

## **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:	<p>Banks and investment firms as defined under the Law of 21 October 1992 on Banks and Investment Firms (Banking Act; BA)</p> <p>Asset management companies as defined under the Law of 25 November 2005 on Asset Management (Asset Management Act; AMA)</p> <p>Insurance companies as defined under the Law of 12 June 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Act; ISA)</p>
Concerning:	<p>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”), 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”)</p>
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## 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 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). Since 3 October 2017, the FMA has declared that it has been “compliant” with the Joint Guidelines (<https://www.fma-li.li/de/regulierung/regulierungen-der-europaischen-aufsichtsbehorden/guidelines.html>).

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 26c(3) of the BA, 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) in conjunction with Article 26c of the BA, in an asset management company within the meaning of Articles 10a et seqq. of the AMA and in insurance companies 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, an asset management company or an insurance company must be notified in writing to the FMA by the parties interested in the acquisition or disposal.
- 2.2 Written notification must also be provided of any proposed 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.
- 2.3 Any increase in a holding in a bank or investment firm, asset management company or insurance company must be reported in writing to the FMA, even where the holding is transformed into a qualifying holding as a result of the increase.
- 2.4 In addition, a written report must be filed in the event that the bank or investment firm, asset management company or insurance company would become a subsidiary of an acquirer or would no longer be a subsidiary of the seller.  
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; hereinafter referred to as the “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).
- 2.5 Each intended acquisition or each intended increase in a non-marginal holding must likewise be reported in advance to the FMA, even if it does not reach the threshold of 10% of the capital or voting rights of the target undertaking. The FMA carries out a prudential examination to establish whether such a holding would enable the interested acquirer to exert a considerable influence on the management of the target undertaking, irrespective of whether or not such influence is actually exerted. To assess whether a considerable influence can be exerted, the FMA takes account of several factors, including the shareholder structure of the target undertaking and the current level of involvement of the interested acquirer in the management of the target undertaking.

### 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 undertaking or to directly or indirectly increase a qualifying holding of this kind (see also Article 26a(1a) of the BA on persons acting in concert).
- c) “Target undertaking” or “financial institution”: a bank (in accordance with Article 3(1) of the BA), an investment firm (in accordance with Article 3(2) of the BA), an asset management company (in accordance with Article 4(1)(1) of the AMA), an insurance company (in accordance with Article 10(1)(55) of the ISA), or 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 4(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 (EU) 2014/65 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 percentage 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 requirement

#### 4.1 Notification by the interested acquirer or the disposing party

The notification by the interested acquirer or the disposing party must be given in writing, stating the size of the proposed holding or reduction in the holding and containing the information required by the FMA in accordance with Annex 2 of these Guidelines.

#### 4.2 Notification by the target undertaking

If a target undertaking gains knowledge of an acquisition or disposal of a qualifying holding, it shall inform the FMA immediately (Article 26a(3) of the BA). If shares of the target undertaking 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 26(1a) of the BA, Article 96(2) of the ISA, Article 10a(3) AMA). The other applicable statutory notification obligations remain unaffected by the foregoing.

#### 4.3 Person or persons interested in the acquisition and the disposal located abroad

A qualifying direct or indirect interested acquirer or a seller whose legal seat is outside Liechtenstein and does not have a delivery point in Liechtenstein needs to provide the FMA with a service address in Liechtenstein. Article 12 of the Law of 22 October 2008 on the Service of Official Documents (*Gesetz vom 22. Oktober 2008 über die Zustellung behördlicher Dokumente; Zustellgesetz, ZustG – Official Documents Service Act; hereinafter referred to as the “ODSA”*) is applicable.

#### 4.4. The joint notification of all qualifying direct and indirect interested acquirers or sellers is permitted (cf. Article 10(2) of the ODSA).

## 5. Confirmation of the notification

- 5.1 Receipt of full 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.
- 5.2 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. Such confirmation of full notification will represent a procedural step that relates exclusively to the formal completeness of the notification and does not imply any commentary on the substantive examination.
- 5.3 The period of 60 working days for the performance of the prudential assessment starts to run upon confirmation of the full notification. 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.

The notification confirmation will not affect the authority of the FMA to request further information or to raise objections at any time 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.

- 5.4 If the notification is incomplete, the FMA will likewise 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 acquirer (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 undertaking and the amount of the holding to be acquired. The reputation of the interested acquirer must be assessed in all cases in accordance with the same requirements – irrespective of their impact on the target undertaking (section 8.3 of JC/GL/2016/01).
- 6.2 Under certain conditions, interested acquirers may also be subject to reporting 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 or increase of qualifying holdings in banks or investment firms falling under Article 26a of the BA is governed by Article 26b of the BA.

The procedure for the assessment of the acquisition or increase of qualifying holdings in asset management companies is governed by Article 10b of the AMA.

The procedure for the assessment of the acquisition or increase of qualifying holdings in insurance companies is 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 is governed by the relevant 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 Implementing Regulation (EU) 2017/461, Implementing Regulation (EU) 2017/1944 and/or the relevant statutory regulations (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 contact the responsible supervisory authority in the third country in question.

