

Annex to Handbook

**FSMA\_2024\_06-03 of 22/03/2024**

Explanatory document concerning the professional integrity of an applicant for a mandate in an operational body or for a key function at an Institution for Occupational Retirement Provision (IORP)

Scope:

Institutions for Occupational Retirement Provision

Section 4 (‘You have professional integrity’) of the questionnaires for the initial appointment of a member of an operational body or of a key function holder contains a number of statements. For each statement you have not been able to confirm is (entirely) true, you need to provide explanations. Use the present form for this purpose.

The questions in section 4 of the aforementioned questionnaires can be divided into the following categories:

1. Financial supervision
2. Amicable settlement
3. Criminal law
4. Tax law
5. Administrative and disciplinary law
6. Occupational activity
7. Personal debts
8. Asset organisation
9. Bankruptcy and judicial reorganization

The explanations requested are subdivided into these categories. Where relevant, please state whether the requested explanation applies to:

* **you personally**;
* the **legal entity applicant** mentioned under subsection 2.2.2.1 of the questionnaires;
* the **legal entity** **permanent representative** of the legal entity applicant mentioned under subsection 2.2.2.2 of the questionnaire “Initial appointment of a key function”; or
* a **company or institution** with which you or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 of the questionnaire “Initial appointment of a key function” or “Initial appointment of a member of an operational body” has/have links[[1]](#footnote-1).

Make as many copies of the tables as necessary.

|  |  |
| --- | --- |
|  | **Please note :** some explanations require a copy of the relevant **judgment or ruling to be attached**. This is marked in **red**. |

# Financial supervision

## Explanation for statement 4.1.1 – Another pending application in the financial sector

are you, in parallel with your application to the IORP, currently an applicant for a regulated function in the financial sector at a company that is not under the FSMA’s supervision? If so, please fill in the following table. Make copies of the table, if necessary, for each function.

|  |  |
| --- | --- |
| **I**  **The legal entity applicant** *(mentioned under subsection 2.2.2.1. of the questionnaire)*  **The legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*    **am/is currently also applying for the position of** | non-executive director  executive director  member of the Supervisory Board  member of the Management Committee  person who effectively runs the company  compliance officer or holder of the compliance function  holder of the risk management function  holder of the internal audit function  holder of the actuarial funtion  another regulated function:  …………………………………………………… |
| **At** *(details of the company)* |  |
| **Financial supervisory authority concerned** |  |
| **Country** |  |
| **Results** | *I will inform the FSMA of the results of the analysis conducted by the financial supervisory authority as soon as they are available* |
| **Comments** |  |

## Explanation for statements 4.1.2, 4.1.3, and 4.1.4 – Evaluations conducted previously by supervisory authorities in the financial sector

Have you ever applied for another function leading to your professional integrity and/or your expertise being evaluated by a supervisory authority in the financial sector other than the FSMA? Or have you ever withdrawn an application for a regulated function in the financial sector at a company that is not supervised by the FSMA or prematurely left such a function? If so, please fill in the following table. Make copies of the table, if necessary, for each function.

|  |  |
| --- | --- |
| **My professional integrity and/or expertise**  **The professional integrity and/or expertise of the legal entity applicant** *(mentioned under subsection 2.2.2.1. of the questionnaire)*  **The professional integrity and/or expertise of the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*  **was/were evaluated in the past when I/it applied for the function of** | non-executive director  executive director  member of the Supervisory Board  member of the Management Committee  person who effectively runs the company  compliance officer or holder of the compliance function  holder of the risk management function  holder of the internal audit function  holder of the actuarial function  another regulated function:  …………………………………………………. |
| **At** *(details of the company)* |  |
| **Financial supervisory authority concerned** |  |
| **Country** |  |
| **Result** | the supervisory authority approved the application  the supervisory authority provided a conditional approval to the application  the supervisory authority rejected the application  I/the legal entity withdrew the application  the company subject to supervision withdrew the application  the supervisory authority considered that I/the legal entity no longer had the requisite professional integrity and/or appropriate expertise  I/the legal entity departed from my/its function prematurely |
| **Date of the decision, withdrawal of the application or early departure** |  |
| **Comments** |  |

## Explanation for statement 4.2.3 – Being refused, suspended or struck off from authorization, registration or listing by a supervisory authority in the financial sector

Have you ever been refused, suspended or struck off from authorization, registration or listing by a supervisory authority in the financial sector other than the FSMA? If so, please fill in the following table.

|  |  |
| --- | --- |
| **This explanation applies to**  **me personally**  **the legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*  **a company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 have/has links: ………………………………………………………………………** | |
| **Nature of the authorization, registration or listing concerned** |  |
| **Supervisory authority concerned** |  |
| **Reason for being refused, suspended or struck off** |  |
| **Date on which you were refused, suspended or struck off** |  |
| **Comments** |  |

# Amicable settlement

## Explanation for statement 4.2.1 – Amicable settlement

Have you ever been party to an amicable settlement intended to put an end to a dispute relating to a potential breach of financial, (para)fiscal, social or labour legislation or relating to an potential criminal offence? If so, please fill in the following table.

