

PRA RULEBOOK: CHANGE IN CONTROL INSTRUMENT 2015

Powers exercised

- A. The Prudential Regulation Authority ("PRA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 137G (the PRA's general rules);
 - (2) section 137T (general supplementary powers);
 - (3) section 179 (Requirements for section 178 notices); and
 - (4) section 191E (Requirements for notices under section 191D).
- B. The rule-making powers (section 137G and section 137T of the Act) referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

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- D. The PRA makes the rules and gives the directions in Annex A to this instrument.

Commencement

- E. This instrument comes into force on 3 August 2015.

Citation

- F. This instrument may be cited as the PRA Rulebook: Change in Control Instrument 2015.

By order of the Board of the Prudential Regulation Authority

31 July 2015

Annex A

In this Annex, the text is all new and is not underlined.

Part

CHANGE IN CONTROL

Chapter content

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1 APPLICATION AND DEFINITIONS

- 1.1 (1) Unless otherwise stated, this Part applies to every *firm* except:
- (a) an *incoming firm*;
 - (b) a *non-directive friendly society*.
- (2) Chapter 5 (Annual Controllars Report) does not apply to a *credit union*.
- (3) The *PRA* directs that Chapter 2 (Obligations on Controllars) applies to *persons* required to give to the *PRA* a *section 178 notice* or a notice under section 191D of *FSMA*.

- 1.2 In this Part, the following definitions shall apply:

acquiring control

has the meaning given in section 181 of *FSMA*, read in conjunction with the *Exemption Order*.

Annual Controllars Report

means the relevant form referred to in Chapter 6.6

ceasing to have control

has the meaning given in section 183(3) of *FSMA*, read in conjunction with the *Exemption Order*.

change in control

means any situation amounting to *acquiring control*, *ceasing to have control*, *increasing control*, or *reducing control*.

controller

has the meaning given in section 422 of *FSMA*, read in conjunction with the *Exemption Order*.

Controller's Form

means the relevant form referred to in Chapter 6.1 to 6.5.

Exemption Order

means the Financial Services and Markets Act 2000 (Controllars) (Exemption) Order 2009 (SI 2009/774).

increasing control

has the meaning given in section 182 of *FSMA*, read in conjunction with the *Exemption Order*.

investment manager

has the meaning given in the *FCA Handbook* from time to time other than for the purposes of the part of the *FCA Handbook* in Specialist sourcebooks that has the title Listing Rules.

reducing control

has the meaning given in section 183(1) and (2) of *FSMA*, read in conjunction with the *Exemption Order*.

section 178 notice

has the meaning given in section 178(3) of *FSMA*.

UK domestic firm

means a *firm* that has its registered office (or, if it has no registered office, its head office) in the United Kingdom.

2 OBLIGATIONS ON CONTROLLERS AND PROPOSED CONTROLLERS

- 2.1 The *PRA* directs that a *person* submitting a *section 178 notice* in accordance with section 178(1) of *FSMA* must do so using the relevant *Controller's Form*.
- 2.2 (1) The *PRA* directs that a *person* who has submitted a *section 178 notice* must notify the *PRA* immediately if the *person* becomes aware, or has information which reasonably suggests, that the *person* has or may have provided the *PRA* with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed in a material particular.
- (2) 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 of why such information was or may have been provided; and
 - (c) the correct information.
- (3) If the information in (2)(c) is not immediately available for submission with the *section 178 notice*, the *PRA* directs that the information must instead be submitted as soon as possible.
- (4) The requirement in (1) ceases if the *change in control* occurs or will not take place.
- 2.3 The *PRA* directs that a notice under section 191D of *FSMA* must provide details of the extent of control (if any) that the *controller* will have following the *change in control*.
- 2.4 Where a *controller* or proposed *controller* that is an *investment manager* is complying with the directions in 2.1 and 2.3 in connection with the acquiring or disposal of listed shares in the course its fund management activity, the *PRA* directs that it may use the *Controller's form* at 6.5.

3 OBLIGATIONS ON FIRMS

3.1 A *UK domestic firm*, other than a *non-directive firm* or a *building society*, must notify the *PRA* of:

- (1) a *person acquiring control* over the *firm*;
- (2) an existing *controller increasing control* over the *firm*;
- (3) an existing *controller reducing control* over the *firm*; or
- (4) an existing *controller ceasing to have control* over the *firm*.

3.2 A *building society* or a *non-directive firm* must notify the *PRA* of:

- (1) a *person acquiring control* over the *firm*; or
- (2) an existing *controller ceasing to have control* over the *firm*

unless that *person's acquiring* or *ceasing to have control* is exempt from the notification requirement in sections 178 or 191D of *FSMA* by virtue of the *Exemption Order*.

3.3 An *overseas firm* other than an *incoming firm* must notify the *PRA* of:

- (1) a *person acquiring control* over the *firm*;
- (2) an existing *controller increasing control* over the *firm*;
- (3) an existing *controller reducing control* over the *firm*; or
- (4) an existing *controller ceasing to have control* over the *firm*.

