AUTHORISATION OF THE ACQUISITION OF QUALIFYING HOLDING IN INVESTMENT FIRMS

The regulatory environment applicable to investment firms has considerably changed after that 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**) has entered into force on 3 January 2018. In accordance with this, the requirements to be proved during the licensing procedure have also become broader, which have been stipulated in Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (**Investment Firms Act**) and in the directly applicable EU legal acts – not requiring transposition by the Member States – detailed later.

I. QUALIFYING HOLDING

I.1. Notion of the qualifying holding

Pursuant to Section 4 (2)11 of the Investment Firms Act qualifying holding shall mean "the notion determined as qualifying holding in Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (**Credit Institutions Act**)"
Pursuant to Section 6 (1)6 of the Credit Institutions Act "qualifying holding shall mean the notion defined as such in Regulation No 575/2013/EU of the European Parliament and of the Council;"

Pursuant to point 36 of Article 4 of Regulation No 575/2013/EU of the European Parliament and of the Council, "qualifying holding is a direct or indirect holding in an undertaking which **represents 10 percent or more of the capital or of the voting rights** or which **makes it possible to exercise a significant influence** over the management of that undertaking;"

I.2. General rules applicable to the acquisition of qualifying holding (general requirements, subject to prior authorisation)

According to Section 37(4) of the Investment Firms Act: "A qualifying holding may be held in an investment firm by a person,
a) the activity or the influence of whom exerted on the investment firm does not jeopardise independent, reliable and prudent owner's control over the investment firm,
b) the nature of whose business activity and relations or the structure of his direct and indirect ownership share outstanding in other companies do not hinder the supervisory activity,
c) who has good business reputation,
d) who – in the case of natural persons – has a clean record in respect of the criminal offences specified in Section 22 (5) and proves this fact by an extract from the judicial record (considering the provisions of Section 22 (6) of the Investment Firms Act).

Additional guidance is provided – by way of examples – for the construction of the general requirement stipulated in Section 37 (4)a) of the Investment Firms Act by paragraph (5) of the legal provision referred to, which stipulates: "The applicant, its activity or impact exerted on the investment firm jeopardises the independent, reliable and prudent owner's control of the investment firm particularly when
a) the exercise of its voting right has been suspended by the competent supervisory authority within five years preceding the submission of the application,
b) he has (or had) qualifying holding or is (was) a senior executive in such an investment firm, financial institution or insurance company,
ba) in the case of which the insolvency could be avoided solely through the measure applied by the competent supervisory authority, and whose personal liability for the development of this situation has been established by a non-appealable court judgement or administrative resolution, or
bb) which had to be liquidated, and whose personal liability for the development of this situation has been established by a non-appealable court judgement or administrative resolution, c) severely or regularly breached the provisions of this Act or other laws applicable to the management of the investment firm, and this has been established by the final resolution of the competent supervisory authority or other authority, or by a non-appealable court judgement dated within the previous five years.
c) severely or regularly breached the provisions of this Act or other laws applicable to business management of the investment firm, and this has been established by the final resolution of the competent supervisory authority or other authority not further back than five years or by a non-appealable court judgement dated within the previous five years."
Section 37 (1) of the Investment Firms Act states that the "**acquisition of a qualifying holding in an investment firm shall be subject to the prior authorisation of the Supervisory Authority**".

Section 37/B (1) of the Investment Firms Act prescribes that if an applicant that already holds qualifying holding wishes to amend its qualifying holding so as to exceed the limit of twenty, thirty-three or fifty percent, it also needs to obtain the prior authorisation of the MNB.

I.3. Determining the rate of the qualifying holding

Pursuant to Section 37/A (1) of the Investment Firms Act: "For the purposes of determining rate of the qualifying holding, the voting rights shall be calculated – irrespective of any provisions related to the restriction of the exercise of the voting right – on the basis of all shares to which voting rights are attached, as provided for in the investment firm's instrument of incorporation."

When determining the rate of the qualifying holding, in addition to the applicant's share, the voting right as specified below shall be also taken into consideration (Section 37/A (2) of the Investment Firms Act).

"For the purposes of determining the rate of the qualifying holding, it is necessary to take into consideration
a) the voting rights of any investment fund management company or UCITS management company, if the investment fund management company or the company engaged in the management of UCITS is controlled by the applicant and if able to exercise the voting rights attached to the securities portfolio it manages,
b) the voting rights of any investment firm or credit institution, if the investment firm or credit institution is able to exercise the voting rights attached to the portfolio it manages based on the direct or indirect instructions of the applicant or another controlled company of the applicant, or in any other way."

