

# MFSA

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MALTA FINANCIAL SERVICES AUTHORITY

## **Consultation Procedure**

### **Proposal for Banking Rule BR/13**

#### *Explanatory Note*

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received, inter alia, from licence-holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

# **Note for Consultation**

## **Banking Rule BR/13**

### **1. Purpose**

- 1.1 On the 2 March 2009, the MFSA had issued a Note for Consultation relating to the proposed amendments to the Banking Act (Cap. 371) primarily to transpose the provisions of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (the “Acquisitions Directive”). The Note for consultation can be accessed on the following link: <http://www.mfsa.com.mt/files/announcements/consultation%20papers/files/Banking%20-%20Note%20for%20Consultation%20-%20Acquisition%20Directive.pdf>
- 1.2 Pursuant to the provisions, in part, of the Acquisitions Directive a specific Banking Rule has been drafted by the MFSA expanding on the abovementioned proposed amendments. In this respect, we are attaching the draft for consultation prior to actual implementation. Comments are to be provided to the MFSA in writing by not later than the 4<sup>th</sup> December 2009.

### **2. The proposed draft Banking Rule (BR/13)**

- 2.1 The Act entitled “An Act to amend various financial services laws and to implement Directive 2007/44/EC” is currently awaiting publication. The Act proposes amendments to the Banking Act in order to transpose the provisions of the Acquisitions Directive. The amendments to the Banking Act can be accessed on the following link <http://www.doi.gov.mt/EN/bills/2009/Bill%2029.pdf>. One of the aims of this Bill is to transpose the Acquisitions Directive in the Banking Act. The proposed amendments also make reference to a Banking Rule to be issued by the MFSA under the said Act.
- 2.2 The purpose of the proposed draft Banking Rule is:
- to transpose, in part, the articles relating to the five prudential criteria introduced in Directive 2006/48/EC by the Acquisitions Directive and which will be followed by MFSA as competent authority when assessing for approval proposed acquirers of credit institutions;
  - to determine the criteria to be applied by the authority is the assessment process of a proposed acquirer; and
  - to ensure that the proposed acquirer possesses the information that is required to be provided to the MFSA in order for the MFSA to be in a position to assess the proposed acquisition in a complete and timely manner.

In drafting the Rule the authority has been guided by the 3L3 Committees of European Financial Supervisors (CEBS, CESR and CEIOPS) Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC issued on 18 December 2008.

2.3 Therefore, the draft Banking Rule contains provisions on the notification and assessment process of a proposed acquisition or increase in shareholding. It also contains the five assessment criteria, together with some additional guidance produced in the 3L3 Guidelines. The draft rule also contains an Appendix which is divided into two Parts:

- (i) Part I lists 'general information requirements', that is, all of the information which will generally be requested by the MFSA concerning the nature of the proposed acquirer and the proposed acquisition, regardless of the presumed degree of involvement (percentage of capital or voting rights) that the proposed acquirer will have in the credit institution.
- (ii) Part II lists the specific information required on the basis of the proportionality principle, distinguishing between two cases:
  - (a) when the acquisition will result in a change in control over the credit institution; and
  - (b) when a proposed acquirer will not gain control over the credit institution but will acquire a qualifying shareholding.

2.4 As a result of the proposed amendments, minor consequential amendments will also be made to Banking Rule (BR/01) – Application Procedures and Requirements for Authorisation of Licences for Banking Activities under the Banking Act 1994. In particular, the form 2 '*Questionnaire for Institutional Controllers*' found in BR/01 has been amended to align with the 3L3 Guidelines and renamed '*Questionnaire for Qualifying Shareholders other than Individuals*'. A copy of the amended version of the form 2 is being attached at the end of BR/13 for ease of reference.

**6<sup>th</sup> November 2009**