

## **SCHEDULE**

*(Paragraph 3.2.6 of Chapter 3)*

### **List of information required for the assessment of an acquisition**

1. The Schedule 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 capital or voting rights) that the proposed acquirer will have in the authorised undertaking.
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 authorised undertaking, and when the proposed acquirer will not gain control over the authorised undertaking 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. Where the proposed acquirer acquires a qualifying shareholding but does not gain control over the authorised undertaking, the information required should be proportionate to the presumed degree of involvement of the proposed acquirer in the management of the authorised undertaking.
5. In all cases, the proposed acquirer should attest to the competent authority that all of the information communicated by him is accurate, and is not false, misleading, or deceptive. The competent authority should be able to verify the statement submitted by the proposed acquirer by asking to provide documents evidencing that the statement is true (e.g., recent extracts from the criminal register) and, if needed, by requesting confirmation from other authorities (e.g. judicial authorities or other regulators), domestic or otherwise.
6. The information requirements listed in this Schedule have to be provided by the persons (whether direct or indirect proposed acquirers) subject to notification requirement according to paragraph 3.2.2 of Chapter 3.

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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 should 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. IDENTITY OF AND INFORMATION ON THE PROPOSED ACQUIRER

#### A: In the case of a natural person:

Where the proposed acquirer is an individual, the Personal Questionnaire set out in the Annex I to Chapter 2 shall be submitted by the individual concerned, together with the following:

- Information regarding the current financial position of the proposed acquirer, including details concerning sources of revenues, assets and liabilities, pledges and guarantees, granted or received;
- Financial information, including credit ratings and publicly available reports on the undertakings controlled or directed by the proposed acquirer and, if applicable, on the proposed acquirer;

#### B: In the case of a legal person:

Where the proposed acquirer is not an individual, the Questionnaire for Qualifying Shareholders other than Individuals set out in the Annex to this Chapter shall be submitted.

Where the proposed acquirer is a legal person which has its head office registered in a **third country**, the proposed acquirer should provide to the competent authority the following additional information:

- (a) a certificate of good standing, or equivalent where not available, from the overseas regulatory authority in relation to the proposed acquirer;

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- (b) where available, a declaration by the overseas regulatory authority that there are no obstacles or limitations to the provision of information necessary for the supervision of the authorised undertaking; and
- (c) general information on the regulatory regime of that third country as applicable to the proposed acquirer.

**C: In the case where the proposed acquirer is a trust that already exists or would result from the acquisition:**

- (a) Names of all the persons who will manage the assets (trustees) under the terms of the trust document and the respective shares in the distribution of income;
- (b) Names of all the persons who are 'beneficial owners' of the trust property indicating their percentage holdings. If the Trustees are not aware of all beneficiaries of the Trust, detailed reasons as to why must be given (for example, if the selection of beneficiaries is at the discretion of the Trustees the extent of this discretion and the class of persons from whom beneficiaries may be selected should be described);
- (c) 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 settlors, beneficiaries, protector (if any);
  - iv. Duration of the trust.
- (d) A Personal Questionnaire as set out in the Annex I to Chapter 2 in Part A of these Insurance Rules is to be submitted by:
  - (i) a beneficiary, holding directly or indirectly, 10% or more in an authorised

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undertaking, 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 set out in the Annex to this Chapter shall be submitted;

(iv) a qualifying shareholder of the trustee, if the trustee is not regulated in an approved jurisdiction. Where a qualifying shareholder is a legal person, the Questionnaire for Qualifying Shareholders other than Individuals set out in the Annex to Chapter 3 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 (Cap.331).

**D:** In the case where the proposed acquirer is a **private equity fund** or a **hedge fund**, the proposed acquirer should 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 European regulatory authorities or overseas regulatory 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;

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- (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.

**E:** In the case where the proposed acquirer is a **sovereign wealth fund**, the proposed acquirer should provide to the competent authority the following additional information:

- (a) the name of the ministry or government department in charge of defining the investment policy of the fund;
- (b) details of the investment policy and any restrictions on investment;
- (c) the name and position of the individuals responsible for making the investment decisions for the fund; and
- (d) details of any influence exerted by the identified ministry or government department on the day-to-day operations of the fund and the authorised undertaking.

## **2: INFORMATION ON THE PROPOSED ACQUISITION**

A1: Identification of the authorised undertaking in which the acquisition is being proposed;

A2: The overall aim of the proposed acquisition (e.g. strategic investment, portfolio investment, etc.);

A3: Information on the shares of the authorised undertaking owned, or contemplated to be owned, by the proposed acquirer before and after the proposed acquisition, including:

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- (a) the number and type of shares – whether ordinary shares or other – of the authorised undertaking owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition, along with the nominal value of such shares;
- (b) the share of the overall capital of the authorised undertaking that the shares owned, or intended to be acquired, by the proposed acquirer represent before and after the proposed acquisition;
- (c) the share of the overall voting rights of the authorised undertaking that the shares owned, or contemplated to be owned, by the proposed acquirer represent before and after the proposed acquisition, if different from the share of capital of the authorised undertaking;
- (d) the market value, in euros and in local currency, of the shares of the authorised undertaking owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition.

A4: 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;

A5: The content of intended shareholder's agreements with other shareholders in relation to the acquisition in the authorised undertaking;

A6: 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.

### **3. INFORMATION ON THE FINANCING OF THE PROPOSED ACQUISITION**

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A1: The proposed acquirer should provide a detailed explanation on the specific sources of funding for the proposed acquisition. The 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): details 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 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 a European regulatory authority or an overseas regulatory authority

(e): information on any financial arrangement with other shareholders of the authorised undertaking; and

(f) : information on assets of the proposed acquirer or the authorised undertaking 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.

#### **4. INFORMATION ON THE NEW PROPOSED GROUP STRUCTURE AND ITS IMPACT ON SUPERVISION**

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- A.1 Where the proposed acquirer is a legal person, the proposed acquirer should 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 should 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.
- A.2 The proposed acquirer should 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 should provide a document on strategy to the competent authority. Applying the proportionality principle, the level of information provided should depend on the degree of influence on the management and activities of the authorised undertaking inherent in the holding to be acquired (less than 20% vs. between 20% and 50%).

Depending on the global structure of the shareholding of the authorised undertaking, the more detailed information foreseen under section 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 section A2.

**A1: Qualifying holding of less than 20 %:**

Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the authorised undertaking of less than 20%, the proposed acquirer shall provide a document on strategy. The ‘*document on strategy*’ should contain the following information:

1. The strategy of the proposed acquirer regarding the proposed acquisition. In addition to the information required in Part I, Section 2- (Information on the Acquisition) of this list, the proposed acquirer shall inform the competent authority about:
  - (a) the period for which the proposed acquirer intends to hold its shareholding after the proposed acquisition; and
  - (b) any intention of the proposed acquirer to increase, reduce, or maintain the level of his shareholding in the foreseeable future;
2. An indication of the intentions of the proposed acquirer towards the authorised undertaking, and in particular whether or not it intends to act as an active minority shareholder, and the rationale for such action;
3. Information on the ability (financial position) and willingness of the proposed acquirer to support the authorised undertaking with additional own funds if needed for the development of its activities or in case of financial difficulties.

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

Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the authorised undertaking of 20% or more but less than 50%, the proposed acquirer shall provide a document on strategy of the same nature as mentioned under section B1 above, but in more detail, including:

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1. 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 authorised undertaking; and
2. A description of the proposed acquirer's intentions and expectations towards the authorised undertaking in the medium-term, covering all the elements mentioned above under section B1 of Part II of the Schedule to Chapter 3.
3. Where, depending on the global structure of the shareholding of the authorised undertaking, 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 should provide the information set out in paragraphs I and II of this section.

**B: CHANGE IN CONTROL**

Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the authorised undertaking of 50% or more, or in the authorised undertaking becoming its subsidiary, the proposed acquirer shall provide a business plan which shall comprise a strategic development plan, estimated financial statements of the authorised undertaking, and the impact of the acquisition on the corporate governance and general organisational structure of the authorised undertaking::

- B1: The strategic development plan referred to above should indicate, in general terms, the main goals of the proposed acquisition and the main ways for achieving 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 terms as appropriate;
  - (c) the main synergies to be pursued within the authorised undertaking;

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- (d) the possible redirection of activities/products/targeted customers and the possible reallocation of funds/resources expected to impact on the authorised undertaking;
- (e) general processes for including and integrating the authorised undertaking in the group structure of the proposed acquirer, including a description of the main interactions to be pursued with other undertakings in the group as well as a description of the policies governing intra-group relations; and
- (f) With regard to point (e), for institutions which are authorised and supervised in the European Union, information about the particular departments within the group structure which are affected by the transaction shall be sufficient.

B2: The estimated financial statements of the authorised undertaking referred to above should, on a both 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 capital requirements and solvency ratios;
- (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.

B3: The impact of the proposed acquisition on the corporate governance and general organisational structure of the authorised undertaking referred to above should 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;

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(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 authorised undertaking, including any modification regarding the voting rights of the shareholders.