

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 controllers to seek approval via a section 178 Notice from the FCA **before** gaining (or in some circumstances increasing) control over a firm or becoming a parent undertaking of a firm, that is authorised by the FCA and/or PRA. It is a criminal offence if a person fails to both seek and obtain such approval before making the acquisition in question. Internal restructures would in most cases also require prior FSA/PRA approval.

There is also an obligation on authorised firms to inform the FCA/PRA of any proposed or effected changes in control as set out in the FCA Handbook SUP 11.

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* or *persons* (if acting in concert) are controllers if they:

- a) hold 10% or more of the shares in a UK-authorized *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 they are 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 explicit or implicit 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 (and will be relevant in considering the level of control held by a parent undertaking).

The FCA 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

Control bands for Directive firms 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

These thresholds for control apply to Directive firms; that is firms that 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;
- an E-Money firm; or
- a firm carrying on reinsurance under the Reinsurance Directive.

For Non-Directive Firms (i.e. non-MiFID investment firms, general insurance intermediaries, consumer credit firms and home finance) there is only one controller band of 20% or more. This category also includes full scope AIFMs, unless they are also authorised under MiFID.

A single threshold of 33% applies to limited permission consumer credit firms; whilst a single threshold of 10% applies to Payments Services Firms.

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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:

Transaction Structure (Identifying Controllers)

