

## **FMA Guidelines 2017/20 – Prudential assessment of qualifying holdings**

Guidelines on the prudential assessment of the acquisition, increase or disposal of qualifying holdings in a bank or investment firm, in asset management companies and in insurance companies

Reference:	FMA GL 2017/20
Addressees:	Banks and investment firms as defined under the Law of 21 October 1992 on Banks and Investment Firms (Banking Act; BA)  Asset management companies as defined under the Law of 25 November 2005 on Asset Management (Asset Management Act; AMA)  Insurance companies as defined under the Law of 12 June 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Act; ISA)
Re.:	The acquisition, increase or disposal of a qualifying holding in a bank or investment firm in accordance with the Law of 21 October 1992 on Banks and Investment Firms ( <i>Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG</i> – Banking Act; hereinafter referred to as the “BA”) and the Ordinance of 22 February 1994 on Banks and Investment Firms ( <i>Verordnung vom 22. Februar 1994 über die Banken und Wertpapierfirmen; Bankenverordnung, BankV</i> – Banking Ordinance; hereinafter referred to as the “BO”), in an asset management company in accordance with Article 10a(1) of the Law of 25 November 2005 on Asset Management ( <i>Gesetz vom 25. November 2005 über die Vermögensverwaltung; Vermögensverwaltungsgesetz, VVG</i> – Asset Management Act; hereinafter referred to as the “AMA”) and the Ordinance of 20 December 2005 on the Law on Asset Management ( <i>Verordnung vom 20. Dezember 2005 zum Gesetz über die Vermögensverwaltung; Vermögensverwaltungsverordnung, VVO</i> – Asset Management Ordinance; hereinafter referred to as the “AMO”) and in insurance companies in accordance with the Law of 12 June 2015 on the Supervision of Insurance Undertakings ( <i>Gesetz vom 12. Juni 2015 betreffend die Aufsicht über Versicherungsunternehmen; Versicherungsaufsichtsgesetz, VersAG</i> – Insurance Supervision Act; hereinafter referred to as the “ISA”) and the Ordinance of 25 August 2015 on the Supervision of Insurance Undertakings ( <i>Verordnung vom 25. August 2015 betreffend die Aufsicht über Versicherungsunternehmen; Versicherungsaufsichtsverordnung, VersAV</i> – Insurance Supervision Ordinance; hereinafter referred to as the “ISO”)
Place of publication:	Website
Entry into force:	3 October 2017
Date of publication:	3 October 2017
Last amended on:	7 May 2018

### **1. General information**

The Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01) of 20 December 2016, which were jointly issued by the European supervisory authorities, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), are implemented in Liechtenstein by means of FMA Communication 2015/4, FMA Communication 2012/2 and FMA Communication 2013/1.

In issuing these Guidelines, the Financial Market Authority Liechtenstein (hereinafter referred to as the “FMA”) is meeting its obligation to create and publish a list containing the information required for the assessment of a qualifying holding (Article 26a(7) of the BA in conjunction with Annex 8(III) of the BO, Article 10a et seqq. of the AMA and Article 92(2) of the ISA).

The Guidelines provide an overview of the assessment procedure applied to determine the suitability and financial soundness of a party interested in acquiring a qualifying holding in a bank or investment firm within the meaning of Article 26a(1) of the BA, in an asset management company within the meaning of Article 10a et seqq. of the AMA and in an insurance company within the meaning of Articles 92 et seqq. of the ISA. Assessments regarding individual cases will be made solely on the basis of legislative provisions and instructions issued by the FMA in the capacity of supervisory authority.

Checklists for the assessment will be made available by the respective FMA divisions. The use of the checklists is mandatory.

Please contact the FMA for further information.