"For the purposes of determining the rate of the qualifying holding, voting rights attached to shares shall be recognised as the voting right of the applicant in any of the following cases, where the voting right
a) is exercised by the applicant and a third party under an agreement, which permits the concerted exercise of the voting rights for the parties to the agreement,
b) is exercised by the applicant under an agreement providing for the temporary transfer of the voting right,
c) may be exercised by the applicant, based on an agreement, in relation to shares placed with it as collateral,
d) is exercised by the applicant under the right of beneficial interest in the shareholding,
e) is exercised by the applicant's controlled company within the meaning of subsections a)-d);
f) is exercised by the applicant in its capacity as a custodian, at its discretion in the absence of specific instructions from the depositor,
g) is exercised by a third party in its own name to the benefit of the applicant, based on an agreement with the applicant, or
h) is exercised by the applicant in its capacity as a proxy at its discretion in the absence of specific instructions from the principal."

Within the context of determining the rate of qualifying holding, the following exemptions from the above apply.

According to Section 37/A (5) of the Investment Firms Act: "For the purposes of determining the rate of qualifying holding, it is not necessary to take into consideration the voting rights of the applicant's controlled company, if the applicant and its controlled company make a written declaration upon acquiring the qualifying holding to the effect that
a) they do not exercise the voting right or it may be exercised by a third party independently of the applicant and its controlled company, and that they will alienate the share within one year of the acquisition,
b) they may exercise the voting right in accordance with the specific instruction of a third party – independent of the applicant and of its controlled company – provided on paper or through electronic means,
c) they do not participate in the decisions related to the appointment and dismissal of the members of the investment firm's decision-making, management, supervisory organisations or bodies."

Paragraph (6) of the legal provision referred to stipulates the following as a further exception: "When determining the rate of the qualifying holding it is not necessary to take into consideration the voting right of the investment firm or credit institution operating as the controlled company of the applicant, if the investment firm or credit institution has a portfolio management licence, and may exercise the voting right attached to the portfolio managed by it
a) based on instructions received on paper or by electronic means,
b) independently of the applicant."

II. GENERAL RULES OF PROCEDURE

II.1. Submission of the application

No mandatory standard form has not been created in the EU legislative acts; however, pursuant to Article 59 (4) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank (**MNB Act**) the application for the authorisation of the acquisition of qualifying holding must be submitted on the related standard form or electronic form.
Pursuant to Act CCXXII of 2015 on the General Rules for Trust Services and Electronic Transactions (**E-administration Act**) and Article 58 of Act XXXXIX of 2013 on the Magyar Nemzeti Bank, from 1 January 2018, in the matters belonging to its tasks and competence – and particularly in its licensing, registration and notification procedures – the MNB, as an organisation offering electronic administration, must provide the opportunity for electronic administration, while the enterprises acting as clients, and their legal representative, are obliged to use electronic administration.

According to Section 9 (5) of the E-administration Act, if a law prescribes electronic communication or the method of electronic communication in respect of making a declaration, the declaration not complying with such requirement – with the exception of the cases stipulated in the Act and included in paragraph (4) – shall be void. According to section 9 of the E-administration Act and to the justification added to it, the application submitted on paper – despite the related requirement – shall not be suitable for launching the procedure. Accordingly, in this case the procedure will not commence, since the **declaration submitted in breach of the obligation of electronic communication shall be void**.

For general information on electronic administration in the MNB's official procedures see: https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/e-ugyintezes

Natural persons may submit their application for the authorisation of the acquisition of a qualifying holding both on paper and electronically, by filling in the standard form available on the MNB's website. Pursuant to Article 58 (2) of the MNB Act, natural persons not subject to mandatory electronic communication may submit their application, notification or other submission on the electronic form, available in the ERA system (Electronic System for Receiving Authenticated Data), dedicated to the respective application, notification or other submission, or on the ÁNYK (General Form Filling Framework) form (available at: http://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/e-ugyintezes-az-engedelyezesi-eljarasokban/2018-januartol-hatalyos-szabalyok/a-termeszetes-szemelyekelektronikus-ugyintezese-anyk), dedicated to the respective application, notification or other submission, available in the storage space within the Central Client Registration database or on the standard form available on the MNB's website.

On the other hand, enterprises and their legal representatives are obliged to use electronic administration, and thus they may submit the application only through the relevant electronic form. Accordingly, in the procedure aimed at the authorisation of the acquisition of qualifying holding, step zero for the enterprises shall be the registration for the ERA system, through which the application and the annexes thereto may be submitted on the relevant form. In this case the MNB communicates with the applicant also through the ERA system, and thus the orders and decisions passed during the procedure are also delivered through that.

The MNB's website contains notices related to electronic administration at:
https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/e-ugyintezes/2018-januartol-hatalyos-szabalyok

II.2. Administration deadline

Pursuant to Section 37/B (4) of the Investment Firms Act, the "Supervisory Authority shall confirm to the applicant or the owner of the qualifying holding the receipt of the application in writing within two working days from the submission of the application (hereinafter: acknowledgement of receipt) and at the same time inform it on the administration deadline specified in Section 38 (1). This provision shall be applied mutatis mutandis also to the supplementation specified in Section 38 (2)".

Pursuant to Section 38 of the Investment Firms Act: "(1) Within sixty working days from the issuance of the acknowledgment of receipt (hereinafter: administration deadline) the Supervisory Authority shall decide on the contemplated acquisition whether after the realisation thereof it will be possible to comply with the law. If based on the assessment, the Supervisory Authority rejects the acquisition or increasing of the qualifying holding, it shall

notify the applicant accordingly, specifying the reasons for the decision, within two working days after the completion of the assessment or within the administration deadline, at the latest.
(2) If the information specified in Section 37/B (2) is submitted incompletely or inadequately, the Supervisory Authority may call upon the applicant, within fifty working days from the date of the acknowledgment of receipt, to provide additional information or submit the missing document, indicating the information necessary for completing the assessment (hereinafter: supplementation).
(3) The time allowed for the supplementation shall be twenty working days.
(4) The time allowed for the supplementation shall be thirty working days, if
a) the applicant's registered office is located in a third country, or
b) the applicant is not subject to supervision according to the national laws of the EEA state transposing Directives 2009/65/EC, 2009/138/EC, 2013/36/EC and 2014/65/EC of the European Parliament and of the Council.
(5)
(6) After the completion of the supplementation by the applicant, the Supervisory Authority may also ask for other information from the applicant. However, the deadline provided for the fulfilment of such request for information must be taken into consideration for the purposes of calculating the administration deadline."

Pursuant to Section 39 (1) of the Investment Firms Act "if within the period specified Section 38 (1) the Supervisory Authority does not reject the acquisition of the qualifying holding or the increase of the rate of the qualifying holding, the authorisation shall be considered to have been granted."

II.3. Administrative service fee

Pursuant to Section 4 (2) of MNB Decree 14/2015. (V. 13.) of the Governor of the Magyar Nemzeti Bank on the administrative service fees of the Magyar Nemzeti Bank applied in certain licensing and registration procedures in the context of the supervision of the financial intermediary system and with respect to trustee enterprises, the conduct of the authorisation procedure is subject to the payment of an administrative service fee of 400,000 Forints.

III. MANDATORY ANNEXES TO THE LICENCE APPLICATION BASED ON EU LAWS AND THE INVESTMENT FIRMS ACT

Based on Article 12(8) of MiFID II, 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 (**RTS**) has been prepared, which substantially broadened the information to be provided in the procedure aimed at the authorisation of the acquisition of qualifying holding, depending on the subject thereof (natural person, legal entity, asset management company), the rate of the acquisition (between 10 and 20 percent, between 20 and 50 percent, over 50 percent), and whether the applicant is an institution licensed and supervised in the European Union and complies with the requirements set forth in Article 13(2) of RTS.

