "Details of reputation, available time and additional mandates" the management board member must also declare any familial relationships with members of the management and the members of the administrative or supervisory body, both for the notifying undertaking and for its parent undertaking or subsidiary. If no details are provided on the form, this will be deemed a statement of "nil".

On the form "Details of reputation, available time and additional mandates", business relationships which could result in a certain degree of commercial dependence on the notifying undertaking have to be indicated as follows. The nature of this relationship and the manner in which it is conducted have to be described. If no details are provided on the form, this will be deemed a statement of "nil".

(3) "Certificate of good conduct for presentation to a German authority", "European certificate of good conduct for presentation to a German authority" or "equivalent documents" from another country

(a) General information on certificates of good conduct for official purposes

Depending on their nationality and place of residence, management board members must submit the original copy of a "certificate of good conduct for presentation to a German authority (certificate of good conduct for official purposes)" (document type "O") issued by the Federal Office of Justice (Bundesamt für Justiz – BfJ) in accordance with section 30 (5) of the BZRG, a "European certificate of good conduct for presentation to a German authority" in accordance with sections 30 (5) and 30b of the BZRG or certificates of good conduct equivalent to those named above, or certifications of reputation assessments performed by supervisory authorities in the

Relatives within the meaning of section 11 (1) no. 1 of the German Criminal Code (Staatsgesetzbuch – StGB):

Relations by blood or marriage in direct line; the spouse, the life partner within the meaning of the Act on Registered Life Partnerships (Lebenspartnerschaftsgesetz – LPartG), the fiancée(e), siblings, spouses or life partners of siblings, siblings of spouses or life partners, even if the marriage or life partnership upon which the relationship was based no longer exists, or if the relationship by blood or marriage has ceased to exist; foster parents and foster children

Management board member

Undertaking which is managed by the management board member

Close relatives of the management board member = spouses, registered life partners, partners in a long-term relationship, children, parents, other relatives who belong to the household of the member.

Notifying undertaking

Parent undertaking of the notifying undertaking

Subsidiary of the notifying undertaking

Federal Central Criminal Register (BZR)
The Federal Office of Justice maintains the Federal Central Criminal Register, the details of which are stipulated in the BZRG. This register lists criminal convictions, decisions of administrative authorities and courts, notes on lack of criminal capacity and assessments made by German courts and authorities. These entries are removed subject to the provisions of this Act. Any individual may apply for a certificate of good conduct, and authorities are also entitled to require information subject to certain preconditions.
country of residence after consultation with the relevant division of BaFin ("equivalent documents").

Management board members who have resided in different countries in the previous ten years must submit certificates of good conduct and relevant documents from each country. The relevant division of BaFin has to be provided with detailed information regarding any legal obstacles to their furnishment.

If the relevant documents are already available, they have to be submitted to BaFin together with the other documents to be appended to the notification of intent. However, subsequent submission is also possible.

In countries in which certificates of good conduct are issued by a public agency, other documents may not be used as a substitute.

The "certificate of good conduct for presentation to a German authority" should not be confused with the "extended certificate of good conduct" referred to in section 30a of the BZRG.

The management board member must submit a request for a "certificate of good conduct for presentation to a German authority" and a "European certificate of good conduct for presentation to a German authority" to his or her local registration office (Meldebehörde) (section 30 (2) sentence 1 of the BZRG) or electronically to the Federal Office of Justice (section 30c of the BZRG). German nationals who reside outside the Federal Republic of Germany may apply directly to the Federal Office of Justice as the registration authority (section 30 (3) sentence 1 of the BZRG).

To allow BaFin to allocate the certificates of good conduct which it receives to the undertaking to which the relevant management board member is to be appointed, the name of the notifying undertaking and the BAK number have to be indicated as the reference.

The certificate of good conduct for official purposes must be up-to-date, i.e. at the time of notification of intent it may not be more than three months old. The date of the document's issue will be key for this purpose.

In the event that a certificate of good conduct is to be used within BaFin for further checks as to the reputation of a person, this document may not be more than twelve months old.

The Federal Office of Justice will send both the "certificate of good conduct for presentation to a German authority" and the "European certificate of good conduct for presentation to a German authority" directly to BaFin. There is no need to request additional copies for the Deutsche Bundesbank or the auditing association, in the case of credit institutions that are members of one.
(b) **Specific information on certificates of good conduct for official purposes**

The following specific certificates of good conduct and documents must be submitted:

<table>
<thead>
<tr>
<th>Management board member with</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>German nationality and residing in Germany</td>
<td>a &quot;certificate of good conduct for presentation to a German authority&quot; issued by the Federal Office of Justice</td>
</tr>
<tr>
<td>residing in a Member State of the European Union or in a third country:</td>
<td>a &quot;certificate of good conduct for presentation to a German authority&quot; issued by the Federal Office of Justice and &quot;equivalent documents&quot; from the country of residence</td>
</tr>
<tr>
<td>nationality of a Member State of the European Union and residing in Germany</td>
<td>a &quot;European certificate of good conduct for presentation to a German authority&quot; issued by the Federal Office of Justice</td>
</tr>
<tr>
<td>residing in a Member State of the European Union or in a third country</td>
<td>&quot;equivalent documents&quot; from the country of residence</td>
</tr>
<tr>
<td>nationality of a third country and residing in Germany</td>
<td>a &quot;certificate of good conduct for presentation to a German authority&quot; issued by the Federal Office of Justice;</td>
</tr>
<tr>
<td>residing in a Member State of the European Union or in a third country</td>
<td>&quot;equivalent documents&quot; from the country of residence</td>
</tr>
</tbody>
</table>

Where there are special circumstances relating to residence (e.g. country of residence has changed in the last ten years) or nationality (e.g. a national of multiple EU/EEA states or non-Member States) which are not covered by the situations described above, the documents to be submitted have to be agreed upon with the competent division of BaFin.

