

UK financial regulation: New guidance published on the UK change in control regime

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On 1, November 2024, the FCA issued finalised guidance on the UK change in control regime. The guidance outlines the expectations for identifying controllers, submitting change in control notifications, and the assessment criteria applied by the FCA and PRA. The PRA and FCA also jointly issued a new policy statement on the change in control regime that follows a consultation paper published last year which proposed several changes to the existing assessment framework.

Background

The UK Financial Conduct Authority (FCA) has issued finalised guidance ([FG24/5](#)) on the prudential assessment of acquisitions and increases in control, effective from November 1, 2024 (the Guidance). The Guidance is a comprehensive document that outlines the FCA's expectations and procedures for identifying controllers, submitting change in control notifications, and assessing proposed acquisitions or increases in control of UK authorised persons. For the purposes of the Financial Services and Markets Act 2000 (FSMA), a 'controller' is a person that holds, directly or indirectly, 10% or more of the shares or voting power in a UK authorised person or that holds shares and/or voting power that makes it possible to exercise significant influence over the management of a UK authorised person. The Guidance aims to provide clarity and transparency for regulated firms and individuals involved in acquisitions of, or investments in, UK authorised persons, ensuring compliance with regulatory requirements and promoting the stability and integrity of the UK financial system.

The Guidance replaces the [Joint Committee Guidelines on Acquisitions and Increases of Qualifying Holdings in the Financial Sector](#) published by the Joint European Supervisory Authorities, which came into force on October 1, 2017. It is relevant to all FCA authorised persons, particularly those to which the change in control requirements apply. However, it should be noted that the Guidance does not apply to cryptoasset firms registered solely under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, although it does apply to hybrid UK authorised persons who are also registered or authorised for other activities.

The Guidance is structured into several chapters, each addressing specific aspects of the prudential assessment process. Chapter 1 introduces the Guidance, outlining its scope and applicability. Chapter 2 delves into concepts relating to the identification of controllers, including significant influence, aggregation of holdings, and acting in concert. Chapter 3 focuses on the submission of change in control notifications for proposed acquisitions and increases in control, detailing the information requirements and the process for engaging with the FCA. Chapter 4 outlines the assessment criteria used by the FCA to evaluate notifications. Finally, Chapter 5 discusses the FCA's approach to the use of conditional approvals to advance its objectives.

The Guidance also includes practical examples and illustrative diagrams in Annex 1, which provide further clarity on the determination of controllers and the application of the Guidance in various transaction scenarios. Annex 2 provides detailed explanations and examples to help firms and individuals understand the implications of acting in concert, various corporate arrangements such as pre-emption rights and the requirements for notifications under FSMA.

Also on November 1, 2024, the Prudential Regulation Authority (PRA) and the FCA jointly issued a new policy statement ([PS18/24](#)) on the prudential assessment of acquisitions and increases in control (the Policy Statement). The Policy Statement includes the PRA's new supervisory statement [SS10/24](#) on the change in control regime and the Guidance published by the FCA. Additionally, it updates the PRA statement of policy on the interpretation of EU guidelines and recommendations post-Brexit.

The need for the new Policy Statement arises from the evolving landscape of financial services and the increasing complexity of acquisition structures, particularly those involving private equity and hedge funds. The previous guidelines were deemed insufficient to address the current challenges. The Policy Statement aims to provide clearer guidance on identifying controllers, assessing significant influence, and understanding the implications of different ownership structures.

Overview of the Guidance

As explained above, the Guidance is structured into several chapters, each addressing specific aspects of the prudential assessment process. These are further summarised below.

Controller concepts and identification

In Chapter 2, the Guidance explains the concepts of deciding to acquire or increase control, significant influence, aggregation of holdings, and acting in concert. It provides detailed examples to help firms and individuals understand how to identify controllers and the implications of various control scenarios. It also covers indirect controllers and the specific considerations for limited partnership structures and minority controllers. These points will be of particular interest to private equity firms and fund managers.

Notices of proposed acquisitions and increases in control

Chapter 3 of the Guidance focuses on the submission of notifications for proposed acquisitions and increases in control. It outlines the process for submitting a change in control notification in accordance with section 178 of the FSMA. It details the information requirements, including the power of the FCA to vary or waive application information requirements, and the process for engaging with the FCA. It also provides guidance on the completion of the notification and the forms to be submitted for multiple entities controlled by the same person. The Guidance sets out various examples of transactions in which the FCA and/or PRA may request additional information from proposed controllers. These include transactions involving the use of substantial debt financing and where a private equity or hedge fund is seeking to acquire or increase control to 20% or more of UK authorised firm. In relation to the latter, the FCA and/or PRA may request: (i) a detailed description of the performance of previous acquisitions of financial institutions by the proposed acquirer; (ii) details of the proposed acquirer's investment policy and any restrictions on investment; (iii) the proposed acquirer's decision-making framework for investment decisions; and (iv) where the private equity or hedge fund is not authorised by the FCA, a detailed description of the proposed acquirer's AML procedures and the AML legal framework applicable to it.

