

CONSULTATION ON THE NEW PROVISIONS FOR THE "QUALIFYING HOLDINGS" IN REGULATED ENTITIES

On 6/4/2022, the Bank of Italy published a consultation on the amendments to the supervisory provisions for banks and other intermediaries ("**Provisions**"). The consultation runs until 6/5/2022.

The amendments are intended to implement, by the updates to secondary legislation, the changes imposed by Legislative Decree 182/2021 which, on the occasion of the implementation in Italy of Directive 2019/878/EU (the so-called CRD V), issues new rules on the ownership structures of intermediaries in Legislative Decree 385/1993 ("**TUB**") and in Legislative Decree 58/1998 ("**TUF**").

The Provisions regulate the prior authorisation requirements for those who intend to hold (acquire or modify) "qualifying holdings" in banks, financial intermediaries, trust companies, payment institutions, electronic money institutions, SIMs and managers. In addition, the consultation also intends to systematise and reorganise, within a single document, the current provisions laid down for the different types of intermediaries by the Bank of Italy.

An interesting aspect of the new framework regards the discipline provided for the calculation of "qualifying holdings". The Provisions define "qualifying holdings" as *"holdings which directly or indirectly attribute at least 10% of the voting rights or capital of the supervised entity or which make it possible to exercise a significant influence over the management of the entity, within the meaning of Article 4(1)(36) of the CRR, as well as holdings which make it possible to exercise control over the entity"*, and further detailed in Chapter I, paragraph 4(a), (b), (c) and (d) of the Provisions.⁶

⁶ Provisions, Chapter I, paragraph 4: *"These provisions regulate the prior authorisation requirements for (a) acquiring, for whatever reason, holdings in a supervised undertaking which involve the possibility of exercising control or significant influence over that undertaking or which give rise to a proportion of the voting rights or of the capital of at least 10%, taking into account the shares or units already held; (b) to increase holdings already held where the proportion of voting rights or of the capital reaches or exceeds 20%, 30% or 50% and, in any case, where the increase involves control of the supervised undertaking itself; (c) to acquire in a company which holds the shareholdings referred to in point (a): (1) control; (2) a proportion of the voting rights or of the capital, where as a result of that acquisition one of the cases referred to in Chapter III, paragraph 3, is fulfilled; (d) acquiring, by any means whatsoever, in the absence of any acquisition of holdings, including by way of a contract with the undertaking being supervised or by way of a clause in its memorandum or articles of association, control or a significant influence over the undertaking being supervised, or a proportion of the voting rights or of the capital of at least 10%, 20%, 30% or 50%, having regard to the holdings already held."*

According to the Provisions, "qualifying holdings" are calculated by aggregating all holdings acquired or held both directly or indirectly. There are three methods⁷ of aggregating (direct and indirect) holdings considered by the Provisions. The obligation to request prior authorization from the Bank of Italy is triggered when the threshold is reached or exceeded as a result of the application of even one of them.

In particular, indirect holdings are regulated by Article 22 of the TUB and Article 15(4) of the TUF. Such indirect holdings may be calculated, as the case may be, on the basis of either the *control criterion* or the *multiplication criterion*.

Pursuant to the Provisions⁸, both criteria apply along the investment chain at each level of the supervised entity; please note that the multiplication criterion applies even if an *indirect proposed acquirer* has been identified on the basis of the control criterion.

Article 15(4)(a) of the TUF and Article 22(1)(a) of the TUB consider as indirect holdings "*holdings acquired or otherwise controlled⁹ through subsidiaries, trust companies or nominees*".

In the above situations, the "**control criterion**" will be applied to quantify the size of the holding. In particular, according to the Provisions, the size of the participation in the supervised entity of the *indirect proposed acquirer*, calculated on the basis of the control criterion, is equal to the size of the participation in the supervised entity of the proposed acquirer (or participant) controlled by it. When the acquisition or increase of a qualifying participation is determined through subsidiaries, the following are subject to the prior authorisation requirement: (1) the proposed acquirer at the top of the shareholding chain, (2) the proposed direct acquirer, (3) all intermediate parties in the shareholding chain.

Moreover, following the amendments introduced by Legislative Decree No. 182 of 8 November 2021¹⁰, Article 15(4)(b) of the TUF and Article 22(1)(b) of the TUB consider relevant for the subjection to the prior authorisation obligation the cases, identified by the Bank of Italy, which determine the holding of a qualified shareholding, as a result of voting rights or capital shares held through companies, including non-subsidiaries, which in turn have voting rights or capital shares in the bank, Sim, asset management company, Sicav or Sicaf, taking into account the multiplication produced by the shareholding chain.

In the above situations, the "**multiplication criterion**" will be applied to quantify the size of the participation. In particular, according to the Provisions (which identify as required by the TUF and the TUB "*the cases, identified by the Bank of Italy*"), the calculation to assess the size of the participation in the supervised entity is made through the multiplication of the percentages of the holdings along the holding chain. At the end of the calculation, the following are considered as *indirect*

⁷ See Part One, Chapter II. No. 1 of the Provisions.

⁸ Annex 1, of the Provisions, provides illustrative diagrams of the application of the two criteria (e.g. 1: control criterion; e.g. 2: multiplication criterion; e.g. 3: multiplication criterion in the presence of another controlling entity; e.g. 4: complex corporate structure; e.g. 5: concerted action; e.g. 6: aggregation of direct and indirect shareholdings).

⁹ The notion of "control" is set out in Article 23 of TUB, which is also expressly referred to in Article 15.4(a) of TUF.

¹⁰ Pursuant to the same Legislative Decree No. 182 of 8 November 2021, Article 22, paragraph 1, letter b), of the TUB and Article 15, paragraph 4, letter b), of the TUF and the related prior authorisation requirements apply to cases occurring after the date of entry into force of the relevant implementing rules issued by the Bank of Italy. Implementing regulations consisting of the Provisions under consultation.

proposed acquirers: (a) the entity for which the product is equal to or greater than 10% and (b) the entity which, directly or indirectly, exercises control over the proposed acquirer identified on the basis of the above calculation. In the latter case, the size of the parent's shareholding in the controlled undertaking shall be equal to the size of the shareholding in the controlled undertaking of the indirect proposed acquirer identified on the basis of the multiplication criterion.

The text of the Consultation is available at the following link:

https://www.bancaditalia.it/compiti/vigilanza/normativa/consultazioni/2022/20220406-assetti-proprietari-banche/Assetti-proprietari_documento-di-consultazione.pdf

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