**European certificate of good conduct for presentation to a German authority**

Since 27 April 2012, European certificates of good conduct for presentation to a German authority may be applied for following the German legislator’s transposition, through section 30b of the BZRG, of the requirements of the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93 of 7 April 2009, p. 23).

The Federal Office of Justice has published information on the European certificate of good conduct on its website www.bundesjustizamt.de.

According to these explanations, nationals of other Member States of the European Union residing in Germany may, pursuant to section 30b of the BZRG, be issued a certificate of good conduct featuring information on the contents of the Federal Central Criminal Register and also the criminal register of their home Member State (European certificate of good conduct). An application for the grant of a European certificate of good conduct must be submitted to the competent registration office. The European certificate of good conduct may be issued for the applicant’s own purposes (private certificate of good conduct) or for presentation to a German authority (certificate of good conduct for official purposes).

If a European certificate of good conduct is requested, the Federal Office of Justice will ask the applicant’s home Member State to provide the contents of its register, so that this can be included in the certificate of good conduct. The information provided will not be translated and nor will its accuracy be verified.
Excerpt from the Central Trade and Industry Register

The management board member must also provide BaFin with an original excerpt from the Central Trade and Industry Register pursuant to section 150 of the GewO.

The management board member must personally request an excerpt from the Central Trade and Industry Register from the competent local authority – generally the registration office or the trade regulatory authority (Gewerbeaufsichtsamt) (sections 150 (2), 155 (2) of the GewO in conjunction with the laws of the relevant German federal state (Land) or electronically from the Federal Office of Justice (section 150e of the GewO). Persons who reside outside the Federal Republic of Germany may apply directly to the Federal Office of Justice as the registration authority (section 150 (3) of the GewO). The management board member has to apply for the register excerpt as a natural person.

The following instructions on completion of the official form GZR 3 in the German Second General Administrative Regulation on Fulfilment of Section XI – Central Trade and Industry Register – of the Trade Regulation Code (Zweite allgemeine Verwaltungsvorschrift zur Durchführung des Titels XI – Gewerbezentralregister – der Gewerbeordnung – 2. GZRVwV – Ausfüllanleitung) of 29 July 1985 shall be complied with:

- the key code number "1" shall be entered in field 01 document type ("Beleg-Art");
- both boxes should remain blank in field 20.

To allow BaFin to allocate separately received excerpts from the Central Trade and Industry Register to the undertaking to which the relevant management board member is to be appointed, the name of the notifying undertaking and the BAK number have to be indicated as the reference.

The excerpt must be up-to-date, i.e. at the time of notification of intent it may not be more than three months old. The date of the document's issue will be key for this purpose.

In the event that an excerpt from the Central Trade and Industry Register is to be used within BaFin for further checks as to the reputation of a person, this document may not be more than twelve months old.

Due to the provisions of the GewO, the Federal Office of Justice will not send the excerpt from the Central Trade and Industry Register directly to BaFin and will instead send this to the applicant. If the relevant excerpt is already available, it has to be submitted to BaFin together with the other documents to be appended to the notification of intent. However, subsequent submission is also possible. There is no need to request additional copies for the Deutsche Bundesbank or the auditing association, in the case of credit institutions that are members of one.

In the case of persons who have never resided or worked in Germany, as a rule BaFin will not require these persons to submit an excerpt from the German Central Trade and Industry Register.
Industry Register or to furnish similar foreign documents. BaFin reserves the right to request additional documents in individual cases.

(5) **Details of additional mandates as a management board member or in administrative or supervisory bodies (Banking Act)**

For an assessment of compliance with the limitations of management board members' mandates stipulated in supervisory law and whether the relevant person has sufficient time within the scope of the Banking Act, additional mandates of the relevant person must be indicated or a statement of "nil" must be provided. These details are to be provided on the form "Details of reputation, available time and additional mandates"; a statement of "nil" is submitted by ticking the relevant field on the form.

All activities as a management board member and any mandates on administrative and supervisory bodies of any undertakings must be indicated – regardless of whether these undertakings are supervised by BaFin and whether or not individual mandates are included in the maximum number of mandates permitted. For the maximum number of mandates permitted, a distinction must be made between significant CRR institutions and all other institutions (see the comments on limitations of mandates under II.5. and II.6.). Irrespective of this, all management board members must dedicate sufficient time to the performance of their duties.

Mandates on non-mandatory supervisory boards must also be indicated.

Mandates on advisory councils must be indicated if the duties and powers of the advisory council are analogous to those of an administrative or supervisory body and are regulated by law or in the articles of association or the partnership agreement.

Where multiple mandates held by the management board member are considered to be a single mandate, this has to be documented by means of supporting statements or documents.

In the case of mandates held as a representative of the German federal government or the German federal states, the relevant legal basis has to be indicated or the relevant articles of association are to be appended.

(6) **Details of available time (Banking Act)**

Within the scope of the Banking Act, the notification of intent to appoint a management board member must include the material facts for an assessment of whether sufficient time is available for the performance of the related duties. This information has to be provided on the form "Details of reputation, available time and additional mandates".

As a rule, BaFin assumes that a person will only accept an appointment as a management board member if he or she considers himself or herself capable of fulfilling the time requirements associated with this activity. Accordingly, this person has to conduct an overall review of all of his or her current activities and mandates and estimate the amount of time associated with this new activity.

The following guidance notes shall be complied with in notifying BaFin of whether this person has sufficient time.

All activities and mandates, including the mandate subject to notification, are to be included. The time required to perform these activities and mandates is to be estimated and disclosed to BaFin as such.
All of the management board member's full-time and part-time professional activities must be indicated. All mandates in administrative and supervisory bodies must also be included. The amount of time required for a mandate on an advisory council must be indicated if the duties and powers of this advisory council are analogous to those of an administrative or supervisory body and are regulated by law or in the articles of association or the partnership agreement.