Assessment of the proposed acquisition

Chapter 4 of the Guidance outlines the assessment criteria used by the FCA to evaluate change in control notifications. It covers the FCA's approach to the assessment, which includes consideration of the reputation of the proposed controller, the reputation, knowledge, skills, and experience of those who will direct the business of the UK authorised person as a result of the proposed acquisition (i.e., new board members), the financial soundness of the proposed controller, and the ability of the UK authorised person to comply with its prudential requirements. It also addresses the FCA's considerations regarding money laundering and terrorist financing risks associated with the proposed acquisition.

Use of conditional approvals

Chapter 5 of the Guidance discusses the FCA's approach to the use of conditional approvals to advance its objectives. The ability of the FCA and PRA to impose conditions when approving a change in control was enhanced by amendments introduced by the Financial Services and Markets Act 2023. The Guidance explains that the FCA may impose conditions when approving a change in control where there are unresolved matters, such as outstanding proceedings against a proposed controller.

Annex 1: Practical examples of the determination of controllers

Annex 1 includes practical examples and illustrative diagrams that demonstrate how the controller test applies in various scenarios. The examples emphasise the impact of voting power in determining whether there is a controlled undertaking and provide clarity on the application of the Guidance.

Annex 2: Further guidance on acting in concert

Annex 2 offers additional guidance on the concept of acting in concert, covering deemed voting power, passive shareholder agreements, conditional agreements, pre-emption rights, drag along rights, tag along rights, and the Takeover Code definition of acting in concert.

Key takeaways

The Guidance has several key takeaways for firms and individuals involved in transactions where change in control approval may be required. These points highlight the importance of understanding and complying with the regulatory requirements and processes outlined in the Guidance.

1. Identification of controllers: Firms and individuals must accurately identify controllers, including those with significant influence, aggregated holdings, and acting in concert. The Guidance aims to assist with this process, particularly in relation to complex acquisition structures.

2. Submission of notifications: The process for submitting notifications for proposed acquisitions and increases in control is clearly outlined in the Guidance. Firms and individuals must ensure that they provide all required information and engage with the FCA as needed. Early engagement with the FCA can help ensure that notifications meet the FCA's expectations and are deemed complete shortly after initial submission.

3. Assessment criteria: The FCA's assessment criteria for evaluating notifications are comprehensive and cover various aspects, including the reputation of the proposed controller, the suitability of those who will direct the business of the UK authorised person, the financial soundness of the proposed controller, and the ability of the UK authorised person to comply with its prudential requirements. Firms and individuals must be prepared to provide detailed information and evidence to the FCA to support their change in control notifications and, in the case of complex and/or high-risk transactions, additional information if requested.

4. Conditional approvals: The FCA may impose conditions on an approval in order to advance any of the FCA's objectives. Firms and individuals should be aware of the potential for conditional approvals and the factors that the FCA considers when imposing conditions. The potential for the FCA to approve transactions subject to the imposition of conditions should be carefully considered when drafting regulatory approval conditions in transaction documentation.

5. Acting in concert: The Guidance provides additional information on acting in concert, deemed voting power, passive shareholder agreements, conditional agreements, pre-emption rights, drag along rights, and tag along rights. Firms and individuals must understand the implications of these concepts when identifying controllers and preparing change in control notifications.

6. Compliance with prudential requirements: The proposed acquisition should not adversely affect the UK authorised person's compliance with prudential requirements, including capital requirements, liquidity requirements, and governance arrangements. Firms and individuals must ensure that the UK authorised person can continue to meet its regulatory requirements following an acquisition or increase in control.

7. Money laundering and terrorist financing risks: The FCA will assess the risks of money laundering and terrorist financing associated with proposed acquisitions. Firms and individuals must provide information on their sources of funds and any relevant personal or business links to ensure compliance with applicable anti-money laundering and terrorist financing regulations.

Compliance with the Guidance will help firms and individuals navigate the prudential assessment process and ensure successful transactions.

Overall, the Guidance along with the Policy Statement aim to provide a more robust and transparent framework for the prudential assessment of acquisitions and increases in control of UK authorised persons. It seeks to balance the need for regulatory oversight with the practicalities of modern financial transactions, ensuring that firms can navigate the regulatory landscape more effectively.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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