## **10. Documents for the assessment of the acquisition or increase 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 undertaking and the acquirer's suitability and financial soundness are taken into account (Article 26c(1) of the BA, 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 and Article 92(2) of the ISA can be found in Annex 2 of these Guidelines.
- 10.3 For the assessment of the acquisition or increase 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 Annex 3 of these Guidelines must be submitted (in accordance with JC/GL/2016/01 for banks; see also Annex 1(31) of the AMO for asset management companies).
- 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 and/or Annex 3 must be submitted by the interested acquirer for the assessment of the proposed acquisition of a qualifying holding. All direct and indirect interested acquirers must provide the FMA, as the responsible supervisory authority of the target undertaking, with the information stated under Annex 2/Annex 3 depending on whether the information relates to the purchase of a bank or securities firm in accordance with the BA.
- 10.6 All enclosures must be numbered sequentially and submitted in an orderly manner. If the checklist refers to an enclosure, the enclosure and any material passages from the text must be marked clearly so as to enable unequivocal referencing between them. Duplicate submissions of individual documents must be avoided. The numbering previously stated must be continued for additional submissions.
- 10.7 Please note that, as a general rule, all documents must be submitted as originals. Personal declarations (e.g. guarantee form, CV, etc.) must be either signed by hand and the original filed as a hard copy with the FMA or signed by qualified electronic signature and transmitted digitally to the FMA. Article 3(1) of the Law of 27 February 2019 on Signature and Trust Services for Electronic Transactions (*Gesetz vom 27. Februar 2019 über elektronische Signaturen und Vertrauensdienste für elektronische Transaktionen; Signatur- und Vertrauensdienstegesetz, SigVG – Signature and Trust Services Act*; hereinafter referred to as the "STSA") and Article 25(2) of Regulation (EU) 910/2014 are applicable as regards qualified electronic signatures. Official or governmental confirmations (such as e.g. criminal records extracts, confirmations of residence, etc.) may only be filed in digital format if the document has been digitally issued by the competent body and bears a corresponding electronic administrative signature.

## **11. Transitional provisions**

- 11.1. 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 Law of 21 October 1992 on Banks and Investment Firms (Banking Act, BA) and the 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) No. 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 on the free movement of such data, and repealing Directive 95/46/EC) and in line with applicable data protection law.

All information regarding the processing of personal data, including details about the purpose of processing, the data controller and the rights of data subjects can be found in the FMA Privacy Policy, accessible at: <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.

### **14. Change directory**

The following changes were made on 13 April 2023:

Section 2. General information: clarification has been incorporated concerning the exception for marginal holdings.

Section 7. Procedure: the procedure set out in the Guidelines does not apply to the disposal of holdings.

Section 10. Documents for the assessment of the acquisition: documents must be submitted by all direct and indirect acquirers.

Annex 1: the legal basis has been altered.

**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**

## 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 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPG – Due Diligence Act; hereinafter referred to as the “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)
- FMA Communication 2013/7: Communication on the guarantee in respect of the proper conduct of business (banks, financial holding companies and certain mixed financial holding companies)

### Asset management companies

- Law of 25 November 2005 on Asset Management (Gesetz vom 25. November 2005 über die Vermögensverwaltung; Vermögensverwaltungsgesetz, VVG – Asset Management Act; hereinafter referred to as the “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; hereinafter referred to as the “AMO”)

### 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



## **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 et seqq. of the BA 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 an interested acquirer in the notification of a proposed acquisition, a proposed increase or a disposal of a qualifying holding for the assessment of the proposed acquisition.

### ***Section 2***

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

The information to be provided by the interested 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 interested acquirer***

1. Where the interested acquirer is a natural person, the interested acquirer provides the FMA with the following information relating to their 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, signed curriculum vitae (or equivalent document), stating relevant training and development, previous professional experience, and any professional activities or other relevant functions currently performed.
2. Where the interested acquirer is a legal person, the interested 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 a detailed, signed curriculum vitae (stating relevant training and development, 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 interested acquirer provides 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 on the interested acquirer as an individual<sup>1</sup>***

1. An interested acquirer who is a natural person provides the FMA with the following additional information:
- (a) the following information concerning the interested acquirer, and any undertaking directed or controlled by the interested 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 an affidavit;
    - (2) open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the interested acquirer;
    - (3) refusal of registration, authorisation, membership or a licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of any such 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;
  - (b) information as to whether an assessment of reputation of the interested acquirer has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of the assessment;
  - (c) information as to the current financial position of the interested acquirer, including details concerning sources of revenue, assets and liabilities, pledges and guarantees granted or received;
  - (d) a description of the business activities of the interested acquirer;
  - (e) financial information including credit ratings and publicly available reports on the undertakings controlled or directed by the interested acquirer and, if applicable, on the interested acquirer;

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<sup>1</sup> The information must be provided using the form for assessing the guarantee in respect of the proper conduct of business (Article 4 of FMA Communication 2013/07).

