Circular 10/2023 (VA) - Professional qualifications (fit) and good repute (proper) of members of administrative or supervisory bodies in accordance with the VAG

Bonn, 1 December 2023

The circular provides explanations of the professional and personal requirements made of members of administrative or supervisory bodies and of the associated notification requirements based on the German Act on the Supervision of Insurance Undertakings (Versicherungsaufsichtsgesetz – VAG).

Table of Contents

I. Notification requirement and necessary documents..............................................................................5

1. General information about the notification requirements ..............................................................5

2. Group of persons subject to the notification requirements............................................................6
   a. Notification of a first-time appointment .....................................................................................6
   b. Notification of reappointment at the same undertaking .............................................................6
   c. Notification of appointment at an additional undertaking ..........................................................7
   d. Notification of a new appointment in the course of reorganisation .........................................7

3. Notification requirement upon appointment ....................................................................................7
   a. Documents required .....................................................................................................................7
   b. The documents in detail ..............................................................................................................8
      (1) Curriculum vitae ......................................................................................................................8
      (2) Form “Personal statement including information on fulfilling the fit and proper requirements” .................................................................9
      (3) “Certificate of good conduct for submission to an authority”, “European criminal record check for submission to an authority” or “corresponding documents” from abroad ........................................................................11
         (a) General information on certificates of conduct ..............................................................11
         (b) Specific information on certificates of conduct ..............................................................12
      (4) Extract from the Central Trade and Industry Register ......................................................13
      (5) Where applicable, Proof of further training .........................................................................14

4. Notification requirement upon resignation ....................................................................................14

5. Overview of the composition of the administrative or supervisory body .........................................15

II. Requirements made of members of administrative and supervisory bodies ....................................15

1. Professional qualifications (“fit”) .....................................................................................................16
a. Representative in a co-determined administrative or supervisory body ...................... 17
b. Institutions for Occupational Retirement Provision (IORPs) ........................................ 17
c. “Natural” members ........................................................................................................... 17
d. Further training .................................................................................................................. 17
e. Further training and development ................................................................................. 18

2. Reliability ............................................................................................................................ 18

3. Conflicts of interest ............................................................................................................. 19

4. Availability in terms of time ............................................................................................. 19

5. Mandate limitations .......................................................................................................... 20
a. Maximum number of control mandates ......................................................................... 20
b. Privilege ............................................................................................................................ 20
c. Former members of senior management in an administrative or supervisory body .... 20
d. No interactions ................................................................................................................. 20
e. “Old mandates” .............................................................................................................. 21

6. Supervisory measures ...................................................................................................... 21

7. Special attention to the requirements of the Money Laundering Act ......................... 21

III. Knowledge within the governing body .............................................................................. 21

1. Self-assessment .................................................................................................................. 21
a. Requirements for self-assessment ............................................................................... 22
b. Timing/intervals of the self-assessment(s) ................................................................. 22

2. Annual development plan ................................................................................................. 23

IV. Obligations of administrative or supervisory bodies ....................................................... 23

V. Written internal policy ...................................................................................................... 24
The circular provides explanations of the professional and personal requirements made of members of administrative or supervisory bodies and of the associated notification requirements based on the German Insurance Supervision Act (Versicherungsaufsichtsgesetz – VAG) of 1 April 2015 (Federal Law Gazette I, p. 434), as last amended by Article 9 of the Act of 31 May 2023 (Federal Law Gazette 2023 I no. 140).

This circular is intended for all of the following types of undertaking subject to supervision by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) under the VAG:

- insurance undertakings (section 7 no. 33 of the VAG);
- Pensionsfonds (section 236 of the VAG);
- insurance holding companies (section 7 no. 31 of the VAG);
- undertakings within the meaning of section 293 (4) of the VAG;
- special purpose insurance vehicles (section 168 (1) sentence 1 of the VAG); and
- mixed financial holding companies (section 7 no. 10 of the VAG).

(One undertaking each)

In accordance with the following information.

The respective provisions of the VAG in each case are to be applied to small insurance undertakings (section 211 of the VAG), pension provision funds (sections 232 and 236 of the VAG) and funeral expenses funds (section 218 of the VAG) in respect of the suitability requirements for members of an administrative or supervisory body. The specific characteristics of the respective business model are taken into account.

In addition to the provisions of the VAG, the Commission Delegated Regulation (EU) 2015/35 and the EIOPA guidelines on system of governance (EIOPA-BoS-14/253 EN), including its Technical Annex, must also be taken into consideration in respect of all other undertakings.

The reference made in section 25 (1) sentence 3 of the German Financial Conglomerates Supervision Act (Finanzkonglomerate-Aufsichtsgesetz – FKAG) in conjunction with section 275 (1) sentence 1 of the VAG in conjunction with section 24 of the VAG applies to superordinated undertakings at the head of a financial conglomerate.

Members of administrative or supervisory bodies must appropriately control and monitor the members of the undertaking’s management and actively support the development of the undertaking. When monitoring and advising, both the usefulness and legal compliance of the management must be considered. The members of an administrative or supervisory body must be in a position at all times to understand the business conducted by the undertaking, to assess the risks involved and, if necessary, to implement changes in management.

If they fail to fulfil these tasks and duties and thus violate the duty to take due care of a properly and conscientiously acting administrative or supervisory body, the members of these governing bodies are liable to the undertaking for damages. Depending on the type of breach of duty, legal supervisory measures may also be taken against the members of the supervisory or administrative board or the undertaking’s licence may even be revoked.

The relevant normative regulations and the contents of the circular based on them are characterised at various levels by numerous special features. At national level, different areas of law such as supervisory law, company law, labour law and worker co-determination law, as well as European provisions, must be kept in mind in parallel, some of which touch on, interfere with or modify each other. This can give rise to areas of tension that are not always amenable to a general and comprehensive solution and require a case-by-case approach.

The circular should be both readable and not too long, yet take the many different aspects into account.
Thus the relevant special features, such as those applicable to small mutual societies (section 210 of the VAG), funeral expenses funds (section 218 of the VAG), pension provision funds (sections 232 and 236 of the VAG) and small insurance undertakings (section 211 of the VAG), must also be taken into consideration, even if they are not always mentioned explicitly in the individual sections.

This circular replaces the publication of 6 December 2018, which was previously formulated as a Guidance Notice.

Please refer to the following circulars in the version in force at the material time with regard to BaFin’s expectations for the design of key areas of proper business organisation, these are currently:

- Circular 02/2017 (VA) – Minimum Requirements under Supervisory Law on the System of Governance of Insurance Undertakings (MaGo), incl. the corresponding FAQ published on the linked website
- Circular 01/2020 (VA) – Minimum requirements under supervisory law on the system of governance of small undertakings pursuant to section 211 of the VAG (MaGo for Small IUs)
- Circular 08/2020 (VA) – Minimum requirements under supervisory law on the system of governance of institutions for occupational retirement provision

(For details of the scope of the respective “MaGo circular”, see section 2 “Scope and definitions” in each case.)