In the case of mandates in administrative and supervisory bodies, in addition to the time needed to take part in meetings, the time required for meeting preparation and post-meeting work is to be taken into account, as is participation in committees and travel, where applicable. The assessment shall also reflect the fact that an activity as a member of an administrative or supervisory body will also take up time outside the scope of regular meetings and that this time requirement may suddenly increase if the undertaking is faced with extraordinary situations.

As a rule, purely voluntary positions and activities which form part of the person's private life need not be included.

4. Notification of realisation and of the change or withdrawal of an intention to make an appointment

A notification of realisation shall be submitted as of the date of the management board member's legally valid appointment and the commencement of his or her activity.

For the purposes of the Banking Act, the Payment Services Supervision Act and the Capital Investment Code, this notification of realisation is not to be made exclusively on the basis of a legally valid appointment. Instead, it is primarily to be made on the basis of the person's commencement of his or her activity. This is the date as of which BaFin assesses whether any facts have arisen since the institution or undertaking submitted its notification of intent which may be relevant in regard to the professional qualifications, the reputation and the available time of the notified person.

If a period of more than twelve months has elapsed between the notification of intent and the notification of realisation, the updated versions of the documents which were appendable to the notification of intent have to be re-submitted. This also applies to the register excerpts. BaFin may waive this requirement in individual cases.

If an institution covered by the Banking Act changes or withdraws its intention to appoint a management board member, this shall also be communicated without delay. If this change relates to the date of realisation of the appointment, this new date has to be indicated.
5. **Notification obligation upon resignation**

The resignation of a management board member shall be reported without delay.

BaFin requests that the grounds for resignation be indicated in the notification and for a current overview of the management board’s composition to be provided.

**Legal basis:**
Section 24 (1) no. 2 of the KWG, section 5e of the AnzV
Section 29 (1) no. 2 of the ZAG
Section 34 (3) no. 2 of the KAGB

6. **Further notification obligations**

a. **Notification of other activities as a management board member or as a member of the supervisory or administrative board**

A management board member shall report without delay any commencement and any termination of an activity as a management board member of another undertaking or as a member of the administrative or supervisory body of another undertaking.

This notification is necessary so that BaFin is able to regularly assess compliance with the limitations of mandates under supervisory law as well as the need for the person to have sufficient time available. This notification obligation applies irrespective of whether or not individual mandates are included in the maximum number of mandates permitted. Mandates on non-mandatory supervisory boards must also be indicated. Mandates on advisory councils must be indicated if the duties and powers of the advisory council are analogous to those of an administrative or supervisory body and are regulated by law or in the articles of association or the partnership agreement. It is also irrelevant for the notification obligation whether an activity is part-time or full-time in nature.

Where multiple mandates held by the management board member are considered to be a single mandate, this has to be documented by means of supporting statements or documents.

In case of mandates held as a representative of the German federal government or the German federal states, the relevant basis in law has to be indicated or the relevant articles of association are to be appended.

For an assessment of whether the member of the administrative or supervisory body has sufficient time available, the notification must provide relevant details, including the new mandate (cf. I.3.b.(6))

b. **Notification of direct participating interests held by the management board member**

A management board member shall report without delay any acquisition or disposal of a direct participating interest in an undertaking and any changes in the amount of this participating interest. A direct participating interest shall be deemed to be the holding of at least 25 per cent of the undertaking's capital.

**Legal basis:**
Section 24 (3) sentence 1 no. 1 of the KWG,
Section 11 of the AnzV
Section 29 (1b) sentence 1 no. 1 of the ZAG
Section 34 (5) sentence 1 no. 1 of the KAGB
7. **Violation of notification obligations**

BaFin wishes to point out that a violation of the management board member's notification obligations under the **Banking Act** and the **Capital Investment Code** will constitute an administrative offence which may result in an administrative fine of up to one hundred thousand euros.

Violation of the notification requirement means failing to make a notification or making such notification incorrectly, incompletely or not in due time.

**Legal basis:**
- Section 56 (2) no. 1i, (6) no. 4 of the KWG
- Section 340 (2) no. 2 of the KAGB
II. Requirements for management board members (Banking Act, Payment Services Supervision Act)

Management board members must be professionally qualified and reliable and must devote sufficient time to the performance of their duties. For the appointment of a management board member, his or her professional qualifications, his or her reputation and whether he or she has sufficient time will be assessed on the basis of the documents submitted. However, the criteria required by law must be fulfilled not only as of the time of appointment but also throughout the period of the management board member's activity. BaFin will regularly review this on the basis of the reporting provided by the auditor of the undertaking's annual financial statements. Upon request, institutions are obliged to provide BaFin and, where applicable, the Deutsche Bundesbank with further documents and information.

For acting management board members and appointed substitutes under savings bank law, all of the requirements as to professional qualifications, reputation, sufficient time and the limitation of permitted mandates apply mutatis mutandis.

1. Professional qualifications

Professional qualifications to manage an institution within the meaning of the Banking Act and the Payment Services Supervision Act mean that a management board member has adequate theoretical and practical knowledge of the business concerned as well as managerial experience. The requirements as to the professional qualifications of a management board member will be determined on the basis of the size and structure of the institution as well as the nature and variety of the business activities pursued by this institution and will be assessed on a case-by-case basis. This means that there is no generally accepted professional qualification of a management board member – BaFin will always assess this on the basis of the specific institution.

The management board member must have current theoretical and practical knowledge and managerial experience – therefore, his or her professional qualifications can only be based on recent previous activities.

a. Legal presumption

If a management board member has held a managerial position at an institution for at least three years, as a rule BaFin will assume that this person is professionally qualified to manage an institution of comparable size and type of business, without making an in-depth individual assessment of this individual's theoretical and personal knowledge and managerial experience.

