

LEGAL ALERT

QUALIFYING HOLDINGS IN INSURANCE OR REINSURANCE UNDERTAKINGS AND PENSION FUND MANAGEMENT COMPANIES

REGULATORY STANDARD NO. 3/2021-R, OF 13 APRIL

Regulatory Standard no. 3/2021-R, of 13 April, issued by the Portuguese Insurance and Pension Funds Supervisory Authority (ASF), was published in *Diário da República*, coming into force on the day after its publication.

This diploma establishes, among others, the **elements** and **information** that must be provided together with (i) the **prior notification of projects for the** acquisition, increase or decrease of qualifying holdings in insurance or reinsurance companies and pension fund management companies and (ii) the **notification of legal transactions** resulting in the creation or the possibility of a future creation of encumbrances or charges on voting rights or capital that represent a qualifying holding in an insurance or reinsurance company or pension fund management company. Accordingly, [Regulatory Standard no. 3/2016-R, of 12 May](#), is repealed and the [Joint Guidelines of the European Supervisory Authorities](#) on the prudential assessment of acquisitions and increases of qualifying holdings in financial sector entities are taken into account.

The following provisions are of an innovative nature compared to previous regulations on the subject:

a) Communications to ASF

- i. The **information items** included in Annexes I and II of the Regulatory Standard **have been updated** (if the proposed acquirer is a natural person, the main change

- relates to the financial information to be provided; if the proposed acquirer is a legal person, the focus of the changes relates to the identification of the persons that effectively direct the business of the legal person and the shareholders with a significant influence over it, in addition to issues related to financial information);
- ii.* The **information to be included in the business plan** that must be presented if the proposed acquisition gives rise to a **relationship of control** or **dominance** with the financial entity in which **control is exercised** was adjusted;
 - iii.* The range of information to be provided where the proposed acquirer is a **legal person established in a non-EU country** or where the proposed acquirer is a **sovereign wealth fund, private equity** or **hedge fund** has been extended, as well as information on the proposed new group structure and its impact on supervision;
 - iv.* Specific terms were established for compliance with the obligation of prior notification to ASF of **projects for the acquisition and increase of qualifying holdings** in cases where:
 1. by virtue of the overall shareholding structure of the entity in which the acquisition is proposed, the influence exercised by the proposed acquirer's holding is deemed equivalent to the influence exercised by qualifying holdings of 20% and up to 50%;
 2. there is no change in the control of the investee, but the proposed acquirer obtains, by virtue of the transaction, powers to appoint members of the management body and other persons who effectively direct its activities; or
 3. the proposed acquirer becomes, by reason of the transaction, an undertaking that is part of an insurance or reinsurance group for which ASF holds the quality of group supervisor;
 - v.* The situations in which, through the application of the principle of proportionality, ASF may **adjust the temporal scope or the content of the elements and information of a financial nature and regarding the professional qualification of the proposed acquirers that need to be communicated** have been densified.

Also of note is the diversification of situations where ASF can **waive the submission of information items**, including: where the proposed acquirer presents **difficulties in obtaining the information** necessary to prepare a complete business plan and the absence of this information does

not prevent ASF from understanding the likely outcome of the acquisition for the company and from carrying out the prudential assessment, and the missing information must be provided as soon as possible; or where the three cumulative requirements of the new “**simplified regime**” are met in such situation: (i) an increase or acquisition of an indirect qualifying holding is at issue; (ii) this increase or acquisition has only economic motivations; and (iii) the proposed acquirer cannot and does not intend to exercise an influence over the management of the investee or the final target entity.

b) Qualified holdings by concerted action

- i.* For the purposes of prior notification of acquisition projects and increases in qualifying holdings, cases of acting in concert will also be expressly considered;
- ii.* The **criteria** or **signs** that must be taken into consideration in order to determine the existence of qualifying holdings by acting in concert are established, as well as the situations of **exception** and the terms of compliance in this case with the obligation of prior notification to ASF.

c) Qualified holdings by indirect shareholding

- i.* The criteria for verifying situations in which there are indirect qualifying holdings, such as the **control criterion** or the **multiplication criterion**, are established.

d) Exercising significant influence over the management of the company

- i.* It defines the regime applicable to the acquisition of shareholdings, **regardless of the thresholds reached or exceeded**, in cases where these allow the proposed acquirer to exercise a significant influence over the management of the company, whether or not this influence is actually exercised;
- ii.* The circumstances (indicative and not exhaustive) are determined in order to determine whether the proposed acquisition or increase of a qualifying holding would enable the proposed acquirer to exercise a significant influence over the management of the undertaking.

Regarding the transitional regime, it should be noted that within 60 days after the publication of Regulatory Standard no. 3/2021-R, insurance and reinsurance companies and pension fund management companies have the duty to communicate to ASF the identity of all holders of

qualifying holdings that will be considered as such in accordance with the regime provided for in the said Regulatory Standard, sending for the purpose the following elements:

- a) An organisation chart of the corporate structure showing the respective chain of holdings, from the person holding a direct stake in the entity concerned to the person or persons at the top of the chain of holdings;
- b) The corporate name of the holders of qualifying holdings in accordance with the organisational chart referred to in the previous sub-paragraph, as well as the percentages of the respective holdings.

For more information on Regulatory Standard no. 3/2021-R, of 13 April, we suggest consulting the information provided by ASF available at the following [link](#), as well as the [video of the public presentation session of the respective public consultation](#).

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