MFSA MALTA FINANCIAL SERVICES AUTHORITY

BANKING RULE BR/13

PRUDENTIAL ASSESSMENT OF ACQUISITIONS AND INCREASE OF QUALIFYING SHAREHOLDINGS IN CREDIT INSTITUTIONS AUTHORISED UNDER THE BANKING ACT (CAP.371)

CONTENTS

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	1 March 2021	Amendments to further align the Rule with the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01) and to update Appendix 1 in view of the publication of EBA 'Regulatory Technical Standards (RTS) under Article 8(2) of Directive 2013/36/EU (EBA/RTS/2017/08).

PRUDENTIAL ASSESSMENT OF ACQUISITIONS AND INCREASE OF QUALIFYING SHAREHOLDINGS IN CREDIT INSTITUTIONS AUTHORISED UNDER THE BANKING ACT (CAP. 371)

Introduction

1. In terms of Article 4(6) of the Banking Act 1994 ('the Act'), the competent authority may make Banking Rules ('the Rules') as may be required for carrying into effect any of the provisions of the Act. The competent authority may amend or revoke such Rules. The Rules and any amendment or revocation thereof shall be officially communicated to credit institutions and copies shall be made thereof available to the public.

2. The Prudential Assessment of Acquisitions and Increase of Qualifying Shareholdings in Credit Institutions Rule ('the Rule') is being made pursuant to Articles 13 and 13A of the Act.

3. It shall be emphasised, however, that the Rule must not be construed to be solely a substitute for a reading of the Act itself. The responsibility for observing the law rests entirely with the applicant and the individual persons concerned. Potential applicants shall therefore refer to the Act and may also wish to seek legal advice.

Scope

4. The scope of the Rule is:

   (b) (a) to transpose, in part, the relevant provisions of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector;

   (c) to determine the criteria to be applied by the competent authority in the assessment process of a proposed acquirer; and

   (d) to ensure that the proposed acquirer knows what information is required to be provided in order to allow the competent authority to assess the proposed acquisition in a complete and timely manner.

5. In drafting the Rule, the competent authority has been guided by the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector JC/GL/2016/01 issued by the Joint Committee of the European Supervisory Authorities on 20 December 2016.

Definitions

6. For the purposes of the Rule, unless the context otherwise requires, the following shall apply:

"*beneficial owners*" are individuals who ultimately own or control the proposed acquirer, and or persons on whose behalf the acquisition is being conducted. It also includes persons who exercise ultimate effective control over a proposed acquirer which is a legal person or a legal arrangement, such as a trust.

"control" means the relationship between a parent undertaking and a subsidiary, as defined in Article 2 of the Companies Act, or a similar relationship between any person and an undertaking.

"***qualifying holding***" or "***qualifying shareholding***" shall have the same meaning as that assigned in Article 2(1) of the Act.

"*licensed entity*" shall mean any entity which holds a licence or other authorisation issued by the Authority.

"significant influence" is exercised where a proposed acquirer's shareholding, although below 10% of share capital or of the voting rights of the credit institution, allows it to exercise a significant influence over the management of the credit institution (for example, allows it to have a representative on the board of directors).

"***significant transactions***" or "***complex transactions***" may include:

(a) transactions where the proposed acquirer or the credit institution has a complex group structure;

(b) cross-border transactions;

(c) transactions involving significant proposed changes to the business plan or strategy of the credit institution; and

(d) transactions involving the use of substantial debt financing.

"voting rights" shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended. Voting rights exercised in any of the following cases or a combination of them shall also be included:

(a) voting rights held by a third party with whom a person has concluded an agreement, which obliges the person and the third party to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the credit institution in question;

(b) voting rights held by a third party under an agreement concluded with a person providing for the temporary transfer for consideration of the voting rights in question;

(c) voting rights attaching to shares which are lodged as collateral with a person, provided the person controls the voting rights and declares its intention of exercising them;

(d) voting rights attaching to shares in which a person has the life interest;

(e) voting rights which are held, or may be exercised within the meaning of points (a) to (d), by an undertaking controlled by a person;

(f) voting rights attaching to shares deposited with a person which person can exercise at its discretion in the absence of specific instructions from the shareholders;

(g) voting rights held by a third party in its own name on behalf of a person;

(h) voting rights which a person may exercise as a proxy where the person can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.

Application

7. The Rule applies to a proposed acquirer of a credit institution licensed under the Act as referred to in Article 13 of the Act.

8. According to Article 13(1) of the Act, a proposed acquirer shall notify the competent authority of a proposed acquisition in a credit institution in writing.

9. In addition to the above, if a person or persons acting in concert take or decide to take any of the actions set out in sub-article 13(1) of the Act without notifying the competent authority or obtaining its approval in terms of sub-article 13A(7)(a) or (b) of the Act, then, without prejudice to any other penalty which may be imposed under the Act, the competent authority shall have the power to make an order in terms of sub-article 13(6) of the Act. Furthermore, without prejudice to any other penalty which may be imposed under the Act, where a qualifying shareholding in a credit institution is acquired notwithstanding the refusal of the competent authority in terms of sub-article 13A(7)(c) of the Act, sub-article 13A(12) of the Act shall apply.

10. Prior to approving a proposed acquisition, an assessment in terms of Article 13A of the Act shall be carried out.

11. In this respect, the Rule (Appendix I) specifically lists the information and documents required to be attached to the notification of an acquisition in order to be able to start the assessment process.

Other acquisitions

12. In Article 13(2) of the Act reference is being made to a shareholding deemed to result in significant influence.

    From the Article referred to above, it follows that a shareholding below the 10% threshold in share capital or voting rights, can also be considered a "qualifying shareholding" if it makes it possible to exercise a significant influence over the management of the credit institution in which that holding subsists, for example, by allowing it to have a representative on the board of directors.

    In such cases, Article 13(1) and not Article 13(2) of the Act shall apply requiring an assessment as well as an approval of the proposed acquisition by the competent authority.

Disposals

13. The competent authority's approval shall not be required for a qualifying shareholder to dispose or reduce his or her qualifying shareholding in terms of Article 13(3) of the Act. There is only a requirement of notification. Instead the competent authority will assess and approve the proposed acquirer of the shares being sold.

Notification and assessment process of a proposed acquisition or increase in shareholding

14. In terms of Article 13(1) of the Act, a proposed acquirer is required to provide notification of a proposed acquisition to the competent authority as soon as a decision is made to acquire or increase a qualifying shareholding in a credit institution. Notification is also required:

    (a) if the shareholding held by the acquirer in the credit institution involuntarily reaches or exceeds 10%, 20%, 30% or 50% of the shares or voting rights in a credit institution. This may occur as a result of the repurchase by a credit institution of shares held by other shareholders, or in the event of an increase in capital in which existing shareholders do not participate. In such cases notification to the competent authority is still necessary upon becoming aware that a shareholding reaches or exceeds one of the thresholds referred to in this paragraph, even if the acquirer intends to reduce its level of shareholding so that it once again falls below the said thresholds;

    (b) when a number of persons are "acting in concert" such that each of them decides to exercise his or her rights linked to the shares he or she acquires in accordance with an explicit or implicit agreement made between them. In such a case, notification of the voting rights held collectively by these persons will have to be made to the competent authority by each of the parties

concerned or by one of these parties on behalf of the group of persons so acting in concert;

(c) in the case of indirect qualifying shareholdings. Where the credit institution directly concerned by the proposed acquisition, in turn, directly or indirectly, controls subsidiaries that are regulated entities subject to the supervision of overseas authorities, the proposed acquirer is required to provide notification of its proposed acquisition to each of these authorities. However, the responsibility for the final decision regarding the prudential assessment remains with the competent authority, if the proposed acquisition relates to a credit institution licensed under the Act.

15. If qualifying shareholdings are held indirectly through one or more third parties, all persons in the chain of holdings are subject to assessment by the competent authority against the five assessment criteria, described in paragraphs 44 to 99 of this Rule, where a threshold mentioned in paragraph 14(a) of this Rule is reached or exceeded. These requirements may be satisfied by assessing the person at the top of the chain and those who hold shares in the credit institution directly, unless the competent authority has doubts about intermediate holders.

16. In some cases, such as when the proposed transaction is considered as either significant or complex the proposed acquirer shall engage in pre-notification contacts with the competent authority.

17. Pre-notification contacts shall focus on the information required by the competent authority to commence its assessment of an acquisition or increase of a qualifying holding.

Formal notification is to be accompanied by all the required information specified in Appendix 1 to the Rule which include the Personal Questionnaire as set out in the Application Procedures and Requirements for Authorisation of Licences for Banking Activities Rule (BR/01), if the proposed acquirer is an individual and the Questionnaire for Qualifying Shareholders other than Individuals as set out in BR/01 if the proposed acquirer is not an individual so that the competent authority is in a position to conduct its prudential assessment of the proposed acquisition.

18. In order to avoid undue delays in the assessment process laid down in Article 13A of the Act, it is essential that the proposed acquirer promptly transmits all required information, together with the notification of its decision, to the competent authority. The assessment period of 60 days from the date of the Authority's written acknowledgement of receipt of the notification will only commence when all required information is transmitted to the competent authority. Where the notification is incomplete, the competent authority shall acknowledge receipt of the notification within two working days. Such notification shall not, however, have the contents and effects specified in Article 13A of the Act and the competent authority shall not be obliged to specify the missing information in the

acknowledgment of receipt, but may detail the missing information in a separate letter to be issued within a reasonable time period. Upon receipt of all required documents, the competent authority shall acknowledge receipt of the notification in writing pursuant to, and with the effects and contents specified in Article 13(A) of the Act.

