

Pursuant to Article 9 and 25 of the Law on the Banking Agency of the Federation of Bosnia and Herzegovina ("Official Gazette of the FBiH", No. 9/96, 27/98, 20/00, 45/00, 58/02, 13/03, 19/03, 47/06, 59/06, 48/08, 34/12 and 77/12), Article 32, paragraph (3) and Article 38, paragraph (3) of the Law on Factoring ("Official Gazette of the Federation of BiH", No. 14/16) and Article 18 of the Statute of the Banking Agency of the Federation of BiH ("Official Gazette of the Federation of BiH", No. 42/04), the Management Board of the Banking Agency of the Federation of Bosnia and Herzegovina, at its 86<sup>th</sup> session held on 30 August 2016, adopted the

## **DECISION**

### **ON MINIMUM STANDARDS FOR THE CRITERIA AND DECISION-MAKING PROCEDURE ON ISSUING APPROVALS FOR ACQUIRING OR INCREASING QUALIFYING SHARES IN FACTORING COMPANIES AND OF FACTORING COMPANIES IN ANOTHER LEGAL ENTITY**

#### **I Introductory Provisions**

##### **Article 1**

(1) This Decision prescribes:

a) documentation submitted to the Banking Agency of the Federation of BiH (hereinafter: the Agency) together with the request for the issuance of an approval for acquiring a qualifying share and criteria on the basis of which the fitness and propriety and financial status of the intended acquisition of the qualifying share are assessed, as well as the decision-making procedure on the approval for acquiring a qualifying share in factoring companies,

b) documentation submitted to the Agency together with the request for the issuance of an approval for acquiring a qualifying share and criteria on the basis of which the fitness and propriety and financial status of the legal entity in which the factoring company is acquiring or increasing the qualifying share are assessed.

(2) The request for the issuance of an approval for acquiring or increasing a qualifying share shall contain adequate documentation prescribed by this Decision.

(3) The provisions of this Decision shall also be applied when acting upon the request for increasing a qualifying share in a factoring company or in another legal entity.

(4) For the purpose of the provisions of this Decision, certain terms shall have the meaning prescribed in Article 2 of the Law on Factoring (hereinafter: the Law).

(5) The provisions of the Law apply to matters related to the implementation of this Decision, which have not been regulated by this Decision.

#### **II Documentation to be submitted together with the request for the issuance of an approval for acquiring a qualifying share in a factoring company**

##### **Article 2**

(1) A legal entity as an intended acquirer of a 10%, 20%, 30% or 50% share in capital or in voting rights in a factoring company, shall submit the following in the request for the acquisition of a qualifying share in a factoring company:

a) data on the amount of the share which intends to be acquired,

- b) an excerpt from the Court Register or another corresponding register, and an excerpt from another corresponding register for a foreign legal entity (no older than three months),
- c) a list of the owners of the shares/stakes of the applicants, with stated identification data, the nominal amount and percentage of ownership, and an indication of how they are related to the applicant.
- d) a list of entities that are, for the purpose of the Law, related to the intended acquirer, and a description of the relation,
- e) financial statements for the last three business years, if the company was established within the last three years, and if the aforementioned financial statements are subject to audits, the audited financial statements shall be submitted,
- f) if more than 9 months have passed since the last financial statement, the financial statements for the current year shall be submitted,
- g) proof of funds secured for the acquisition of a qualifying share and a description of the manner, i.e. source of funding,
- h) a statement that no bankruptcy or liquidation proceedings have been initiated or opened against the intended acquirer,
- i) a certificate of no criminal record, i.e. proof from the records of the competent bodies on whether the applicant has been punished, sanctioned or convicted for misdemeanour, within a period of 5 years from the day of the judgment's validity, excluding the time of serving a prison sentence, as well as proof that no criminal proceedings or misdemeanour proceedings are currently being conducted against them (proof shall be no older than three months),
- j) when applicable, an opinion or approval of the competent body from other countries regarding the intended acquisition,
- k) a statement on debts with banks, their amounts and the current amount of the debt, as well as a statement on the total debts with banks and other entities,
- l) other documentation as requested by the Agency.