## 2. Scope of application

- 2.1 Any proposed direct or indirect acquisition and any proposed disposal of a qualifying holding in a bank or an investment firm, in an asset management company or in an insurance company must be notified in writing to the FMA by the party or parties interested in the acquisition or disposal. Written notification must also be provided for any direct or indirect increase or disposal of a qualifying holding if, due to the increase or disposal, the thresholds of 20%, 30% or 50% of the capital or voting rights of the bank or investment firm, asset management company or insurance company are reached, exceeded or fallen below or if the bank or investment firm, the asset management company or the insurance company would become a subsidiary of an acquirer or would no longer be a subsidiary of the disposer. For the determination of voting rights, Articles 25, 26, 27 and 31 of the Law of 23 October 2008 on the Disclosure of Information on Issuers of Securities (*Gesetz vom 23. Oktober 2008 über die Offenlegung von Informationen betreffend Emittenten von Wertpapieren; Offenlegungsgesetz, OffG – Disclosure Act, DA*) applies (Article 26a(1) of the BA, Article 10a(1) of the AMA, Article 4(1)(15) of the AMA, Article 98 of the ISA).
- 2.2 A proposed acquisition or a proposed increase of a holding that does not reach 10% of the capital or voting rights of the target entity must also be notified to the FMA in advance so that it can prudentially assess whether such a holding would enable the interested acquirer to exert a considerable influence on the management of the target entity, irrespective of whether this influence is actually exerted or not. To assess whether a considerable influence can be exerted, the FMA takes account of several factors, including the shareholder structure of the target entity and the current level of involvement of the interested acquirer in the management of the target entity.

## 3. Definitions

The following definitions apply to these Guidelines:

- a) “Report” or “notification”: report/notification in accordance with Article 26a(1) of the BA, Article 10a(1) of the AMA, Article 92(2) of the ISA.
- b) “Interested acquirer”: a natural person or legal entity who proposes, either alone or together with one or more other natural persons or legal entities, to directly or indirectly acquire a qualifying holding in a target entity or to directly or indirectly increase a qualifying holding of this kind.
- c) “Target entity” or “financial institution”: a bank (in accordance with Article 4(1)(1) of Regulation (EU) No. 575/2013), an investment firm or asset management company (in accordance with Article 4(1)(1) of Directive 2014/65/EU), an insurance company (in accordance with Article 10(1)(55) of the ISA), a central counterparty (in accordance with Article 2(1) of Regulation (EU) No. 648/2012).

- d) “Information”: all details, documents and declarations that are to be presented by the notifier in accordance with these Guidelines.
- e) “Qualifying holding”: a holding within the meaning of Article 26a(1) of the BA and Article 3a (1)(36) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council (CRR), Article 10(1)(36) of the ISA and Article 13(21) of Directive 2009/138/EC of the European Parliament and of the Council (Solvency II), Article 4(1)(15) of the AMA and Article 4(1)(31) of Directive 2014/65/EU of the European Parliament and of the Council (MiFID II), in particular the direct or indirect holding of at least 10% of the capital or voting rights of an entity or where another possibility exists to exert a considerable influence on the management of this entity. To assess whether a considerable influence exists, the FMA will use the criteria stipulated under section 5 of JC/GL/2016/01.
- f) “Indirect acquisition of qualifying holdings”: a qualifying holding is deemed to be acquired indirectly by each person in respect of which the result of the multiplication of the holdings is 10% or more. The same applies to persons who have direct or indirect control over the person or persons who has/have been identified under application of the described multiplication criterion.

#### **4. Notification obligation**

##### **4.1 Notification by the interested acquirer**

A written notification stating the size of the proposed holding or reduction in the holding and containing the information required by the FMA in accordance with Annex 8(III) of the BO, Article 92(2) of the ISA, Article 10b(2) of the AMA and section 10 of these Guidelines must be submitted by the interested acquirer.

##### **4.2 Notification by the target entity**

If a target entity gains knowledge of an acquisition or disposal of a qualifying holding, it shall inform the FMA immediately. If shares of the target entity are admitted to trading on a regulated market, it shall inform the FMA at least once a year of the identity of the shareholders with qualifying holdings that it knows of and the size of such holdings (Article 26a(3) of the BA, Article 96(3) of the ISA, Article 10a(3) of the AMA). The other applicable statutory notification obligations remain unaffected by the foregoing.

#### **5. Notification confirmation**

- 5.1 Receipt of notification will be confirmed to the interested acquirer by the FMA in writing and without delay and within two working days of receipt under all circumstances. The notification will be deemed to be complete if it contains all of the information stipulated under section 10 and Annex 2/Annex 3 of these Guidelines. Notification confirmation of this kind will exclusively represent a procedural step that relates to the formal completeness of the notification and that leads to the start of the period of 60 working days for the performance of the prudential assessment. It will not imply the performance of a substantive examination by the FMA of the information made available. The notification confirmation will not affect the authority of the FMA to request further information or to raise objections against the proposed acquisition for reasons based on the prudential assessment or if the information made available by the interested acquirer is subsequently classified as incomplete. Upon providing confirmation of receipt of notification, the FMA will inform the interested acquirer of the date on which the assessment period will expire. The date of the FMA's confirmation letter will be decisive in this regard.
- 5.2 If the notification is incomplete, the FMA will confirm receipt of the notification within two working days. However, such confirmations neither include the contents nor have the effect stated under section 5.1. The FMA is under no obligation to list which information is missing in the confirmation of the notification's receipt. It may, however, provide details in this regard in a separate letter that must be prepared within a reasonable period. Following receipt of all of the required documents, the FMA

will confirm receipt of the notification in writing in accordance with the provisions of section 5.1 and with the contents and effect stated therein.