Without prejudice to paragraph 22 of this Rule, the list of information necessary to carry out the assessment as set out in Appendix I to the Rule shall be considered to be an exhaustive list of all the required information.

If any of the information submitted is false or forged, rendering the conclusions of the competent authority liable to be erroneous, the approval of the proposed acquisition shall be refused.

The proportionality principle

18A. Pursuant to the Act, any regulations made or Rules issued thereunder transposing the CRD and Regulation (EU) No 575/2013 (the 'CRR'), the prudential assessment of proposed acquirers shall be carried out in accordance with the principle of proportionality, namely in respect of:

i. The intensity of the assessment, which shall take into account the likely influence the proposed acquirer may exercise on the credit institution and
ii. The composition of the required information, which shall be proportionate to the nature of the proposed acquirer and of the proposed acquisition.

The criteria to be considered when applying the principle of proportionality includes the nature of the proposed acquirers, the objective of the acquisition or increase of a qualifying holding and the extent to which the proposed acquirer may exercise influence over the credit institution.

19. The information required shall be proportionate and adapted to the nature of the proposed acquirer (legal or natural person, regulated entity or otherwise, whether or not the proposed acquirer is regulated in the EU or in a third country considered equivalent, etc.), and the nature of the proposed acquisition including the specifics of the proposed transaction (intra-group transaction or transaction between persons which are not part of the same group, etc.), the degree of involvement of the proposed acquirer in the management of the credit institution and the size of the holding to be acquired. In some cases, the competent authority may not need the proposed acquirer to provide all of the information that appears on the list found in Appendix I of this Rule (for example if the competent authority already possesses some information or can obtain it from another overseas authority).

20. In the case of intra-group transactions, a notification shall be submitted by the proposed acquirer, identifying the upcoming changes in the group (for instance, the revised group structure chart) and providing the required information, as laid down in this Rule, concerning the new persons and/or entities in the group. This refers to the direct or indirect owners of the qualifying shareholding, as well as to

the persons who effectively direct the business of the proposed acquirer. The full assessment procedure is only necessary for the new persons and/or entities in the group and the new group structure. If there is a change in the nature of a qualifying shareholding so that an indirect qualifying shareholding becomes a directly held qualifying shareholding and the relevant holder has already been assessed, the assessment shall be considered to be limited to the changes having occurred since the date of the last assessment.

21. In certain circumstances, such as in the case of acquisitions by means of a public offer, the proposed acquirer may encounter difficulties in obtaining information which is needed to prepare a full business plan. In these cases, the proposed acquirer shall bring such difficulties to the attention of the competent authority and point out the aspects of its business plan that might be modified in the near future.

22. In other cases, notwithstanding the provisions of paragraph 18 of this Rule, the competent authority may consider, on the basis of its analysis of the nominally complete information, transmitted by the proposed acquirer, that some additional information is necessary for the assessment of the proposed acquisition. In that case, the competent authority may request in writing that the proposed acquirer provides the additional information referred to in Article 13A of the Act. Such a request shall trigger the beginning of the interruption period referred to in Article 13A (5) of the Act. This additional information is not included as such on the list of required information specified in Appendix 1, but clarifies and completes the information submitted in accordance with that Appendix.

22A. In certain well-justified circumstances, the competent authority shall not oppose the proposed acquisition on the sole basis of the lack of some required information, the absence of which can be justified by the nature of the transaction. This shall apply only where the information provided appears sufficient to understand the likely outcome of the acquisition for the credit institution and to carry out the prudential assessment and provided that the proposed acquirer undertakes to provide the missing information as soon as possible after the closing of the acquisition.

The concept of significant influence

23. Notification in terms of Article 13(1) of the Act is also required if a proposed acquisition or increase in a shareholding (which does not amount to 10% of the capital or voting rights of the credit institution) would enable the proposed acquirer to exercise a significant influence over the management of the credit institution, whether such influence is actually exercised or not.

24. *Deleted by Version 1.00*.

25. In particular, the following non exhaustive list of factors shall be taken into account for the purpose of assessing whether a proposed acquisition of a shareholding would make it possible for the proposed acquirer to exercise significant influence over the management of the credit institution:

    (a) the existence of material and regular transactions between the proposed acquirer and the credit institution;

    (b) the relationship of each member or shareholder with the credit institution;

    (c) whether the proposed acquirer enjoys additional rights in the credit institution, by virtue of a contract entered into or of a provision contained in the articles of association of the credit institution;

    (d) whether the proposed acquirer is a member of, has a representative in or is able to appoint a representative in the board of directors;

    (e) the overall ownership structure of the credit institution or of a parent undertaking of the credit institution, having regard, in particular, as to whether shares or participating interests and voting rights are distributed across a large number of shareholders or members;

    (f) the existence of relationships between the proposed acquirer and the existing shareholders and any shareholders agreement that would enable the proposed acquirer to exercise significant influence;

    (g) the proposed acquirer's position within the group structure of the credit institution; and

    (h) the proposed acquirer's ability to participate in the operating and financial strategy decisions of the credit institution.

Indirect acquisitions of qualifying shareholdings

26. The relevant tests to assess whether a qualifying holding is acquired and the size of such holding are carried out when:

    (a) a natural or legal person acquires or increases a direct or indirect participation in an existing holder of a qualifying holding; or

    (b) a natural or legal person has a direct or indirect holding in a person which acquires or increases a direct participation in an authorised undertaking.

27. Two tests shall be applied to assess whether a qualifying shareholding is acquired indirectly and the size of such holding. The control criterion shall be applied first. If, from the application of such criterion, it is ascertained that the relevant person does not exert or acquire, directly or indirectly, control over an existing qualifying shareholder or an acquirer of a qualifying shareholding in a credit institution, the multiplication criterion shall be subsequently applied in respect of that person. The

control and the multiplication criteria shall be applied along each branch of the corporate chain.

Application of the control criterion

28. The first step envisages the application of the notion of control and, accordingly, all natural or legal persons:

(a) who acquire, directly or indirectly, control over an existing holder of a qualifying shareholding in a credit institution, irrespective of whether such existing holding is direct or indirect; or

(b) who, directly or indirectly, control the proposed direct acquirer of a qualifying shareholding in a credit institution

shall be considered to constitute indirect acquirers of a qualifying shareholding.

29. In both case (a) and case (b) of paragraph 28, the indirect acquirers include the ultimate natural person or persons at the top of the corporate control chain.

In the case set out in point (a) of paragraph 28 above, each of the persons acquiring, directly or indirectly, control over an existing holder of a qualifying shareholding shall be treated as an indirect acquirer of a qualifying shareholding and is required to submit the prior notification to the competent authority in terms of Article 13(1) of the Act. The existing holder of the qualifying shareholding shall not be required to submit the said notification. The competent authority may allow the person or persons at the top of the corporate control chain to submit the prior notification also on behalf of the intermediate holders. The size of the holding of each indirect acquirer so identified shall be deemed equal to the qualifying shareholding of the existing holder over which control is acquired.

In the case set out in point (b) of paragraph 28 above, the direct acquirer and the indirect acquirers so identified shall submit a prior notification to the competent authority regarding their intention to acquire or increase a qualifying shareholding. The person or persons at the top of the corporate control chain may be allowed to submit the prior notification also on behalf of the intermediate holders; however, this is without prejudice to the obligation of the proposed direct acquirer to submit to the competent authority the prior notification in respect of its own acquisition of a qualifying shareholding. The size of the holding of each indirect acquirer shall be deemed to be equal to the qualifying shareholding acquired directly.

Application of the multiplication criterion

30. Where the application of the control criterion does not determine that a qualifying shareholding was acquired indirectly by the person to which the control criterion is applied the multiplication criterion shall be carried out.

31. The multiplication criterion entails the multiplication of the percentages of the holdings across the corporate chain, starting from the participation held directly in the credit institution, which has to be multiplied by the participation held at the level immediately above (the result of such multiplication being the size of the indirect holding of the latter person) and continuing up the corporate chain for so long as the result of the multiplication continues to be 10% or more.

32. Under this criterion, a qualifying shareholding will be deemed to be acquired indirectly:

    (a) by each of the persons in respect of which the result of the multiplication is 10% or more; and

    (b) by all persons holding, directly or indirectly, control over the person or persons identified pursuant to the application of the multiplication criterion in accordance with point (a) of this paragraph.

32A. Irrespective of the application of the control or of the multiplication criterion, where indirect acquirers are licensed entities which are supervised by the competent authority and the competent authority is already in possession of up-to-date information, the competent authority may deem it sufficient, taking into account the particular circumstances of the case, to assess fully only the person or persons at the top of the corporate control chain, in addition to the proposed direct acquirer. This does not affect the obligation of any of the concerned entities to submit a notification to the competent authority regarding the intention to directly or indirectly acquire or increase a qualifying holding in a credit institution, except where the person or persons at the top of the corporate control chain are allowed to submit the prior notification also on behalf of the intermediate holders.

Decision to acquire

33. In terms of Article 13(1) of the Act, a proposed acquirer is required to provide notification of a proposed acquisition to the competent authority as soon as a decision is made to acquire or increase a qualifying shareholding in a credit institution.

34. The following non-exhaustive elements shall be taken into account in order to assess whether a decision to acquire has been made:

(a) whether the proposed acquirer was aware or, considering information it could have had access to, should have been aware of the acquisition or increase of a qualifying shareholding and the transaction giving rise to it; and

(b) whether the proposed acquirer had the ability to influence, to object to or to prevent the proposed acquisition or increase of a qualifying shareholding.