In principle, the size of an institution will be determined on the basis of its balance sheet total. However, BaFin may also include further criteria such as its number of employees, its loan portfolio, its volume of securities accounts or its number of customers in assessing whether this institution is of a similar size. As a rule, institutions with similar business models and which conduct the same types of bank business or provide the same

Legal basis:
Section 25c (1) of the KWG
Section 8 (3) no. 9 of the ZAG,
section 8a (3) no. 5 in conjunction with section 9 no. 5.
types of financial services pursue the same type of business. For example, this applies to
credit cooperatives and savings banks.

The legal presumption may also be assumed to apply if a person currently holds, or has held, a management position which is hierarchically directly below management board level.

b. Theoretical knowledge

Sufficient theoretical knowledge may be documented by means of completed vocational training, study programmes and courses in economics, business, tax law, general law and banking. For example, this may entail vocational training as a bank officer or else a business or economics degree. In principle, sufficiently broad-based professional experience may also establish this theoretical knowledge.

c. Practical knowledge

By way of proof of his or her professional qualifications, the management board member must have practical experience of banking business or financial services or payment services/e-money business. In particular, BaFin considers professional experience in the lending business (credit institutions) and risk management to be essential. This must involve prominent activities, i.e. having an appropriately high hierarchical status and entailing commensurate powers.

d. Managerial experience

A management board member will have sufficient managerial experience if he or she has managed undertakings in his or her professional life to date or if the management of organisational units for which employees reported to him or her was assigned to him or her and he or she exercised personal responsibility with decision-making powers. The management board member must be familiar with the obligations which an undertaking must fulfil. These undertakings need not necessarily be institutions. On the basis of the size of the undertakings, the number of employees reporting to the management board member and the powers granted to and exercised by this management board member, BaFin will assess whether the management experience acquired should be considered sufficient for his or her management of the notifying institution.

2. Reputation

Management board members must be of good repute. Reputation need not be positively documented. Reputation will be assumed in the absence of facts establishing a lack of reputation.

Persons will be deemed not of good repute if, based on general experience, their personal circumstances would justify the assumption that these circumstances could interfere with the prudent and proper exercise of their activity as a management board member. The personal conduct and the business practices of the management board member with regard to criminal, financial, property-related and supervisory issues will be considered. The commission of criminal or administrative offences – particularly those associated with positions held with undertakings, and within both the German legal system and a foreign legal system – is of particular relevance here. Fault is not required in order to be considered lacking in reputation.
In the light of such circumstances, in each individual case BaFin will assess whether the management board member may not, or may no longer, be deemed of good repute in relation to his or her performance of this activity.

For instance, the following criteria for a lack of reliability may apply:

- supervisory measures which BaFin has imposed against the management board member or an undertaking for which the management board member currently works or has worked in the past
- property- and tax-related criminal offences or particularly serious crimes and money laundering
- breaches of administrative rules
- conflicts of interest

3. **Conflicts of interest**

Conflicts of interest exist where personal circumstances or personal economic activity on the part of the management board member may be detrimental to the management board member's independence in the performance of his activity and his or her obligation to act in the best interests of the institution. Permanent conflicts of interest will hinder his or her performance of the activity.

A conflict of interest may arise in that management board members are related to each other or to one or more members of the administrative or supervisory body. Whether or not this relationship is an obstacle to the management board member's activity has to be assessed on a case-by-case basis.

A conflict of interest may arise in that the management board member, a close relative of the management board member or an undertaking managed by the management board member maintains business relationships with the supervised institution, which could give rise to commercial dependence on this institution. For instance, this will apply if the management board member, a close relative of the management board member or an undertaking managed by the management board member arranges loans, other banking business, financial services or insurance products.

A conflict of interest also exists if the management board member has borrowed from the supervised undertaking and is in danger of defaulting.

A management board member shall disclose possible conflicts of interest early on at least to the chair of the administrative or supervisory body. Any administrative or supervisory body has to appropriately document any existing conflicts of interest of management board members and how these conflicts of interest are handled.
4. **Available time (Banking Act)**

Management board members must dedicate sufficient time to performing their functions. This means that this person must be generally considered capable in view of his or her professional and social obligations to find a sufficient amount of time for his or her activity and actually does dedicate the necessary amount of time to this activity. Due to the applicable legal requirement, upon notification of the management board member's appointment and also in the course of his or her activity as a management board member BaFin will review whether he or she has a sufficient amount of time available.

All of the management board member's full-time and part-time professional activities have to be included in the assessment. All positions in administrative and supervisory bodies must also be included. Mandates on advisory councils must be included if the duties and powers of the advisory council are analogous to those of an administrative or supervisory body and are regulated by law or in the articles of association or the partnership agreement. In addition to the time needed to take part in meetings, the time required for meeting preparation and post-meeting work is to be taken into account, as is participation in committees and travel, where applicable. The assessment must also reflect the fact that an activity as a member of an administrative or supervisory body will also take up time outside the scope of regular meetings and that this time requirement may suddenly increase if the undertaking is faced with extraordinary situations.

As a rule, purely voluntary positions and activities which form part of the person's private life need not be included.

The need for a sufficient amount of time will apply irrespective of the limitations of mandates for management board members. This means that a management board member may be unable to accept a further mandate because of time constraints, even if he or she has not yet reached the maximum number of mandates permitted under the Banking Act.

As a rule, BaFin considers that a management board member of a credit institution will generally be unable to manage several different credit institutions at the same time on account of the legal requirement for him or her to have sufficient time available.

5. **Limitations of mandates (Banking Act - significant CRR institutions)**

Management board members must dedicate sufficient time to performing their functions. If a management board member holds an excessive number of management and supervisory mandates at the same time, this would prevent this person from finding the appropriate amount of time for each mandate. For this reason, the Banking Act restricts the number of mandates permitted. To prevent conflicts of interest, this Act also excludes certain combinations of different mandates.