Note on other publications by BaFin on related topics based on other supervisory laws

In the case of thematically related publications by BaFin on the basis of supervisory laws of other financial sectors (e.g. the German Banking Act (Kreditwesengesetz – KWG)), it should be noted that, even when the content is similar, the special features of the respective supervisory area must be taken into account. This is based in particular on

- European and national legal regulations, some of which differ in content;
- as a result also on other guidelines issued by the relevant European supervisory authority; and
- different institutional supervisory structures and their associated administrative processes. In contrast to insurance and pension funds supervision, in the area of supervision of credit institutions and financial services institutions, the German Bundesbank, the European Central Bank and the auditing associations are involved in various forms in addition to BaFin.

Data protection information:

General information on the data processing undertaken by BaFin to comply with its statutory obligations regarding notifications of appointments can be found on its website www.bafin.de/EN by going to BaFin/Data protection/Information on data processing.

Further information on the processing of personal data when reporting the appointment of members of administrative or supervisory bodies can be found here.
I. Notification requirement and necessary documents

1. General information about the notification requirements

The undertaking must submit to BaFin the notification to be made in accordance with the VAG along with the documents that must be attached.

Unless told otherwise, BaFin will assume that the undertaking has taken the steps envisaged by the relevant statutory and internal provisions and that, as far as the undertaking’s authorised representatives are aware, the person being put forward as a member of the administrative or supervisory body has, for their part, done all that is necessary (e.g. applied for a certificate of good conduct and an extract from the Central Trade and Industry Register).

The four-digit BaFin registration number and the name of the undertaking must be entered as the reference to ensure the unambiguous assignment of a notification and the required documents.

The notification, as well as all documentation to be appended, must – subject to any legal exceptions – be submitted in German. If documents are not issued in German, a translation is required in addition to the foreign-language source document, subject to any legal exceptions. A certified translation or a translation prepared by a publicly appointed or sworn interpreter or translator may be required. The responsible department at BaFin may – in accordance with the relevant legal provisions – refrain from requiring documents submitted in English to be translated.

A notification of the appointment a member of the administrative or supervisory body must be communicated without delay, which BaFin understands to mean within two weeks from the appointment.

The curriculum vitae, the form “Personal statement including information on fulfilling the fit and proper requirements” and, if applicable, evidence of further training should be submitted to BaFin together with the notification. An application for the certificate of conduct and the extract from the Central Trade and Industry Register must be submitted at the latest at the time of the notification of appointment. If the extract from the Central Trade and Industry Register is already available, it must also be submitted with the notification. The certificate of good conduct is sent directly to BaFin by the Federal Office of Justice.

The documents must not be more than three months old when the notification of appointment is made. This also corresponds to the provision in Article 43(3) of Directive 2009/138/EC of 25 November 2009. The date the relevant document was issued is determinative in this case.

If BaFin already possesses a document on the same person from a previous notification procedure and there have not been any changes and no other aspects have become relevant to the current notification procedure in the interim, then the same document can be used for additional notifications of appointment within 12 months of its issue date.

If reputation-related official documents were submitted to BaFin in a previous notification procedure on account of a foreign place of residence, they will not need to be resubmitted to BaFin for subsequent notifications if the foreign place of residence no longer exists and the documents hitherto submitted have an issue date that lies after the foreign place of residence came to an end.

Example to illustrate this: person X (of German nationality) had their place of residence abroad from 2012...
to 2016, and then exclusively in Germany from 2017 onwards. The undertaking first submitted a notification of the appointment of person X as a member of its administrative or supervisory body in 2019. In addition to the certificate of good conduct for submission to an authority and the extract from the Central Trade and Industry Register, the “relevant documents” from abroad were also submitted. In 2024, the undertaking submitted a notification of reappointment of person X as a member of its administration or supervisory board. The “corresponding documents” from abroad do not need to be resubmitted, as this relates to a completed period in the past for which “corresponding documents” have already been submitted. By contrast, the certificate of good conduct for presentation to an authority and the extract from the Central Trade and Industry Register will need to be updated and resubmitted because the documents submitted to date are more than 12 months old.

BaFin may request additional or updated documents and information if it appears necessary in individual cases.

BaFin does not bear the costs for the documents to be submitted.

2. Group of persons subject to the notification requirements

24 The appointment of a member of an administrative or supervisory body by the competent body or committee must be reported to BaFin without delay. The notification must be submitted by the undertaking.

25 The duty of notification also applies to members of an optional administrative or supervisory body.

26 At undertakings with the legal form of an SE and a monistic system within the meaning of sections 20 et seq. of the German SE Implementation Act (SE-Ausführungsgesetz – SEAG), the members of the Administrative Board within the meaning of section 22 SEAG are to be considered members of an administrative or supervisory body under supervisory law.

27 The notification requirement also applies for deputies of members of an administrative or supervisory body at the time of their election, irrespective of their actual deployment, provided that deputies of members are authorised by law, as is the case for smaller associations within the meaning of section 210 of the VAG. BaFin defines a deputy member as a person who has been appointed to take over the function of the actual member of the administrative or supervisory body in the event that the actual member is prevented from fulfilling their duties short notice.

28 Replacement members are to be distinguished from deputies. BaFin defines this as a person who replaces the specific member of the administrative or supervisory body if the latter leaves the governing body permanently. A replacement member does not have to fulfil all the requirements for exercising the mandate until the substitute member actually takes over. The notification requirement also does not apply unit this point in time.

29 The reappointment of a member of an administration or supervisory board at the same undertaking is subject to notification requirements.

30 All documents must be submitted in their latest version, with the following simplifications:
• According to BaFin’s current administrative practice, documents relating to professional qualifications (e.g. curriculum vitae) do not have to be submitted, but rather only those that are relevant to the assessment of reputation. These comprise:

- the form “Personal statement including information on fulfilling the fit and proper requirements” from the member of the administrative or supervisory body
- a “Certificate of good conduct for submission to an authority”, “European criminal record check for submission to an authority” and/or “corresponding documents” from abroad;
- an extract from the Central Trade and Industry Register

• For the sake of clarity, please note that the simplifications described under I.1. in margin numbers 19 and 20 apply.

c. Notification of appointment at an additional undertaking

31 Insofar as the member of an administrative or supervisory body has been appointed at another undertaking while already holding a mandate as a member of an administrative or supervisory body, all documents must be submitted in an updated form as a basic principle. Reference is made to the simplifications described under I.1. in margin numbers 19 and 20.

d. Notification of a new appointment in the course of reorganisation

32 Insofar as a member of an administrative or supervisory body is newly appointed when an undertaking is being reorganised, a notification is required. When such a new appointment takes place is determined by the provisions of reorganisation or company law.

