

Watani France SA
(prospectively National Bank of Kuwait France SA)
90, avenue des Champs Elysées
75008 Paris
FRANCE

(hereinafter the 'Applicant')

Notified via:

Autorité de contrôle prudentiel et de résolution (ACPR)

ECB-SSM-2018-FR-9

14 December 2018

LIC-2018-0042

Decision pursuant to Articles 4(1)(a) and 14 of Council Regulation (EU) No 1024/2013 (the 'SSM Regulation')¹, Article 78(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)² (the 'SSM Framework Regulation'), and Article L.511-10 and following of the Monetary and Financial Code as amended by Order n° 2014-1332 of 6 November 2014³

1. Legal basis of the Decision

In accordance with Directive 2013/36/EU of the European Parliament and of the Council⁴, and in particular Article 8(1) thereof, Member States shall require credit institutions to obtain authorisation before commencing their activities.

1 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

2 Regulation (EU) No 468/2014 of 16 April 2014 of the European Central Bank establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (OJ L 141, 14.5.2014, p.1).

3 <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072026&idArticle=EGIARTI000006654310&dateTexte=&categorieLien=cid>

4 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

According to Article 4(1)(a) of the SSM Regulation the ECB is competent to authorise credit institutions established in the participating Member States, in accordance with the procedure set out in Article 14 of the SSM Regulation. Specifically, according to Article 14(2)-(3) of the SSM Regulation, the national competent authority (NCA) is responsible for proposing a draft decision to the ECB to grant authorisation to take up the business of a credit institution, which is deemed to be adopted by the ECB unless the ECB objects to it.

According to Article 76(1) of the SSM Framework Regulation if the NCA is satisfied that the application for the authorisation to take up the business of a credit institution complies with all conditions for authorisation laid down in the relevant national law, it should prepare a draft decision proposing that the ECB grant the applicant authorisation to take up the business of a credit institution.

According to Article 78(4) of the SSM Framework Regulation the ECB should adopt a decision granting authorisation if the applicant complies with all the conditions for the authorisation in accordance with the relevant Union law and national law of the Member State in which the applicant is established.

National law applies, in particular Article L.511-10 and following of the Monetary and Financial Code as amended by Order n° 2014-1332 of 6 November 2014 which adapts French regulation to the Single Supervisory Mechanism of credit institutions⁵.

2. Application

On 4 June 2018, the Applicant submitted an application to take up the business of a credit institution to the ACPR. The Applicant provided the last requested information on 26 September 2018.

On 12 June 2018 the ACPR notified the ECB of the Applicant's application for a licence as a credit institution.

On 3 December 2018 the ACPR submitted a final draft decision on the authorisation of the Applicant.

In 2018 the Applicant was established under French law as a private limited liability company (*société anonyme*) with the aim of applying for a banking license and to safeguard the NBK group's access to the EU market. Upon the issuance of the relevant banking licence by the ECB, the Applicant will be renamed "NBK France SA". The Applicant applies for an authorisation as a credit institution in order to be able to grant loans and advances, take customer deposits and issue letters of credits and letters of guarantees.

National Bank of Kuwait S.A.K.P. (hereinafter the 'Parent Bank') is the ultimate shareholder of the Applicant. The Parent Bank is also the parent company of the NBK group⁶, a Kuwaiti banking group with total assets amounting to USD 85.7 billion at the end of 2017.

Currently, NBK group is present in Europe through the Parent Bank's fully-owned subsidiary in London, National Bank of Kuwait (International) Plc (hereinafter 'NBKI'). Additionally, NBKI holds a branch in Paris, which has conducted business in France since 1987. The business and assets of the NBKI Paris

5 <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072026&idArticle=LEGIARTI000006654310&dateTexte=&categorieLien=cid>

Branch will be transferred to the Applicant. Consequently, the NBKI's Paris branch will not continue its operations following the licencing of the Applicant and the staff of the NBKI Paris branch will be employed by the Applicant.

In accordance with Article 24 of the SSM Framework Regulation, the Applicant has agreed to receive this decision in English.

2.1 Assessment

The following assessment was conducted by the ECB with the assistance of the ACPR.

The Applicant will have two qualifying shareholders. The Parent Bank will control the Applicant with ca. 80% shareholding, whereas NBKI will become the other shareholder of the Applicant with the remaining ca. 20% of the shares. The exact amount to be held by NBKI is determined depending on the valuation of the assets that are going to be transferred to the Applicant upon licensing. The suitability of all qualifying holders and their managers has been successfully assessed. In this regard, the ECB is not aware of any information which might lead to the conclusion that the direct and indirect holders of qualifying holdings do not fulfil the legal requirements pursuant to Article 23 (1) of the CRD IV and national law.