III.1. Documents to be submitted by natural person applicants

III.1.1. Standard form
– the applicant satisfies the requirements set out in Article 3(1) of RTS and Section 37 (2)a) of the Investment Firms Act by filling in the standard form; furthermore, the information related to the contemplated acquisition under Article 7 of RTS must be provided also on this form (Annex 1);

III.1.2. Good business reputation questionnaire
– declaration on – among other things – the following provisions shall be made on the good business reputation questionnaire: point a) of Article 4 of RTS (also in respect of the range of data not mentioned below, and the companies controlled by the applicant); points b-g) of Article 4 of RTS (thereby also fulfilling Section 37 (2)d) of the Investment Firms Act); (link)

III.1.3. Other documents without specific requirement with regard to their form
– detailed curriculum vitae of the applicant (Article 3(1)b) of RTS);
– in the case of non-Hungarian citizen applicants, confirmation that they have no outstanding debt to tax authority, customs authority and social insurance organisation; for Hungarian citizens this confirmation is obtained by the Supervisory Authority based on Section 37 (2b) of the Investment Firms Act (Section 37 (2)c) of the Investment Firms Act and Article 4 a)(1) of RTS);

– applicant's certificate of clean record with enhanced content[1] (Article 4a) (1) of RTS and Section 37 (2a) of the Investment Firms Act),
− the applicant's declaration on the following – naming the persons who will actually manage the business activity of the target company in the future (due to the fact that the election and appointment of senior executives is subject to prior authorisation, it is not necessary to provide the information specified in Article 6 of the RTS since those will be assessed in the personnel authorisation procedure),
– information related to the funding of the contemplated acquisition (Article 9 of RTS),
– applicant's declaration that he or she complies with the provisions of Section 37 (4) and (5) of the Investment Firms Act (Section 37 (2)f) of the Investment Firms Act) /on standard form/
– applicant's declaration to the effect that the acquisition of qualifying holding does not jeopardise the control of the investment firm from the head office located in the territory of Hungary (Section 37 (2)h) of the Investment Firms Act), /on the standard form/
– applicant's declaration related to Section 37 (2)j) and k) of the Investment Firms Act, with the proviso that it is not necessary to make a declaration on Section 28 (1)t) of the Investment Firms Act, since it applies only to legal entities;
– proof of the legal origin of the financial resources necessary for the acquisition of the qualifying holding (Section 37 (2)b) of the Investment Firms Act – for the proof of the legal origin of the financial resources see Section IV of the Guide);
– depending on the rate of the acquisition – upon acquiring a qualifying holding of not more than 20 percent, the documentation specified in Article 10 of RTS[2],
− upon acquiring a qualifying holding between 20 percent and 50 percent, the documentation prescribed in Article 11 of RTS: [3],
− upon acquiring a qualifying holding exceeding 50 percent, the documentation prescribed in Article 12 of RTS[4];

(2) The strategic development plan referred to in paragraph (1) shall indicate, 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;

[1] As part of confirming good business reputation, a certificate of clean record with enhanced content, i.e. also covering the effect of not being banned from exercising civil rights and occupation, shall be also attached. Pursuant to Section 22 (6) of the Investment Firms Act, the person in respect of whom the Act prescribes the absence of prior criminal record, must have a clean record in respect of the criminal offences specified in paragraph (5), which fact shall be proved – in the case of Hungarian citizens – by the extract from the judicial records obtained by the Supervisory Authority or provided by the client. However, in view of the fact that the directly applicable RTS does not limit the criminal offences, and the MNB is entitled to apply for data only in respect of the criminal offences stipulated in Section 22 (5) of the Investment Firms Act, the applicant must attach his or her certificate of clean record with enhanced content, covering all criminal offences.

[2] Article 10 of RTS: Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 percent, the proposed acquirer shall provide a document on strategy to the competent authority of the target entity containing the following information:
a) 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 their shareholding in the foreseeable future;
b) an indication of the intentions of the proposed acquirer in relation to the target entity, including whether or not it intends to exercise any form of control over the target entity, and the rationale for that action;
c) information on the financial position of the proposed acquirer and its willingness to support the target entity with additional own funds if needed for the development of its activities or in case of financial difficulties.

[3] Article 11 of RTS: (1) Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20 percent and 50 percent, the proposed acquirer shall provide a document on strategy to the competent authority of the target entity containing the following information:
a) all information set out in Article 10;
b) details on the influence that the proposed acquirer intends to exercise on the financial position in relation to target entity including dividend policy, the strategic development, and the allocation of resources of the target entity;
c) a description of the proposed acquirer's intentions and expectations in relation to the target entity in the medium term, covering all the elements referred to in Article 12 (2) and (3).
(2) By way of derogation from paragraph (1), the information referred to in that paragraph shall also be provided to the competent authority of the target entity by any proposed acquirer referred to in Article 10 where the influence exercised by the shareholding of that proposed acquirer, based on a comprehensive assessment of the shareholding's structure of the target entity, would be equivalent to the influence exercised by shareholdings between 20 percent and 50 percent.

[4] Article 12 of RTS: (1) Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of 50 percent or more, or in the target entity becoming its subsidiary, the proposed acquirer shall provide a business plan to the competent authority of the target entity which shall comprise a strategic development plan, estimated financial statements of the target entity, and the impact of the acquisition on the corporate governance and general organisational structure of the target entity.

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 entity;
d) general processes for including and integrating the target entity 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.
(3) Where the proposed acquirer is an entity authorised and supervised in the European Union, information about the particular departments within the group structure which are affected by the proposed acquisition shall be sufficient for the purposes of the information referred to in point d).
(4) The estimated financial statements of the target entity referred to in paragraph 1 shall, on both an individual and a consolidated basis, include the following for a reference period of three years:
a) a forecast balance sheet and income statement;
b) a 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 intra-group transactions.

(5) The impact of the acquisition on the corporate governance and general organisational structure of the target entity referred to in paragraph (1) shall include 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 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 with anti-money laundering and risk management, and the appointment of key functions of internal auditor, compliance officer and risk manager;
c) the overall IT systems and organisation including any changes concerning the IT outsourcing policy, the data flowchart, the in-house and external software used and the essential data and systems security procedures and tools such as back-up, continuity plans and audit trails;
d) the policies governing outsourcing, including information on the areas concerned, the selection of service providers, and the respective rights and obligations of the parties to the outsourcing contract 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 entity, including any modification regarding the voting rights of the shareholders.
- confirmation of the payment of the administrative service fee.

III.2. Documents to be submitted by legal entity applicants

III.2.1. Electronic form
– the applicant satisfies the requirements set out in Article 3 (2) of RTS by filling in the electronic form; furthermore, the information related to the contemplated acquisition under Article 7 of RTS must be provided also on this form (Annex 1);

III.2.2. Good business reputation questionnaire
– declaration on – among other things – the following provisions shall be made on the good business reputation questionnaire: point a) of Article 5 of RTS (also in respect of the range of data not mentioned below, and the persons effectively controlling the applicant, all companies controlled by the applicant and all shareholders exerting significant influence on the applicant); points b-d) and j) of Article 5 of RTS (thereby also fulfilling Section 37 (2)d) of the Investment Firms Act);

III.2.3. Other documents without specific requirement with regard to their form
– the detailed curriculum vitae of the persons effectively controlling the applicant (Article 3 (2) d) of RTS);
– in the case of non-resident legal entity applicants, confirmation that they have no outstanding debt to tax authority, customs authority and social insurance organisation; for resident legal entities this confirmation is obtained by the Supervisory Authority based on Section 37 (2b) of the Investment Firms Act (Section 37 (2)c) of the Investment Firms Act and Article 5 a)(1) of RTS);

– in the case of legal entity applicant with registered office outside Hungary, presentation of the instrument of incorporation in effect at the time of submitting the application, documentary proof – not older than thirty days – that it has been registered in accordance with its personal law; proof that it is not under bankruptcy, liquidation or dissolution proceeding, and no disqualifying reasons exist in respect of its senior executive; in the case of legal entities with registered office in Hungary, this confirmation is obtained by the Supervisory Authority pursuant to Section 37 (2b) of the Investment Firms Act (Section 37 (2)g) of the Investment Firms Act and Article 5 a)(1) of RTS)
– extract from the judicial record, with enhanced content, for the persons effectively controlling the applicant and of natural person shareholder exerting significant influence on the applicant (Article 5a)(1) of RTS),
– presentation of the applicant's financial standing (Article 5, i) of RTS);
− the applicant's declaration on the following – naming the persons who will actually manage the business activity of the target company in the future (due to the fact that the election and appointment of senior executives is subject to prior authorisation, it is not necessary to provide the information specified in Article 6 of the RTS since those will be assessed in the personnel authorisation procedure),
– information related to the funding of the contemplated acquisition (Article 9 of RTS),
– applicant's declaration that it complies with the provisions of Section 37 (4) and (5) of the Investment Firms Act (Section 37 (2)f) of the Investment Firms Act) /on electronic form/
– applicant's declaration to the effect that the acquisition of qualifying holding does not jeopardise the control of the investment firm from the head office located in the territory of Hungary (Section 37 (2)h) of the Investment Firms Act), /on electronic form/
– applicant's declaration related to Section 37 (2)j) and k) of the Investment Firms Act,
– presentation of the applicant's shareholding structure supported by documentary evidence (Article 5e)-h) of RTS and Section 37 (2)i) of the Investment Firms Act)
− upon acquiring a qualifying holding of up to 20 percent, the documentation prescribed in Article 10 of RTS[2];
− upon acquiring a qualifying holding between 20 percent and 50 percent, the documentation prescribed in Article 11 of RTS[3];
− upon acquiring a qualifying holding exceeding 50 percent, the documentation prescribed in Article 12 of RTS[4];
– depending of the rate of acquisition;
– proof of the legal origin of the financial resources necessary for the acquisition of the qualifying holding (Section 37 (2)b) of the Investment Firms Act – for the proof of the legal origin of the financial resources see Section IV of the Guide);
– if the applicant's registered office is an a third country, provision of the information prescribed in Article 5(2) of RTS[5];
– if the applicant is a sovereign investment fund, provision of the information prescribed in Article 5(3) of RTS[6];
– if as a result of acquisition of qualifying holding, the investment firm would be subject to group consolidated supervision, providing the information under Article 8 of RTS[7];
- confirmation of the payment of the administrative service fee.