**Legal basis:**

Section 25c (2) of the KWG
In terms of limitations of mandates, the Banking Act distinguishes between significant CRR institutions and all other institutions ("Other Institutions"). This section outlines the limitations of mandates for management board members of significant CRR institutions. The limitations of mandates for management board members who only hold mandates in management boards and administrative and supervisory bodies of non-significant institutions are outlined in the following section 6.

If a person is a management board member or a member of the administrative or supervisory body of a significant CRR institution, the limitations of mandates outlined in this section apply to all of his or her mandates (both as a management board member and as a member of administrative and supervisory bodies). A person will only be covered by the limitations of mandates outlined in the following section 6 if he or she exclusively holds mandates with "Other Institutions".

The following examples are provided by way of illustration:

<table>
<thead>
<tr>
<th>Person A</th>
<th>Management board member</th>
<th>Supervisory board member</th>
<th>Supervisory board member</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Significant CRR institution</td>
<td>Non-CRR institution</td>
<td>Non-significant CRR institution</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Person B</th>
<th>Management board member</th>
<th>Supervisory board member</th>
<th>Supervisory board member</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Non-significant CRR institution</td>
<td>Non-CRR institution</td>
<td>Significant CRR institution</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Person C</th>
<th>Management board member</th>
<th>Supervisory board member</th>
<th>Supervisory board member</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Non-significant CRR institution</td>
<td>Non-CRR institution</td>
<td>Non-significant CRR institution</td>
</tr>
</tbody>
</table>

If a CRR institution which has not been previously significant becomes significant, from the date of its obtaining this significant status the limitations of mandates outlined in this section will apply to the management board members of this institution. This affects all of the mandates held by the management board member (both as a management board member and as a member of administrative and supervisory bodies). Mandates exceeding the maximum number of mandates permitted are covered by the so-called "rules of protection for pre-existing mandates" (see II.5.d. Pre-existing mandates, p. 32).

The limitations of mandates stipulated in the Banking Act do not replace the limitations of mandates provided for in other laws, such as the German Stock Corporation Act (Aktiengesetz – AktG) and the German Insurance Supervision Act (Versicherungsaufsichtsgesetz – VAG). These limitations also have to be complied with. BaFin wishes to point out that in the case of mandates held with foreign undertakings which are supervised by foreign financial supervisory authorities, possibly divergent limitations of mandates under the applicable supervisory law also have to be complied with.

Significant institution (section 25c (2) sentence 6 of the KWG):
- its total assets equal or exceed EUR 15 billion on average over the reporting dates of the preceding three completed financial years or
- this institution is supervised by the European Central Bank pursuant to Article 6 (4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287 of 29 October 2013, p. 63) or
- it has been categorized as having the potential to pose a systemic risk within the meaning of section 20 (1) sentence 3 of the German Recovery and Resolution Act (Sanierungs- und Abwicklungsgesetz – SAG) or
- it is a financial trading institution within the meaning of section 25f (1) of the KWG.

Guidance Notice on management board members pursuant to the KWG, ZAG and the KAGB
a. Prohibition of simultaneous management and monitoring

A person who is a management board member of an institution may not be a member of the administrative or supervisory body of this institution at the same time. This eliminates, at the outset, the conflict of interest arising where a person manages an institution while simultaneously monitoring his or her own management.

b. Further management and supervisory mandates

As a rule, a person who manages an institution will, right from the outset, be obliged to devote a considerable amount of time to the performance of that duty. For this reason, subject to the following exemptions, management board members may only pursue one activity as a management board member and a maximum of two additional mandates as members of administrative and supervisory bodies at the same time. It should be noted that this rule also limits the management board member to a single mandate as a management board member, even if this mandate is held with non-supervised undertakings. However, in view of the exemptions outlined below this may in practice entail multiple activities as a management board member.

In line with the definition provided in section 1 (2) of the KWG, for the purposes of section 25c (2) sentence 2 no. 2 of the KWG management board members are those natural persons who are appointed according to law, articles of association, articles of incorporation or a partnership agreement to manage the business of and represent an undertaking in the form of a legal person or a commercial partnership. Activities as a management board member of undertakings not supervised by BaFin must also be included. This is not prevented by the fact that the definition of the management board member in section 1 (2) of the KWG is limited to persons performing these activities in institutions. An activity will be considered relevant irrespective of whether it is a full-time or part-time position.

Mandates held in administrative and supervisory bodies will also be included for all undertakings, irrespective of whether these undertakings are supervised by BaFin.

The maximum number of mandates held in administrative and supervisory bodies may neither be exceeded by accepting a further supervisory mandate with a supervised undertaking nor by accepting a further supervisory mandate with an undertaking which is not supervised by BaFin.

Legal basis:
Section 25c (2) sentence 2 no. 1 of the KWG

Legal basis:
Section 25c (2) sentence 2 no. 2 of the KWG
(1) Counting of multiple mandates as a single mandate

On account of the so-called "privileged counting", as a rule an unlimited number of mandates shall count as a single mandate, subject to the following preconditions, so that in practice a management board member may perform more than one activity as a management board member and hold more than two mandates as the member of an administrative or supervisory body. However, this management board member must still dedicate sufficient time to each individual activity and each individual mandate, irrespective of whether or not this person has already exhausted the maximum number of mandates permitted.

The privileged counting options outlined below apply both to management board mandates and to positions in administrative and supervisory bodies. However, management board mandates and mandates as members of administrative or supervisory bodies will not be jointly counted as a single mandate.

- Multiple mandates count as one mandate if these mandates are carried out at undertakings which belong to the same group of institutions, financial holding group, mixed financial holding group or mixed holding group.

