Chapter 3: Prudential assessment of acquisitions and increase of holdings in authorised undertakings

3.1 Introduction

3.1.1 In terms of article 38 of the Act, changes in shareholding of an authorised insurance undertaking, an authorised reinsurance undertaking, a captive insurance undertaking and a captive reinsurance undertaking ("an authorised undertaking") are to be notified to the competent authority. This Chapter lays down the Insurance Rules to be complied with in terms of article 38 and 38A of the Act.

3.1.2 This Chapter determines the manner in which any person or person acting in concert ("the proposed acquirer") is to notify the competent authority when a decision has been taken to a acquire directly or indirectly a qualifying shareholding in an undertaking authorised to carry on business of insurance or increasing the existing qualifying shareholding in the undertaking concerned. Furthermore, this Chapter also determines the criteria to be applied by the competent authority in the assessment process of a proposed acquirer as well as the information which is required to be provided in order to allow the competent authority to assess the acquisition in a complete and timely manner.

3.1.3 The procedure set out in this Chapter shall apply *mutatis mutandis* where the proposed acquirer is authorised or established in a third country.

3.1.4 This Chapter also includes relevant provisions found in the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector issued by the Joint Committee of the European Supervisory Authorities' published on the 20th December 2016.

3.2 Notification and Assessment Process of Proposed Acquisition or increase in shareholding

3.2.1 A proposed acquirer is required to provide a notification of a proposed acquisition to the competent authority, pursuant to article 38(1) of the Act, as soon as a decision is made to acquire or increase a qualifying shareholding in an authorised undertaking.

3.2.2 Notification is also required:

(a) if the shareholding held by the acquirer in the undertaking involuntarily reaches or exceeds 10%, 20%, 30% or 50% of the shares or voting rights in an authorised undertaking. This may occur as a result of the repurchase by an authorised undertaking 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 rights linked to the shares he 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 an authorised undertaking directly concerned by the proposed acquisition, in turn, directly or indirectly, controls subsidiaries that are regulated entities subject to the supervision of their European regulatory 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 an authorised undertaking.

3.2.3 Where 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 paragraph 3.9, where a threshold mentioned in paragraph 3.2.2(a) 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 an authorised undertaking directly, unless the competent authority has doubts about intermediate holders.

3.2.4 Where the proposed transaction is considered as significant or complex the proposed acquirer should in anticipation of the formal notification contact the competent authority.

3.2.5 For the purposes of paragraph 3.2.4, significant or complex transactions may include:

(a) transactions where the proposed acquirer or the authorised undertaking has a complex group structure;

(b) cross-border transactions;

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

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

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

3.2.6 Formal notification is to be accompanied by:

(a) in the case of a proposed acquirer who is an individual, a completed Personal Questionnaire as set out in the Annex I of Chapter 2 in Part A to these Insurance Rules;

(b) in the case of a proposed acquirer who is not an individual, the Questionnaire for Qualifying Shareholders other than Individuals set out in the Annex to this Chapter,

together with the information contained in the Schedule of this Chapter.

3.2.7 In order to avoid undue delays in the assessment process laid down in article 38A 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 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 38(A) 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 38(A) of the Act.

3.2.8 Without prejudice to paragraph 3.3.1 the list of information necessary to carry out the assessment set out in the Schedule to this Chapter shall be considered to be an exhaustive list of all the required information.

3.2.9 In the event that any of the information submitted is false or forged, rendering the conclusions of the competent authority liable to be erroneous, the competent authority shall refuse the approval of the proposed acquisition.

3.3 The Proportionality Principle

3.3.1 The information required from the proposed acquirer shall be proportionate and shall take into account amongst other matters:

(a) the nature of the proposed acquirer (legal or natural person, entity subject to prudential supervision or otherwise, whether or not the proposed acquirer is regulated in the EU or in a third country considered equivalent, etc.),

(b) 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.),

(c) the degree of involvement of the proposed acquirer in the management of the authorised undertaking and

(d) the size of the holding to be acquired.

3.3.2 Notwithstanding, the provisions of paragraphs 3.2.7:

(a) in some cases, the competent authority may not require the proposed acquirer to provide all of the information that appears in the Schedule to the Chapter (for example, if the competent authority already possesses some information or can obtain it from another European regulatory authority);

(b) in other cases, the competent authority may consider, on the basis of its analysis of the information submitted 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 38A(4) of the Act. Such a request shall initiate the beginning of the interruption period referred to in article 38A(5) of the Act. This additional information clarifies and completes the information submitted in accordance with the Schedule to this Chapter.

3.3.3 Where the proposed acquisition involves an intra-group transaction, the proposed acquirer shall notify the competent authority, identifying the upcoming changes in the group (for instance, the revised group structure chart) and providing the required information, as laid down in this Chapter, 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 competent authority shall consider limiting its assessment to the changes having occurred since the date of the last assessment.

3.3.4 Where the proposed acquirer encounters difficulties in obtaining the information required to prepare a full business plan, such as in the case of acquisitions by means of a public offer, such proposed acquirer shall inform the competent authority of the difficulties in obtaining information which is needed to prepare a full business plan and point out the aspects of its business plan that might be modified in the near future.

3.4 The Concept of Significant Influence

3.4.1 Where a proposed acquisition or increase in a holding, which does not amount to 10% of the capital or voting rights of the authorised undertaking, would enable the proposed acquirer to exercise a significant influence over the management of the authorised undertaking, whether such influence is actually exercised or not, notification to the competent authority is also required.

3.4.2 The (non-exhaustive) list of factors which shall be taken into account in order to assess whether a proposed acquisition of a holding would make it possible for the proposed acquirer to exercise significant influence over the management of the authorised undertaking are the following:

(a) the existence of material and regular transactions between the proposed acquirer and the authorised undertaking;

(b) the relationship of each member or shareholder with the authorised undertaking;

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

(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 authorised undertaking or of a parent undertaking of the authorised undertaking, 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 authorised undertaking; and

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

3.5 Indirect acquisitions of qualifying shareholdings

3.5.1 The relevant tests to assess whether a qualifying holding is acquired indirectly, 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.

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 an authorised undertaking, 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

3.5.2 The application of the notion of control envisages all natural or legal persons:

(a) who acquire directly or indirectly, control over an existing holder of a qualifying shareholding in an authorised undertaking, 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 an authorised undertaking,

as constituting indirect acquirers of a qualifying shareholding.

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

3.5.3 In the case set out in sub-paragraph (a) of paragraph 3.5.2, 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 38(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.

3.5.4 In the case set out in sub-paragraph (b) of paragraph 3.5.2, 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 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; 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

3.5.5 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.

3.5.6 The multiplication criterion entails the multiplication of the percentages of the holdings across the corporate chain, starting from the participation held directly in the authorised undertaking, 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. 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 sub-paragraph (a) above.

3.6 Decision to Acquire

3.6.1 In terms of article 38(1) of the Act, a proposed acquirer is required to notify the competent authority as soon as a decision is made to acquire or increase a qualifying shareholding in an authorised undertaking.

3.6.2 The following non-exhaustive list of 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/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.

3.7 The Concept of Acting in Concert

3.7.1 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 authorised undertaking. 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, the competent authority shall take all the relevant elements into account on a case by case basis.

3.7.2 Where certain persons act in concert, their holdings shall be aggregated in order to determine whether such persons acquire a qualifying shareholding or cross any relevant threshold contemplated in article 38(1) of the Act. Every person 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.

3.7.3 Where no notification evidencing that certain persons are acting in concert has been submitted to the competent authority, the competent authority may still examine whether such persons are in fact acting in concert. For this purpose, the competent authority shall take into account the non-exhaustive factors listed below as indicators that 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.

3.7.4 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:

(i) the existence of family relationships;

(ii) 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;

(iii) 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);

(iv) the use by different persons of the same source of finance for the acquisition or increase of holdings in the competent authority; and

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

3.7.5 When shareholders cooperate or engage in any of the activities set out in 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 companyabout the company's policies, practices or particular actions that the undertaking might consider taking;

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

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

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

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

(iv) 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:

(aa) 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 undertaking's financial statements; or

ix. the undertaking'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

(bb) to reject a related party transaction.

3.7.6 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 contemplated in paragraph 3.6.5 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.

3.7.7 Where shareholders cooperate by engaging in an activity which is not listed in paragraph 3.7.5, that fact in and of itself, does not mean that those persons should be regarded as persons acting in concert.

3.7.8 In cases of cooperation between shareholders in relation to the appointment of directors, in addition to the facts described above (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 proposed 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.

3.8. Determination of voting rights

3.8.1 For the purpose of determining voting rights:

(a) a UCITS management company within the meaning of Article 2 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) (recast), 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:

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

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

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

(bb) 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.

(b) 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:

(i) has permission to provide portfolio management;

(ii) exercises its voting rights independently from the parent; and

(iii) 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 equivalent to those provided for under Directive 2009/65/EC by putting into place appropriate mechanisms.

(c) shares reaching or exceeding 5% of the total voting rights in an authorised undertaking held by a market maker (as defined in Article 4.1(7) of the Directive

2014/65/EU), acting in the capacity of a market maker need not be aggregated provided that:

(i) it is authorised by its home Member State under Directive 2014/65/EU; and

(ii) it neither intervenes in the management of the issuer concerned not exerts any influence on the issuer to buy such shares or back the share price;

(d) shares held by a credit institution or investment firm in its trading book as defined in Article 3.1(54) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, need not be aggregated provided that:

(i) the voting rights held in the trading book do not exceed 5%; and

(ii) 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 authorised undertaking;

(e) shares acquired for the sole purpose of clearing and settling within a short settlement cycle shall not be taken into account;

(f) 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 such shares under instructions given in writing on by electronic means;

(g) voting rights or shares held by a credit institution or an investment firm as a result of -

(i) providing the underwriting of financial instruments; and/or

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

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 authorised undertaking and, on the other, disposed of within one year of acquisition.

3.9 The Five assessment criteria

3.9.1 In assessing the notification provided for in article 38 of the Act and the information referred to in article 38A of the Act, the competent authority shall in order to ensure the sound and prudent management of the authorised undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the authorised undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition 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 authorised undertaking 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 authorised undertaking in which the acquisition is proposed;

(d) whether the authorised undertaking will be able to comply and continue to comply with prudential requirements of the Act and of any regulations and Insurance Rules issued thereunder, and where applicable, the Financial Conglomerates Regulations, 2013, in particular, whether the group 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 European regulatory authorities and determine the allocation of responsibilities amongst the competent authority and European regulatory 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(2) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015, *on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC*, is being or has been committed or attempted or that the proposed acquisition could increase the risk thereof.

3.10 First assessment criterion - Reputation of the proposed acquirer

3.10.1 Without prejudice to the requirements of the Chapter on Fitness and Properness, the assessment of the reputation of the proposed acquirer covers two elements:

(a) integrity; and

(b) professional competence.

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

Integrity - Situations subject to assessment

3.10.3 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 authorised

undertaking. The assessment shall also cover the legal and beneficial owners of the proposed acquirer.

3.10.4 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 reasonable grounds to doubt his or her good repute.

3.10.5 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 in the integrity of the proposed acquirer. For this purpose the following situations shall be taken into account:

(a) any 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.

3.10.6 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 sub-paragraph (a) above;

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

(c) any relevant findings from on-site compliance visits and offsite supervision; and

(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 competent authority shall consider both the extent to which the source is public and trustworthy, as well as the extent to which the information is provided by several independent and reputable sources, is consistent over a period of time and there are no reasonable grounds to suspect that it is false.

3.10.7 The absence of a criminal conviction or prosecution, administrative and enforcement action should 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.

3.10.8 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 competent authority shall pay attention to:

(a) any evidence that the proposed acquirer has not been transparent, open, and cooperative in its dealings with the competent authority or any European regulatory authority, including any evidence that the proposed acquirer knowingly ignored the obligation of notification in terms of article 38(1) of the Act or attempted to evade 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 for 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 competent authority from acting as a person who directs the business.

3.10.9 The competent authority shall assess the relevance of such situations 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 be not significant.

3.10.10 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), the phase of the judicial process reached (conviction, trial, indictment), the effect of rehabilitation.

3.10.11 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 supervised entity vs. unregulated entity). However, in all cases, the proposed acquirer himself should attest in a statement that none of the situations described in paragraphs 3.10.6 and 3.10.8 occurs or has, to his best knowledge, occurred in the past. A delayed, incomplete, or undelivered declaration will call into question the approval of the acquisition. In all cases, the competent authority should be able to verify the statement submitted by the proposed acquirer by asking such person to provide documents evidencing that no adverse events as mentioned 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.

3.10.12 In the case of an increase in an existing qualifying shareholding which crosses the relevant thresholds contemplated in article 38(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.

3.10.13 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. In this context, by way of 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 an undertaking and B is a board member of that undertaking appointed by A, or vice versa;

(b) A and B jointly control an undertaking;

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

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

Professional competence

3.10.14 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 authorised undertakings ('technical competence').

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

3.10.16 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, the experience should also demonstrate due skill, care, diligence, and compliance with the relevant standards.

3.10.17 The assessment of professional competence shall take into account the influence that the proposed acquirer will exercise over the authorised undertaking. 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 authorised undertaking. In such circumstances, the evidence of adequate management competence should be sufficient.

3.10.18 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 another European regulatory authority;

(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 another European regulatory authority; or

(c) the proposed acquirer is a legal person that is a licensed and supervised by the competent authority or by another European regulatory authority;

and there is no new or revised evidence that could cast reasonable concerns regarding the proposed acquirer's professional competence. For instance, if a proposed acquirer has been judged competent to control (for example) a small licence holder which is authorised to provide investment advice, it does not necessarily mean that it is competent to control a more significant firm, such as a large credit institution.

3.10.19 If any of the situations contemplated in sub-paragraphs (a), (b), and (c) of paragraph 3.10.18 apply in respect of a proposed acquirer that is supervised by an overseas regulatory authority which is considered equivalent, the assessment of integrity and professional competence may be facilitated by cooperating with the overseas regulatory authority.

3.10.20 The circumstances set out in paragraph 3.10.18 are also relevant for the assessment of the proposed acquirer's integrity but do not constitute, by themselves, sufficient grounds for the competent authority to assume the proposed acquirer's integrity.

3.10.21 Persons may acquire significant holdings in entities subject to prudential supervision by European regulatory authorities or overseas regulatory 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 authorised undertaking concerned. Having regard to the likely influence of the proposed acquirer over the authorised undertaking, the professional competence requirements for this type of acquirer would be significantly reduced.

3.10.22 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 authorised undertaking concerned. In the same way, the degree of technical competence needed will depend on the nature and complexity of the activities envisaged.

3.10.23 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

3.10.24 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.

3.10.25 When assessing professional competence, the technical competence assessment should relate primarily to the financial activities currently performed by the proposed acquirer and/or by companies in the group to which such person belongs. In the light of the above, all persons who effectively direct the business of the proposed acquirer, which is not regulated in a Member State or an EEA State or in an approved jurisdiction, shall be required to submit to the competent authority the Personal Questionnaire set out in Annex 1 to Chapter 2 in Part A to these Insurance Rules.

3.11 Second assessment criterion – Reputation and experience of those who will direct the business of the authorised undertaking

3.11.1 The second criterion addresses circumstances when the proposed acquirer is in a position to appoint new persons who will direct the business of the authorised undertaking as a result of the proposed acquisition and such persons need to be fit and proper.

3.11.2 In contrast, and without prejudice to the fit and proper on-going requirements that apply to persons who currently direct the business of an authorised undertaking 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.

3.11.3 If the proposed acquirer intends to appoint a person who is not fit and proper, then the competent authority shall oppose the proposed acquisition.

3.12 Third assessment criterion –Financial soundness of the proposed acquirer

3.12.1 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 authorised undertaking. This capacity should 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 authorised undertaking becoming a subsidiary of the proposed acquirer, in the forecast financial objectives, consistent with the strategy identified in the business plan. The competent authority shall determine whether the proposed acquirer is sufficiently sound from a financial point of view to ensure the sound and prudent management of the authorised undertaking for the foreseeable future (usually three years), having regard to the nature of the proposed acquirer and of the acquisition.

3.12.2 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 authorised undertaking 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 authorised undertaking and situations where the proposed acquirer would be likely to exercise little or no influence.

3.12.3 If a proposed acquirer gains control over the authorised undertaking, 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 authorised undertaking in the midterm, if necessary, and its stated intentions in respect of whether it would provide such capital.

3.12.4 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) an entity subject to prudential supervision;

(b) an entity which is not so subject; or

(c) an individual.

3.12.5 In the case of a change in control, in particular in relation to the type of business pursued and envisaged in the authorised undertaking in which the acquisition is proposed, the extent of the proposed acquirer's compliance with prudential requirements should 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 authorised undertaking in which the acquisition is proposed, which presupposes the financial soundness of the proposed acquirer (i.e. its ability to implement the business plan).

3.12.6 The competent authority shall also analyse whether the financial mechanisms put in place by the proposed acquirer to finance the acquisition, or existing financial relationships between the proposed acquirer and the authorised undertaking concerned, could give rise to conflicts of interest that could destabilise the financial structure of the authorised undertaking.

3.12.7 The competent authority shall oppose the proposed acquisition if it concludes, based on its analysis of the information received, that the proposed acquirer is likely to face financial difficulties during the acquisition process or in the foreseeable future.

3.12.8 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, the competent authority shall assess if such indebtedness negatively affects the financial soundness of the proposed acquirer or the authorised undertaking's capacity to comply with prudential requirements (including, where relevant, the commitments provided by the proposed acquirer to meet prudential requirements referred to in section 3.13 below).

3.13 Fourth assessment criterion – Compliance with Prudential Requirements

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

3.13.2 In assessing this criterion, the competent authority shall take into consideration not only the objective facts, such as the intended share in the authorised undertaking, the reputation of the proposed acquirer, its financial soundness, and its group structure; but also the proposed acquirer's declared intentions towards the authorised undertaking 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 this Chapter, provided that the rights of the proposed acquirer under the Act and any regulations and Insurance Rules issued thereunder are not affected. These commitments could concern, for example, financial support provided in case of liquidity or solvency problems, corporate governance issues, the proposed acquirer's future intended shareholding in the authorised undertaking, and directions and goals for development, etc.

3.13.3 The competent authority shall take into account the ability of the authorised undertaking in which the proposed acquisition is proposed to comply at the time of the proposed acquisition, and to continue to comply thereafter, with all prudential requirements, including capital requirements, liquidity requirements, requirements related to governance arrangements, internal control, risk management, and compliance, etc.

3.13.4 If the authorised undertaking 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 European regulatory authorities, and determine the allocation of responsibilities among the competent authority and overseas regulatory authorities.

3.13.5 The prudential assessment of the proposed acquirer shall also cover its capacity to support an adequate organisation of the authorised undertaking within its new group. Both the authorised undertaking concerned as well as the group should 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).

3.13.6 The group of which the authorised undertaking will become a part of should be adequately capitalised.

3.13.7 The authorised undertaking shall also consider whether the proposed acquirer will be able to provide the authorised undertaking 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 authorised undertaking may require for future growth in its activities; or to implement any other appropriate solution to accommodate the authorised undertaking's needs for additional own funds.

3.13.8 If the proposed acquisition would result in a qualifying shareholding of 50% or more or in the authorised undertaking becoming a subsidiary of the proposed acquirer, this criterion shall be assessed at the time of acquisition and on continuous basis for the foreseeable future (usually three years). The business plan provided by the proposed acquirer to the competent authority should 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 Schedule to this Chapter.

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

3.13.10 For the purposes of this section:

(a) the *"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).

(b)"*to exercise effective supervision"* shall mean that the competent authority is not prevented from fulfilling its supervisory duties by the authorised undertaking'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 authorised undertaking, or by difficulties in the enforcement of those laws, regulations, or administrative provisions.

3.14 Fifth assessment criterion – Suspicion of Money Laundering or terrorist financing by the proposed acquirer

3.14.1 In terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008, an authorised undertaking is required to report transactions to the Financial Intelligence Analysis Unit and to the competent authority whenever it suspects or has reasonable grounds to suspect that the funds involved may have been or are the proceeds of a criminal activity or are linked to terrorism. Transactions should be reported whenever the circumstances surrounding them would lead a reasonable person to be suspicious. These concepts shall be similarly used for the prudential assessment of acquirers.

3.14.2 The 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.

3.14.3 The competent authority shall oppose the proposed acquisition where:

(a) it 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) it 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.

3.14.4 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 personal 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.

3.14.5 The competent authority shall also oppose the proposed acquisition even 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. 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 on Money Laundering (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.

3.14.6 In addition to information relating to the proposed acquirer collated during the assessment process, the competent authority shall collect information 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 money laundering or terrorism financing typologies etc.

3.14.7 Within this context, the competent authority shall also assess information regarding the source of the funds that will be used for the proposed acquisition, 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 competent authority shall verify that:

(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 European regulatory authorities or overseas regulatory 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.

3.14.8 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.

3.14.9 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 competent authority shall oppose the acquisition.