## **6. Proportionality**

- 6.1 The prudential assessment of the interested acquirer is performed in accordance with the principle of proportionality (section 8 of JC/GL/2016/01). The type and scope of the information requested from the interested acquirer are, in particular, dependent on the type of the interested party (e.g. natural person or legal entity, supervised financial institution or other supervised entity, financial institution supervised in the EEA or an equivalent third country), the particular features of the proposed transaction (e.g. transaction within the group or transaction between persons who are not part of the same group) and the level of involvement of the interested acquirer in the management of the target entity and the amount of the holding to be acquired.
- 6.2 Under certain conditions, interested acquirers may also make use of reduced information requirements. These arise from JC/GL/2016/01 and Annex 2(13)/Annex 3 (Article 13 of Commission Delegated Regulation (EU) No. 2017/1946) of these Guidelines. The FMA will decide on the existence of reduced information requirements on a case-by-case basis.

## **7. Procedure**

The procedure for the assessment of the acquisition, increase or disposal of qualifying holdings in banks or investment firms within the meaning of Article 26a of the BA will be governed by the provisions set out in Annex 8(I)(2) of the BO. The procedure for the assessment of the acquisition, increase or disposal of qualifying holdings in asset management companies will be governed by Article 10b of the AMA. The procedure for the assessment of the acquisition, increase or disposal of qualifying holdings in insurance companies will be governed by the provisions set out in Articles 93 and 94 of the ISA.

## **8. Cooperation with EU and EEA Member States**

- 8.1 Cooperation with EU or EEA Member States will be governed by the provisions applicable to the individual areas (Article 26a(2) and (6) of the BA; Article 10a(2) and (6) of the AMA; Article 95(2) of the ISA).
- 8.2 Commission Implementing Regulation (EU) 2017/461 and/or the relevant statutory regulations (Annex 1(31) of the BO; Article 55 of the AMA; Article 188 of the ISA) should be referred to for information on the consultation process between authorities.

## **9. Cooperation with third countries**

If the interested acquirer is subject to supervision in a third country, the FMA will work together with the responsible supervisory authority in the third country in question.

## **10. Documents for the assessment of the acquisition, increase or disposal of a qualifying holding**

- 10.1 The FMA will examine the information in the interest of ensuring the sound and prudent management of the bank or investment firm, asset management company or insurance company for which the acquisition/disposal or increase is proposed, whereby, in particular, the likely influence of the interested acquirer on the target entity and the acquirer's suitability and financial soundness are taken into account (Article 26a(7) of the BA in conjunction with Annex 8(II)(1) of the BO, Article 10c of the AMA and Article 94 of the ISA).
- 10.2 The list containing the information needed for the assessment of the qualifying acquisition that the FMA is required to publish in accordance with Article 26a of the BA in conjunction with Annex 8(III) of the BO (for banks) and Article 92(2) of the ISA can be found in Annex 2 of these Guidelines.

- 10.3 For the assessment of the acquisition, increase or disposal of a qualifying holding in investment firms in accordance with the BA and asset management companies in accordance with the AMA, the information listed in Commission Delegated Regulation (EU) No. 2017/1946 must be submitted in accordance with Annex 1.1(31) of the BO and Annex 1(31) of the AMO (see Annex 3 of these Guidelines).
- 10.4 All information to be submitted to the FMA as part of the assessment of a qualifying holding must in principle be submitted as original documents (and, where applicable, notarised and apostilled) in German or as an officially certified translation. Following consultation with the FMA, information can be provided in English or other languages.
- 10.5 Together with the notification of the proposed acquisition or increase of a qualifying holding, the information referred to in Annex 2 must be submitted by the interested acquirer for the assessment of the acquisition of a qualifying holding for the purpose of assessing the proposed acquisition. The interested acquirer must provide the FMA, as the responsible supervisory authority of the target entity, with the information stated under Annex 2/Annex 3 depending on whether the information relates to a natural person or a legal entity.