Acting in concert

35. A person shall still be considered as acting in concert even when one or several such persons are passive, since inaction might contribute to create the conditions for an acquisition or increase of a qualifying holding or for exercising influence over the credit institution. In order to establish whether certain persons act in concert, and thus whether a notification to the competent authority and subsequent prudential assessment is required, all the relevant elements shall be taken into account on a case by case basis.

36. Where certain persons act in concert, their holdings shall be aggregate in order to determine whether such persons acquire a qualifying shareholding or cross any relevant threshold contemplated in Article 13(1) of the Act. In such a case, each of the persons concerned, or one person acting on behalf of the rest of the group of persons acting in concert shall notify the competent authority of the relevant acquisition or increase of a qualifying shareholding.

37. When no notification evidencing that certain persons are acting in concert has been submitted to the competent authority, the latter may still decide to examine whether such persons are in fact acting in concert. For this purpose, the non-exhaustive factors listed below shall be taken into account as indicators that the persons may be acting in concert. The fact that any particular factor is present does not necessarily in itself lead to the conclusion that the relevant persons are acting in concert.

38. The (non-exhaustive) list of factors which shall be considered in order to assess whether certain persons are acting in concert are the following:

(a) shareholder agreements and agreements on matters of corporate governance (excluding, however, pure share purchase agreements, tag along and drag along agreements and pure statutory pre-emption rights); and

(b) other evidence of collaboration, for example:

(1) the existence of family relationships;

(2) whether the proposed acquirer holds a senior management position or is a member of the board of directors or is able to appoint such a person;

(3) the relationship between undertakings in the same group (excluding, however, those situations which satisfy the independence criteria set out in paragraph 4 or, as the case may be, 5 of Article 12 of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as subsequently amended);

(4) the use by different persons of the same source of finance for the acquisition or increase of holdings in the credit institution; and

(5) consistent patterns of voting by the relevant shareholders.

39. When shareholders cooperate or engage in any of the activities set out in points (a) to (d) of the non-exhaustive list below, such cooperation, shall not be considered in and of itself, as leading to the conclusion that they are acting in concert:

(a) entering into discussions with each other about possible matters to be raised with the board of directors of the company;

(b) making representations to the board of directors of the company about its policies, practices or particular actions that the company might consider taking;

(c) other than in relation to the appointment of directors, exercising shareholders' statutory rights to:

(1) add items to the agenda of a general meeting;

(2) table draft resolutions for items included or to be included on the agenda of a general meeting; or

(3) call a general meeting, other than the annual general meeting;

(d) other than in relation to a resolution for the appointment of directors, agreeing to vote in the same way on a particular resolution put to a general meeting, in order, for example:

(1) to approve or reject:

i. a proposal relating to directors' remuneration;
ii. an acquisition or disposal of assets;
iii. a reduction of capital and/or share buy-back;
iv. a capital increase;
v. a dividend distribution;
vi. the appointment, removal or remuneration of auditors; vii. the appointment of a special investigator; viii. the company's financial statements; or
vii. the company's policy in relation to the environment or any other matter relating to social responsibility or compliance with recognised standards or codes of conduct; or

(2) to reject a related party transaction.

40. Each case shall be assessed on its own merits. Where there are facts, in addition to the shareholders' engagement in any activity set out in the preceding paragraph, which indicate that the shareholders should be regarded as persons acting in concert, then those facts shall be taken into account in making a determination. There might, for example, be facts about the relationship between the shareholders, their objectives, their actions or the results of their actions which suggest that their cooperation in relation to an activity mentioned in paragraph 39 is not merely an expression of a common approach on a specific matter, but one element of a broader agreement or understanding between the shareholders.

41. Where shareholders cooperate by engaging in an activity which is not listed in paragraph 39, that fact, in and of itself, does not mean that those persons shall be regarded as persons acting in concert.

42. In cases of cooperation between shareholders in relation to the appointment of directors, in addition to the facts described in paragraph 38 (including the relationship between the relevant shareholders and their actions), other facts shall also be considered such as:

(a) the nature of the relationship between the shareholders and the proposed directors;

(b) the number of directors being voted for pursuant to a voting agreement;

(c) whether the shareholders have cooperated in relation to the appointment of directors on more than one occasion;

(d) whether the shareholders are not simply voting together but are also jointly proposing a resolution for the appointment of certain directors; and

(e) whether the appointment of the proposed directors will lead to a shift in the balance of power in the board of directors.

42A. For the avoidance of doubt, the notion of acting in concert set out in this Rule shall apply exclusively to the prudential assessment of acquisitions and increases in qualifying holdings in the financial sector to be carried out in accordance with the Act, regulations made or Rules issued thereunder transposing the CRD, and the CRR and shall not affect the interpretation of any similar notion contemplated in other EU legislative acts, such as Directive 2004/25/EU on takeover bids, and the national legislative provisions transposing them.

Determination of voting rights

43. For the purpose of determining voting rights:

(1) A UCITS management company within the meaning of Article 2(1), point (b) of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed (the management company) and its parent undertaking:

(a) need not aggregate their holdings, provided that they exercise their voting power independently of each other; but

(b) must aggregate their holdings if the management company:

(i) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller; and

(ii) has no discretion to exercise the voting rights attached to such holdings and may only exercise the voting rights attached to the holdings under direct or indirect instructions from its parent undertaking or an undertaking in respect of which the parent undertaking is a controller.

(2) An investment firm and its parent undertaking need not aggregate holdings of the parent undertaking with holdings managed by the investment firm on a client by client basis, provided that the investment firm:

(a) has permission to provide portfolio management;

(b) exercises its voting power independently from the parent; and

(c) may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

(3) Shares reaching or exceeding 5% of the total voting rights in a credit institution held by a market maker (as defined in Article 4(1)(7) of Directive 2014/65/EU on markets in financial instruments in its capacity of a market maker need not be aggregated provided that:

(a) it is authorised by its home Member State under Directive 2014/65/EU on markets in financial instruments; and

(b) it neither intervenes in the management of the issuer concerned nor exerts any influence on the issuer to buy such shares or back the share price.

(4) Shares held by a credit institution or investment firm in its trading book need not be aggregated provided that:

(a) the voting rights held in the trading book do not exceed 5%, and

(b) the credit institution or investment firm ensures that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the credit institution.

(5) Shares acquired for the sole purpose of clearing and settling within a short settlement cycle shall not be taken into account.

(6) Shares held by a custodian in its capacity as custodian, shall not be taken into account provided that the custodian can only exercise the voting rights attached to the shares under instructions given in writing or by electronic means.

(7) Voting rights or shares held by a credit institution or an investment firm as a result of:

(a) providing the underwriting of financial instruments; and, or

(b) placing financial instruments on a firm commitment basis in terms of point 6 of Section A of Annex I to Directive 2014/65/EU on markets in financial instruments,

shall not be taken into account provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

The five assessment criteria

44. In the assessment of the notification provided for in Article 13 of the Act, and the information referred to in Article 13A of the Act, the sound and prudent management of the credit institution in which an acquisition is proposed shall be ensured, having regard to the likely influence of the proposed acquirer on the credit institution, and the suitability of the proposed acquirer and the financial soundness of the proposed acquisition shall be appraised against all of the following criteria:

a) the reputation of the proposed acquirer;

b) the reputation and experience of any person who will direct the business of the credit institution as a result of the proposed acquisition;

c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;

d) whether the credit institution will be able to comply and continue to comply with the prudential requirements applicable to credit institutions, in particular, whether the group of which it will become a part of has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authority and overseas authorities and determine the allocation of responsibilities amongst the competent authority and overseas authorities;

e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

First assessment criterion – Reputation of the proposed acquirer

45. With regard to the prudential assessment, this criterion implies the determination of whether any doubts exist about the integrity and professional competence of the proposed acquirer and whether these doubts are founded. Such doubts may arise, for instance, from past business conduct. The assessment of the reputation is of particular relevance if the proposed acquirer is an unregulated entity but shall be facilitated if the proposed acquirer is authorised and supervised within the European Union. The assessment of the reputation of the proposed acquirer covers two elements:

- integrity, and
- professional competence.

46. While the integrity of the proposed acquirers shall always be assessed against the same requirements regardless of the influence over the credit institution, the assessment of the professional competence may be reduced for proposed acquirers who are not in a position to exercise any influence over the credit institution or who intend to acquire holdings purely for passive investment purposes.

Integrity - Situations subject to assessment

47. The integrity requirements shall be applied regardless of the size of the qualifying holding that the proposed acquirer intends to acquire and of its involvement in the management or the influence that it is planning to exercise on the credit institution. The assessment shall also cover the legal and beneficial owners of the proposed acquirer.

48. In general, the proposed acquirer is assumed to be of 'good repute' (trustworthy) if there is no reliable evidence to the contrary and the competent authority has no reliable grounds to doubt his or her good repute. Integrity requirements imply, but are not limited to, the absence of 'negative records'. The competent authority retains discretionary power to determine which other situations cast doubt on the integrity and the reputation of the proposed acquirer.

49. For this purpose the following situations shall be taken into account:

(a) conviction of a relevant criminal offence. Special consideration shall be given to any offence under the laws governing banking, financial, securities, or insurance activity, or concerning securities markets or securities or payment instruments, including laws on money laundering, market manipulation, or insider dealing and usury; to any tax offences; to any offences of dishonesty, fraud, or financial crime; and to other offences under legislation relating to companies, bankruptcy, insolvency, or consumer protection.

(b) any relevant criminal offences currently being tried or having been tried in the past may also be relevant, as they can cast doubt on the integrity of the proposed acquirer and may mean that the integrity requirements are not met.