(2) A natural person as an intended acquirer of a 10%, 20%, 30% or 50% share in capital or in voting rights in a factoring company, shall submit the following in the request for the acquisition of a qualifying share in a factoring company:

- a) data on the amount of the share which intends to be acquired,
- b) a photocopy of the ID card or passport for non-residents,
- c) a CV of the intended acquirer, including personal information (full name, address of residence, temporary residence and other identification information of the acquirer), a list of the legal entities in which the intended acquirer was employed or is still employed, a management board or supervisory board member, a procurator, and in which the intended acquirer had or still has a qualifying share,
- d) a certificate of no criminal record, i.e. proof from the records of the competent bodies on whether the applicant has been punished, sanctioned or convicted for misdemeanour, within a period of 5 years from the day of the judgment's validity, excluding the time of serving a prison sentence, as well

as proof that no criminal proceedings or misdemeanour proceedings are currently being conducted against them (proof shall be no older than three months),

e) a list of entities that are, for the purpose of the Law, related to the intended acquirer, and a description of the relation,

f) proof of funds secured for the acquisition of a qualifying share and a description of the manner, i.e. source of funding,

g) a statement on debts with banks, their amounts and the current amount of the debt, as well as a statement on the total debts with banks and other entities,

h) other documents as requested by the Agency.

(3) The documentation referred to in paragraph (1) and (2) of this Article shall be submitted in the form of originals or certified copies. If the applicant submits a document in a foreign language, they shall also provide a certified translation into one of the official languages in the Federation of BiH.

(4) If the data referred to in paragraph (1), item i) and paragraph (2), item d) of this Article cannot be obtained according to the legislation of a foreign country, a statement of the legal entity or natural person to which the data refers, no older than one month, shall be submitted.

(5) When acquiring a qualifying share which enables a prevailing influence or control over the business operations of a factoring company, the intended acquirer shall, upon the Agency request, submit the following together with the documentation referred to in paragraph (1) and (2) of this Article:

a) a business plan and strategy of the factoring company in which they are acquiring a qualifying share, with projections of income statements for the first three business years,

b) changes in the management, organisational and staff structure, if planned,

c) a plan of activities in the area of information technology, if changes are planned.

### **Article 3**

If the intended acquirer is a parent company, i.e. a senior person in the group, the intended acquirer shall submit the documentation referred to in Article 2, paragraph (1), item e) and f) of this Decision, prepared on a consolidated basis

### **Article 4**

In order to acquire a qualifying share in another legal entity, a factoring company, as an intended acquirer, shall submit, together with the request, the documentation referred to in Article 2, paragraph (1) and Article 3 of this Decision, which appropriately relates to the legal entity in which the qualifying share is being acquired.

### **Article 5**

Pursuant to Article 36 of the Law, in addition to the documentation referred to in Articles 2, 3 and 4 of this Decision, the Agency may request, during the request processing procedure, other documentation that it deems necessary for deciding on the issuance of the approval, including information which are prescribed by the law regulating anti-money laundering and counter-terrorism financing, and which are obtained by the entities bound by that law.

**III Criteria on the basis of which the fitness and propriety and financial status of the acquirer of a qualifying share in a factoring company or a legal entity in which the factoring company is acquiring a qualifying share.**

**Article 6**

When deciding on the issuance of an approval for acquiring a qualifying share in a factoring company, the Agency evaluates the fitness and propriety and financial status of the intended acquirer of the qualifying share in accordance with the following criteria:

- a) the reputation of the intended acquirer,
- b) the reputation, experience and adequate capabilities of the person who will manage the business operations of the factoring company after the acquisition, in the event that such changes occur,
- c) the financial status of the intended acquirer,
- d) the assessment of the abilities of the factoring company to comply with or continue to comply with the provisions of the Law and other laws and regulations applicable to the factoring company's business operations,
- e) the existence of justified reasons for suspicion in accordance with the regulations on anti-money laundering and counter-terrorism financing, that the acquisition of the qualifying share would lead to engagement or attempted engagement in money laundering or terrorism financing, or that the acquisition of the qualifying share could increase the risk of money laundering or terrorism financing.