## **11. Transitional provisions**

- 11.1 Regulations that refer to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II) will enter into force upon their national implementation.
- 11.2 With the entry into force of these Guidelines, the FMA Guidelines of November 2015 on the “Acquisition, increase or disposal of a qualifying holding in a bank or investment firm in accordance with the Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (Banking Act, BA) and the Liechtenstein Ordinance of 22 February 1994 on Banks and Investment Firms (Banking Ordinance, BO)” will cease to apply.

## **12. Data protection**

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) as well as in line with the Liechtenstein data protection law.

Information regarding the processing of personal data, as well as details about the processing purpose, the data controller and the rights of data subjects can be found in the FMA Privacy Policy: <https://www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html>.

## **13. Entry into force**

These Guidelines will enter into force on 3 October 2017.

### **Annex 1 – Legal basis**

**Annex 2 – List of information required for the assessment of the acquisition or increase of a qualifying holding in a bank or an insurance company**

**Annex 3 – List of information required for the assessment of the acquisition or increase of a qualifying holding in an investment firm in accordance with the BA or an asset management company in accordance with the AMA**



FMA

## Annex 1 – Legal basis

### General

- Law of 23 October 2008 on the Disclosure of Information on Issuers of Securities (*Gesetz vom 23. Oktober 2008 über die Offenlegung von Informationen betreffend Emittenten von Wertpapieren; Offenlegungsgesetz, OffG – Disclosure Act, DA*)
- Law of 24 November 2006 against Market Abuse in the Trading of Financial Instruments (*Gesetz vom 24. November 2006 gegen Marktmissbrauch im Handel mit Finanzinstrumenten; Marktmissbrauchsgesetz, MG – Market Abuse Act, MAA*)
- Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPG – Due Diligence Act; DDA*)
- Persons and Companies Act of 20 January 1926 (*Liechtensteinisches Personen- und Gesellschaftsrecht vom 20. Januar 1926; PGR*)

### Banks and investment firms

- Law of 21 October 1992 on Banks and Investment Firms (*Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG – Banking Act, BA*)
- Ordinance of 22 February 1994 on Banks and Investment Firms (*Verordnung vom 22. Februar 1994 über die Banken und Wertpapierfirmen; Bankenverordnung, BankV – Banking Ordinance, BO*)
- FMA Communication 2013/7: Communication on the guarantee of sound and proper business operation (banks, financial holding companies, and certain mixed financial holding companies)
- FMA Communication 2015/4: Communication on the application of the guidelines and recommendations issued by the European Banking Authority (EBA) which the FMA has declared it complies with and which are applicable in this published form under section 3.

### Asset management companies

- Law of 25 November 2005 on Asset Management (*Gesetz vom 25. November 2005 über die Vermögensverwaltung; Vermögensverwaltungsgesetz, VVG – Asset Management Act, AMA*)
- Ordinance of 20 December 2005 on the Law on Asset Management (*Verordnung vom 20. Dezember 2005 zum Gesetz über die Vermögensverwaltung; Vermögensverwaltungsverordnung, VVO – Asset Management Ordinance, AMO*)
- FMA Communication 2012/2: Communication on the application of the guidelines issued by the European Securities and Markets Authority (ESMA) which the FMA has declared it complies or intends to comply with and which are applicable in this published form under section 4

### Insurance companies

- Law of 12 June 2015 on the Supervision of Insurance Undertakings (*Gesetz vom 12. Juni 2015 betreffend die Aufsicht über Versicherungsunternehmen; Versicherungsaufsichtsgesetz, VersAG – Insurance Supervision Act, ISA*)
- FMA Guidelines 2017/18: Professional qualification and personal integrity of executive bodies and function holders

- FMA Communication 2013/1: Overview of the guidelines issued by the European Insurance and Occupational Pensions Authority (EIOPA) which the FMA has declared it complies with or intends to comply with as part of the comply-or-explain procedure



## **Annex 2 – List of information required for the assessment of the acquisition or increase of a qualifying holding in a bank or an insurance company**

(List containing the information needed for the assessment of the qualifying acquisition that the FMA is required to publish in accordance with Article 26a of the BA in conjunction with Annex 8(III) of the BO and Article 92(2) of the ISA. The list corresponds to the list of information required for the assessment of the acquisition of a qualifying holding as recommended in Annex I of JC/GL/2016/01 of 20 December 2016 [see section 10.4 of the Guidelines]).

### ***Section 1***

#### ***Subject matter***

This Annex sets out the list of information required by the FMA to be included by a proposed acquirer in the notification of a proposed acquisition of, or increase in, a qualifying holding for the assessment of the proposed acquisition.

### ***Section 2***

#### ***Information to be provided by the proposed acquirer***

The information to be provided by the proposed acquirer to the FMA is that referred to in Sections 3 to 13 of this Annex, depending on whether the information relates to a natural person or a legal person or a trust.

### ***Section 3***

#### ***General information relating to the identity of the proposed acquirer***

1. Where the proposed acquirer is a natural person, the proposed acquirer provides the FMA with the following information relating to his identity:
  - (a) personal details including the person's name, date and place of birth, personal national identification number (where available), address, and contact details;
  - (b) a detailed curriculum vitae (or equivalent document), stating relevant education and training, previous professional experience, and any professional activities or other relevant functions currently performed.
2. Where the proposed acquirer is a legal person, the proposed acquirer provides the FMA with the following information:
  - (a) documents certifying the business name and registered address of its head office, and postal address if different, contact details and its national identification number (where available);
  - (b) registration of legal form in accordance with relevant national legislation;
  - (c) an up-to-date overview of entrepreneurial activities;
  - (d) complete list of persons who effectively direct the business, their name, date and place of birth, address, contact details, national identification number, where available, and detailed curriculum vitae (stating relevant education and training, previous professional experience, any professional activities or other relevant functions currently performed);
  - (e) the identity of all persons who may be considered to be beneficial owners of the legal person, their name, date and place of birth, address, contact details, and national identification number, where available.

3. For trusts that already exist or would result from the proposed acquisition, the proposed acquirer provides the FMA with the following information:
  - (a) the identity of all trustees who will manage assets under the terms of the trust document and, where applicable, their respective shares in the distribution of income;
  - (b) the identity of all persons who are beneficial owners or settlors of the trust property and, where applicable, their respective shares in the distribution of income.

#### **Section 4**

##### ***Additional information relating to the proposed acquirer that is a natural person***

1. The proposed acquirer that is a natural person provides the FMA with the following additional information:
  - (a) the following information concerning the proposed acquirer, and any undertaking directed or controlled by the proposed acquirer, over the last 10 years:
    - (1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures), notably through an official certificate (if and in so far as it is available from the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;
    - (2) open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer;
    - (3) refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or a professional body or association;
    - (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
  - (b) information as to whether an assessment of reputation of the proposed acquirer has already been conducted by another supervisory authority, the identity of that authority, and evidence of the outcome of the assessment;
  - (c) 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;
  - (d) a description of the business activities of the proposed acquirer;
  - (e) 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;
  - (f) a description of the financial and non-financial interests or relationships of the proposed acquirer with the persons listed in the following points:
    - (1) any other current shareholder of the target undertaking;
    - (2) any person entitled to exercise voting rights of the target undertaking in any of the following cases or a combination of them:
      - voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;

- voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
  - voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
  - voting rights attaching to shares in which that person or entity has the life interest;
  - voting rights which are held, or may be exercised within the meaning of the first four items of this sub-paragraph (2), by an undertaking controlled by that person or entity;
  - voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
  - voting rights held by a third party in its own name on behalf of that person or entity;
  - voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
- (3) any member of the administrative, management or supervisory body, in accordance with relevant national legislation, or of the senior management of the target undertaking;
- (4) the target undertaking itself and its group;
- (g) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target undertaking and possible solutions for managing those conflicts of interest.
2. With regard to point (f) of paragraph 1, financial interests may include interests such as credit operations, guarantees and pledges. Non-financial interests may include interests such as family or close relationships.

## **Section 5**

### ***Additional information relating to the proposed acquirer that is a legal person***

1. The proposed acquirer that is a legal person provides the FMA with the following additional information:
  - (a) information regarding the proposed acquirer, any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer as identified in point (e). That information shall include the following:
    - (1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures), notably through an official certificate (if and in so far as it is available within the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;
    - (2) open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer;
    - (3) refusal of registration, authorisation, membership, or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
    - (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation (in relation to any person who effectively directs the business of the proposed acquirer and any shareholder exerting significant influence on the proposed acquirer);
  - (b) information as to whether an assessment of reputation of the proposed acquirer or of the person who directs the business of the proposed acquirer has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of the assessment;
  - (c) a description of financial interests and non-financial interests or relationships of the proposed acquirer or, where applicable, the group to which the proposed acquirer belongs, as well as the persons who effectively direct its business with:
    - (1) any other current shareholders of the target undertaking;
    - (2) any person entitled to exercise voting rights of the target undertaking in any of the following cases or a combination of them:
      - voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
      - voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
      - voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
      - voting rights attaching to shares in which that person or entity has the life interest;