49A. Nevertheless, the cumulative effects of more minor incidents, which individually do not impinge on the reputation of a proposed acquirer but might collectively have a material impact, shall also be considered.

50. The integrity of the proposed acquirer is not only affected by court decisions and ongoing judicial proceedings. The following situations shall also be taken into account, since they may cast doubt on the integrity of the proposed acquirer:

(a) current or past investigations and/or enforcement actions related to the proposed acquirer either directly or indirectly, by way of its ownership or control, or the imposition of administrative sanctions for non-compliance with provisions governing banking, financial, securities, or insurance activity or those concerning securities markets, securities or payment instruments, or any financial services legislation or other matters contemplated in paragraph 49(a); or

(b) current or past investigations and/or enforcement actions by any other regulatory or professional bodies for non-compliance with any relevant provisions; or

(c) any relevant findings from on-site inspections and offsite ongoing supervision; or

(d) any other information from credible and reliable sources that is relevant in this context. When considering whether information from other sources is credible and reliable, the following shall be considered:

(i) the extent to which the source is public and trustworthy;
(ii) the extent to which the information is provided by several independent and reputable sources, is consistent over a period of time and having no reasonable grounds to suspect that it is false.

The absence of a criminal conviction or prosecution, administrative and enforcement action shall not be considered as constituting in and of itself sufficient evidence of a proposed acquirer's integrity, in particular where allegations of criminal conduct persist.

51. In addition to considering judicial or administrative decisions or procedures, the assessment of the integrity of the proposed acquirer shall examine its correctness in past business dealings, the lack of which may undermine the integrity and trustworthiness of the proposed acquirer at the time of the proposed acquisition. The following facts shall be taken into consideration:

(a) any evidence that the proposed acquirer has not been transparent, open, and cooperative in its dealings with the competent authority or any overseas authority, including any evidence that the proposed acquirer knowingly ignored the obligation of notification in terms of Article 13(1) of the Act or attempted to evade from the prudential assessment that such person is required to undergo as a proposed qualifying shareholder;

(b) any refusal of a registration, authorisation, membership, or licence to carry out a trade, business, or profession; any revocation, withdrawal, or termination of such registration, authorisation, membership, or licence; and any expulsion from a professional body or association;

(c) the reasons of any dismissal from employment or a position of trust, fiduciary relationship, or other similar situation, as well as any request to resign from such a position; and

(d) any disqualification by any overseas authority from acting as a person who directs the business.

52. The relevance of such situations shall be assessed on a case-by-case basis, recognising that the characteristics of each situation may be more or less severe and that some situations may be significant when considered together, even though each of them in isolation may not be significant.

53. The competent authority may judge the relevance of criminal records differently according to the type of conviction, the level of appeal (definitive vs. non-definitive convictions), the type of punishment (imprisonment vs. less severe punishments, the length of the sentence (more vs. less than a specified period), or the phase of the judicial process reached (conviction, trial, indictment) and the effect of rehabilitation.

54. In cases involving the acquisition of a new qualifying shareholding, the information requirements on which the assessment of integrity is based may vary according to the nature of the proposed acquirer (individual vs. legal person, regulated or licensed entity vs. unregulated entity).

55. However, in all cases, the proposed acquirer shall attest in a statement that none of the situations described in paragraph 51 of this Rule occurs or has, to the best of his or her knowledge, occurred in the past. A delayed, incomplete, or undelivered declaration will call into question the approval of the proposed acquisition.

56. In all cases, the competent authority shall be able to verify the statement submitted by the proposed acquirer by asking the proposed acquirer to provide documents evidencing that no adverse events as mentioned in paragraph 51 above have occurred (e.g., police conduct certificates), and, if needed, by requesting confirmation from other authorities (e.g., judicial authorities or other regulators), domestic or otherwise. The competent authority may also consider, to the extent that they are relevant and the source appears trustworthy, other indications of wrongdoing, such as adverse media reports and allegations.

57. In the case of an increase in an existing qualifying shareholding which crosses the relevant thresholds contemplated in Article 13(1) of the Act, and to the extent that the integrity of the proposed acquirer has previously been assessed by the competent authority, the relevant information shall be updated as appropriate.

58. When assessing the integrity of the proposed acquirer, the competent authority may take into consideration the integrity and reputation of any person linked to the proposed acquirer: i.e., any person who has, or appears to have, a close family or business relationship with the proposed acquirer. To give a few examples (where A is the proposed acquirer and B is a connected person): a close business relationship could be where:

    (a) A is the controlling shareholder of a company and B is a board member of that company appointed by A, or vice versa;

    (b) A and B jointly control a company;

(c) A and B are board members of a company appointed by the same shareholder;

(d) A and B participate in a shareholder agreement regarding the exercise of voting rights which have significant influence in a company, etc.

58A. The following circumstances are also relevant for the assessment of the proposed acquirer's integrity:

(a) the proposed acquirer is a person already considered to be sufficiently competent in its capacity as a holder of a qualifying shareholding in another licensed entity which is supervised by the competent authority or an overseas authority in another Member State;

(b) the proposed acquirer is a natural person who already directs the business of the same or another licensed entity which is supervised by the competent authority or by an overseas authority in another Member State; or

(c) the proposed acquirer is a legal person that is a licensed and supervised by the competent authority or by an overseas authority in another Member State.

Nevertheless, the circumstances set out in this paragraph do not constitute, by themselves sufficient grounds for the proposed acquirer's integrity to be assumed.

Professional Competence

59. The *professional competence* of the proposed acquirer covers competence in management ('management competence') and in the area of the financial activities carried out by the credit institution ('technical competence').

60. The *management competence* may be based on the proposed acquirer's previous experience in acquiring and managing holdings in companies, and shall demonstrate due skill, care, diligence, and compliance with the relevant standards.

61. The *technical competence* may be based on the proposed acquirer's previous experience in operating and managing financial firms as a controlling shareholder or as a person who effectively directs the business of a financial firm. In this case as well, the experience shall demonstrate due skill, care, diligence, and compliance with the relevant standards.

62. The assessment of professional competence shall take into account the influence that the proposed acquirer will exercise over the credit institution. In accordance with the proportionality principle, the competence requirements shall be reduced for proposed acquirers who are not in a position to exercise, or undertake not to exercise, significant influence over the credit institution. In such circumstances, the evidence of adequate management competence shall be sufficient.

63. The professional competence requirement shall generally be considered to be met if:

(a) the proposed acquirer is a person already considered to be sufficiently competent in its capacity as a holder of a qualifying shareholding in another licensed entity which is supervised by the competent authority or an overseas authority in another Member State;

(b) the proposed acquirer is a natural person who already directs the business of the same or another licensed entity which is supervised by the competent authority or by an overseas authority in another Member State; or

(c) the proposed acquirer is a legal person that is a licensed and supervised by the competent authority or by an overseas authority in another Member State;

and there is no new or revised evidence that could cast reasonable concerns regarding the proposed acquirer's professional competence.

63A. In the case of an increase in an existing qualifying holding, and to the extent that the professional competence of the proposed acquirer has been assessed previously, the assessment of the professional competence of the proposed acquirer shall take into account the increased influence and responsibility associated with the increased holding.

64. If any of the situations contemplated in subparagraphs (a), (b), and (c) of paragraph 63 apply in respect of a proposed acquirer that is supervised by an overseas authority in a third country which is considered equivalent, the assessment of integrity and professional competence may be facilitated by cooperating with the overseas authority in such third country.

65. Persons may acquire significant holdings in entities subject to prudential supervision by European regulatory authorities or overseas authorities with the aim of diversifying their portfolio and/or obtaining dividends or capital gains, rather than with the aim of becoming involved in the management of the credit institution concerned. Having regard to the likely influence of the proposed acquirer over the credit institution, the professional competence requirements for this type of acquirer would be significantly reduced.

66. Similarly, when the acquisition of control or of a shareholding allows the proposed acquirer to exercise a strong influence (e.g. a holding which confers a veto power), the need for technical competence will be greater, considering that the controlling shareholders will be able to define and/or approve the business plan and strategies of the credit institution concerned. In the same way, the degree of technical competence needed will depend on the nature and complexity of the activities envisaged.

67. The following situations regarding past and present business performance and financial soundness of a proposed acquirer with regard to their potential impact on his or her professional competence shall also be considered:

    (a) any inclusion on any list of unreliable debtors or any similar negative records with a credit bureau, if available;

    (b) the financial and business performance of the entities owned or directed by the proposed acquirer or in which the proposed acquirer had or has significant share with special consideration to any rehabilitation, bankruptcy and winding-up proceedings and whether and how the proposed acquirer has contributed to the situation that led to the proceedings;

    (c) any declaration of personal bankruptcy; and

    (d) any civil lawsuits, administrative or criminal proceedings, large investments or exposures and loans taken out, in so far as they can have a significant impact on the financial soundness.

Where the proposed acquirer is a legal person:

68. If the proposed acquirer is a legal person, the requirements must be satisfied by the legal person, as well as by all of the persons who effectively direct its business, and in any case by those persons who meet the criteria set out in Article 3(6)(a)(i) or 3(6)(c) of Directive (EU) 2015/849.

69. When assessing professional competence, the technical competence aspect shall relate primarily to the financial activities currently performed by the proposed acquirer and/or by companies in the group to which such person belongs.

70. In the light of the above, all the persons who effectively direct the business of a proposed acquirer which is not regulated in a Member State or an EEA State or an approved jurisdiction shall be required to submit to the competent authority a completed Personal Questionnaire as set out in BR/01.

Second assessment criterion – Reputation and experience of those who will direct the business of the credit institution

71. The second criterion addresses circumstances when the proposed acquirer is in a position to appoint new persons who will direct the business of the credit institution as a result of the proposed acquisition. In such case, the proposed acquirer needs to be fit and proper.