33 No notification of appointment needs to be submitted if the undertaking is changing legal form in accordance with the German Transformation Act (Umwandlungsgesetz – UmwG) and if the makeup of its supervisory or administrative board is being maintained or remaining unchanged and it is to continue engaging in its insurance business. In the event of a merger, the acquiring undertaking is required to submit a notification to the effect that a member of the supervisory or administrative board of the undertaking being acquired is to be appointed as a member at the acquiring undertaking.

34 If a notification of appointment is necessary, all documents must be submitted in an updated form. Reference is made to the simplifications described under I.1. in margin numbers 19 and 20.

3. Notification requirement upon appointment

35 The notification must include the date on which the member of the administrative or supervisory body is to be appointed.

a. Documents required

36 The notification of appointment must be accompanied by the following documents:

(1) The curriculum vitae of the member of the administrative or supervisory body
(2) Form “Personal statement including information on fulfilling the fit and proper requirements” from the member of the administrative or supervisory body
(3) A “Certificate of good conduct for submission to an authority”, “European criminal records check for submission to an authority” and/or “corresponding documents” from abroad
(4) An extract from the Central Trade and Industry Register
(5) Proof of further training
(6) Self-assessment (see point III.1.)

Please note: Certificates of conduct are sent directly to BaFin by the Federal Office of Justice.

BaFin provides a checklist on its website as an annex to this circular, which the notifying undertaking can use to make sure they are enclosing all the necessary documents.

General guidance notes on communicating with the Insurance Supervision can be found on the BaFin website, currently [here](#).

As soon as an electronic submission procedure for notifications and change notifications has been established, notifications and change notifications (each including the documents to be submitted to BaFin by the undertaking) must be submitted via this procedure. BaFin will publish further details on its website in due course.

b. The documents in detail

1. Curriculum vitae

The notification of appointment must be accompanied by a detailed CV. The CV of the designated member of the administrative or supervisory body must be dated, without gaps, complete and truthful. Signing it with an electronic facsimile (scanned-in signature) is currently sufficient as a basic principle. The CV must include the following information:

- surname, all first names, birth name if applicable, interim names;
- date of birth, place of birth;
- place(s) of residence;
- citizenship(s);
- a detailed description of the candidate’s professional background;
- the names of all undertakings for which the person works or has worked;
- information on the type and duration of the respective jobs, including secondary activities;
- details concerning language skills.

The focus of the CV must be on the stages of the candidate’s professional life. The individual career stages include in particular:

- the specific position;
- start and end of activity with month and year in each case;

---

1 Reference is made to the [Guidance notes on communicating with the Insurance Supervision Sector](#) in all other respects. As soon as a standardised electronic submission procedure for notifications and change notifications has been established, notifications and change notifications (each including the documents to be submitted to BaFin by the undertaking) must be submitted via this procedure. BaFin will publish further details on its website in due course.

Legal basis:
Technical Annex to the EIOPA Guidelines on the Governance System.
The European regulations contain detailed specifications on what information must be provided to the supervisory authority.
the name and registered office of the undertaking (for supervised undertakings include the register number) as well as the type and scope of the business model (e.g. regionally active hail insurer, nationally active health insurer, internationally active reinsurer);

- the location of the job.

43 If the member of the administrative or supervisory body has been resident outside Germany in the past ten years, the relevant country and period of time must be indicated. The CV must also state if the principal residence and the place of professional activity were not in the same country. This information will be relevant for BaFin insofar as it has an impact on the register extracts to be submitted (see I.3.c. (3) and (4) below).

(2) Form “Personal statement including information on fulfilling the fit and proper requirements”

44 BaFin makes the “Personal statement including information on fulfilling the fit and proper requirements” form available on its website for the declarations to be made by persons envisaged as members of administrative or supervisory bodies of undertakings:

- disclosure of criminal convictions and administrative offence proceedings;
- sovereign sanctions;
- proceedings under commercial or property law and proceedings concerning the withdrawal or revocation of a licence to practise as a liberal professional if the proceedings in question could be relevant to determining whether or not the person is of good repute (proper) (e.g. section 35 of the German Trade Regulation Code (Gewerbeordnung – GewO), insolvency proceedings, proceedings regarding the swearing of an affidavit regarding financial circumstances, section 46 of the German Tax Advisory Act (Steuerberatungsgesetz – StBerG), section 20 of the German Act on the Profession of Auditors (Wirtschaftsprüferordnung – WPO) or section 14 of the German Federal Lawyers’ Act (Bundesrechtsanwaltsordnung – BRAO));
- disclosure of relationships;
- disclosure of business relationships;
- disclosure of qualifying holdings within the meaning of section 7 no. 3 of the VAG;
- overview of further mandates.

45 The form must be dated and then submitted both together with the notification of appointment and, in updated form, in the event of any changes occurring at a later date. Signing it with an electronic facsimile (scanned-in signature) is currently sufficient as a basic principle.

46 Pending criminal proceedings may be disregarded in the disclosure

- if they were discontinued due to lack of sufficient suspicion;
- if they were discontinued due to a permanent impediment to proceedings;

2 “Sovereign sanctions” include the cases set out in section 7a of the VAG, which result in the person not being considered of good repute (proper) (sentence 1) or generally result in the person not being considered of good repute (proper) (sentences 2 and 3). Similar matters under other legal systems must also be disclosed, which also includes sovereign sanctions imposed by official bodies outside the European Union.

3 Reference is made to the Guidance notes on communicating with the Insurance Supervision Sector in all other respects. As soon as a standardised electronic submission procedure for notifications and change notifications has been established, notifications and change notifications (each including the documents to be submitted to BaFin by the undertaking) must be submitted via this procedure. BaFin will publish further details on its website in due course.
if they ended with an acquittal;
- if an entry made in the Federal Central Criminal Register (Bundeszentralregister – BZR) regarding them is to be removed or cancelled; or
- if they do not have to be stated in accordance with section 53 of the Federal Central Criminal Register Act (Bundeszentralregistergesetz – BZRG).

47 In contrast, criminal proceedings discontinued in accordance with sections 153 and 153a of the Code of Criminal Procedure (Strafprozessordnung – StPO) and other (provisionally) discontinued criminal proceedings – with the exception of discontinuations in accordance with section 170 (2) of the StPO – must be disclosed, as such proceedings may give rise to indications that the person is not of good repute (proper), particularly in the case of proceedings in connection with infringements that are punishable by law against relevant supervisory law, property or insolvency offences, or tax offences. However, these proceedings do not have to be disclosed if they were concluded with a fine, condition, instruction or other decision more than five years before the beginning of the year in which the notification is submitted.