[5] Article 5 (2) of RTS: Where the proposed acquirer is a legal person which has its head office registered in a third country, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:
a) a certificate of good-standing or equivalent document from the relevant foreign competent authorities in relation to the proposed acquirer;
b) a declaration by the relevant foreign competent authorities that there are no obstacles or limitations to the provision of information necessary for the supervision of the target entity;
c) general information on the regulatory regime of that third country as applicable to the proposed acquirer.

[6] Article 5 (3) of RTS: Where the proposed acquirer is a sovereign wealth fund, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:
a) the name of the ministry or government department in charge of defining the investment policy of the fund;
b) the details of the investment policy and the restrictions applicable to the investments;
c) the name and position of the individuals responsible for taking the investment decisions for the fund, as well as the details of qualifying holdings or the influence as referred to in Article 11 (2) exerted by the identified ministry or government department on the day-to-day operations of the fund and the target entity.

[7] Article 8 of RTS: (1) Where the proposed acquirer is a legal person, it shall provide the competent authority of the target entity with an analysis of the scope of consolidated supervision of the group which the target entity would belong to after the proposed acquisition. That analysis shall include information about which group entities would be included in the scope of consolidated supervision requirements after the proposed acquisition and at which levels within the group those requirements would apply on a full or sub-consolidated basis.
(2) The proposed acquirer shall also provide the competent authority of the target entity with an analysis of the impact of the proposed acquisition on the ability of the target entity to continue to provide timely and accurate information to its supervisor, including as a result of close links of the proposed acquirer with the target entity.

If the conditions stipulated in Article 13 (1) and (2) of RTS exist[8], the applicant may provide only the information stipulated therein, **but the licensing procedure must conducted in this case as wel**l.

III.3. Documents to be submitted by asset management company applicants

The RTS does not provide a precise definition of the asset management company. The law in English uses the term 'trust', which has no precise equivalent in the Hungarian law; however, trustees specified in Act XV of 2014 on Trustees and the rules governing their activities (**Trustee Act**) are somewhat similar to this institution and the personal scope of the legal relationship covers the range of persons in respect of whom information must be provided based on the provision of RTS mentioned above (trustee, settlor and beneficiary).

Fiduciary asset management may be pursued as a business only by fiduciary asset management companies; however, non-professional fiduciary asset management may be pursued by natural persons and legal entities alike, and thus it is not excluded that a natural person, non-professional fiduciary asset manager acquires qualifying holding in an investment firm. The formulation in the RTS implies that explicitly only the asset management companies must make a declaration on the settlors, trustees and beneficiaries; however, based on the foregoing, it is advisable to extend this also to the natural person fiduciary asset managers.

Accordingly, if the applicant acts as a trustee, either as a natural person or as a legal entity, he or it should make a declaration on the information under Article 3(3) of RTS and provide all other information and prove all other requirements prescribed by the RTS and the Investment Firms Act.