Only mandates which are held with undertakings belonging to one of the above-mentioned groups may be counted as a single mandate. Due to the clear wording of the applicable law, mandates held with undertakings in other groups – such as within the same insurance group or within a single corporate group – may not be privileged. This is particularly important for persons who hold additional mandates with insurance undertakings or commercial undertakings, since the Insurance Supervision Act and the Stock Corporation Act also allow individual mandates to be aggregated, but subject to different preconditions.

The privileged counting of all mandates held within a group of institutions, a financial holding group, a mixed financial holding group or a mixed holding group will also apply if a person accepts additional mandates in administrative and supervisory bodies or is simultaneously the management board member of an institution. However, mandates as a management board member and as a member of an administrative or supervisory body will not be jointly counted as a single mandate, even if these are held with undertakings within the same group.

Legal basis:
Section 25c (2) sentence 3 nos. 1 to 3 of the KWG

Legal basis:
Section 10a (1) of the KWG – definition of the group of institutions, the financial holding group and the mixed financial holding group
**Example 1:**

Person A  
Management board mandate 1  
Institution A  
Institution X1  
Supervisory board mandate 1 (group of institutions X)  
Institution X2  
Institution X3  
Supervisory board mandate 2 (group of institutions Y)  
Institution Y1  
Institution Y2

**Example 2:**

Person B  
Management board mandate 1 (group of institutions X)  
Institution X1  
Institution X2  
Institution X3  
Supervisory board mandate 2  
Undertaking M
Multiple mandates count as one mandate if these mandates are carried out at undertakings which are members of the same institutional protection scheme.

In Germany, the member institutions of the National Association of German Cooperative Banks (Bundesverband der Volksbanken und Raiffeisenbanken e. V.) constitute an institutional protection scheme. The member institutions are cooperative banks, savings and loans banks, PSD banks, Sparda banks, church credit cooperatives, cooperative central banks and mortgage banks as well as other specialist institutions belonging to this financial group such as the Bausparkasse Schwäbisch Hall.

The cross-guarantee scheme of the Savings Banks Financial Group (Sparkassen-Finanzgruppe) is another institutional protection scheme in Germany. Its members are the savings banks, Landesbanks, DekaBank and regional building societies.

Mandates as a management board member and as a member of an administrative or supervisory body will not be jointly counted as a single mandate, even if these undertakings belong to the same institutional protection scheme.

Mandates with undertakings which belong to the respective association but are not included in this institutional protection scheme may not be privileged.

Multiple mandates will count as one mandate if these mandates are carried out at undertakings in which the institution holds a qualified participating interest.

Only mandates with undertakings in which the institution holds a qualified participating interest may be privileged— but not mandates with undertakings which hold a qualified participating interest in the institution. It is not necessary for these undertakings to be supervised by BaFin.

All mandates held in undertakings in which the institution holds a qualified participating interest will also be privileged if a management board member accepts further administrative and supervisory board mandates, irrespective of whether these are mandates as a management board member or in administrative or supervisory bodies. However, the mandates as a management board member and as a member of an administrative or supervisory body will not be jointly counted as a single mandate, even in the case of corresponding participating interests.

A qualified participating interest means a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which otherwise makes it possible to exercise a significant influence over the management of that undertaking.

Section 1 (9) of the KWG in conjunction with Art. 4 (1) no. 36 of Regulation (EU) No 575/2013
Example 3:

Person C

- Management board mandate 1
  - Institution A

Supervisory board mandate 1
- Institution B (significant holding)
  - Undertaking B1
  - Undertaking B2

Supervisory board mandate 2
- Institution D

Example 4:

Person D

- Management board mandate 1
  - Institution B (significant holding)
    - Undertaking B1
    - Undertaking B2

Supervisory board mandate 1
- Institution E (significant holding)
  - Undertaking E1
  - Undertaking E2

Supervisory board mandate 2
- Institution F
Example 5:

The different case groups for the privileged counting of mandates will be separately applied. It is not possible to combine different case groups or to apply the privileged counting at several different levels.

Example 6:
Exemptions for mandates provided for under the Banking Act and the Insurance Supervision Act may not be reciprocally applied.

Management board members who are members of the administrative or supervisory body of an institution, a financial holding company or a mixed financial holding company and of an undertaking which is subject to the **Insurance Supervision Act** have to comply with the limitations of mandates laid down both in the **Banking Act** and the **Insurance Supervision Act**. Exemptions for multiple mandates and privileged counting options provided for under the **Banking Act** and the **Insurance Supervision Act** may not be reciprocally applied.

The exemption stipulated in section 24 (4) sentence 2 half-sentence 2 of the VAG will not apply in terms of the assessment of the permissibility of mandates covered by the **Banking Act**. In each case, only the relevant legal exemption may be claimed for any appointment. Even if a corporate group or a group of undertakings includes undertakings covered by the **Insurance Supervision Act** and undertakings covered by the **Banking Act**, the maximum number of supervisory mandates will always be separately assessed under the **Insurance Supervision Act** and the **Banking Act**. This must be noted, in particular, because a situation may arise – in view of the different exemptions provided by the **Insurance Supervision Act** and the **Banking Act** – where a mandate is permissible under the **Banking Act** but not under the **Insurance Supervision Act**, or vice versa.

**Example 7:**

Section 24 (4) sentence 2 of the VAG
Requirements for persons who actually manage the undertaking or who perform other key duties:
"A person who already holds five supervisory mandates with undertakings supervised by BaFin may not be appointed a member of the administrative or supervisory body; mandates held with undertakings in the same insurance or corporate group will not be included."
Example 8:

(2) Mandates with organisations and undertakings which do not pursue predominantly commercial objectives

Mandates held with organisations and undertakings which do not pursue predominantly commercial objectives – in particular, undertakings which provide public services – will not be included in the maximum number of mandates permitted for management, administrative and supervisory bodies.

