

Schedule H - List of Information Required for the Assessment of an Acquisition

1. This 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 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 Investment Services Licence Holder.
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 Investment Services Licence Holder, and when the proposed acquirer will not gain control over the Investment Services Licence Holder but will acquire a qualifying shareholding.
3. The notion of “Control” of an Investment Services Licence Holder is defined in the Glossary to these Rules. In case of a change in control, the proposed acquirer shall provide a business plan to the MFSA as detailed in Part II of this Schedule.
4. When the proposed acquirer acquires a qualifying shareholding but does not gain control over the Investment Services Licence Holder, information required should be proportionate to the presumed degree of involvement of the proposed acquirer in the management of the Investment Services Licence Holder.
5. In all cases, the proposed acquirer should attest to the MFSA that all of the information communicated by him is accurate, and is not false, misleading, or deceptive. The MFSA should be able to verify the statement submitted by the proposed acquirer by asking it to provide documents evidencing that the statement is true (e.g. police conduct certificates) 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 requirements in terms of Article 10 of the Act. In the case of a chain of holdings reference should be made to section 13.1 in Part A of these Rules.

Part I - General information requirements

1. IDENTITY AND INFORMATION OF THE PROPOSED ACQUIRER

A: In the case of a natural person:

Where a proposed acquirer is an individual, the Personal Questionnaire as set out in Schedule F to these Rules shall be submitted by the individual.

B: In the case of a legal person:

Where a proposed acquirer is not an individual, the Questionnaire for Qualifying Shareholders other than Individuals as set out in Schedule G to these Rules shall be submitted. In the case of a chain of holdings reference should be made to section 13.1 in Part A of these Rules.

C: In the case where a 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 MFSA. 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, and protector (if any); and

iv. duration of the trust.

(d) A Personal Questionnaire as set out in Schedule F to these Rules is to be submitted by:

- i. a beneficiary holding directly or indirectly 10% or more in the investment services licence holder 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 qualifying shareholder is a legal person the Questionnaire for Qualifying Shareholders other than Individuals set out in Schedule G shall be submitted;
- iv. a qualifying shareholder 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 Schedule G 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).

2. INFORMATION ON THE ACQUISITION

- (a) Identification of the Investment Services Licence Holder in which the acquisition is being proposed;
- (b) The overall aim of the acquisition (e.g. strategic investment, portfolio investment, etc.);
- (c) The number and type of shares (ordinary shares or any other kind) of the Investment Services Licence Holder owned by the proposed acquirer before and after the acquisition; the amount of the shares in the total capital, in percentage, in Euros and in the reporting currency of the Investment Services Licence Holder; and the proportion of voting rights, if different from the proportion of capital;

- (d) Any action in concert with other parties (contribution of other parties to the financing, means of participation in the financial arrangements, future organisational arrangements, etc.);
- (e) Provisions of (contemplated) shareholder's agreements with other shareholders in relation to the acquisition in the Investment Services Licence Holder.

3. INFORMATION ON THE FINANCING OF THE ACQUISITION

- (a) Details on the use of private financial resources and their origin: documentary evidence or a signed statement;
- (b) Information on the means and the network used to transfer funds (availability of the resources which will be used for the acquisition, financial arrangements, etc.);
- (c) Details on access to capital sources and financial markets and on the funding for the purchase of the shares;
- (d) Information on the use of borrowed funds contracted with the banking system (financial instruments to be issued) or any kind of financial relationship with other shareholders of the Investment Services Licence Holder (maturities, terms, pledges and guarantees);
- (e) Information on assets of the proposed acquirer or the Investment Services Licence Holder which are to be sold in the short term (conditions of sale, price appraisal, and details on their characteristics).

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

A: CHANGE IN CONTROL

If there is a ‘change in control’ in an Investment Services Licence Holder, a **business plan** should be provided, containing information on the contemplated strategic development plan relating to the acquisition, prospective data, and details on principal modifications or changes in the Investment Services Licence Holder envisaged by the proposed acquirer.

1. A strategic development plan indicating, in general terms, the main goals of the acquisition and the main ways for reaching them, including
 - (a) the rationale for the proposed acquisition;
 - (b) medium-term financial goals (return on equity, cost-benefit ratio, earnings per share, etc.);
 - (c) the main synergies to be pursued within the Investment Services Licence Holder;
 - (d) the possible redirection of activities/products/targeted customers and the possible reallocation of funds/resources anticipated within the Investment Services Licence Holder;
 - (e) general modalities for including and integrating the Investment Services Licence Holder in the group structure of the proposed acquirer, including a description of the main synergies to be pursued with other companies in the group as well as a description of the policies governing intra-group relations.
2. Estimated financial statements of the Investment Services Licence Holder, on both a solo and consolidated basis, for a period of 3 years, including:
 - (a) a forecast balance sheet and a profit and loss account;
 - (b) a forecast of any applicable prudential ratios;
 - (c) information on the level of risk exposures (credit, market, operational, etc.); and
 - (d) a forecast of provisional intra-group operations.
3. The impact of the acquisition on the corporate governance and general organisational structure of the Investment Services Licence Holder, including the impact on:

- (a) the composition (including information concerning the persons who will be appointed to direct the business) and duties of the board and the main committees created by the decision-taking body (the management committee, risk committee, audit committee, and any other committees);
- (b) administrative and accounting procedures and internal controls: principal changes in procedures and systems related to accounting, audit, internal control, and compliance (including anti-money laundering) including the appointment of key functions (auditor/internal controller and compliance officer);
- (c) the overall IT systems architecture: this includes, for example, any changes concerning the subcontracting policy, the data flowchart, the in-house and external software used and the essential data and systems security procedures and tools (e.g. back-up, continuity plan, audit trails, etc); and
- (d) the policies governing subcontracting and outsourcing (areas concerned, selection of service providers, etc.) and the respective rights and obligations of the principal parties as set out in contracts (e.g. audit arrangements, quality of service expected from the provider, etc.).

B: 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 MFSA. Applying the proportionality principle, the level of information provided should depend on the degree of influence on the management and activities of the Investment Services Licence Holder 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 Investment Services Licence Holder, the more detailed information foreseen under point B2 below may be requested by the MFSA 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 B2.

B1: Qualifying shareholding of less than 20 %:

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

- I. The policy 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 MFSA about:
 - (a) the period for which the proposed acquirer intends to hold his shareholding after the acquisition;

- (b) any intention of the proposed acquirer to increase, reduce, or maintain the level of his shareholding in the foreseeable future;
- II. An indication of the intentions of the proposed acquirer towards the Investment Services Licence Holder, and in particular whether or not he intends to act as an active minority shareholder, and the possible rationale for such action;
- III. Information on the ability (financial position) and willingness of the proposed acquirer to support the Investment Services Licence Holder with additional own funds if needed for the development of its activities or in case of financial difficulties.

B2: Qualifying shareholding between 20 and 50 %:

Information of the same nature as mentioned under point B1 above 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 Investment Services Licence Holder;
- II. A description of the proposed acquirer's intentions and expectations towards the Investment Services Licence Holder in the medium-term, covering all the elements mentioned above under point (1) in section A of Part II of this Schedule.