IV. EXISTENCE OF THE FINANCIAL RESOURCES, PROOF OF THEIR LEGAL SOURCE, AND ASSESSMENT OF THE APPLICANT'S FINANCIAL AND ECONOMIC SITUATION

The proof of the **legal origin of the financial resources** includes also the proof of their **availability** between the emergence and utilisation thereof.

IV.1. Confirming the availability and legal origin of the financial resources
The financial resources may be provided from own funds or from debt capital.
When the applicant is a natural person, own funds may be proved primarily by an income certificate issued by NTCA, which also contains the incomes subject to separate taxation. Incomes taxed separately include, among others, dividends, income from property lease or foreign exchange gains.

The amounts reasonably necessary for covering the normal living costs and the taxes specified in the income certificate shall be deducted from the consolidated income stated in the income certificate. **The tax certificate alone is not sufficient to prove the own funds.**

Companies may prove own funds by their balance sheet data and audited annual accounts, when on the liability side the balance sheet profit and retained earnings correspond to or are higher than the amount to be used for the acquisition.

If at the time of initiating the authorisation procedure the audited balance sheet cannot be deemed current due to the lapse of time, an unaudited interim balance sheet, supported by the current trial balance, should be submitted. In addition to the liability side of the annual accounts, the assets side is also examined to ascertain whether the applicant has sufficient liquid assets for the financial resources and whether they will provide the applicant with sufficient liquidity even after the acquisition. Please indicate which balance sheet row of the annual accounts contain the financial resources necessary for the acquisition.
Debt capital may comprise of funds originating from a loan contract, where the lawful origin of the loan amount must be assessed.

[8] The condition of simplified notification is that the person intending to acquire shareholding should be an institutional unit licensed and supervised in the EU, and the target company complies with the criteria specified in paragraph (2), namely
a) it does not hold assets of its clients;
b) it is 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) where it is authorised for the investment service of 'Portfolio management' as referred to in point (4) of Section A of Annex I of Directive 2004/39/EC, the assets under management by the firm are below EUR 500 million.

Loan contract from a financial institution may be accepted, if the purpose thereof is in line with the acquisition of the qualifying holding. If the lender is a private individual, it is also necessary to examine the lawful origin of the funds provided by him or her. When the lender is a company or other non-natural person, it must be examined whether the lender has any profit, retained earnings and liquid assets that may be used for lending and whether it has not used it for other purposes.

In the authorisation procedure it is also necessary to attach the loan contract, other documents specifying the conditions of the loan and it must be rendered probable that the applicant is able to repay the loan. If the repayment of the loan will take place from the profit of the supervised institution, it also may be necessary to submit the business plan of the supervised institution – irrespective of the rate of the shareholding – to assess the probability of the repayment.

When the applicant is a closed-end capital fund or other similar fund – since the capital fund includes collective assets – in the authorisation procedure it is necessary to inspect the financial resources in respect of the capital fund, and the compliance with other conditions (good business reputation, clean record and disqualification declaration of senior executives) in respect of the manager of the capital fund. When a capital fund acquires a holding, not only the capital fund will qualify as applicant, but also the capital fund manager – due to the exercise of voting rights – and thus it shall be also subject to the provisions of this licensing guide. If the fund is active, the annual report of the fund should be submitted. If it is a newly established fund, the amounts provided to the fund by the investors contributing to the fund will be examined.

It must be proved that the **funds of legal origin are continuously available to the applicant** from the date of the origination until the acquisition of the holding, i.e. the "legality" thereof is maintained.

Availability also means that if there is a longer time between raising and using the funds, i.e. the acquisition of the qualifying holding, it must be also proved that the funds are still available for the purposes of the procedure in question and have not been used for other purposes meanwhile. The availability of the funds may be proved primarily by a bank confirmation or confirmation issued by the securities account-keeping institution.

When the acquisition is funded from a loan, the applicant must also prove the movement of the funds from the disbursement until the utilisation. The transfer may be proved by the bank transfer document or the confirmation of the banks involved in the transfer of funds. If the debt capital is not from a bank loan, the loan contract must also specify the purpose of the loan and the target account where it is transferred to.

Depending on the type of the acquirer of the holding, a bank certificate or an escrow confirmation issued by a lawyer or notary public is required, if the amount used for the acquisition of the holding after obtaining the licence has been blocked or reserved on the account of the acquirer of the holding or on the escrow account. If the funds come from securities, a declaration should be made to the effect that the source of the cash will be the sales of the existing liquid securities (e.g. can be sold in the market within 2 days).

