

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular to the financial services industry on changes to Chapter 3 of the Insurance Rules issued under the Insurance Business Act (CAP.403)

1. Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 (the ‘Directive’)¹ established the legal framework for the prudential assessment of acquisitions by natural or legal persons of a qualifying holding in a credit institution, assurance, insurance or reinsurance undertaking or an investment firm. The Directive amended the European Directives applicable to credit institutions, investment firms, and insurance and reinsurance undertakings. In 2008 the former Level-3 Committees (CEBS, CESR and CEIOPS) developed non-binding guidelines for the prudential assessment of qualifying holdings (the ‘3L3 Guidelines’).
2. A Report published by the European Commission in February 2013 highlighted some shortcomings in the 3L3 Guidelines, including a lack of harmonised definitions of key concepts such as that of ‘indirect qualifying holding’, ‘significant influence’ and ‘persons acting in concert’, resulting in different interpretations by competent authorities as to whether, under such circumstances, a proposed acquisition or increase of a qualifying holding has to be notified or not to the relevant competent authority.
3. On 20th December 2016 the Joint Committee to the European Supervisory Authorities (EBA, ESMA and EIOPA) published updated Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01) hereafter referred to as the ‘2016 Guidelines’. The 2016 Guidelines harmonise key concepts, and list factors which competent authorities should take into account in their prudential assessment of acquisitions and increases of qualifying holdings. The 2016 Guidelines also give further guidance as to how the proportionality principle should be applied by the relevant competent authority in its prudential assessment of the proposed acquisition and the criteria to be applied by the competent authority in the assessment of the proposed acquirer. Annex I to the Guidelines sets out the recommended list of information which should be provided to the competent authorities in order to carry out their assessment.
4. The MFSA has amended [Chapter 3 of the Insurance Rules on Prudential assessment of acquisitions and increase of holdings in authorised undertakings](#), and its Schedule (‘the Rules’) in order to bring them in line with the 2016 Guidelines. Annex I of the 2016

¹ Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) which repeals the Directive contains provisions of the Directive in relation to acquisitions.

Guidelines has been transposed in part in the Schedule to Chapter 3, whilst the rest of the information required in Annex I is contained in the Personal Questionnaire annexed to Chapter 2 of the Insurance Rules and the Questionnaire for Qualifying Shareholders other than Individuals annexed to Chapter 3.

5. The MFSA would like to point out that pursuant to Article 58(8) of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) EIOPA may develop draft regulatory technical standards to establish an exhaustive list of information, referred to in Article 59(4) of the Solvency II Directive to be included by the proposed acquirers in their notification. When the draft regulatory standards are issued, these shall apply and the requirements set out in the Schedule to Chapter 3 of the Insurance Rules shall no longer apply to acquisitions and increases of qualifying holdings in authorised undertakings.

Contacts

Any queries or requests for clarifications in respect of the above should be sent to Dr. Emaliese Lofaro by email on elofaro@mfsa.com.mt.

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19th February 2018