48 Furthermore, any administrative fines or other administrative proceedings relevant to the Central Trade and Industry Register that were pending at the time of the disclosure may be disregarded

- if they were discontinued due to lack of sufficient suspicion;
- if they were discontinued due to a permanent impediment to proceedings;
- if they ended with an acquittal;
- if they are to be removed from the Central Trade and Industry Register or cancelled in accordance with sections 152 and 153 of the GewO;
- with regard to decisions to withdraw or revoke the licence to practise as a liberal professional if the reason for the withdrawal or revocation ceased to exist more than five years ago; or
- if the person concerned has been exonerated of the accusation in the relevant administrative proceedings.

49 Similar matters under other legal systems with regard to criminal proceedings, administrative fines and other administrative procedures must also be disclosed.

50 The information must be complete and correct. If proceedings are to be indicated, copies of judgements, decisions, notices or other relevant documents must be attached. BaFin reserves the right to obtain further information from the competent authorities if necessary.

51 It is advisable to contact the division responsible at BaFin in the event of any doubt. In order to assess any conflicts of interest, the member of the administrative or supervisory body must also disclose any relationships with the members of senior management and the members of the administrative or supervisory board. In addition, information must be provided on qualifying holdings within the meaning of section 7 no. 3 of the VAG of the member of the administrative or supervisory body and of their relatives within the meaning of section 11 (1) no. 1 of the German Criminal Code (Strafgesetzbuch – StGB) in the undertaking itself and other undertakings that hold shares in the undertaking.
52 Insofar as (i) the member of an administrative or supervisory body, (ii) a relative within the meaning of section 11 (1) no. 1 of the StGB, or (iii) another undertaking managed by the member of the administrative or supervisory body or their relative within the meaning of section 11 (1) no. 1 of the StGB maintains business relationships with the undertaking submitting the notification that could make that undertaking economically dependent on the reporting undertaking, the nature and extent of the relationships must be described.

53 Holding 10% or more of the capital or voting rights in another undertaking or having any other possibility of exercising a significant influence over the management of this other undertaking is equivalent to managing another undertaking (based on section 7 no. 3 of the VAG).

(3) “Certificate of good conduct for submission to an authority”, “European criminal record check for submission to an authority” or “corresponding documents” from abroad

(a) General information on certificates of conduct

54 Depending on their nationality and place of residence, the member of an administrative or supervisory body may need to submit a “Certificate of good conduct for submission to an authority” (document type “O”) issued by the Federal Office of Justice in accordance with section 30 (5) of the BZRG (a certificate of conduct), a “European certificate of good conduct for submission to an authority” in accordance with section 30 (5) and section 30b of the BZRG (a European criminal record check) and/or corresponding certificates of conduct or declarations regarding assessments of reputation conducted by supervisory authorities in their country of residence in consultation with the relevant division at BaFin (“corresponding documents”).

Federal Central Criminal Register (BZR)
The Federal Office of Justice maintains the Federal Central Criminal Register, the details of which are regulated in the BZRG. Criminal convictions, decisions by administrative authorities and courts, notes of incapacities and insanity by German courts and authorities are recorded in this register. The entries are removed under the conditions set out in the BZRG. Anyone can apply for a certificate of good conduct pertaining to themselves, and under certain conditions authorities can also request information.

55 Members of an administrative or supervisory body who have lived in several countries in the past ten years are required to provide certificates of good conduct and corresponding documents from each country. Any legal obstacles to submission must be explained to the relevant department at BaFin.

56 In countries where a certificate of conduct is issued by a public sector entity, it may not be replaced by

---

4 The Federal Office of Justice sends the (European) certificate of conduct directly to BaFin. In contrast, the undertaking must provide BaFin with the relevant documents from abroad – as well as the extract from the Central Trade and Industry Register. The Guidance notes on communicating with the Insurance Supervision Sector apply at present. As soon as a standardised electronic submission procedure for notifications and change notifications has been established, notifications and change notifications (each including the documents to be submitted to BaFin by the undertaking) must be submitted via this procedure. BaFin will publish further details on its website in due course.
other documents.

57 The certificate of good conduct should not be confused with the “enhanced certificate of conduct” (extended criminal records check) in accordance with section 30a of the BZRG.

58 The application for a certificate of conduct and a European criminal record check must be submitted by the member of the administrative or supervisory body themselves, either in person to the local registration office (section 30 (2) sentence 1 of the BZRG) or electronically to the Federal Office of Justice (section 30c of the BZRG). German nationals residing outside the Federal Republic of Germany can submit the application directly to the Federal Office of Justice as the registration authority (section 30 (3) sentence 1 of the BZRG). According to the information on the website of the Federal Office of Justice, the processing time is usually one to two weeks. The application must be submitted to the Federal Office of Justice in good time so that BaFin receives the certificate of good conduct or the European criminal record check in a timely manner, together with the undertaking’s notification.

59 The four-digit BaFin registration number and the name of the undertaking must be entered as the reference to ensure that BaFin can allocate the certificates of good conduct received to the undertaking at which the member of the administrative or supervisory body is to be appointed.

The Federal Office of Justice sends both the certificate of good conduct and the European certificate of good conduct directly to BaFin.

(b) Specific information on certificates of conduct

60 Specifically, the following certificates of conduct and, if applicable, corresponding documents must be submitted:

<table>
<thead>
<tr>
<th>Persons with...</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>German nationality and...</td>
<td>A certificate of good conduct issued by the Federal Office of Justice</td>
</tr>
<tr>
<td>their place of residence in Germany</td>
<td></td>
</tr>
<tr>
<td>their place of residence in a Member State of the European Union or a third country</td>
<td>A certificate of good conduct issued by the Federal Office of Justice and the “corresponding documents” from the country of residence</td>
</tr>
<tr>
<td>the citizenship of another Member State of the European Union and...</td>
<td>A European certificate of good conduct issued by the Federal Office of Justice</td>
</tr>
<tr>
<td>their place of residence in Germany</td>
<td>“Corresponding documents” from the country of residence</td>
</tr>
<tr>
<td>their place of residence in a Member State of the European Union or a third country</td>
<td></td>
</tr>
<tr>
<td>the citizenship of a third country and...</td>
<td>A European certificate of good conduct issued by the Federal Office of Justice</td>
</tr>
<tr>
<td>their place of residence in Germany</td>
<td></td>
</tr>
</tbody>
</table>

European certificate of good conduct

Since 27 April 2012, it has been possible to apply for a European certificate of good conduct after the German legislator applied section 30b of the BZRG (which was last amended by Article 1 of the Act of 4 December 2022 (Federal Law Gazette I p. 2146)) to implement the provisions of Council Framework Decision 2009/315/JHA of 26 February 2009, on the method and content of the exchange of information extracted from the criminal records of different Member States (OJ L 93 from 7 April 2009, p. 23).

