

Quick Reference Guide: Acquisitions and the Change in Control regime

Requirement to seek and obtain approval prior to a Change in Control

Part XII of the Financial Services and Markets Act 2000 (FSMA), requires persons to seek approval via a section 178 Notice from the FSA **before** gaining (or in some circumstances increasing – when moving up a controller band) control over a firm that is authorised by the FSA. It is a criminal offence if a person fails to both seek and obtain such approval before making the acquisition in question.

Note: Changes in the holding structure of a group or transfer of an FSA-authorised firm between divisions of a Group may constitute a change in control. Please refer to the Frequently Asked Questions (FAQs) for further details.

Definition of controllers (section 422 of FSMA)

Please see section 422 of FSMA for the full definition of controller, but as an overview, a person is a controller if they:

- a) hold 10% or more of the shares in a UK-authorised person (A) or a parent undertaking (P) of A; or
- b) hold 10% or more of the voting power in A or P; or
- c) hold shares or voting power in A or P as a result of which he is able to exercise significant influence over the management of A.

Shares are:

- in relation to an undertaking with share capital, allotted shares (inc all classes of shares);
- in relation to an undertaking with capital but no share capital, rights to share in the capital;
- in relation to an undertaking without capital, interests:
 - conferring any right to share in the profits, or liability to contribute to the losses; or
 - giving rise to an obligation to contribute to the debts or expenses in the event of a winding up.

Voting power in relation to controllers includes:

- Voting power held by two or more parties who have an agreement in respect of how they use their voting power ('acting in concert'); and
- Voting power which is held, or may be exercised by a subsidiary.

The FSA considers parents of minority controllers to be controllers of authorised firms due to the extended definition of 'voting power' in s422 (5)(a)(v) of FSMA .

Controller Bands

The 'normal' control bands are:

- 10% or more but less than 20%;
- 20% or more but less than 30%;
- 30% or more but less than 50%; and
- 50% or more
- Parent undertaking (see FAQs)

The 'normal' control bands apply to Directive firms; that is firms who are:

- a credit institution defined in the Banking Consolidation Directive;
- a MiFID investment firm;
- an insurance firm under the Consolidated Life Directive or the First Non-Life Directive; or
- a firm carrying on reinsurance under the Reinsurance Directive.

For Non Directive Firms (i.e. Non MiFID investment firms, General insurance intermediaries and home finance) there is only one controller band of 20% or more.

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Example structure chart

The following example has been provided to help you identify controllers as defined in section 422 of FSMA:

