

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Circular to the financial services industry on changes to Banking Rule 13**

1. Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 (the 'Directive') established the legal framework for the prudential assessment of acquisitions by natural or legal persons of a qualifying holding in a credit institution, assurance, insurance or reinsurance undertaking or an investment firm. The Directive amended the European Directives applicable to credit institutions, investment firms, and insurance and reinsurance undertakings. In 2008 the former Level-3 Committees (CEBS, CESR and CEIOPS) developed non-binding guidelines for the prudential assessment of qualifying holdings (the '3L3 Guidelines').
2. A Report published by the European Commission in February 2013 highlighted some shortcomings in the 3L3 Guidelines, including a lack of harmonised definitions of key concepts such as that of 'indirect qualifying holding', 'significant influence' and 'persons acting in concert', resulting in different interpretations by competent authorities as to whether, under such circumstances, a proposed acquisition or increase of a qualifying holding has to be notified or not to the relevant competent authority.
3. Hence, on 20th December 2016 the Joint Committee to the European Supervisory Authorities (EBA, ESMA and EIOPA) published updated Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01) hereafter referred to as the '2016 Guidelines'. The 2016 Guidelines harmonise key concepts, and list factors which competent authorities should take into account in their prudential assessment of acquisitions and increases of qualifying holdings. The 2016 Guidelines also give further guidance as to how the proportionality principle should be applied by the relevant competent authority in its prudential assessment of the proposed acquisition and the criteria to be applied by the competent authority in the assessment of the proposed acquirer. Annex I to the Guidelines sets out the recommended list of information which should be provided to the competent authorities in order to carry out their assessment.
4. The MFSA has published a revised version of Banking Rule 13 on [Prudential Assessment of Acquisitions and Increase of Shareholdings in Credit Institutions Authorised under the Banking Act 1994](#) ('the Rule'). Banking Rule 13 is modelled on and guided by the 2016 Guidelines. The Appendix to Banking Rule 13 reflects Annex I to the 2016 3L3 Guidelines however some of the information required in Annex I is

contained in the Personnel Questionnaire and the Questionnaire for Qualifying Shareholders other than Individuals annexed to Banking Rule 1 on Application Procedures and Requirements for Authorisation of Licences for Banking Activities under the Banking Act 1994 [BR/01/13].

5. As of the date of application of the regulatory technical standards developed by the EBA pursuant to Article 8(2) of Directive 2013/36/EU Part I of the Appendix to Banking 13 shall not apply to acquisitions and increases of qualifying shareholdings in credit institutions.

### **Contacts**

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