The Federal Office of Justice has published explanatory notes on the European certificate of good conduct on its website.
61 An extract from the Central Trade and Industry Register in accordance with section 150 of the GewO must also be submitted to BaFin.\(^5\)

62 The application for an extract from the Central Trade and Industry Register must be submitted by the person themselves, either in person to the competent local authority—usually the registration office or Trade Supervisory Office (Gewerbeaufsichtsamt)—(sections 150 (2) and 155 (2) of the GewO) or electronically to the Federal Office of Justice (section 150e of the GewO). Persons residing outside the Federal Republic of Germany can submit the application directly to the Federal Office of Justice in its capacity as the registration authority (section 150 (3) of the GewO). It is important to ensure that a natural person applies for the register extract.

63 The following instructions on completion of the official form GZR 3 of the Second General Administrative Regulation on Fulfilment of Section XI—Central Trade and Industry Register—of the GewO (2nd GZRVwV—instructions for completion—) of 29 July 1985 must be complied with:

- Code “1” must be entered in field 01, “Document type”.
- Both boxes in field 20 are to be left blank.

64 The four-digit BaFin registration number and the name of the undertaking must be entered as the reference to ensure that BaFin can allocate any extracts from the Central Trade and Industry Register that it might receive separately to the undertaking at which the member of the administrative or supervisory body was appointed.

65 In accordance with the provisions of the GewO, the Federal Office of Justice sends the extract from the Central Trade and Industry Register to the applicant rather than directly to BaFin. As soon as it has been received, an extract must be submitted to BaFin together with the other documents to be enclosed with the notification of appointment. However, a later submission is also possible.

---

\(^5\) The Federal Office of Justice sends the (European) certificate of conduct directly to BaFin. In contrast, the undertaking must provide BaFin with the relevant documents from abroad—as well as the extract from the Central Trade and Industry Register. The Guidance notes on communicating with the Insurance Supervision Sector apply at present. As soon as a standardised electronic submission procedure for notifications and change notifications has been established, notifications and change notifications (each including the documents to be submitted to BaFin by the undertaking) must be submitted via this procedure. BaFin will publish further details on its website in due course.
As a basic principle, BaFin waives the requirements to submit an extract from the (German) Central Trade and Industry Register and provide comparable foreign documents for members of administrative or supervisory bodies who have not yet resided or worked in Germany. BaFin reserves the right to request further documents in individual cases.

Application of the provisions on the Central Trade and Industry Register to undertakings subject to supervision under the VAG

The provisions of sections 149 et seq. of the GewO governing the Central Trade and Industry Register also apply to undertakings subject to supervision under the VAG and to natural persons working for them (see section 6 (1) sentence 3 of the GewO).

The requirement to use the Central Trade and Industry Register for insurance undertakings is also based on the Second General Administrative Regulation on Fulfilment of Section XI – Central Trade and Industry Register – of the GewO (2nd General Administrative Regulation – instructions for completion) of 29 July 1985, which was issued by the then Federal Ministry of Justice in agreement with the then Federal Ministry for Economic Affairs in accordance with section 153b (1) of the GewO (old version; now section 153c sentence 1 of the GewO). The first part, “Notifications”, contains the formal requirements for the entities subject to notification requirements that prepare notifications concerning the Central Trade and Industry Register in accordance with section 153a (1) sentence 1 of the GewO. The forms GZR 1 and GZR 2 (Appendix 1 to the 2nd GZRVwV) contain the field 23 “Trade code”; in accordance with no. 1.26 and no. 3.10 of the 2nd GZRVwV, a four-digit code must be entered here based on Appendix 4 to the 2nd GZRVwV, “List of codes of trades and commercial enterprises”. The following insurance lines are listed in “Part 6: Credit institutions and the insurance industry” under the serial numbers 146–149:

<table>
<thead>
<tr>
<th>Serial no.</th>
<th>Name of the trade</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>146</td>
<td>Life insurance, Pensionskassen and funeral expenses funds</td>
<td>6100</td>
</tr>
<tr>
<td>147</td>
<td>Health insurance</td>
<td>6120</td>
</tr>
<tr>
<td>148</td>
<td>Property and casualty insurance</td>
<td>6140</td>
</tr>
<tr>
<td>149</td>
<td>Reinsurance</td>
<td>6160</td>
</tr>
<tr>
<td>150</td>
<td>Brokering of insurance policies</td>
<td>6190</td>
</tr>
</tbody>
</table>

(5) Where applicable, Proof of further training

If the professional qualifications (fit) of a member of an administrative or supervisory body were (also) obtained by completing further training courses, then corresponding proof (photocopies will suffice as a basic principle) of successful participation in the further training must be enclosed with the notification of appointment. The proof must indicate the organiser, the content and the duration of the training course(s). The requirement to submit evidence only relates to further training that is relevant for the assessment of the existence of the professional qualification required in accordance with section 24 (1) of the VAG.

Further training and development:

BaFin makes a linguistic distinction between further training and development. Further training is considered to be training courses, training programmes, seminars etc. that were successfully attended before taking up office for the purpose of acquiring or strengthening professional qualifications. Development, on the other hand, is defined as training, courses, seminars, etc. that are completed after taking up office in order to maintain or strengthen professional qualifications.

4. Notification requirement upon resignation
The undertaking is required to communicate the resignation of a member of an administrative or supervisory body without delay, giving the reasons in each case insofar as these are relevant to an assessment of the person’s suitability (section 24 (1) of the VAG).

Rather than being submitted together with a notification of appointment, the notification of resignation must be sent separately so that the two processes can be kept clearly separate for data protection purposes.

5. Overview of the composition of the administrative or supervisory body

BaFin must be provided with an up-to-date overview of the composition of the governing body. Changes to the chairmanship of the supervisory board must be reported.

II. Requirements made of members of administrative and supervisory bodies

The members of administrative or supervisory bodies must be reliable and professionally qualified to fulfil the control function and to assess and monitor the business conducted by the undertaking. Professional qualifications (fit) must be up to date.

In the case of small insurance undertakings, pension provision and funeral expenses funds, only the relevant provisions of the VAG apply. With regard to the requirements made of the members of administrative and supervisory bodies, particular attention is paid to the business model, including the nature, scale and complexity of the risks facing the undertaking in question based on the provisions of the VAG (section 296 (1) sentence 1 of the VAG). In the case of Pensionskassen and Pensionsfonds, the specific characteristics of pension provision funds are taken into account (section 296 (1) sentence 2, also in conjunction with section 237 (1) sentence 1 of the VAG). The provisions of the Commission Delegated Regulation (EU) and the EIOPA guidelines are not to be applied to these undertakings.