3.4 The notifications in 3.1 to 3.3 must:

- (1) be made:
 - (a) as soon as the *firm* becomes aware that a *person*, whether alone or acting in concert, has decided to *acquire control*, to *increase control* or to *reduce control*; or
 - (b) if the *change in control* takes place without the knowledge of the *firm*, within 14 days of the *firm* becoming aware of the *change in control* concerned;
- (2) in relation to *acquiring control* or *increasing control*, contain as much of the following information as the *firm* is able to provide, having made reasonable enquiries from *persons* and other sources as appropriate:
 - (a) the name of the *firm*;
 - (b) the name of the *controller* or proposed *controller* and, if it is a body corporate and is not an authorised person, the names of its directors and its *controllers*;
 - (c) a description of the proposed event including the shareholding and voting power of the *person* concerned, both before and after the *change in control*; and
 - (d) any other information of which the *PRA* would reasonably expect notice;

- (3) in relation to a *reducing control*, contain the following:
- (a) the name of the *controller*, and
 - (b) details of the extent of control (if any) which the *controller* will have following the reduction in *control*.
- 3.6 (1) A *UK domestic firm* must notify the *PRA* immediately if, in the period between a *section 178 notice* being submitted and the occurrence of the *change in control*, the *firm* becomes aware, or has information which reasonably suggests, that the *person* submitting the notice has or may have provided the *PRA* with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed in a material particular.
- (2) 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.
- (3) If the information in (2)(c) is not immediately available for submission with the notification, the information must instead be submitted as soon as possible.
- 3.7 During the period referred to in 3.6, a *UK domestic firm* must take reasonable steps to keep itself informed about the circumstances of the *controller* or the proposed *controller* to which the notification related.
- 3.8 A *firm* must notify the *PRA*:
- (1) when a *change in control* which was previously notified under 3.1 to 3.3 has taken place; or
 - (2) if the *firm* has grounds for reasonably believing that the event will not now take place.
- 3.9 The notification under 3.8 must be given within 14 days of the *change in control* or of having the grounds (as applicable).

4 ONGOING NOTIFICATION REQUIREMENTS

- 4.1 A *firm* must notify *PRA* immediately it becomes aware of any of the following matters in respect of one or more of its *controllers*:
- (1) if a *controller*, or any entity subject to his *control*, is or has been the subject of any legal action or investigation which might put into question the integrity of the *controller*;
 - (2) if there is a significant deterioration in the financial position of a *controller*;
 - (3) if a corporate *controller* undergoes a substantial change or series of changes in its *governing body*;

- (4) if a *controller*, who is authorised in another *EEA State* as a MiFID investment firm, *CRD credit institution* or UCITS management company or under the *Insurance Directives* or the *Insurance Mediation Directive*, ceases to be so authorised (registered in the case of an *IMD insurance intermediary*).
- 4.2 A *firm* must take reasonable steps to keep itself informed about *controllers*, including if applicable:
- (1) monitoring its register of shareholders (or equivalent);
 - (2) monitoring notifications to the *firm* in accordance with Part 22 of the Companies Act 2006;
 - (3) monitoring public announcements made under the relevant disclosure provisions of the Takeover Code or other rules made by the Takeover Panel;
 - (4) monitoring the entitlement of delegates, or persons with voting rights in respect of group insurance contracts, to exercise or control voting power at general meetings.

5 ANNUAL CONTROLLERS REPORT

- 5.1 A *firm* must submit (or procure that another *firm* in its *group* submits) to the PRA, by electronic means, a written *Annual Controllers Report* which contains the information specified in the form referred to at 6.6, within four months of the *firm's accounting reference date*.

Exemptions

- 5.2 A *friendly society* or a *building society* is only required to submit a report under 5.1 if it is aware that it has a *controller*.
- 5.3 In relation to a *building society*, a *controller* does not include a *person* who is exempt from the obligation to notify a *change in control* under the *Exemption Order*.
- 5.4 An *insurer* need not submit a report under 5.1 to the extent that the information has already been provided to the PRA under *IPRU(INS) 9.30 R* (Additional information on controllers).

6 FORMS

- 6.1 The *Controllers Form* to be used by a limited company or limited liability partnership can be found [here](#).
- 6.2 The *Controllers Form* to be used by a partnership is can be found [here](#).
- 6.3 The *Controllers Form* to be used by an individual (other than in that individual's capacity as a trustee, settler or beneficiary of a trust) can be found [here](#).
- 6.4 The *Controllers Form* to be used by a *person* in their capacity as a trustee, settler or beneficiary of a trust can be found [here](#).
- 6.5 The *Controllers Form* to be used by a *person* in their capacity as an *investment manager* can be found [here](#).
- 6.6 The *Annual Controllers Report* can be found [here](#).