The purpose of this rule is to exempt mandates with non-commercial undertakings, in particular charitable undertakings, and mandates with undertakings which provide public services. In view of the rationale behind the limitation of mandates – that the accumulation of an excessive number of management and supervisory mandates would preclude a member of such a body from spending adequate time on the performance of his or her duties – BaFin interprets the scope of this exemption restrictively.

Due to the significance of the proper functioning, stability and integrity of the financial sector for the overall economy and for consistent fulfilment of the supervisory tasks assigned to BaFin, as a rule BaFin does not consider the scope of this exemption to apply to the undertakings under its supervision. For credit institutions, this already follows from the fact that an assessment to different effect would appear contradictory in the context of the definition of a credit institution provided in section 1 (1) of the KWG ("undertakings which conduct banking business commercially or on a scale which requires commercially organised business operations").

Important cases to which the derogating provisions apply comprise, on the one hand, recognised charitable organisations and undertakings within the meaning of sections 51 et seqq. of the German Fiscal Code (Abgabenordnung – AO) and, on the other, undertakings which provide public services. For the purposes of section 25c (2) sentence 4 of the KWG, irrespective of its legal form an undertaking which provides public services is an undertaking which

- does not exclusively or primarily aim to realise a profit,
- primarily and directly fulfils a public purpose through its service, but not indirectly through its profits and income, and in which
- the local authority operating this undertaking or participating in this undertaking – while ensuring an appropriate level of influence – holds a majority stake.

A case-by-case assessment is necessary to establish whether these preconditions are fulfilled.

Outside the indicated areas of application, an assessment as to whether an undertaking may be considered to be predominantly non-commercial in nature may only be made in view of the specific circumstances of the individual case and the overall picture for the activity requiring assessment. The lack of a profit-making intention is not a suitable sole distinguishing criterion even if, conversely, these privileges cannot as a rule be applied for undertakings which exclusively or primarily aim to realise a profit. Nor are tax exemptions – in particular, corporation income tax or trade tax exemptions – as such a sufficient criterion for the applicability of section 25c (2) sentence 4 of the KWG, due to the fundamentally different purposes of tax law and banking supervisory law.

BaFin will exclusively make a determination that an undertaking is not primarily commercial in nature for the purposes of the Banking Act. This is not relevant for other authorities, e.g. for a decision as to an undertaking's tax liability.

c. Approval of an additional mandate

Taking into account the specific circumstances and the nature, scope and complexity of the activities of the institution, the supervisory authority may permit a management board member to hold an additional mandate in an administrative or supervisory body provided that this does not prevent the member from devoting sufficient time to performing his or her functions in the undertaking in question.

This approval will require an application which the individual must submit personally. This application is to be informally submitted to the supervisory authority. This means that the application is to be submitted to both the European Central Bank and to BaFin in the case of a mandate with the administrative or supervisory body of a significant institution directly supervised by the ECB, and in all other cases to BaFin. The application has to indicate in detail the amount of time which the mandate for which approval is sought will require. If this involves a mandate with an undertaking which is not supervised by the supervisory authority, the business purpose, the size and the structure of the undertaking need to be described. Moreover, the amount of time required for the mandates which this person already holds has to be described in detail.

This approval may be granted either before or after the appointment of this person to the administrative or supervisory body. If the acceptance of a mandate is planned or foreseeable, BaFin recommends that an application already be submitted prior to this appointment. BaFin must be notified if, after the supervisory authority has issued its approval for a mandate, the appointment to the administrative or supervisory body is not made.

The supervisory authority may only permit a person to hold a single further mandate in an administrative or supervisory body. This means that, together with the approved further mandate, no additional mandates may be jointly counted as a single mandate. The privileges stipulated in section 25c (2) sentence 3 of the KWG will not apply to this further mandate.

Legal basis:
Section 25c (2) sentence 5 of the KWG
d. "Pre-existing mandates"

If a management board member held more than the maximum number of mandates permitted as a management board member or as a member of administrative and supervisory bodies after the German CRD IV Implementation Act (CRD IV- Umsetzungsgesetz) came into force, he or she may continue to hold these mandates if

- none of these mandates is held with an institution which may pose a systemic risk and
- this mandate already existed on 31 December 2013.

The so-called "protection of pre-existing mandates" applies subject to the above-mentioned preconditions for mandates held with any undertakings, irrespective of whether they are supervised by BaFin. No subsequent notification requirement applies.

Mandates which exceed the maximum number of mandates permitted and which are covered by the protection rule for pre-existing mandates may be extended through re-election or reappointment. However, additional mandates may not be accepted. This also applies in the event that the new position might be counted as a single mandate together with an existing mandate which is covered by the protection rule for pre-existing mandates.

The protection rule for pre-existing mandates also applies if an "Other Institution" becomes a significant CRR institution, e.g. because it is categorized as having the potential to pose a systemic risk within the meaning of section 20 (1) sentence 3 of the SAG.

If a management board member holds more than the maximum number of mandates permitted as a management board member or as a member of administrative and supervisory bodies following classification of the institution as a significant CRR institution, he or she may continue to hold these mandates if

- this position was already held as of the date of the institution's classification as a significant CRR institution.

"Protection of pre-existing mandates" applies subject to the above-mentioned preconditions to mandates held with any undertakings, irrespective of whether they are supervised by BaFin. No subsequent notification requirement applies.

Management board members of institutions posing a systemic risk are not eligible for protection for pre-existing mandates. Following promulgation of the CRD IV Implementation Act on 28 August 2013, in the period up to 30 June 2014 this group of persons had time to adjust the structure of their mandates in line with the rules subsequently applicable for these mandates.