The principle of proportionality plays a major role, in particular when implementing the requirements for professional qualifications ("fit"). The principle of proportionality is associated with the individual characteristics of the criteria specified in section 296 (1) sentence 1 or sentence 2 of the VAG for the respective undertaking.

As it thus depends on the undertaking-specific characteristics of the criteria specified in section 296 (1) sentence 1 or sentence 2 of the VAG, a case-by-case assessment is always required. However, an assessment of which form may be regarded as proportionate is not set in stone, including with regard to the individual undertaking. Rather than being done once only, the assessment must be carried out whenever a notification of appointment is received on the basis of the current characteristics of the criteria of the respective undertaking specified in section 296 (1) sentence 1 or sentence 2 of the VAG. In this respect, the undertakings have to examine whether and how the available structures and processes must be further
Proportionality has nothing to do with whether or not the applicable requirements need to be complied with. It only affects the manner in which the requirements can be fulfilled. While less stringent requirements are possible for undertakings with a lower level of the criteria specified in section 296 (1) sentence 1 or sentence 2 of the VAG, undertakings with a higher level of these criteria may only be able to classify more complex structures as proportional under certain circumstances.

The requirements that the person be of good repute ("proper") reflect the same standards, as their reputation and integrity must always be ensured to the same degree regardless of the individual characteristics of the criteria specified in section 296 (1) sentence 1 or sentence 2 of the VAG.

For deputies – insofar as they are authorised by law, as is the case for smaller associations within the meaning of section 210 of the VAG – all requirements regarding professional qualifications, reliability and the limitation of permissible mandates apply accordingly from the time of their election.

Whether a person is deemed fit and proper when a notification of appointment is made is assessed based on the documents submitted. The criteria required by law must nevertheless be met not only at the time of appointment, but also throughout the exercise of the mandate.

Replacement members, on the other hand, only have to fulfil all the requirements for exercising the mandate when they actually become the successor of the departing member.

1. Professional qualifications ("fit")

Professional qualifications mean that a member of an administration or supervisory body must at all times be professionally capable of appropriately controlling and monitoring the members of the undertaking’s management and actively supporting the development of the undertaking. To this end, the member of an administrative or supervisory body must understand the transactions carried out by the undertaking and be able to assess their risks for the undertaking. The member must be familiar with the key legal regulations for the undertaking. In order to be able to fulfil the supervisory function effectively, the member should have or acquire basic underwriting knowledge of risk management. A member of an administrative or supervisory body does not need to have expert knowledge, but must be able to recognise the need to obtain advice if necessary. In the case of Solvency II insurance undertakings that use a (partial) internal model, the administrative or supervisory body must have an overall understanding of the (partial) internal model that fulfils the requirements of Article 225(1) of the Commission Delegated Regulation (EU).

Having the professional qualifications and being “fit” encompasses continuing development, meaning that members of the administrative or supervisory body are able to fulfil changing or increasing requirements made of their duties at their undertaking. As a bare minimum, the undertakings are required to reassess the suitability of the relevant persons on the occasions specified in no. 13 of the EIOPA guidelines.

Art. 273 (3) of the Commission Delegated Regulation (EU) requires the duties assigned to the individual members of an administrative or supervisory body to be taken into account. At the same time, it must be borne in mind that each individual member of an administrative or supervisory body has to have sufficient theoretical and practical knowledge of all lines of business in order to ensure corresponding control. The
knowledge and experience of other members of governing bodies or other employees are no substitute for appropriate professional qualifications (fit) held by the member of the administrative or supervisory body in question.

According to Article 273(2) of the Commission Delegated Regulation (EU), “professional and formal qualifications, knowledge and relevant experience in the insurance sector, other financial sectors and other undertakings” must be taken into account. Where relevant, the areas of insurance, finance, accounting, actuarial science and management must be taken into account. A (previous) activity in other sectors, in public administration or due to political mandates can therefore justify the professional qualifications if it was or is significantly focussed on economic and legal issues over a longer period of time and was or is not of a completely subordinate nature.

In the case of merchants within the meaning of sections 1 et seq. of the German Commercial Code (Handelsgesetzbuch – HGB) and farmers and foresters who are required to keep accounts, as well as other entrepreneurs within the meaning of section 141 of the German Fiscal Code (Abgabenordnung), general economic expertise is regularly assumed. Depending on the size and business model of the undertaking, these persons may have the necessary professional qualifications (“fit”).

The following special features should be noted:

a. **Representative in a co-determined administrative or supervisory body**

In the case of co-determined administrative or supervisory bodies, employees of the respective group of undertakings who are directly involved in the economic and legal processes of the day-to-day business of the supervised undertaking are generally assumed to be professionally qualified. This also applies to members of the works council or staff council who are released from duties to serve on the administrative or supervisory bodies and to employee representatives at trade unions, provided they are familiar with similar processes due to their (previous) activities.

b. **Institutions for Occupational Retirement Provision (IORPs)**

Irrespective of this, section 234a (4) of the VAG stipulates that the supervisory authority, when examining professional qualifications, must take into account the special characteristics of institutions for occupational retirement provision with regard to the composition of the supervisory body by representatives of the employers and employees of the sponsoring undertakings.

c. **“Natural” members**

In the case of chief administrative officers of a local authority (e.g. full-time mayor or district administrator), professional qualifications are regularly assumed if they have carried out activities over a longer period of time and to a not insignificant extent before or since taking office that were primarily focussed on economic and legal issues and were not of a completely subordinate nature. The same applies for the treasurer of a local authority and employees in a comparable function.

d. **Further training**

As a rule, the necessary professional qualifications for work in an administrative or supervisory body can also be acquired through further training. The training must be in relation to the respective individual case and the criteria to be applied, and must cover the basic economic and legal processes of the day-to-day business of comparable undertakings, risk management and the function and responsibility of the members of the administrative or supervisory body, as well as the differences between supervision and management. It should cover the main features of supervisory law, accounting and auditing. For clarification purposes: Basic principles are not synonymous with the more stringent expertise requirement in section...
100 (5) of the Stock Corporation Act (Aktiengesetz – AktG).

90 Whether a training course provides the required knowledge can only be decided on a case-by-case basis. Therefore, the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) cannot certify training programmes in the sense that participation in a particular training course is sufficient in every case.

91 In principle, the training should have been attended prior to the notification of appointment as a member of the administrative or supervisory body, but in individual cases it can also take place shortly after taking up office.

92 Proof of attendance of completed training courses must be submitted together with the notification of appointment. Proof of attendance must name the organiser, the content and the duration of the further training. If training courses are not held until shortly after taking up office, the notification of appointment must state the organiser, the content and the duration of the planned training courses and proof of attendance must be submitted once the training has been completed.

