



Eligibility criteria and incompatibilities for administrators of financial investments companies

LEGAL BASIS	CRITERIA
Art. 9 letter c of Government Emergency Ordinance (GEO) no. 32/2012	Asset Management Company (SAI)*, Romanian legal person, may be authorized by CNVM if it cumulatively meets following conditions: training, experience and professional integrity of members of the board of directors (administration) / supervisory board, directors / members of the directorate, of internal audit and personnel of internal control comply with the requirements imposed by CNVM / ASF regulations
Art. 23 par.1 letter c of ASF Regulation no. 9/2014	The members of the board of directors (administration) of SAI shall meet the general conditions provided by Law no. 31/1990, for the exercise of said position, supplemented by the special conditions provided by GEO no. 32/2012;
Art. 5 letter a, and Art 6 par. 1 of ASF Regulation no. 14/2015	meet the requirements of professional competence and experience provided by Regulation ASF no. 14/2015 **
Art. 23 par. 1 letter d, pt. 2 of ASF Regulation no. 9/2014	they are not members of the board of directors (administration)/supervisory board or directors/members of the executive board of another asset management company, investment companies or of a credit institution operating as depositary for one of administrated collective investment undertakings, they are not members of the board of directors (administration)/supervisory board of an investment firm (SSIF) with which SAI concluded a financial intermediation contract and they are not employed by, or have any contractual relationship with, any other asset management company (SAI) or investment company;
Art. 8 par. (2) letter b of ASF Regulation no. 10/2015	not to be members of the board of directors/supervisory board or managers/members of the executive board of another AIFM/investment management company/investment company or credit institution acting as depositary for any of the undertakings for collective investment under management, not to be members of the board of directors/supervisory board of the SSIF with which the AIFM/SAI concluded a financial intermediation contract and not to be employed or have any kind of contractual relationship with another SAI or investment company, except for other entities belonging to the same group;
Art. 6 par. 2 of ASF Regulation no. 14/2015	must be higher education graduates attested by examination or diploma, must meet the general requirements laid down in Company Law No. 31/1990, republished, as subsequently amended and supplemented, and must have relevant experience corresponding to the nature, scale and complexity of the business of the regulated entity and assigned responsibilities;
Art. 5 letter b and Art. 7 par. 1 of ASF Regulation no. 14/2015	comply with the good repute and integrity requirements provided by ASF Regulation no. 14/2015***

Art. 5 letter c and Art. 8 of ASF Regulation no. 14/2015	comply with the requirements laid down in this ASF Regulation no. 14/2015*** referring to governance
Art. 23 par. 2 of ASF Regulation no. 9/2014	The members of the board of directors (administration)/supervisory board, the directors/members of the directorate, auditors and employees of a SAI may not be significant shareholders, may not hold a position in or be employed by another investment management company (SAI) or self-managed investment company. For the members of the board of directors (administration)/supervisory board, the restriction shall not apply if such persons are part of the board of directors (administration)/supervisory board of an entity within the group.
Art. 73 ¹ of Law no. 31/1990 in conjunction with Art. 6 par. 2 of Law no. 31/1990	May not be founders people who, by law, are incapacitated or who have been convicted for fraudulent management, breach of trust, forgery, use of forgery, fraud, embezzlement, perjury, giving or taking bribe, for wrongdoings provided by Law no. 656/2002 on preventing and sanctioning money laundering, and the establishment of measures to prevent and combat terrorism financing, as amended and supplemented, for wrongdoings provided by Art. 143-145 of Law. 85/2006 on insolvency proceedings or those of present Law, as amended and supplemented.
Art. 73 ¹ of Law no. 31/1990	The persons who, pursuant to Art. 6 par. (2) may not be founders may not be administrators, managers, members of the supervisory board and the directorate, auditors and financial auditors, and if elected, are to be disqualified.
Art. 153 ¹⁶ of Law no. 31/1990	A natural person may simultaneously exercise maximum 5 offices of administrator and/or member of the supervisory board in joint-stock companies with a head office on the Romanian territory. This provision shall apply to the same extent to the natural person administrator or member in the supervisory board, as it applies to the natural person who is a permanent representative of a legal person that is an administrator or member of the supervisory board.
Art.14 par. (1) of SIF Banat-Crişana's Articles of Association	The persons elected as members of the Board of Directors must meet the requirements provided by the Law 31/1990 and capital market legislation and must not be members in another Board of Directors, supervisory board or directorate of other investment company or investment management company (SAI), be employed or have any contractual relationship with such entity;
Art.14 par. (2) of SIF Banat-Crişana's Articles of Association	may not hold managing positions in the company: members of the Board of Directors (administrators) of a depositary, of its executive management, holders of 5% or more of the share capital of that depositary, including the persons involved;
Art.14 par. (3) of SIF Banat-Crişana's Articles of Association	may not hold managing positions in the company: members of the Board of Directors (administrators) a financial investment services company, of its executive management, holders of 5% or more of the shares of financial investment services companies including the persons involved.

* Some texts refer to SAI which manage UCITS, but are also applicable to SIFs, as Regulation no. 15/2004 directs to the provisions concerning SAI of the same Regulation. For example, art. 224 of Regulation 15/2004 states: *"The provisions of art. 18 par. (1) and (2) shall apply accordingly to board members and managers a self-administrated non-UCITS."* Art. 18 of Regulation No. 15/2004, article now repealed, regulated the eligibility requirements for the position of administrator of SAI.

But, Regulation no. 9/2014 provides in Art. 237 the following:

"(3) All references to Regulation no. 15/2004, approved by Order no. 67/2004 of the President of the National Securities Commission, regarding the UCITS activity shall be deemed references hereto.

(4) The provisions of Regulation No. 15/2004, approved by Order No. 67/2004 of the President of the National Securities Commission, applicable to non-UCITS and investment management companies (SAIs) managing upon the entry into force hereof such undertakings for collective investment, shall remain in force. If such provisions are applicable by reference to provisions applicable to UCITS, then such references shall be interpreted similarly to the provisions of Par. (3)."

** Art. 6 par. 1 of ASF Regulation no. 14/2015:

(1) In order to assess the professional competence and experience corresponding to the position concerned, the following shall be taken into account:

- a) theoretical knowledge obtained on the basis of studies and vocational training;
- b) seniority and practical experience gained from previous relevant occupations;
- c) extent of competence, responsibilities, related risks and, where relevant, ability to make decisions considering previous functions and the intended function;
- d) managerial skills, considering the number of employees, where applicable;
- e) other relevant aspects.

*** Art. 7 of ASF Regulation no. 14/2015:

(1) Unless there are objective and demonstrable grounds raising reasonable doubts for the last 10 years of activity, it shall be deemed that the assessed person meets the good repute and integrity requirements.

(2) The repute and integrity of the assessed person, set out in Par. (1), are being questioned where there is information, not limited to it, on the existence of any of the following situations:

- a) criminal proceedings or conviction in cases referring to:
 - (i) crimes provided for in the financial and banking legislation, including crimes set out by the legislation on money laundering and terrorist financing;
 - (ii) property crimes or other crimes specific to the economic/financial field;
 - (iii) crimes provided for in the fiscal legislation;
 - (iv) other crimes provided for in the company law, bankruptcy, insolvency legislation and that on consumer protection.
- b) past or ongoing relevant administrative investigations or enquiries, actions for enforcement of the law or imposition of administrative sanctions for breach of the provisions applicable to the activities governed by the financial and banking legislation;
- c) past or ongoing relevant enquiries, actions for enforcement of the law taken by other regulatory or vocational bodies;
- d) professional misconduct raising reasonable doubts regarding that person's ability to exercise his/her job duties, to ensure a sound and prudent management of the regulated entity.

(3) In applying Par. (2) Letter d), the following aspects are relevant:

- a) the assessed person was not transparent, open and cooperative in his/her relations with the regulatory authorities;
- b) the rejection, revocation, withdrawal or termination of a registration, approval, membership or license for an activity or profession, or the exclusion or prohibition from carrying out activities in a field, by a regulator;
- c) the financial and professional results of the entities owned or managed by the person subject to assessment or in which that person held a majority interest, taking into account in particular the reorganization, bankruptcy and involuntary liquidation proceedings and, where appropriate, in what way the person concerned contributed to the situation that led to those proceedings;
- d) the declaration of personal bankruptcy, where appropriate;
- e) any reasonable indications that the assessed person is affiliated to a certain group of interests or the risk of being subjected to influence from outside the entity, which affected the previous professional activity, affects or might affect the correctness, independence or impartiality of decisions.

**** Art. 8 of ASF Regulation no. 14/2015:

The assessment of whether the governance requirement referred to in Art. 5 Letter c) is met refers to:

- a) the existence of a possible conflict of interests, as defined in Art. 2(2) Letter c); (**conflict of interests** - means the situation or circumstances which may occur in the operational or decision-making process, where the direct or indirect personal interest of the personnel and members of the management structure/persons holding key functions within the entity is contrary to such entity's interest, so that it affects or could affect their independence and impartiality in making decisions, professional judgment or the timely and objective fulfilment of their duties, or likely to affect, by nature, the financial market stability or integrity);
- b) any restrictions and incompatibilities between the assessed function and the positions held within the same entity or within other entities, as they are defined in the specific sectoral legislation;
- c) the ability to actually carry out the activity and allocate the time necessary therefor;
- d) the assessed person's ability to fulfil his/her duties independently, and any relevant aspects ensuing from the analysis of the information obtained, referring to:
 - (i) the activities carried out when holding past and current functions within regulated entities or within other entities;
 - (ii) any personal, professional relations or other economic relations with members of the management structure within the same regulated entities, the parent company or from other entities of the group to which the regulated entity belongs;
 - (iii) any personal, professional relations or other economic relations with the shareholders controlling the regulated entity, parent company or other group entities.
- e) the overall composition of the management structure, the collective knowledge and experience necessary for the good functioning of the regulated entity, where applicable.