72. In contrast and without prejudice to the on-going suitability requirements that apply to persons who currently direct the business of credit institutions under the

Act, this criterion does not apply to a proposed acquisition that does not involve the appointment of new persons who will direct the business.

73. The assessment of the suitability of such persons shall, in respect of acquisitions and increases of qualifying shareholdings in credit institutions, be carried out in accordance with the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2017/12), as amended or replaced from time to time.

74. If the proposed acquirer intends to appoint a person who is not suitable, then the proposed acquisition shall be opposed.

Third assessment criterion – Financial soundness of the proposed acquirer

75. The financial soundness of the proposed acquirer can be understood as the capacity of the proposed acquirer to finance the proposed acquisition and to maintain a sound financial structure for the foreseeable future in respect of the proposed acquirer of the credit institution. This capacity shall be reflected in the overall aim of the acquisition and the policy of the proposed acquirer regarding the acquisition, but also – if the proposed acquisition would result in a qualifying shareholding of 50% or more or in the credit institution becoming a subsidiary of the proposed acquirer-, in the forecast financial objectives, consistent with the strategy identified in the business plan. A determination as to whether the proposed acquirer is sufficiently sound from a financial point of view shall also be made to ensure the sound and prudent management of the credit institution for the foreseeable future (usually three years), having regard to the nature of the proposed acquirer and of the acquisition.

76. The depth of the assessment of the financial soundness of the proposed acquirer shall be linked to the degree of influence the proposed acquirer would have over the credit institution following the proposed acquisition, the nature of the proposed acquirer (for instance, whether the proposed acquirer is a strategic or a financial investor, including whether it is a private equity fund or a hedge fund) and the nature of the acquisition (for instance, whether the transaction is significant or complex). The assessment of the characteristics of the acquisition will also vary between situations where the acquisition leads to a change in the control of the credit institution and situations where the proposed acquirer would be likely to exercise little or no influence.

77. If a proposed acquirer gains control over the credit institution, the assessment of the financial soundness of the proposed acquirer shall also cover the capacity of the proposed acquirer to provide further capital to the credit institution in the midterm, if necessary, and its stated intentions in respect of whether it would provide such capital.

78. The information required for the assessment of the financial soundness of the proposed acquirer will depend on the legal status of the proposed acquirer, for example, whether it is:

(a) a credit institution subject to prudential supervision;
(b) an entity which is not so subject; or
(c) a natural person.

78A. If the proposed acquirer is a regulated entity subject to prudential supervision by another overseas authority, the assessment of the proposed acquirer's financial situation shall be taken into account by such other authority, together with the documents gathered and transmitted directly by the supervisor of the proposed acquirer to the competent authority.

78B. Where the proposed acquirer is supervised by another overseas authority, the assessment made by the overseas authority shall be taken into account as follows:

(a) if the proposed acquirer is a supervised entity in another Member State, the assessment of its financial soundness shall rely heavily on the assessment made by the supervisor of the proposed acquirer, which has all the information on the profitability, liquidity and solvency of the proposed acquirer, as well as on the availability of the resources for the acquisition (without prejudice, however, to the possibility of the competent authority disagreeing with the assessment of the proposed acquirer's supervisor); or

(b) if the proposed acquirer is a financial entity supervised by a competent supervisor in a third country considered equivalent, the assessment may be facilitated by cooperation with that competent supervisor.

79. In the case of a change in control, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed the extent of the proposed acquirer's compliance with prudential requirements shall also be taken into account. While the objective of this criterion is to assess the financial soundness of the proposed acquirer, the objective of the fourth assessment criterion is to assess the prospective soundness of the credit institution in which the acquisition is proposed, which presupposes the financial soundness of the proposed acquirer (i.e., its ability to implement the business plan).

80. The financial mechanisms put in place by the proposed acquirer to finance the acquisition, or existing financial relationships between the proposed acquirer and the credit institution concerned shall also be analysed as they could give rise to conflicts of interest that could destabilise the financial structure of the said credit institution.

81. If based on analysis of the information made available, it is concluded that the proposed acquirer is likely to face financial difficulties during the acquisition process or in the foreseeable future, the proposed acquisition shall be opposed.

82. While the use of borrowed funds to finance the acquisition shall not, in and of itself, lead to the conclusion that the proposed acquirer is unsuitable, such indebtedness shall be assessed to deduce if it negatively affects the financial soundness of the proposed acquirer or the credit institution's capacity to comply with prudential requirements (including, where relevant, the commitments provided by the proposed acquirer to meet prudential requirements referred to in paragraph 83 below).

Fourth assessment criterion – Compliance with Prudential Requirements

83. Whereas the third assessment criterion aims basically at clarifying whether the financial situation of the proposed acquirer is sound enough to support the proposed acquisition of the credit institution, this criterion requires that the proposed acquisition does not adversely affect the credit institution's compliance with prudential requirements. In particular, effective supervision, information exchange, and the clear allocation of responsibilities shall not be hindered as a result of the proposed acquisition.

83A. The specific assessment of the proposed acquirer's plan at the time of the acquisition is complementary to the ongoing supervision of the target undertaking.

84. In assessing this criterion, the objective facts, such as the intended shareholding in the credit institution, the reputation of the proposed acquirer, its financial soundness, and its group structure shall be taken into consideration. However, the assessment shall also consider the proposed acquirer's declared intentions towards the credit institution concerned as expressed in its strategy (business plan). This could be backed up by appropriate commitments made by the proposed acquirer to meet prudential requirements under the assessment criteria laid down in the Rule, provided that the rights of the proposed acquirer under the Act and any regulations and Rules made thereunder are not affected. These commitments could concern, for example, financial support in case of liquidity or solvency problems, corporate governance issues, the proposed acquirer's future intended shareholding in the credit institution, and directions and goals for development.

85. The ability of the credit institution in which the acquisition is being proposed to comply at the time of the proposed acquisition shall be taken into account, together with the credit institution's ability to continue to comply thereafter with all prudential requirements, including capital requirements, liquidity requirements, large exposures limits, requirements related to governance arrangements, internal control, risk management and compliance, etc.

86. If the credit institution in which the acquisition is being proposed will be part of a group as a result of the proposed acquisition, the group structure shall make it possible for the competent authority to exercise effective supervision, effectively exchange information with different overseas authorities, and determine the allocation of responsibilities among the competent authority and overseas authorities.

87. The prudential assessment of the proposed acquirer shall also cover its capacity to support adequate organisation of the credit institution within its new group. Both the credit institution concerned as well as the group shall have clear and transparent corporate governance arrangements and adequate organisation, including an effective internal control system and independent control functions (risk management, compliance, and internal audit).

88. The group of which the credit institution will become a part shall be adequately capitalised.

89. Consideration shall also be made of whether the proposed acquirer will be able to provide the credit institution concerned with the financial support it may need for the type of business pursued by and/or envisaged for it; to provide any new capital that the credit institution may require for future growth in its activities; or to implement any other appropriate solution to accommodate the credit institution's needs for additional own funds.

90. If the proposed acquisition would result in a qualifying shareholding of 50% or more or in the credit institution becoming a subsidiary of the proposed acquirer, this criterion shall be assessed at the time of acquisition and on a continuous basis for the foreseeable future (usually three years). The business plan provided by the proposed acquirer to the competent authority shall cover at least this period. On the other hand, in cases of qualifying shareholdings of less than 20%, the applicable information requirements are those set out in Section B1 of Part II of the Appendix to this Rule.

91. The business plan shall clarify the plans of the proposed acquirer concerning the future activities and organisation of the credit institution in which the acquisition is proposed. This shall also include a description of its proposed group structure. The plan shall also evaluate the financial consequences of the proposed acquisition and include a medium-term forecast.

92. For the purposes of this section:

- *"group structure"* shall cover the members of the group, including their parent entities and subsidiaries, and intra-group corporate governance procedures

(decision-making mechanisms, level of independence, capital management); and

- *"to exercise effective supervision"* shall mean that the competent authority is not prevented from fulfilling its supervisory duties by the credit institution's close links to other persons. It also means that the competent authority shall not be prevented from fulfilling its monitoring duties by the laws, regulations, or administrative provisions of another country governing a person with close links to the credit institution, or by difficulties in the enforcement of those laws, regulations, or administrative provisions.

Fifth assessment criterion – Suspicion of money laundering or terrorist financing

93. In terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, S.L.373.01, credit institutions are required to report transactions to the Financial Intelligence Analysis Unit and to the competent authority, whenever they suspect or have reasonable grounds to suspect that the funds involved may have been or are the proceeds of criminal activity or are linked to terrorism. Transactions shall be reported whenever the circumstances surrounding them would lead a reasonable person to be suspicious. These concepts shall also be used for the prudential assessment of proposed acquirers.

94. The anti-money laundering or terrorist financing assessment complements the integrity assessments referred to in the First Assessment Criterion and shall be carried out regardless of the value and other characteristics of the proposed acquisition.

The proposed acquisition shall be opposed if:

(a) the competent authority knows or suspects, or has reasonable grounds for knowing or suspecting, that the proposed acquirer is or was involved in money laundering operations or attempts, whether or not this is linked directly or indirectly to the proposed acquisition;

(b) the competent authority knows or suspects, or has reasonable grounds for knowing or suspecting, that the proposed acquirer has carried out terrorist activities or terrorist financing, in particular if the proposed acquirer is subject to a relevant financial sanctions regime; or

(c) the proposed acquisition increases the risk of money laundering or terrorist financing.