- voting rights which are held, or may be exercised within the meaning of the first four items of this sub-paragraph (2), by an undertaking controlled by that person or entity;
  - voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
  - voting rights held by a third party in its own name on behalf of that person or entity;
  - voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
- (3) any member of the administrative, management or supervisory body, in accordance with relevant national legislation, or of the senior management of the target undertaking;
- (4) the target undertaking itself and the group to which it belongs;
- (d) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target undertaking and possible solutions for managing those conflicts of interest;
- (e) the shareholding structure of the proposed acquirer, with the identity of all shareholders exerting significant influence and their respective share of capital and voting rights including information on any shareholders agreements;
- (f) if the proposed acquirer is part of a group, as a subsidiary or as the parent undertaking, a detailed organisational chart of the entire corporate structure and information on the share of capital and voting rights of shareholders with significant influence on the entities of the group and on the activities currently performed by the entities of the group;
- (g) if the proposed acquirer is part of a group, as a subsidiary or as the parent company, information on the relationships between the financial entities of the group and other non-financial group entities;
- (h) identification of any credit institution; assurance, insurance or reinsurance undertaking; or investment firm within the group, and the names of the relevant supervisory authorities;
- (i) statutory financial statements, at an individual and, where applicable, at consolidated and sub-consolidated group levels, regardless of the size of the proposed acquirer, for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:
- (1) the balance sheet;
  - (2) the profit and loss accounts or income statement;
  - (3) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the proposed acquirer.
- Where the proposed acquirer is a newly established entity, instead of the information specified in the first sub-paragraph, the proposed acquirer shall provide to the target supervisor the forecast balance sheets and forecast profit and loss accounts or income statements for the first three business years, including planning assumptions used;
- (j) where available, information about the credit rating of the proposed acquirer and the overall rating of its group.

2. With regard to point (c) of paragraph 1, financial interests may include interests such as credit operations, guarantees and pledges. Non-financial interests may include interests such as family or close relationships.
3. Where the proposed acquirer is a legal person which has its head office registered in a third country, the proposed acquirer provides to the FMA the following additional information:
  - (a) a certificate of good standing, or equivalent where not available, from foreign financial sector authorities in relation to the proposed acquirer;
  - (b) where available, a declaration by foreign financial sector authorities that there are no obstacles or limitations to the provision of information necessary for the supervision of the target undertaking;
  - (c) general information on the regulatory regime of that third country as applicable to the proposed acquirer.
4. Where the proposed acquirer is a sovereign wealth fund, the proposed acquirer provides to the FMA 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 target undertaking.
5. Where the proposed acquirer is a private equity fund or a hedge fund, the proposed acquirer provides to the FMA the following additional information:
  - (a) a detailed description of the performance of previous acquisitions by the proposed acquirer of qualifying holdings in financial institutions;
  - (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 target undertaking and factors that would trigger changes to the proposed acquirer's exit strategy;
  - (c) the proposed acquirer's decision-making framework for investment decisions, including the name and position of the individuals responsible for making such decisions; and
  - (d) a detailed description of the proposed acquirer's anti-money laundering procedures and of the anti-money laundering legal framework applicable to it.

## **Section 6**

### ***Information on the persons that will effectively direct the business of the target undertaking***

1. The proposed acquirer provides the FMA with the following information relating to the reputation and experience of any person who will effectively direct the business of the target undertaking as a result of the proposed acquisition:
  - (a) personal details including the person's name, date and place of birth, personal national identification number (where available), address and contact details;
  - (b) the position to which the person is being or will be appointed;

- (c) a detailed curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the particular for any activities within the scope of the position sought, and documentation relating to the person's experience, such as a list of reference persons including contact information and letters of recommendation. For positions held in the last 10 years, when describing these activities, the person shall specify his or her delegated powers, internal decision-making powers and the areas of operations under his or her control. If the curriculum vitae includes other relevant experiences, including management body representation, this shall be stated;
  - (d) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures), through an official certificate (if and in so far as it is available within the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;
  - (e) information on:
    - (1) open investigations, enforcement proceedings, sanctions or other enforcement decisions against the person;
    - (2) refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association; and;
    - (3) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
  - (f) information as to whether an assessment of reputation as a person who directs the business has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of this assessment;
  - (g) a description of financial interests and non-financial interests or relationships of the person and his or her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders;
  - (h) the minimum time that will be devoted to the performance of the person's functions within the firm (annual and monthly indications);
  - (i) the list of executive and non-executive directorships currently held by the person.
2. With regard to point (g) of paragraph 1, financial interests may include interests such as credit operations, shareholdings, guarantees and pledges. Non-financial interests may include interests such as family or close relationships.

