

Chapter 11

Controllers and close links



11.3 Requirements on controllers or proposed controllers under the Act

- 11.3.1

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The notification requirements are set out in sections 178, 179, 191D and 191E of the Act and holdings which may be disregarded are set out in section 184 of the Act. A summary of the notification requirements described in this section is given in ■ SUP 11 Annex 1.
- 11.3.1A

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For the purposes of Part XII (Control over authorised persons) of the Act, and in particular, calculations relating to the holding of shares and/or voting power, the definitions of “shares” and “voting power” are set out in section 191G of the Act.
- 11.3.1B

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■ SUP 11 Annex 6G provides *guidance* on when one *person's* holding of *shares* or *voting power* must be aggregated with that of another *person* for the purpose of determining whether an acquisition or increase of control will take place as contemplated by section 181 or 182 of the Act such that notice must be given to the *appropriate regulator* in accordance with section 178 of the Act before making the acquisition or increase. This will be:

(1) where those *persons* are acting in concert, as contemplated by section 178(2) (Obligation to notify appropriate regulator: acquisitions of control) of the Act; or

(2) in the case of voting power only, if any of the circumstances described in section 422(5) (Controller) of the Act apply.
- 11.3.2

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Requirement to notify a proposed change in control

Sections 178(1) and 191D(1) of the Act require a *person* (whether or not he is an *authorised person*) to notify the *appropriate regulator* in writing if he decides to acquire, increase or reduce *control* or to cease to have *control* over a *UK domestic firm* . Failure to notify is an offence under section 191F of the Act (Offences under this Part).
- 11.3.2A

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The Treasury have made the following exemptions from the obligations under section 178 of the Act:

(1) *controllers* and potential *controllers* of *non-directive friendly societies* are exempt from the obligation to notify a change in *control* (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774));

- (2) *controllers* and potential *controllers* of *building societies* are exempt from the obligation to notify a change in *control* unless the change involves the acquisition of a holding of a specified percentage of a *building society's* capital or the increase or reduction by a specified percentage of a holding of a *building society's* capital (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774.)). The "capital" of a *building society* for these purposes consists of:
- (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which have been issued by the society (in practice, likely to be permanent interest bearing shares (PIBS)); and
 - (b) the general reserves of that *building society*;
- (3) potential *controllers* of *non-directive firms* (other than, in the case of an *FCA-authorised person*, *firms* with only a *limited permission*) ("A") are exempt from the obligation to notify a change in *control* unless the change results in the potential *controller* holding:
- (a) 20% or more of the *shares* in A or in a *parent undertaking* of A ("P");
 - (b) 20% or more of the *voting power* in A or P; or
 - (c) *shares* or *voting power* in A or P as a result of which the *controller* is able to exercise significant influence over the management of A;
- or where the change in *control* over A would lead to the *controller* ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).
- (4) (in the case of a change in *control* over an *FCA-authorised person*) potential *controllers* of *firms* with only a *limited permission*) ("A") are exempt from the obligation to notify a change in *control*, unless the change would result in the potential *controller* holding:
- (a) 33% or more of the *shares* in A or in a *parent undertaking* of A ("P"); or
 - (b) 33% or more of the *voting power* in A or P; or
 - (c) *shares* or *voting power* in A or P as a result of which the *controller* is able to exercise significant influence over the management of A;
- or where the change in *control* over A would lead to the *controller* ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).

11.3.3 [G] [deleted]

Approval required before acquiring or increasing control

11.3.4 [G] If a *person* decides to acquire *control* or increase *control* over a *UK domestic firm* in a way described in ■ SUP 11.4.2 R or acquire *control* in a way described in ■ SUP 11.4.2AR (1), he must obtain the *appropriate regulator's* approval

before doing so. Making an acquisition before the *appropriate regulator* has approved of it is an offence under section 191F of the Act (Offences under this Part).

11.3.5 G The *appropriate regulator's* approval is not required before a *controller* reduces *control* or ceases to have *control* over a *UK domestic firm*.

Pre-notification and approval for fund managers

11.3.5A G The *appropriate regulator* recognises that *firms* acting as *investment managers* may have difficulties in complying with the prior notification requirements in sections 178 and 191D of the Act as a result of acquiring or disposing of listed *shares* in the course of that fund management activity. To ameliorate these difficulties, the *appropriate regulator* may accept pre-notification of proposed changes in *control*, made in accordance with ■ SUP D, and may grant approval of such changes for a period lasting up to a year.