### e. Further training and development

93 Members of administrative or supervisory bodies must ensure that they always make their decisions on the basis of up-to-date information. They are therefore required to continuously familiarise themselves with changes in the undertaking’s environment, such as new legislation or developments in the area of financial products, both within the undertaking and on the market. To this end, they should take the appropriate measures to undergo further training to the extent necessary. Based on the self-assessment of board members (see section III.), specific training needs can be identified in certain subject areas.

### 2. Reliability

94 Members of administrative or supervisory bodies must be of good repute (proper). It is not necessary to furnish positive proof that the person is of good repute (proper). This means that the person is considered to be of good repute if no facts are evident that would justify considering them not of good repute.

95 A person is to be deemed not of good repute or not reliable if personal circumstances based on general life experience justify the assumption that these circumstances may make it harder for them to perform their mandate as a member of the administrative or supervisory body diligently and properly. This must take into account the member of administrative or supervisory body’s personal behaviour and business conduct in financial terms and under criminal, property and supervisory law. Criminal or administrative offences – especially those in connection with activities at undertakings – are of particular relevance within both the German and foreign legal systems.

96 Not being of good repute (proper) does not assume the person is at fault.

97 If relevant circumstances arise or have arisen, BaFin will determine on a case-by-case basis whether the member of the administrative or supervisory body is not or no longer to be deemed of good repute (proper) with regard to the performance of their duties.

98 Criteria for not being of good repute (proper) include:

- Supervisory measures that BaFin is taking or has taken against the member or an undertaking in which the person serves or has served as a member of senior management or member of an administrative or supervisory body
- Property- or tax-related criminal or administrative offences, money laundering offences or serious crime
• Conflicts of interest

3. Conflicts of interest

There are conflicts of interest when personal circumstances or the own economic activity are capable of interfering with the independence of the member of the administrative or supervisory board as regards their control and monitoring function. Permanent conflicts of interest prevent a person from exercising their mandate.

A conflict of interest can arise when a member of the administrative or supervisory body is related to one or more of the following persons at the undertaking submitting the notification or at its parent company or subsidiary:

• a member of senior management
• other members of the administrative or supervisory body
• persons responsible for key functions

Whether a relationship prevents the person from exercising their mandate must be determined on a case-by-case basis.

BaFin considers it incompatible in principle for an employee of an undertaking to be a member of the administrative or supervisory body of that same undertaking, unless this is required by law, e.g. by co-determination acts, or the employee is a member of the works council or staff council.

A conflict of interest can exist in particular if (i) the member, (ii) a relative (section 11 (1) no. 1 of the StGB) of the member, or (iii) another undertaking managed by the member or their relative(s) maintains business relationships with the undertaking submitting the notification that could make that undertaking economically dependent on the reporting undertaking. Holding 10% or more of the capital or voting rights in another undertaking or having any other possibility of exercising a significant influence over the management of this other undertaking is equivalent to managing another undertaking (based on section 7 no. 3 of the VAG).

Conflicts of interest affecting the member of an administrative or supervisory body, especially any connected with their own economic activity (e.g. if they are also working as a broker) may be relevant to assessing whether they are of good repute (proper).

Members of administrative or supervisory bodies are expected to act early in disclosing potential conflicts of interest to the chair of the administrative or supervisory body as a bare minimum. The administrative or supervisory body is required to record in an appropriate manner the conflicts of interest affecting the member and how these conflicts are to be handled.

Reference is also made in particular to the three MaGo circulars that contain additional guidance notes on conflicts of interest affecting members of administrative or supervisory bodies within their respective scopes.

4. Availability in terms of time

A member of an administrative or supervisory body must devote sufficient time to the fulfilment of their duties. On the one hand, this means that the member must generally be able to dedicate sufficient time to the individual mandate, taking into account their professional and social obligations, and on the other hand that they actually do spend the requisite time on them. As a basic principle, each individual member
of has a responsibility to only accept a mandate if they will be able to devote the necessary time to it. The requirement to have sufficient time available applies irrespective of any restrictions on mandates for members of an administrative or supervisory body. This means that a member may be prevented from taking on an additional mandate on time grounds even if they have not reached the maximum number of mandates permitted under the VAG. Any mandates that are not considered within the scope of the restrictions on mandates must also be included in an assessment of whether sufficient time is available.

5. Mandate limitations

108 Members of administrative or supervisory bodies must devote sufficient time to performing their work. If a member is responsible for too many management and supervisory mandates at the same time, this would prevent the member from devoting sufficient time to the individual mandate. The VAG therefore limits the number of permissible mandates.

109 The mandate limits of the VAG do not replace the mandate limits resulting from other laws, e.g. the German Stock Corporation Act and the German Banking Act. These must be observed in parallel by both the reporting undertaking and the member themselves.

110 In order to prevent conflicts of interest, the law continues to exclude certain constellations of mandates.

a. Maximum number of control mandates

111 A member of an administrative or supervisory body may - with the exceptions set out below - hold a maximum of five mandates in administrative or supervisory bodies of undertakings under the supervision of BaFin at the same time.

Legal basis:
section 24 (4) sentence 1 of the VAG

b. Privilege

112 Mandates with undertakings of the same insurance or corporate group are notionally counted as one mandate and not with the respective actual number of mandates towards the maximum number (privileged treatment pursuant to section 24 (4) sentence 2 half-sentence 2 of the VAG).

Legal basis:
section 24 (4) sentence 2 of the VAG

c. Former members of senior management in an administrative or supervisory body

113 In order to avoid any excessive influence of former members of the management on the current management body, only two former members of the management may be members of an administrative or supervisory body. The VAG does not permit any additional appointments of former members of the management to the administrative or supervisory body. It is irrelevant how long the members have been out of management; on the other hand, the VAG does not require a waiting period for a change from management to the administrative or supervisory body.

Legal basis:
section 24 (4) sentence 1 of the VAG

d. No interactions

114 The privileged treatment under section 25d (3) sentence 3 of the KWG does not apply to appointments to the administrative or supervisory body of an undertaking that is subject to the provisions of the VAG. Only the relevant statutory privilege can be claimed for each appointment. Even if a corporate group or group of undertakings contains some undertakings subject to the provisions of the VAG and others subject to the provisions of the KWG, the maximum number of supervisory mandates is always assessed separately in accordance with the VAG and the KWG.
e. “Old mandates”

Old mandates already existing at the time of the entry into force of the statutory provision of section 7a (4) sentence 4 of the VAG old version, which was introduced into the VAG by the Act for the Strengthening of the Financial Markets and Insurance Supervision (Gesetz zur Stärkung der Finanzmarkt- und der Versicherungsaufsicht – FMVASTärkG) of 29 July 2009 and which exceed the maximum number pursuant to section 24 (4) sentence 2 of the VAG, do not have to be reduced and may also be extended by reappointment. However, no further mandates may be accepted. This also applies in the event that the new mandate could be counted as one with an existing mandate that falls under the old mandate protection.