## **Section 7**

### ***Information relating to the proposed acquisition***

The following information relating to the proposed acquisition is to be provided by the proposed acquirer to the FMA:

- (a) identification of the target undertaking;
- (b) details of the proposed acquirer's intentions with respect to the proposed acquisition, such as strategic investment or portfolio investment;
- (c) information on the shares of the target undertaking owned, or contemplated to be owned, by the proposed acquirer before and after the proposed acquisition, including:



- (1) the number and type of shares – whether ordinary shares or other – of the target 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;
  - (2) the share of the overall capital of the target undertaking that the shares owned, or intended to be acquired, by the proposed acquirer represent before and after the proposed acquisition;
  - (3) the share of the overall voting rights of the target 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 target undertaking;
  - (4) the market value, in euros and in local currency, of the shares of the target undertaking owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition;
- (d) any action in concert with other parties which shall include, amongst other things, the following considerations: the contribution of other parties to the financing, the means of participation in the financial arrangements and future organisational arrangements;
- (e) the content of intended shareholder's agreements with other shareholders in relation to the target undertaking;
- (f) the proposed acquisition price and the criteria used when determining such price and, if there is a difference between the market value and the proposed acquisition price, an explanation as to why that is the case.

### **Section 8**

#### ***Information on the new proposed group structure and its impact on supervision***

1. Where the proposed acquirer is a legal person, the proposed acquirer provides the FMA with an analysis of the perimeter of consolidated supervision of the target undertaking and the group that it would belong to after the proposed acquisition. This includes 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.
2. The proposed acquirer also provides 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 target undertaking, on the ability of the target undertaking to continue to provide timely and accurate information to the FMA.

### **Section 9**

#### ***Information relating to the financing of the proposed acquisition***

1. The proposed acquirer provides a detailed explanation, as provided in paragraph 2, on the specific sources of funding for the proposed acquisition.
2. The explanation referred to in paragraph 1 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 financial supervisor 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 a supervised financial institution;
- (e) information on any financial arrangement with other shareholders of the target undertaking;
- (f) information on assets of the proposed acquirer or the target undertaking which are to be sold in order to help finance the proposed acquisition, such as conditions of sale, price, appraisal, and details regarding their characteristics, including information on when and how the assets were acquired.

### **Section 10**

#### ***Additional information requirements where the proposed acquisition would result in a qualifying holding of up to 20%***

Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of up to 20%, the proposed acquirer provides a document on strategy to the FMA containing, where relevant, the following information:

- (a) the strategy of the proposed acquirer regarding the proposed acquisition, including the period for which the proposed acquirer intends to hold its shareholding after the proposed acquisition and any intention of the proposed acquirer to increase, reduce or maintain the level of his shareholding in the foreseeable future.
- (b) an indication of the intentions of the proposed acquirer towards the target undertaking, and in particular whether or not it intends to act as an active minority shareholder, and the rationale for that action;
- (c) information on the financial position of the proposed acquirer and its willingness to support the target undertaking with additional own funds if needed for the development of its activities or in case of financial difficulties.

### **Section 11**

#### ***Additional information requirements where the proposed acquisition would result in a qualifying holding of 20% and up to 50%***

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 20% and up to 50%, the proposed acquirer provides a document on strategy to the FMA containing, where relevant, the following information:
  - (a) all the information requested pursuant to Section 10 of this Annex;
  - (b) 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 target undertaking;
  - (c) a description of the proposed acquirer's intentions and expectations towards the target undertaking in the medium term, covering all the elements referred to in Section 12(2) of this Annex.
2. Where, depending on the global structure of the shareholding of the target undertaking, the influence exercised by the shareholding of the proposed acquirer is considered to be equivalent to the influence exercised by shareholdings of 20% and up to 50%, the proposed acquirer provides the information set out in paragraph 1.