|  |  |
| --- | --- |
| **Parties concerned** | me  the legal entity applicant *(mentioned under subsection 2.2.2.1 of the questionnaire)*  the legal entity permanent representative *(mentioned under subsection 2.2.2.2 of the questionnaire)*  a company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 has/have links, i.e.: **………………………………………………………………………** |
|  | Other parties concerned: …………………………………. |
| **The amicable settlement concerned the following actions** |  |
| **Date of the actions** *(period)* |  |
| **Nature of the amicable settlement** | settlement  arbitration  mediation  other:………………………………………….. |
| **Was the amicable settlement fully executed?** | yes  no |
| **Comments** |  |

## Explanation for statement 4.2.2 – Pending negotiations concerning an amicable settlement

Are you involved in negotiations concerning an amicable settlement intended to put an end to a dispute relating to a potential breach of financial, (para)fiscal, social or labour legislation or relating to another potential criminal offence? If so, please fill in the following table.

|  |  |
| --- | --- |
| **Parties concerned** | me  the legal entity applicant *(mentioned under subsection 2.2.2.1 of the questionnaire)*  the legal entity permanent representative *(mentioned under subsection 2.2.2.2 of the questionnaire)*  a company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 has/have links, i.e.: **………………………………………………………………………** |
|  | Other parties concerned: ……………………………………. |
| **The negotiations relate to the following actions** |  |
| **Date of the actions** *(period)* |  |
| **Comments** |  |

# Criminal law

## Explanation for statement 4.2.4 – Closed criminal investigations or proceedings

Have you ever been involved as a suspect in criminal investigations or proceedings that are now closed? If so, please fill in the following table.

**Please attach a copy of the ruling to the present explanatory document.**

|  |  |
| --- | --- |
| **I**  **The legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **The legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*  **A company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 has/have links, i.e.**: **………………………………………………………………………**  **was involved as a suspect in criminal investigations or proceedings** **for the following actions** |  |
| **Date of the actions** *(period)* |  |
| **Type of crime** | financial crime**[[2]](#footnote-2)** *(for example, for having exercised a regulated activity without the necessary authorization)*  corporate or labour crime  (para)fiscal crime  other type of crime *(please explain)*:  …………………………………………………………… |
| **Outcome of the investigations or proceedings** | closure of the case  dismissal  guilty plea  agreed settlement/mediation  discontinuance  acquittal  simple declaration of guilt  suspended sentence  conviction |
| **Date of final ruling** |  |
| **Comments** |  |

## Explanation for statement 4.2.5 – Pending criminal investigations or proceedings

Do you have knowledge of pending investigations or criminal proceedings against you? If so, please fill in the following table.

|  |  |
| --- | --- |
| **There are currently** pending **criminal investigations or proceedings involving**  **me personally**  **the legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*  **a company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 has/have links, i.e.**: **………………………………………………………………………**  **for the following actions** |  |
| **Date of the actions** *(period)* |  |
| **Stage of the investigations or proceedings** |  |
| **Comments** |  |

# Fiscal law

## Explanation for statement 4.2.6 – Fiscal sanctions

Have the tax authorities ever imposed a sanction (such as a fine or a tax increase) on you for a breach committed with the purpose of tax evasion or enabling tax evasion (for example, for deliberately failing to declare a foreign bank account to the Belgian tax authorities)? If so, please fill in the following table.

**Please attach a copy of the decision to the present explanatory document.**

|  |  |
| --- | --- |
| **I**  **The legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **The legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*  **A company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 has/have links, i.e.**: **………………………………………………………………………**  **have/has in the past had a tax sanction imposed for the following actions** |  |
| **Date of the actions** *(period)* |  |
| **Details of the sanction (amount of the fine, for example)** |  |
| **Date of the final decision** |  |
| **Comments** |  |

# Administrative and disciplinary law

## Explanation for statement 4.2.7 – Closed administrative or disciplinary cases

Have you ever been fined or subjected to administrative or disciplinary measures imposed by an authority, a professional body or a supervisory authority in the financial sector other than the FSMA? If so, please fill in the following table.

**Please attach a copy of the decision to the present explanatory document.**

|  |  |
| --- | --- |
| **This explanation applies to**  **me personally**  **the legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*  **a company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 has/have links, i.e.: ………………………………………………………………………** | |
| **The measures concerned the following actions** |  |
| **Date of the actions** *(period)* |  |
| **Authority, supervisory authority or professional body concerned** |  |
| **Outcome of the proceedings** | warning  reprimand  fine  suspension  exclusion  other: |
| **Date of the final decision** |  |
| **Comments** |  |

## Explanation for statement 4.2.8 – Administrative or disciplinary cases in progress

Do you have knowledge of any proceedings against you at the moment that may lead to the imposition of a penalty or of administrative or disciplinary measures by an authority, a professional body or a supervisory authority in the financial sector other than the FSMA? If so, please fill in the following table.