In terms of operations, building on the current business of the NBKI Paris branch, the Applicant will focus its activities on corporate banking and trade finance, private banking and commercial real estate business. The Applicant will hold EUR 360 million assets upon establishment of the entity, increasing to EUR 486 million by the third year of operations. To support these activities, the Applicant will receive EUR 217 million of capital in three instalments by 31 December 2018. By the end of 2019, the Applicant expects to have a CET 1 ratio of 88%, gradually declining to 65% by the end of 2021 as a result of the expansion of the business. In this regard, the programme of operations does not provide data or information showing non-compliance with sound and prudent management of the Applicant. Additionally, the Parent Bank and NBKI have formally committed to ensure that the Applicant will meet all prudential requirements at all times as required by French regulators.

In terms of resources, while the NBKI Paris branch currently employs 20 FTEs, the Applicant has reinforced its organisation with 5 additional FTEs, reaching a total of 25 FTEs at the time of the setup of the new entity. Moreover, an additional IT officer will be hired in 2020.

In terms of internal governance, the Applicant will be governed by a board of directors and, in addition, a general manager and his deputy will be in charge of the management of the Applicant. The Applicant will implement a risk management framework based on three lines of defence and the suitability of all members of the board of directors, the general manager and his deputy, and the key function holders has been successfully assessed. However, the ECB assessment revealed that all the Applicant's board members hold at least one other position within the NBK group. In accordance with French law, there is no legal requirement for having an independent board member. In this regard, the ECB recommends the Applicant to appoint an independent board member. Until this is done, the ECB understands that as part of ongoing supervision, the ACPR will monitor that the lack of independent board member does not lead to potential conflicts of interests or other governance concerns.

The Applicant will outsource its internal audit to a third party while its IT services and infrastructure will be outsourced to NBKI. The Applicant has a designated individual who is responsible for managing and

monitoring the outsourced activities while assessing the potential risks. The ECB considers that during the first years of operations it should be verified that the Applicant has been adequately set up and that it acts in compliance with its planned programme of operations and structural organisation, in particular, with regards to the control of the internal audit function and the independence of its decision-making. The ECB considers that this will need to be verified as part of the ongoing supervision and understands that the ACPR will conduct an on-site inspection to this end during the first years of operations (i.e. 2019-2020).

In addition, the ECB recommends the Applicant to confer the task of overseeing the internal audit function to the to-be-appointed independent board member. Until this is done and verified, the ECB understands that the ACPR will monitor that the lack of independent board member oversight does not lead to potential conflicts of interests or other governance concerns.

Based on these elements, the ECB and the ACPR consider that all the criteria to grant an authorisation to take up the business of credit institution as set out under Articles 8 to 14 of the CRD IV, as transposed by Article L.511-10 and following of the French Monetary and Financial Code, are met.

3. Decision

Based on the above, the ECB has decided to grant Watani France SA (to be renamed 'NBK France SA') the authorisation as a credit institution for the conduct of deposit taking and loan granting activities according to Article L.511-10 and following of the French Monetary and Financial Code⁷.

The ECB recommends the Applicant to appoint an independent board member to ensure the avoidance of conflicts of interest or other governance concerns.

Moreover, the ECB recommends the Applicant to confer the task of overseeing the internal audit function to the to-be-appointed independent board member to ensure the independence of the function.

A review of this Decision by the ECB's Administrative Board of Review may be requested under the conditions and within the time limits set out in Article 24 of Regulation (EU) No 1024/2013 and Decision ECB/2014/16 of the European Central Bank⁸. A request for review should be addressed, preferably, by email to the following address: ABoR@ecb.europa.eu or by post to:

The Secretary of the Administrative Board of Review
European Central Bank
Sonnemannstrasse 22
60314 Frankfurt am Main
Germany

⁷ <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072026&idArticle=LEGIARTI000006654310&dateTexte=&categorieLien=cid>

⁸ Decision ECB/2014/16 of the European Central Bank of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules (OJ L 175, 14.6.2014, p. 47).

Proceedings may be instituted against this Decision before the Court of Justice of the European Union under the conditions and within the time limits provided for in Article 263 of the Treaty on the Functioning of the European Union.

A handwritten signature in black ink, reading "Pedro Gustavo Teixeira". The signature is written in a cursive style with a large initial 'P'.

The Secretary of the Governing Council

Pedro Gustavo TEIXEIRA