Legal basis:
Section 64r (13) sentence 2 of the KWG
The reference to section 67 (2) of the SAG as applicable until 05 November 2015 (old version) in the transitional provision does not include any material reference to the "resolution power, preconditions and further powers" stipulated in sections 62 to 88 of the Act – in transposition of Directive 2013/36/EU, this provision was intended to define a clearly distinguishable group of institutions for which the legislator was able to permit the amended limitations of mandates to come into force as of a later date, but for which the legislator was unable to grant any protection for pre-existing mandates. According to the definition provided in section 67 (2) of the SAG (old version), a systemic risk does not require the undertaking's existence to have been actually jeopardised in accordance with section 63 (1) of the SAG.

A management board member of an institution which may be assumed to pose a systemic risk may not claim protection for pre-existing mandates if he or she already held them prior to 1 August 2009.

6. Limitations of mandates (Banking Act – "Other Institutions")

As a rule, the number of management or supervisory mandates which a management board member may hold at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities.

The applicable limitations of mandates for management board members of institutions which are not significant CRR institutions ("Other Institutions") will depend on the type of undertakings in which mandates are held.

"Other Institutions" are CRR institutions which do not fulfil any of the criteria for a significant institution as well as institutions which do not fall under the scope of Regulation (EU) No 575/2013 (CRR) (non-CRR institutions).

If a management board member holds at least one position on the administrative or supervisory body of a significant CRR institution, he or she will be bound by the limitations of mandates applicable for the members of bodies of significant CRR institutions. This means that, in total, he or she may hold one position as a management board member and no more than two supervisory mandates (see BaFin Guidance Notice on the members of administrative and supervisory boards, II.7). The same applies if he or she is a member of the administrative or supervisory body of a financial holding company or a mixed financial holding company which has been designated a superordinated undertaking and to which a CRR institution belongs.

**Credit institution posing a systemic risk:**

Section 67 (2) of the SAG (old version): a systemic risk will apply in case of a concern that in the concrete market situation jeopardisation of the credit institution's existence will have a significant negative impact on other undertakings in the financial sector, on the financial markets, on the general confidence of depositors and other market participants regarding the functional capacity of the financial system or the real economy. ...
If a management board member exclusively holds mandates on administrative or supervisory bodies of "Other Institutions", he or she may hold no more than five supervisory mandates with undertakings supervised by BaFin (see BaFin Guidance Notice on the members of administrative and supervisory bodies, II.8). On the other hand, the assessment of the permissibility of further activities as a management board member shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. This means that a management board member of an "Other Institution" may not accept further management board member mandates without any limitations.

The limitations of mandates stipulated in the Banking Act do not replace the limitations of mandates provided for in other laws, such as the AktG and the VAG. These limitations also have to be complied with. BaFin wishes to point out that in case of mandates held with foreign undertakings which are supervised by foreign financial supervisory authorities, possibly divergent limitations of mandates under the applicable supervisory law also have to be complied with.

Legal basis:
Section 25d (3a) of the KWG
III. Requirements for management board members
(Capital Investment Code)

1. Reputation

A management board member covered by the Capital Investment Code must be of good repute. Reputation need not be positively documented. Reputation will be assumed in the absence of facts establishing a lack of reputation.

Persons will be deemed not of good repute if, based on general experience, their personal circumstances would justify the assumption that these circumstances could interfere with the prudent and proper exercise of their activity as a management board member. The personal conduct and the business practices of the management board member with regard to criminal, financial, property-related and supervisory issues will be considered. The commission of criminal or administrative offences – particularly those associated with mandates held with undertakings, and within both the German legal system and a foreign legal system – is of particular relevance here. Fault is not required in order to be considered lacking in reputation.

In the light of such circumstances, BaFin will assess in each individual case whether a management board member may not, or may no longer, be deemed of good repute in relation to his or her performance of this activity.

For instance, the following criteria for a lack of reputation may apply:

- supervisory measures which BaFin has imposed against the management board member or an undertaking for which the management board member currently works or has worked in the past
- property- and tax-related criminal offences or particularly serious crimes and money laundering
- breaches of administrative rules
- conflicts of interest

2. Professional qualifications

Under section 23 no. 3 of the KAGB, management board members must have the professional qualifications within the meaning of section 25c (1) of the KWG which are necessary for management. Professional qualifications thus require the persons who are to be appointed as management board members to have sufficient theoretical and practical knowledge of the relevant types of business and also management experience. A person shall normally be assumed to have the necessary professional qualifications for the management of a capital management company (Kapitalverwaltungsgesellschaft) if
he/she can demonstrate three years’ managerial experience at a company of comparable size and type of business (rebuttable legal presumption).

However, the decisive factor for the assessment of the professional qualifications is not the legal presumption, but rather an individual review of all of the circumstances of the specific case. If an applicant does not fulfil the preconditions for the legal presumption, he or she may nonetheless have acquired these professional qualifications by other means. Conversely, an individual review may establish that an applicant does not have the professional qualifications despite fulfilling the underlying preconditions for the legal presumption (e.g. if, in his or her most recent activity, the applicant has demonstrated significant shortcomings in terms of his or her required abilities).

Professional qualifications must also be fulfilled in terms of the fund-specific type of business activity which the capital management company intends to pursue. The envisaged fund-specific type of business activity is stipulated in the purpose of business laid down in the articles of association or the partnership agreement and also in the details of the business plan concerning the types of AIF which the company intends to manage.

If two management board members are designated within the scope of the authorisation process who each have theoretical and practical knowledge in relation to their own particular field (e.g. open-ended investment funds, on the one hand, and closed-ended investment funds, on the other), but not for the other field, subject to certain preconditions this may initially suffice, collectively, for a positive assessment of these management board members’ professional qualifications. Apart from the necessary managerial experience, this requires that these management board members will plausibly outline how each of them will subsequently obtain practical and theoretical knowledge of the other field.