**Article 7**

(1) The Agency shall assess the reputation of the intended acquirer (legal entity) based on the documentation referred to in Article 2, paragraph (1), item d), h), and i), and based on the documentation referred to in Article 2, paragraph (2) item d), e) and f) of this Decision for a natural person.

(2) When assessing the requirements referred to in Article 2, paragraph (1), item i) and paragraph (2), item e), the Agency shall also consider all available information regarding the type of judgment, the stage of the current proceedings and the legal remedies administered, imposed sanctions, existing aggravating and mitigating circumstances of the case, the significance of the offence, the period that has passed since the offence and the behaviour of the entity during that period. Furthermore, the Agency shall also take into account the number of minor offences which individually do not undermine, but together may undermine the entity's good reputation. The Agency shall consider information on all relevant previous injunctions, convictions and proceedings in relation to the legal entity or natural person as an acquirer, conducted or currently being conducted by the Agency or some other competent body.

(3) When assessing the reputation of the intended acquirer (natural person), the Agency shall analyse information indicating unfair behaviour in previous professional work, and particularly non-transparent conduct and non-cooperation with competent bodies, the denial or revocation of licences for holding managerial positions or performing professional occupations or activities, and, if feasible, the Agency shall analyse the reasons for the termination of an employment contract, dismissals from key or similar functions and prohibitions to perform activities or represent legal entities, which were imposed by the competent body.

(4) The financial status of the intended acquirer (legal entity) shall be assessed based on the documentation referred to in Article 2, paragraph (1), item c) d), e), f), g) and h), and based on the documentation referred to in Article 2, paragraph (2), item c), f), and g) of this Decision for a natural person.

(5) When assessing the requirements referred to in Article 6, item c) of this Decision, the Agency shall take into consideration the financial stability of the intended acquirer by analysing the following:

- a) whether the assets jeopardise the settlement of the acquirer's future liabilities,
- b) whether the entity is on the list of defaulting debtors (e.g. a list of tax debtors of the Tax Administration of the FBiH, loan registers, etc., and adequate records for foreign nationals),
- c) whether enforcement or bankruptcy proceedings have been initiated against the entity's assets,
- d) large investments or exposures, and granted loans and credit lines,
- e) other information leading to suspicion regarding the financial stability of the intended acquirer.

(6) In relation to the criterion on the ability of the factoring company to comply with or continue to comply with the provisions of the Law and other laws and regulations applicable to the factoring company's business operations, the Agency shall, based the entire documentation submitted together with the request, analyse whether there are circumstances indicating that the intended acquisition could have a negative influence on the factoring company.

(7) The meeting of the criterion of the intended acquirer's fitness and propriety referred to in Article 6, item e) of this Decision, shall be assessed by applying the law and other regulations governing anti-money laundering and counter-terrorism financing.

(8) The provisions of Article 6 and 7 of this Decision shall also be applied in an appropriate manner in the event of a request by a factoring company for the acquisition of a qualifying share in another entity when assessing the legal entity in which the factoring company is acquiring the qualifying share.

#### **IV Transitional and final provisions**

##### **Article 8**

This decision shall enter into force on the eighth day following its publication in the "Official Gazette of the Federation of BiH".

**Number: U.O.-86-5/16**

**Sarajevo, 30 August 2016**

**Chairwoman of the Management Board**

**Rajka Topčić, BSc in Economics, m.p.**