11.3.5B D The *appropriate regulator* may treat as notice given in accordance with sections 178 and 191D of the Act a written notification from a *firm* which contains the following statements:

- (1) that the *firm* proposes to acquire and/or dispose of *control*, on one or more occasions, of any *UK domestic firm* whose *shares* or those of its ultimate *parent undertaking* are, at the time of the acquisition or disposal of *control*, listed, or which are traded or admitted to trading on a *MTF* or a market operated by a *ROIE*;
- (2) that any such acquisitions and/or disposals of *control* will occur only in the course of the *firm's* business as an *investment manager*;
- (3) that the level of *control* the *firm* so acquires in the pre-approval period will at all times remain less than 20%; and
- (4) that the *firm* will not exercise any influence over the *UK domestic firm* in which the shares are held, other than by exercising its voting rights as a shareholder or by exercising influence intended to promote generally accepted principles of good corporate governance.

11.3.5C G Where the *appropriate regulator* approves changes in *control* proposed in a notice given under ■ SUP 11.3.5B D:

- (1) the *controller* remains subject to the requirement to notify the *appropriate regulator* when a change in *control* actually occurs; and
- (2) the notification of change in *control* should be made no later than five *business days* after the end of each *month* and set out all changes in the *controller's* control position for each *UK domestic firm* for the *month* in question.

At that stage, the *appropriate regulator* may seek from the *controller* further information.

11.3.6 **G** [deleted]

11.3.6A **G** [deleted]

11.3.6B **G** [deleted]

11.3.6C **G** [deleted]

Forms of notifications when acquiring or increasing control

11.3.7 **D** A *section 178 notice* given to the *appropriate regulator* by a *person* who is acquiring *control* or increasing his *control* over a *UK domestic firm*, in a way described in ■ SUP 11.4.2 R (1) to (4), or acquiring *control* in a way described in ■ SUP 11.4.2A R, must contain the information and be accompanied by such documents as are required by the controllers form approved by the *appropriate regulator* for the relevant application.

11.3.7A **G** The *controllers* forms approved by the *appropriate regulator* may be found at the *appropriate regulator's* website www.fca.org.uk/firms/change-control

11.3.8 **D** [deleted]

11.3.9 **D** [deleted]

11.3.10 **D**

- (1) A *person* who has submitted a *section 178 notice* under ■ SUP 11.3.7 D must notify the *appropriate regulator* immediately if he becomes aware, or has information that reasonably suggests, that he has or may have provided the *appropriate regulator* with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed, in a material particular. The notification must include:
 - (a) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;
 - (b) an explanation why such information was or may have been provided; and
 - (c) the correct information.
- (2) If the information in (1) (c) cannot be submitted with the *section 178 notice* (because it is not immediately available), it must instead be submitted as soon as possible afterwards.
- (3) The requirement in (1) ceases if the change in *control* occurs or will not take place.

11.3.11 **G** The *appropriate regulator* will inform a *section 178 notice* giver as soon as reasonably practicable if it considers the *section 178 notice* to be incomplete.

11.3.12	G	The <i>appropriate regulator</i> has power, under section 179(3) of the Act (Requirements for section 178 notices), to vary or waive these requirements in relation to a <i>section 178 notice</i> in particular cases if it considers it appropriate to do so.
11.3.13	G	Where a <i>controller</i> or proposed <i>controller</i> which is an <i>authorised person</i> is required to submit less information under ■ SUP 11.3.7 D than other <i>persons</i> , the <i>appropriate regulator</i> may ask for confirmation of details already held by it or any additional information required under ■ SUP 11.5.1R.
11.3.14	G	[deleted]
Notification when reducing control		
11.3.15	G	[deleted]
11.3.15A	D	A notice given to the <i>appropriate regulator</i> by a <i>person</i> who is reducing or ceasing to have <i>control</i> over a <i>UK domestic firm</i> , as set out in ■ SUP 11.4.2R or ■ SUP 11.4.2A R must: <div><div>(1) be in writing; and</div><div>(2) provide details of the extent of <i>control</i> (if any) which the <i>controller</i> will have following the change in <i>control</i>.</div></div>
11.3.16	G	[deleted]
Joint notifications		
11.3.17	G	Notifications to the <i>appropriate regulator</i> by proposed <i>controllers</i> and <i>controllers</i> under Part XII of the Act may be made on a joint basis outlined in ■ SUP 11.5.8 G to ■ SUP 11.5.10 G.