IV.2. Assessment of the applicant's financial and economic standing

Sections 12 and 13 of the Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (**Guidelines**) prescribe for the event of the planned acquisition, the financial reliability of the applicant and the future maintenance of the prudent operation of the financial organisation as separate evaluation criteria.

The financial standing of the applicant may be deemed adequate if it is not only capable of financing the planned acquisition – i.e. the financial resources necessary for the acquisition are available – but it is also able to maintain the investment firm's stable financial structure in the foreseeable future (usually three years).

During the procedure, the assessment criteria include the general economic condition of the applicant, whether it will face financial difficulties during the acquisition or in the foreseeable future, whether it will be able to provide new capital that may be necessary for the future activity and development of the investment firm, or implement other suitable solution to satisfy the investment firm's additional equity requirements.

For the purposes of assessing the financial and economic standing, the applicant's commitment declaration to the effect that the acquirer is able to ensure the prudent operation of the investment firm must be attached to the application.

The applicant's ability to maintain the investment firm's prudent operation is also closely related to the applicant investment firm's plans with regard to its future operation. If the applicant's financial and economic standing cannot be regarded clearly stable, it can prove its capability of ensuring prudent operation only within certain limits or it has raised the financial resources from a loan, the future operation of the investment firm must be planned in a conservative manner.

The information provided above are for guidance only, but it reflects the principles and key assessment criteria of the licensing procedure. Setting out from the information included in the respective licence application, the MNB may prescribe the submission of a broader range and other type of documents and the confirmation of facts, if it finds that the already submitted documents are not sufficient to prove the legal origin and availability of the financial resources or the adequate financial and economic standing of the applicant. However, if it appears from the specific application that the matter is of simpler assessment, lower transaction value or aimed at the acquisition of smaller holding, the MNB may waive the submission of certain documents, with the proviso that the information prescribed in RTS must be provided without exception.

V. REJECTION OF THE LICENCE APPLICATION

"Section 37 (6) of the Investment Firms Act: The Supervisory Authority shall **reject** the authorisation of the acquisition of qualifying holding or the increasing of the rate of the qualifying holding, if the applicant or **the owner of the qualifying holding does not satisfy the conditions stipulated in paragraphs (1)-(5)**.
(6a) The Supervisory Authority shall **refuse** to authorise the acquisition of or increasing the rate of qualifying holding if there are reasonable grounds **to suspect that, in connection with the applicant's acquisition of qualifying holding, money laundering or terrorist financing within the meaning of the relevant legislation is being** or has been committed or attempted, or that the proposed acquisition of qualifying holding could increase the risk thereof.

(6b) Moreover, the Authority shall also **refuse** to authorise the acquisition, or increasing the rate of qualifying holding interest, if the **laws or administrative provisions of a third country applicable to one or several natural persons or legal entities to whom/which the applicant has close links, or difficulties involved in their enforcement, hinder the effective exercise of the Supervisory Authority's supervisory functions.**

VI. NOTIFICATION OBLIGATION RELATED TO THE ACQUISITION OF QUALIFYING HOLDING

Pursuant to Section 39 (2) of the Investment Firms Act, "upon the authorisation of the acquisition of the qualifying holding or the increasing of the rate of the qualifying holding, the applicant shall complete the transaction within six months."
"Section 39 (4) of the Investment Firms Act: The **investment firm** shall, within two working days from obtaining knowledge, notify the Supervisory Authority of the identification data of the person having qualifying holding in the investment firm, the rate of the holding and any change therein.
(5) **Any person who acquired qualifying holding in an investment firm or amended** the rate of his existing holding in accordance with the provisions of Section 37/B (1) and (3), shall notify the Supervisory Authority accordingly in writing within two working days from the acquisition of the qualifying holding ".
The investment firm shall submit the notification under Section 39 (4) of the Investment Firms Act on the relevant electronic form.

Should, after carefully reading this guide, any further question – related to the respective, individual case, not possible to answer in the form of consultation over the phone or in writing – arise, the MNB provides the applicant with the possibility of personal consultation. For the possibility of personal consultation, contact the secretariat of the Money and Capital Markets Licensing Department (Telephone number: +361-489-9731; Email: ptef@mnb.hu).

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