The assessment shall also cover the persons with close personal or business links to the proposed acquirer, including the legal and beneficial owners of the proposed acquirer.

For the purpose of this paragraph, 'persons with close links' to the proposed acquirer include the spouse, registered partner, cohabitee, child, parent or other relation that shares living accommodation with the proposed acquirer; and 'persons with close business links' to the proposed acquirer are those with whom the proposed acquirer, in private or through a company, its parent undertaking or subsidiary, conducts significant business.

95. The acquisition shall also be opposed when there are no criminal records, or where there are no reasonable grounds to suspect that money laundering is being committed or attempted, if the context of the acquisition would give reasonable grounds to suspect that there will be an increased risk of money laundering or terrorist financing (ML/TF). This could be the case, for example, if the proposed acquirer is established in or has relevant personal or business links itself (or through any family member or persons known to be close associates) in a country or territory identified by the Financial Action Task Force (FATF) as having strategic deficiencies that pose a risk to the international financial system or with a country or territory identified by the European Commission as having strategic deficiencies in its national anti-money laundering or counter-terrorist financing regime that pose significant threats to the financial system. The relevant reports of organisations such as Transparency International, the OECD and the World Bank shall also be considered.

96. In addition to information relating to the proposed acquirer collated during the assessment process, information shall also be collected from (for example) court decisions, public prosecutor's files, FATF-GAFI evaluations, assessments or reports drawn up by international organisations and standard setters with competencies in the field of anti-money laundering, predicate offences to money laundering and combating the financing of terrorism, as well as open media searches, which offer a comprehensive overview of the most recurrent ML/TF typologies, etc.

97. Within this context, the information regarding the source of the funds that will be used for the proposed acquisition shall also be assessed, including both the activity that generated the funds, as well as the means through which they have been transferred, to assess whether this may give rise to an increased risk of money laundering or terrorist financing. The following requirements shall also be verified:

    (a) the funds used for the acquisition are channelled through chains of financial institutions, all of which are subject to effective anti-money laundering and terrorist financing supervision by overseas authorities which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations and effectively implement those requirements;

(b) the information on the activity that generated the funds, including the history of the business activities of the proposed acquirer and on the financing scheme is credible and consistent with the value of the deal; and

(c) the funds have an uninterrupted paper trail back to their origins, or other information that allows the supervisory authorities to resolve all doubts as to their legal origin.

98. Should the competent authority be unable to verify the source of funds in the manner described above, it shall consider whether the explanation provided by the proposed acquirer is reasonable and credible, having regard to the outcome of the proposed acquirer's integrity assessment.

99. Missing information or information regarded as incomplete, insufficient or liable to give rise to suspicion – for example, capital movements not accounted for, cross-border relocations of headquarters, reshuffles in management or legal person owners, earlier associations of the owners, or the management of the company by criminals – shall trigger increased supervisory diligence and requests by the competent authority for further information and, should reasonable suspicion subsist, the acquisition shall be opposed.

Appendix 1 – List of information required for the assessment of an acquisition

1. This Appendix is divided into two parts. Part I lists 'the general information requirements', that is, all of the information which will generally be requested by the competent authority concerning the nature of the proposed acquirer and the proposed acquisition, regardless of the presumed degree of involvement (percentage of share capital or voting rights) that the proposed acquirer will have in the credit institution.

2. Part II lists the specific information required on the basis of the *proportionality principle*, distinguishing between two cases, when the acquisition will result in a change in control over the credit institution, and when the proposed acquirer will not gain control over the credit institution but will acquire a qualifying shareholding.

3. In case of a change in control, the proposed acquirer shall provide a business plan to the competent authority.

4. When the proposed acquirer acquires a qualifying shareholding but does not gain control over the credit institution, the information required shall be proportionate to the presumed degree of involvement of the proposed acquirer in the management of the credit institution.

5. In all cases, the proposed acquirer shall attest to the competent authority that all of the information communicated by him is accurate, and is not false, misleading, or deceptive. The proposed acquirer may be asked to provide documents evidencing that the statement submitted by the proposed acquirer is true (e.g. recent extracts from the criminal register) in order for the competent authority to be able to verify the statement. Confirmation from other authorities (e.g. judicial authorities or other regulators), domestic or otherwise, may also be sought if needed.

6. The information requirements listed in this appendix have to be provided by the persons (whether direct or indirect proposed acquirers) subject to notification requirements according to paragraph 15 of this Rule.

7. If the proposed acquirer has been assessed by the competent authority within the previous two years, regarding the information already held by the competent authority, that proposed acquirer shall only provide those pieces of information that have changed since the previous assessment. Where there have been no changes, the proposed acquirer is required to sign a declaration informing the competent authority that there is no need to update such information, since it remains unchanged from the previous assessment.

Part I – General information requirements

1. The requirements and provisions of the EBA 'Regulatory Technical Standards (RTS) under Article 8(2) of Directive 2013/36/EU on the information to be provided for the authorisation of credit institutions, the requirements applicable to shareholders and members with qualifying holdings and obstacles which may prevent the effective exercise of supervisory powers (EBA/RTS/2017/08)' (the EBA RTS) shall be applicable with respect to the requirements related to shareholders and members with qualifying holdings in credit institutions. In particular, reference shall be made to Annex II of the EBA RTS, which sets out the information which shall be submitted in relation to proposed acquisitions and proposed acquirers. In accordance with Annex II of the EBA RTS, the information to be submitted includes the following:

   A. Information relating to the identity and participation of all natural and legal persons that will have a qualifying holding in the credit institution:

      (a) a chart setting out the shareholder structure of the credit institution, including the breakdown of the capital and voting rights;

      (b) a list of the names of all persons and other entities that will have qualifying holdings in the credit institution, indicating in respect of each such person or entity:

         (i) the number and type of shares or other holdings to be subscribed;
         (ii) the nominal value of such shares or other holdings;
         (iii) any premium paid or to be paid;
         (iv) any security interests or encumbrances created over such shares or other holdings, including the identity of the secured parties; and
         (v) where applicable, any commitments made by such persons or entities aimed at ensuring that the credit institution will comply with applicable prudential requirements;

      (c) details of that person's or entity's financial or business reasons for owning that holding and the person's or the entity's strategy regarding the holding, including the period for which the person or the entity intends to hold the holding and any intention to increase, reduce or maintain the level of the holding in the foreseeable future;

      (d) details of the person's or the entity's intentions in respect of the credit institution and of the influence that the person or the entity intends to exercise over the credit institution, including in respect of the dividend policy, the strategic development and the allocation of resources of the credit institution, whether or not it intends to act as an active minority shareholder and the rationale for such intention;

      (e) information on the person's or the entity's willingness to support the credit institution with additional own funds if needed for the development of its activities or in case of financial difficulties;

(f) the content of any intended shareholder's or member's agreements with other shareholders or members in relation to the credit institution;

(g) an analysis of whether the qualifying holding will have any impact, including as a result of the person's close links to the credit institution, on the ability of the credit institution to provide timely and accurate information to the competent authorities; and

(h) the identity of each member of the management body or of senior management who will direct the business of the credit institution and will have been appointed by, or following a nomination from, such shareholders or members, together with, to the extent not already provided, the information set out in paragraphs (a)-(f) of paragraph 1 of Annex I of the EBA RTS;

(i) an explanation of the sources of funding for the proposed acquisition, including where applicable:

(i) details on the use of private financial resources, including their availability and (to ensure that the competent authority is satisfied that the activity that generated the funds is legitimate) source;
(ii) details on the means of payment for the intended acquisition and the network used to transfer funds;
(iii) details on access to capital sources and financial markets including details of financial instruments to be issued;
(iv) information on the use of borrowed funds, including the name of the lenders and details of the facilities granted, such as maturities, terms, security interests and guarantees, as well as information on the source of revenue to be used to repay such borrowings. Where the lender is not a credit institution or a financial institution authorised to grant credit, the prospective acquirer shall provide to the competent authorities information on the origin of the borrowed funds;
(v) information on any financial arrangement with other persons who are shareholders or members of the credit institution;
(vi) information on any assets of a person who is a shareholder or member of the credit institution which are to be sold to help finance the proposed participation, such as conditions of sale, price, appraisal and details regarding their characteristics, including information on when and how the assets were acquired.

B. <u>Information relating to natural persons that will have a qualifying holding in the credit institution:</u>

(a) personal details including the person's name and, if different, name at birth, date and place of birth, citizenship, personal national identification number (where available), address, contact details and a copy of an official identity document;

(b) a detailed curriculum vitae, stating the relevant education and training, and any professional experience in acquiring and managing holdings in companies, and any professional activities or other functions currently performed;

(c) a statement containing the following information concerning the person and any undertaking directed or controlled by the person over the last 10 years and of which the applicant is aware after due and careful enquiry:

(i) subject to national legislative requirements concerning the disclosure of spent convictions, any criminal conviction or proceedings where the person or undertaking has been found against and which were not set aside;
(ii) any civil or administrative decisions in matters of relevance to the assessment or authorisation process where the person or undertaking has been found against and any administrative sanctions or measures imposed as a consequence of a breach of laws or regulations (including disqualification as a company director), in each case which were not set aside and against which no appeal is pending or may be filed (except in the case of administrative penalties imposed under Regulations 3 to 7 of the Administrative Penalties, Measures and Investigatory Powers Regulations (S.L. 371.05) and of criminal convictions, in respect of which information shall also be provided for rulings still subject to appeal);
(iii) any bankruptcy, insolvency or similar procedures;
(iv) any pending criminal investigations;
(v) any civil or administrative investigations, enforcement proceedings, sanctions or other enforcement decisions against the person or undertaking concerning matters which may reasonably be considered to be relevant to the licensing or to the sound and prudent management of a credit institution;
(vi) where such documents can be obtained, an official certificate or any other equivalent document evidencing whether any of the events set out in sub-paragraphs (i)-(v) has occurred in respect of the relevant person or undertaking;
(vii) any refusal of registration, authorisation, membership or licence to carry out trade, business or a profession;
(viii) any withdrawal, revocation or termination of a registration, authorisation, membership or licence to carry out trade, business or a profession;
(ix) any expulsion by a regulatory or government body or by a professional body or association;
(x) any position of responsibility with an entity subject to any criminal conviction or civil or administrative penalty or other civil or administrative measure in matters of relevance to the assessment or authorisation process taken by any authority or any on-going investigation, in each case for conduct failings, including in respect of fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or of failure to put in place adequate policies and procedures to prevent such events, held at the time when the alleged conduct occurred, together with details of such occurrences and of the person's involvement, if any, in them; and
(xi) any dismissal from employment or a position of trust, any removal from a fiduciary relationship (save as a result of the relevant relationship coming to an end by passage of time) and any similar situation;

(d) where an assessment of reputation of the person has already been conducted by another supervisory authority, the identity of that authority and the outcome of the assessment;

(e) the current financial position of the person, including details concerning sources of revenues, assets and liabilities, security interests and guarantees, whether granted or received;

(f) a description of the business activities of the person and of any undertaking which the person directs or controls;

(g) financial information, including credit ratings and publicly available reports on any undertakings directed or controlled by the person;

(h) a description of the financial interests of the person, including credit operations, guarantees and security interests, whether granted or received, and of any non-financial interests of the person, including family or close relationships with any of the following natural or legal persons:

(i) any other current shareholder or member of the applicant credit institution;

(ii) any person entitled to exercise voting rights of the applicant credit institution in any of the following cases or combination of them:

- voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
- voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
- voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
- voting rights attaching to shares in which that person or entity has the life interest;
- voting rights which are held, or may be exercised within the meaning of the first four items of this sub-paragraph, by an undertaking controlled by that person or entity;
- voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
- voting rights held by a third party in its own name on behalf of that person or entity;
- voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;

(iii) any member of the Board of Directors or of the senior management of the credit institution; or

(iv) the credit institution or any other member of its group,

and, to the extent any conflict of interest arises from such relationships, proposed methods for managing such conflict;

(i) a description of any links to politically exposed persons, as defined in Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01); and

(j) any other interests or activities of the person that may be in conflict with those of the credit institution and proposed methods for managing those conflicts of interest.

C. Information relating to legal persons that will have a qualifying holding in the credit institution:

(a) name of the legal person or entity;

(b) where the legal person or entity is registered in a central register, commercial register, companies register or similar public register, the name of the register in which the legal person or entity is entered, the registration number or an equivalent means of identification in that register and a copy of the registration certificate;

(c) the addresses of its registered office and, where different, of its head office, and principal place of business;

(d) contact details;

(e) corporate documents or agreements governing the entity and a summary explanation of the main legal features of the legal form or of the entity;

(f) whether the legal person or entity has ever been or is regulated by a competent authority in the financial services sector or other government body;

(g) the information referred to in:
  (i) paragraph B(f) in relation to the legal person or entity;
  (ii) paragraph B(d) in relation to the legal person or entity;
  (iii) paragraph B(g) and (i) in relation to the legal person or entity, any person who effectively directs the business of the legal person or entity, any undertaking under the legal person or entity's control;
  (iv) paragraph B(c) in relation to the legal person or entity, any undertaking under the legal person or entity's control, and any shareholder exerting significant influence on the legal person or entity;

(h) a description of the financial interests of the legal person or entity, of persons who effectively direct the business of the legal person or of the entity, or, where applicable, the group to which the legal person or entity belongs, as well as the persons who effectively direct its business, including credit operations, guarantees and security interests, whether granted or received, as well as of any non-financial interests of any such legal person or entity, including, where applicable, family or close relationships, with any of the following natural or legal persons:
  (i) any other current shareholder or member of the credit institution;
  (ii) any person entitled to exercise voting rights of the credit institution in any of the following cases or combination of them:

- voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
- voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
- voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
- voting rights attaching to shares in which that person or entity has the life interest;
- voting rights which are held, or may be exercised within the meaning of the first four items of this sub-paragraph, by an undertaking controlled by that person or entity;
- voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
- voting rights held by a third party in its own name on behalf of that person or entity;
- voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;

(iii) any politically exposed person, as defined in Article 2(1) of the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01);

(iv) any member of the administrative, management or supervisory body, in accordance with relevant national legislation, or of the senior management of the credit institution; or

(v) the credit institution or any other member of its group, and, to the extent any conflict of interest arises from such relationships, proposed methods for managing such conflict;

(i) a list of each person who effectively directs the business of the legal person or entity, their name, date and place of birth, address, contact details, their national identification number, where available, and detailed curriculum vitae (stating relevant education and training, previous professional experience, any professional activities or other relevant functions currently performed), together with the information referred to in paragraphs B(c) and B(d) in respect of each such person;

(j) the shareholding structure of the legal person, including at least the identity of all shareholders exerting significant influence and their respective share capital and voting rights including information on any shareholder agreements;

(k) in the case of an entity which is not a legal person and which holds or shall hold the participation in its own name, the identity of all members of the entity, together with the information set out in paragraph B (if such members are

natural persons) or, as the case may be, in this paragraph C (if such members are legal persons);

(l) if the legal person or entity is part of a group (which, for the purpose of this paragraph, shall, in the case of such entities, include the members of the entity and the subsidiaries of such members), a detailed organisational chart of the structure of the group and information on the share of capital and voting rights of shareholders with significant influence over the entities of the group and on the activities currently performed by the entities of the group;

(m) if the legal person or entity is part of a group, information on the relationships between any credit institution, insurance or re-insurance undertaking or investment firm within the group and any other group entities, and the names of the relevant supervisory authorities;

(n) if the legal person or entity is part of a group, identification of any credit institution, insurance or re-insurance undertaking or investment firm within the group, the names of the relevant competent authorities, as well as an analysis of the perimeter of prudential consolidation of the credit institution and the group, including information about which group entities would be included in the scope of consolidated supervision requirements and at which levels within the group these requirements would apply on a full or sub-consolidated basis;

(o) annual financial statements, at the individual level and, where applicable, at the consolidated and sub-consolidated group levels, for the last three financial years, where the legal person or entity has been in operation for that period of time (or such shorter period of time for which the legal person or the entity has been in operation and financial statements were prepared), approved by the statutory auditor or audit firm within the meaning of Directive 2006/43/EC10, where applicable, including each of the following items:

(i) the balance sheet;
(ii) the profit and loss accounts or income statement;
(iii) the annual reports and financial annexes and any other documents registered with the relevant registry or competent authority of the legal person, including, as set out as relevant in the annual reports, financial annexes and any other registered documents, the planning assumptions used, at least under base case and stress scenarios;

(p) where the legal person or entity has its head office in a third country, at least all of the following information:
(i) where the legal person or entity is supervised by an authority of a third country in the financial services sector, a certificate of good standing, or equivalent where not available, from such foreign authority in relation to the legal person or entity;
(ii) where the legal person or entity is supervised by an authority of a third country in the financial services sector and if the authority does issue such declarations, a declaration by that authority that there are no obstacles or

limitations to the provision of information necessary for the supervision of the credit institution; and

(iii) general information on the regulatory regime of that third country as applicable to the legal person or entity, including information on the extent to which the third country's anti-money laundering and counterterrorist financing regime is consistent with the Financial Action Task Force's Recommendations;

(q) where the legal person is a collective investment undertaking:

(i) the identity of the unit holders controlling the collective investment undertaking or having a holding enabling them to prevent the taking of decisions by the collective investment undertaking;

(ii) details of the investment policy and any restrictions on investment;

(iii) the name and position of the persons responsible, whether individually or as a committee, for defining and making the investment decisions for the collective investment undertaking, as well as a copy of any management mandate or, where applicable, terms of reference of the committee;

(iv) a detailed description of the applicable anti-money laundering legal framework and of the anti-money laundering procedures of the collective investment undertaking; and

(v) a detailed description of the performance of former holdings of the collective investment undertaking in other credit institutions, insurance or re-insurance undertakings or investment firms, indicating whether such holdings were approved by a competent authority and, if so, the identity of the authority; and

(r) where the person is a sovereign wealth fund:

(i) the name of the public body in charge of defining the investment policy of the fund;

(ii) details of the investment policy and any restrictions on investment,

(iii)the names and positions of the individuals responsible for making the investment decisions for the fund; and

(iv)details of any influence exerted by that public body on the day-to-day operations of the fund and the applicant credit institution.

Where the proposed acquirer is not an individual, the *Questionnaire for Qualifying Shareholders other than Individuals* as set out in BR/01 shall be submitted.

2. Further to the information in paragraph 1 above, the following information shall also be submitted:

A. Where a proposed acquirer is a trust that already exists or would result from the acquisition, the provisions of Article 9(4) of the RTS apply. In addition to this, the following shall be submitted in such cases:

(a) A copy of the trust deed. In situations where the trustees do not wish to disclose all the provisions of the trust deed, an extract of the relevant clauses of the trust deed signed by the trustees is to be submitted to the competent authority. The extract of the trust deed is to include:

i. What type of trust it is;

ii. What are the powers of the trustee;

iii. Who are the settlor, beneficiaries, protector (if any);

iv. Duration of the trust.