6. Supervisory measures

Violations of the regulations and orders specified in section 303 of the VAG (in addition to the standards of the VAG and the Delegated Regulation (EU), these also include, e.g., those for the prevention and combating of money laundering and terrorist financing) can – in addition to other supervisory measures – lead to warnings, dismissal requests and activity bans under the conditions specified there.

7. Special attention to the requirements of the Money Laundering Act

Certain insurance undertakings are obliged entities within the meaning of the German Money Laundering Act (Geldwäschegesetz – GwG). These include, pursuant to section 2 (1) no. 7 of the GwG, Solvency II insurance undertakings and domestic establishments of such undertakings with their registered office abroad, in each case in accordance with lit. a) to d). These obliged entities must comply with the requirements standardised in the GwG and in sections 52 to 55 of the VAG. BaFin has published the Interpretation and Application Guidance on the German Money Laundering Act as well as a special section for insurance undertakings (Auslegungs- und Anwendungshinweise zum Geldwäschegesetz – Besonderer Teil für Versicherungsunternehmen – AuA BT VU) on its website.

III. Knowledge within the governing body

The board should include an appropriate diversity of qualifications, knowledge and relevant experience, taking into account the specific characteristics of the undertaking, in order to ensure that the undertaking is professionally monitored. This is, of course, in the undertakings' own interests, but BaFin would like to provide additional impetus in this regard and will pay particular attention to this when appointing new members to administrative or supervisory bodies in the future.

In accordance with the individual specifications in section 296 (1) sentence 1 or sentence 2 of the VAG, the composition of the governing body should include knowledge in the most important subject areas – which in the case of insurance undertakings and pension funds include in any case the areas of investment, underwriting, accounting, auditing and, in the case of Solvency II insurance undertakings, the area of (partial) internal modelling (if such a model is used). In the case of insurance holding companies, mixed financial holding companies – depending on whether the company is also regulated as an insurance undertaking – and undertakings within the meaning of section 293 (4) of the VAG, the thematic area of underwriting may be replaced by the thematic area of undertaking valuation or a comparable topic area in terms of content.

1. Self-assessment
The administrative or supervisory body must explain to BaFin how the individual thematic areas of **investment**, **underwriting** (in the case of holding undertakings, undertaking valuation or similar instead, if applicable), **accounting**, **auditing** and, in the case of Solvency II insurance undertakings, the **(partial) internal model (if such a model is used)** are covered in the governing body. To this end, the members of the administrative or supervisory body should enter their strengths in the aforementioned areas in a self-assessment table using the following template. In addition to the five subject areas listed above, the undertakings can add other subject areas that they consider important to the table.

<table>
<thead>
<tr>
<th>Persons</th>
<th>Chairman of the supervisory board</th>
<th>Board member X</th>
<th>Board member Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thematic areas</td>
<td>Investments</td>
<td>Underwriting (or, if applicable, valuation undertakings or similar in the case of holding companies)</td>
<td>Accounting</td>
</tr>
</tbody>
</table>

The table can be supplemented with additional information where appropriate (e.g. with regard to existing committees (see I.5.) or the special requirement under company law pursuant to section 100 (5) of the AktG (see II.1.a.)).

**a. Requirements for self-assessment**

The self-assessment is based on a five-point scale from A (sound knowledge) to E (no or little knowledge).

The self-assessment must be carried out by the members of the administrative or supervisory body on an individual basis and communicated to BaFin. An anonymised or aggregated overview is not sufficient.

**b. Timing/intervals of the self-assessment(s)**

The self-assessment of a newly appointed member of the administrative or supervisory body must be carried out on the occasion of their appointment and submitted to BaFin.

In addition, the self-assessments of all members of the governing body must be prepared once every calendar or financial year and submitted to BaFin. The self-assessment of the governing body can be carried out at regular intervals (at least every twelve months) at a point in the financial or calendar year to be determined by the administrative or supervisory body. However, it can also be carried out on an event-
2. Annual development plan

The self-assessment forms the basis of a development plan to be drawn up by the administrative or supervisory body on an annual basis. In the development plan, all members analyse the status quo and consider the areas in which they want to develop individually and as a governing body. This can be addressed, for example, through targeted seminars, by establishing a committee for a specific topic or organising a workshop.

In view of the particular importance of the administrative or supervisory body, BaFin requests that the self-assessment of the members and the development plan based on it be submitted annually. In this way, BaFin pursues the key objective of ensuring that the administrative or supervisory body is always in a position to respond to increasing and changing demands on its function within the undertaking.

IV. Obligations of administrative or supervisory bodies

The obligations of the administrative or supervisory bodies as a whole and their members individually are set out in the relevant company law regulations, articles of association and – where applicable – rules of procedure. The VAG requires undertakings to have a proper business organisation which guarantees compliance with the legal provisions to be observed by the undertaking and the requirements under supervisory law. The members of senior management are responsible for this. The administrative or supervisory body is responsible for monitoring and supervising the members of the management.

Members of administrative or supervisory bodies must fulfil their duties at all times. In particular, this requires them to monitor the undertaking’s business strategy and risk situation and make judgements about them. This means that, in addition to attending and preparing for meetings, board members must also monitor the undertaking between meetings, particularly in the event of a significant change in the risk situation.

The members of the administrative or supervisory bodies must meet the requirements of each individual activity and perform the function in person. This requires both a sufficient time commitment as well as active utilisation of the right to information by the administrative or supervisory body vis-à-vis senior management on an event-driven basis. The members of administrative or supervisory bodies must exercise their monitoring and control function carefully in order to detect and eliminate any significant breaches of the principles of proper management by members of management.

In order to be able to pass appropriate resolutions, the members of administrative or supervisory bodies must prepare for a meeting in advance with the help of meeting documents. This preparation requires both an appropriate framework in terms of time and location as well as suitable documents in terms of content and quantity. In this respect, the members of administrative or supervisory bodies require the support of the undertaking they supervise. Documents should only be distributed at the meeting itself in exceptional and duly justified cases. The preparation and editing of meeting documents solely by employees of the mandate holder is not sufficient.
V. Written internal policy

132 Undertakings - apart from small insurance undertakings, pension provision funds and funeral expenses funds - must have written internal guidelines in place that set out responsibilities and the procedures for assessing the professional qualifications (fit) and good repute (proper) of the members of their administrative or supervisory bodies. Among other things, these must record which documents the undertaking uses to ensure that the requirements specified here are complied with.

133 The written internal guidelines must be regularly reviewed and, if necessary, adapted to current developments in the undertaking.

134 Reference is also made to Guideline 13 of the EIOPA Guidelines on the governance system.

Legal basis: section 23 (3) of the VAG