## Section 12

### ***Additional information requirements where the proposed acquisition would result in a qualifying holding of 50% or more, or where the target undertaking becomes a subsidiary of the proposed acquirer***

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 50% or more, or in the target undertaking becoming its subsidiary, the proposed acquirer provides a business plan to the FMA which shall comprise a strategic development plan, estimated financial statements of the target undertaking, and the impact of the acquisition on the corporate governance and general organisational structure of the target undertaking.
2. The strategic development plan referred to in paragraph 1 indicates, in general terms, the main goals of the proposed acquisition and the main ways for achieving them, including:
  - (a) the overall aim of 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 possible redirection of activities, products, targeted customers and the possible reallocation of funds or resources expected to impact on the target undertaking;
  - (d) general processes for including and integrating the target undertaking in the group structure of the proposed acquirer, including a description of the main interactions to be pursued with other companies in the group, as well as a description of the policies governing intra-group relations.

With regard to point (d), for institutions authorised and supervised in the European Union or the European Economic Area, information about the particular departments within the group structure which are affected by the transaction shall be sufficient.

3. The estimated financial statements of the target undertaking referred to in paragraph 1 should, on both an individual and, where applicable, a consolidated basis, for a period of three years, include the following:
  - (a) a forecast balance sheet and income statement;
  - (b) forecast prudential capital requirements and solvency ratio;
  - (c) information on the level of risk exposures including credit, market and operational risks as well as other relevant risks;
  - (d) a forecast of provisional intra-group transactions.
4. The impact of the acquisition on the corporate governance and general organizational structure of the target undertaking referred to in paragraph 1 includes the impact on:
  - (a) the composition and duties of the administrative, management or supervisory body, and the main committees created by such decision-taking body including the management committee, risk committee, audit committee, remuneration committee and any other committees, including information concerning the persons who will be appointed to direct the business;
  - (b) administrative and accounting procedures and internal controls, including changes in procedures and systems relating 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 manager;
  - (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;
- (e) any other relevant information pertaining to the impact of the acquisition on the corporate governance and general organisational structure of the target undertaking, including any modification regarding the voting rights of the shareholders.

### **Section 13**

#### ***Reduced information requirements***

1. Where the proposed acquirer is an entity authorised and supervised within the European Union or the European Economic Area and the target undertaking meets the criteria provided in paragraph 2 of this Section, the proposed acquirer submits the following information to the target supervisor:
  - (a) Where the proposed acquirer is a natural person:
    - (1) the information set out in Section 3(1) of this Annex;
    - (2) the information set out in points (c) to (g) of paragraph 1 of Section 4 of this Annex;
    - (3) the information set out in Sections 6, 7 and 9 of this Annex;
    - (4) information set out in Section 8(1) of this Annex.
    - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of up to 20%, a document on strategy as set out in Section 10 of this Annex; and
    - (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 20% or more, a document on strategy as set out in Section 11 of this Annex.
  - (b) Where the proposed acquirer is a legal person or where a trust exists or would result from the proposed acquisition:
    - (1) the information set out in Section 3(2) and, where relevant, Section 3(3) of this Annex;
    - (2) the information set out in points (c) to (j) of Section 5(1) of this Annex and, where relevant, the information set out in Section 5(4) of this Annex;
    - (3) the information set out in Sections 6, 7 and 9 of this Annex;
    - (4) the information set out in Section 8(1) of this Annex.
    - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of up to 20%, a document on strategy as set out in Section 10 of this Annex; and
    - (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 20% or more, a document on strategy as set out in Section 11 of this Annex.
2. The requirements provided in paragraph 1 applies to acquisitions in investment firms that meet all of the following criteria:
  - (a) they do not hold client assets;

- (b) they are not authorised for the investment services and activities 'Dealing on own account' or 'Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis' referred to in points (3) and (6) of Section A of Annex I of Directive 2004/39/EC;
  - (c) in case they are authorised for the investment service of 'Portfolio management' as referred to in point (4) of Section A of Annex 1 of Directive 2004/39/EC, the assets under management by the firm are below EUR 500 million.
3. If the proposed acquirer has been assessed by the FMA within the previous two years, regarding the information already held by the target supervisor, that proposed acquirer only provides those pieces of information that have changed since the previous assessment.

Where there have been no changes, the proposed acquirer signs a declaration informing the FMA that there is no need to update such information, since it remains unchanged from the previous assessment.

**Annex 3 – List of information required for the assessment of the acquisition or increase of a qualifying holding in an investment firm in accordance with the BA or an asset management company in accordance with the AMA**

For the documents to be submitted, please refer to [Commission Delegated Regulation \(EU\) 2017/1946](#) of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm (OJ L 276 of 26 October 2017, page 32).