- (f) a description of the financial and non-financial interests or relationships of the interested 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 any member 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 interested 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 interested acquirer as a legal person***

1. The interested acquirer that is a legal person provides the FMA with the following additional information:
  - (a) information regarding the interested acquirer, any person who effectively directs the business of the interested acquirer, any undertaking under the interested acquirer's control, and any shareholder exerting significant influence on the interested 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 from the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through an affidavit;
    - (2) open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the interested acquirer;
    - (3) refusal of registration, authorisation, membership or a licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of any such 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 interested acquirer and any shareholder exerting significant influence on the interested acquirer);
  - (b) information as to whether an assessment of reputation of the interested acquirer or of the person who directs the business of the interested 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 interested acquirer or, where applicable, the group to which the interested 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 any member 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 interested 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 interested acquirer, including details concerning 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 interested 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 interested 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; life 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 interested acquirer, for the last three financial periods, approved, where the financial statements are audited, by the external auditor. These include:
- (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 interested acquirer.

Where the interested acquirer is a newly established entity, instead of the information specified in the first sub-paragraph, the interested acquirer shall provide the FMA with 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 interested 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 interested acquirer is a legal person which has its head office registered in a third country, the interested acquirer provides the FMA with the following additional information:
- (a) a certificate of good standing or – where not available – an equivalent certificate from foreign financial sector authorities in relation to the interested 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 interested acquirer.
4. Where the interested acquirer is a sovereign wealth fund, the interested acquirer provides the FMA with 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 persons 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 interested acquirer is a private equity fund or a hedge fund, the interested acquirer provides the FMA with the following additional information:
- (a) a detailed description of the performance of previous acquisitions by the interested acquirer of qualifying holdings in financial institutions;
  - (b) details of the interested acquirer’s investment policy and any restrictions on investment, including details on investment monitoring, factors serving the interested acquirer as a basis for investment decisions related to the target undertaking and factors that would trigger changes to the interested acquirer’s exit strategy;
  - (c) the interested 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 interested 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 interested 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 training and development, professional experience, including the names of all undertakings for which the person has worked as well as the nature and duration of the functions performed, the particular for any activities within the scope of the position sought, and documentation relating to the relevant 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 their control. If the curriculum vitae includes other relevant experience, 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 from the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through an affidavit;
  - (e) information on:
    - (1) open investigations, enforcement proceedings, sanctions or other enforcement decisions against the interested acquirer;
    - (2) refusal of registration, authorisation, membership or a licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of any such registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
    - (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 their 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, 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 interested acquirer to the FMA:

- (a) identification of the target undertaking;
- (b) details of the interested 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 interested 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 interested acquirer before and after the proposed acquisition, along with the nominal value of such shares;
  - (2) the interest in the overall capital of the target undertaking that the shares owned, or intended to be acquired by the interested 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 interested 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 interested 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, resources for participating in 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 interested acquirer is a legal person, the interested 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 interested 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 interested 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 interested 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 FMA 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 interested 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 the characteristics of the assets, 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 interested acquirer holding a qualifying holding in the target undertaking of up to 20%, the interested acquirer provides a document on strategy to the FMA containing, where relevant, the following information:

- (a) the strategy of the interested acquirer regarding the proposed acquisition, including the period for which the interested acquirer intends to hold its shareholding after the proposed acquisition and any intention of the interested acquirer to increase, reduce or maintain the level of its shareholding in the foreseeable future.

- (b) an indication of the intentions of the interested 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 interested 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 interested acquirer holding a qualifying holding in the target undertaking of 20% and up to 50%, the interested 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 interested 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 interested 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 interested acquirer is considered to be equivalent to the influence exercised by shareholdings of 20% and up to 50%, the interested 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 interested acquirer***

1. Where the proposed acquisition would result in the interested acquirer holding a qualifying holding in the target undertaking of 50% or more, or in the target undertaking becoming its subsidiary, the interested 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 interested 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 organisational 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 interested 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 interested acquirer submits the following information to the FMA:
  - (a) Where the interested acquirer is a natural person:

- (1) the information set out in Section 3(1) of this Annex;
  - (2) the information set out in Section 4(1)(c) to (g) 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 interested acquirer holding a qualifying holding in the target undertaking of up to 20%, the interested acquirer shall present a document on strategy to the FMA as set out in Section 10 of this Annex.
  - (6) Where the proposed acquisition would result in the interested acquirer holding a qualifying holding in the target undertaking of 20% or more, the interested acquirer shall present a document on strategy to the FMA as set out in Section 11 of this Annex.
- (b) Where the interested 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 interested acquirer holding a qualifying holding in the target undertaking of up to 20%, the interested acquirer shall present a document on strategy as set out in Section 10 of this Annex.
  - (6) Where the proposed acquisition would result in the interested acquirer holding a qualifying holding in the target undertaking of 20% or more, the interested acquirer shall present a document on strategy as set out in Section 11 of this Annex.
2. The requirements provided in paragraph 1 apply to any acquisition of holdings in investment firms that meets 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 interested acquirer has been assessed by the FMA within the previous two years, regarding the information already held by the FMA, the interested acquirer only provides those pieces of information that have changed since the previous assessment.



# FMA

Where there have been no changes, the interested 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 interested 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).