|  |  |
| --- | --- |
| **This explanation applies to**  **me personally**  **the legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*  **a company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 has/have links, i.e.: ………………………………………………………………………** | |
| **The proceeding concernes the following actions** |  |
| **Date of the actions** *(period)* |  |
| **Authority, supervisory authority or professional body concerned** |  |
| **Stage of the proceedings** |  |
| **Comments** |  |

# Occupational activity

## Explanation for statement 4.1.5 – Serious misconduct in the context of an occupational activity as an employee

Have you ever been dismissed for serious misconduct in the context of an occupational activity as an employee? If so, please fill in the following table.

|  |  |
| --- | --- |
| **Employer concerned** (*identification details*) |  |
| **My role with this employer** |  |
| **Date of dismissal** |  |
| **Grounds for dismissal** |  |
| **Comments** |  |

## Explanation for statement 4.1.6 – Serious misconduct in the context of an occupational activity as a self-employed person

## Have you, when exercising an occupational activity as a self-employed person, ever committed serious misconduct that led to the termination of a contract? If so, please fill in the following table.

|  |  |
| --- | --- |
| **This explanation applies to**  **me personally**  **the legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)* | |
| **Contractual party concerned** (*identification details*) |  |
| **Object of the contract concerned** |  |
| **Date of termination** |  |
| **Grounds for termination** |  |
| **Comments** |  |

# Personal debts

## Explanation for statement 4.1.7 – Amicable settlement or legal proceedings

Please fill in the table below if you have ever been party to an amicable settlement or legal proceedings relating to a discharge of your personal debts.

|  |  |
| --- | --- |
| **Parties concerned** |  |
| **Date of the amicable settlement or outcome of the proceedings** |  |
| **Nature of the amicable settlement or outcome of the proceedings** |  |
| **Comments** |  |

## Explanation for statement 4.1.8 – List of defaulters

Please fill in the following table if you are registered on a list of defaulters (such as the Central Individual Credit Register of the National Bank of Belgium).

|  |  |
| --- | --- |
| **This explanation applies to**  **me**  **the legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)* | |
| **I/The legal entity am/is registered on the following list of defaulters** |  |
| **Nature of the debts and counterparty** |  |
| **Date of registration** |  |
| **Comments** |  |

# Asset organisation

## Explanation for statement 4.1.9 – Interests in a trust or foundation

Please fill in the following table if you have interests in—or are the beneficiary of—a trust, a foundation, a trust office foundation (STAK)*[[3]](#footnote-3)* or a similar legal structure.

|  |  |
| --- | --- |
| **This explanation applies to**  **me personally**  **the legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)* | |
| **Type of structure** | trust  foundation  trust office foundation  other: ………………………………………………. |
| **Under which country’s law....** |  |
| **Since when** |  |
| **Comments** |  |

# Bankruptcy and judicial reorganization

## Explanation for statement 4.2.9 – Closed bankruptcies and judicial reorganizations

Please fill in the following table if a company of which you exercise control or in which you are a member of the management body has been declared bankrupt or has been the subject of judicial reorganization.

**Please attach a copy of the ruling to the present explanatory document.**

|  |  |
| --- | --- |
| **This explanation applies to**  **me personally**  **the legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*  **a company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 has/have links, i.e.: ………………………………………………………………………** | |
| **Company concerned** |  |
| **Details on the links to that company** |  |
| **Date of the bankruptcy or judicial reorganization** |  |
| **The bankruptcy** | was excusable/debts were remitted  was not excusable/debts were not remitted |
| **Rehabilitation** | ☐ I was granted rehabilitation  ☐ I was not granted rehabilitation  ☐ Not applicable – *please explain*: ………………………………………………………………….. |
| **Comments** |  |

## Explanation for statement 4.2.10 – Pending bankruptcy proceedings and judicial reorganizations

Please fill in the following table if you have knowledge of any pending bankruptcy or judicial reorganization proceedings against a company of which you exercise/have exercised control or of which you are/have been a member of the governing body.

|  |  |
| --- | --- |
| **This explanation applies to**  **me personally**  **the legal entity applicant** *(mentioned under subsection 2.2.2.1 of the questionnaire)*  **the legal entity permanent representative** *(mentioned under subsection 2.2.2.2 of the questionnaire)*  **a company or institution with which I or the legal entity/entities mentioned under subsection 2.2.2.1 or 2.2.2.2 has/have links, i.e.: ………………………………………………………………………** | |
| **Company concerned** |  |
| **Details on the links to this company** |  |
| **Date of the opening of bankruptcy or judicial reorganization proceedings** |  |
| **Comments** |  |

1. As defined in subsection 4.2 of the questionnaire “Initial appointment”. [↑](#footnote-ref-1)
2. As defined in Article 20 of the Law of 25 April 2014 on the legal status and the supervision of credit institutions and stockbroking firms, or equivalent crimes. [↑](#footnote-ref-2)
3. Under Dutch law. [↑](#footnote-ref-3)