(b) A Personal Questionnaire as set out in BR/01. This is to be submitted by:

i. a beneficiary, holding directly or indirectly, 10% or more in the credit institution in whose favour a discretion to appoint or advance trust property has been exercised or from a guardian where the beneficiary is a minor;

ii. a settlor when exercising extensive control over the administration of the trust or when the trust deed provides that the trust property reverts to the settlor upon termination of the trust;

iii. a director of the trustee, if the trustee is not regulated in an approved jurisdiction. Where a director is a legal person, the *Questionnaire for Qualifying Shareholders other than Individuals* as set out in BR/01 shall be submitted;

iv. a qualifying shareholder of the trustee, if the trustee is not regulated in an approved jurisdiction. Where a qualifying shareholding is a legal person, the *Questionnaire for Qualifying Shareholders other than Individuals* as set out in BR/01 shall be submitted.

For the purposes of sub-paragraphs (iii) and (iv) of this paragraph "approved jurisdiction" has the same meaning as is assigned to it by the Trust and Trustees Act (Chapter 331 of the Laws of Malta).

B. Where the proposed acquirer is a private equity fund or a hedge fund, the proposed acquirer shall provide to the competent authority the following additional information:

(a) a detailed description of the performance of previous acquisitions by the proposed acquirer of qualifying shareholdings in other entities subject to prudential supervision by overseas authorities;

(b) details of the proposed acquirer's investment policy and any restrictions on investment, including details on investment monitoring, factors serving the proposed acquirer as a basis for investment decisions related to the authorised undertaking and factors that would trigger changes to the proposed acquirer's exit strategy;

(c) the proposed acquirer's decision-making framework for investment decisions, including the name and position of the individuals responsible for making such decisions; and

(d) a detailed description of the proposed acquirer's anti-money laundering procedures and of the anti-money laundering legal framework applicable to it.

3. The information to be submitted in relation to the acquisition shall include:

a) Identification of the credit institution in which the acquisition is being proposed;

b) The overall aim of the acquisition and the proposed acquirer's intentions with respect to the proposed acquisition (e.g. strategic investment, portfolio investment, etc.);

c) The number, type and market value, in Euros and in reporting currency, of the shares (ordinary shares or any other kind) of the credit institution owned or contemplated to be owned by the proposed acquirer before and after the proposed acquisition; the amount of the shares in the total capital, in percentage, in Euros and in the reporting currency of the credit institution; and the proportion of voting rights, if different from the proportion of capital;

d) Any action in concert with other parties which shall include, amongst other things the following considerations: the contribution of other parties to the financing, the means of participation in the financial arrangement, and future organisational arrangements;

e) The content of intended shareholder's agreements with other shareholders in relation to the acquisition in the credit institution;

f) The proposed acquisition price and the criteria used when determining such price and, if there is a difference between the market value and the proposed acquisition price, an explanation as to why that is the case.

4. With respect to the information to be submitted in relation to the financing of the acquisition, the proposed acquirer shall provide a detailed explanation on the specific sources of funding for the proposed acquisition. Such explanation shall include:

a) details on the use of private financial resources and the origin and availability of the funds, including any relevant documentary support to provide evidence

to the competent authority that no money laundering is attempted through the proposed acquisition;

b) information on the means of payment of the intended acquisition and the network used to transfer funds;

c) details on access to capital sources and financial markets including details of any financial instruments to be issued;

d) information on the use of borrowed funds including the name of relevant lenders and details of the facilities granted, including maturities, terms, pledges and guarantees, along with information on the source of revenue to be used to repay such borrowings and the origin of the borrowed funds where the lender is not an entity subject to prudential supervision by the competent authority or an overseas authority;

e) information on any financial arrangement with other shareholders of the credit institution; and

f) information on assets of the proposed acquirer or the credit institution which are to be sold in order to help finance the proposed acquisition such as conditions of sale, price appraisal, and details on their characteristics including information on when and how the assets were acquired.

5. With regard to information on the new proposed group structure and its impact on supervision, the following shall apply:

a) Where the proposed acquirer is a legal person, the proposed acquirer shall provide the competent authority with an analysis of the perimeter of consolidated supervision of the authorised undertaking and the group that it would belong to after the proposed acquisition. This shall include information about which group entities would be included in the scope of consolidated supervision requirements after the proposed acquisition and at which levels within the group these requirements would apply on a full or sub-consolidated basis.

b) The proposed acquirer shall also provide, to the competent authority, an analysis as to whether the proposed acquisition will impact in any way, including as a result of close links of the proposed acquirer with the authorised undertaking, on the ability of such authorised undertaking to continue to provide timely and accurate information to the competent authority.

Part II – Additional information requirements linked to the level of the shareholding to be acquired

A: QUALIFYING SHAREHOLDING WITHOUT A CHANGE IN CONTROL

If there is no change in control, the proposed acquirer shall provide a '*document on strategy*' to the competent authority. Applying the proportionality principle, the level of information provided shall depend on the degree of influence on the management and activities of the credit institution inherent in the shareholding to be acquired (less than 20% vs. between 20% and 50%)

Depending on the global structure of the shareholding of the credit institution, the more detailed information foreseen under point A2 below may be requested by the competent authority even in cases where the shareholding to be acquired remains below the threshold of 20%, if the 'influence' exercised by that shareholding is considered to be equivalent to the influence exercised by shareholdings considered under point A2 below.

A1: Qualifying shareholding of less than 20%:

The '*document on strategy*' shall contain the following information:

I. The policy and strategy of the proposed acquirer regarding the proposed acquisition. In addition to the information required in Part I, Section 3 of this list, the proposed acquirer is required to inform the competent authority about:

   (a) the period for which the proposed acquirer intends to hold his or her shareholding after the proposed acquisition; and

   (b) any intention of the proposed acquirer to increase, reduce, or maintain the level of his or her shareholding in the foreseeable future;

II. An indication of the intentions of the proposed acquirer towards the credit institution, and in particular whether or not the proposed acquirer intends to act as an active minority shareholder, and the rationale for such action;

III. Information on the ability (financial position) and willingness of the proposed acquirer to support the credit institution with additional own funds if needed for the development of its activities or in case of financial difficulties.

A2: Qualifying shareholding of 20% or more but less than 50%:

Information of the same nature as mentioned under point A1 Qualifying shareholding of less than 20% shall be provided, but in more detail, including:

I. Details on the influence that the proposed acquirer intends to exercise on the financial position (including dividend policy), the strategic development, and the allocation of resources of the credit institution; and

II. A description of the proposed acquirer's intentions and expectations towards the credit institution in the medium-term, covering all the elements mentioned above under Section BI of Part II of Appendix 1.

III. Where, depending on the global structure of the shareholding of the credit institution, the influence exercised by the shareholding of the proposed acquirer is considered to be equivalent to the influence exercised by shareholdings of 20% or more but less than 50%, the proposed acquirer shall provide the information set out in paragraphs I and II of this section.

B: CHANGE IN CONTROL

If there is a 'change in control' in a credit institution (i.e. when the proposed acquisition would result in a qualifying holding of 50% or more, or where the target undertaking becomes a subsidiary of the proposed acquirer), the proposed acquirer shall provide a business plan to the competent authority which shall comprise a strategic development plan, estimated financial statements of the credit institution, and the impact of the acquisition on the corporate governance and general organisational structure of the credit institution.

I. The strategic development plan referred to above shall indicate, in general terms, the main goals of the proposed acquisition and the main ways for reaching them, including:

(a) the rationale for the proposed acquisition;

(b) medium-term financial goals which may be stated in terms of return-on-equity, cost-benefit ratio, earnings per share, or in other indicators as appropriate;

(c) the main synergies to be pursued within the credit institution;

(d) the possible redirection of activities/products/targeted customers and the possible reallocation of funds or resources expected to impact on the credit institution;

(e) general processes for including and integrating the credit institution in the group structure of the proposed acquirer, including a description of the main interactions to be pursued with other companies in the group

as well as a description of the policies governing intra-group relations and

(f) With regard to point (e), for credit institutions which are authorised and licensed in the European Union, information about the particular departments within the group structure which are affected by the transaction shall be sufficient.

II. The estimated financial statements of the credit institution referred to above shall, on both a solo and where applicable, a consolidated basis, for a period of three years, include the following:

(a) a forecast balance sheet and income statement;

(b) a forecast of prudential ratios including capital requirements;

(c) information on the level of risk exposures including credit, market and operational risks as well as other relevant risks; and

(d) a forecast of provisional intra-group transactions.

III. The impact of the acquisition on the corporate governance and general organisational structure of the credit institution referred to above shall include the impact on:

(a) the composition and duties of the Board of Directors and the main committees created by such decision-taking body including the management committee, risk committee, audit committee, remuneration committee and any other committees, including information concerning the persons who will be appointed to direct the business;

(b) administrative and accounting procedures and internal controls, including changes in procedures and systems related to accounting, internal audit, compliance (including anti-money laundering) and risk management, and including the appointment of the key functions of internal auditor, compliance officer and risk managers;

(c) the overall IT architecture including any changes concerning the outsourcing policy, the data flowchart, the in-house and external software used and the essential data and systems security procedures and tools including back-up, continuity plans and, audit trails;

(d) the policies governing outsourcing including information on the areas concerned, on the selection of service providers, and on the respective rights and obligations of the principal parties as set out in contracts such as audit arrangements and the quality of service expected from the provider; and

(e) any other relevant information pertaining to the impact of the acquisition on the corporate governance and general organisational structure of the credit institution, including any modification regarding the voting rights of the shareholders.

Malta Financial Services Authority

Triq L-Imdina, Zone 1

Central Business District, Birkirkara, CBD 1010, Malta

communications@mfsa.mt

www.mfsa.mt