



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XII

#### CONTROL OVER AUTHORISED PERSONS

##### *Notice of control*

#### **178** **Obligation to notify the Authority**

- (1) If a step which a person proposes to take would result in his acquiring—
  - (a) control over a UK authorised person,
  - (b) an additional kind of control over a UK authorised person, or
  - (c) an increase in a relevant kind of control which he already has over a UK authorised person,he must notify the Authority of his proposal.
- (2) A person who, without himself taking any such step, acquires any such control or additional or increased control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.
- (3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give notice to the Authority on acquiring, or increasing, the control in question.
- (4) In this Part “UK authorised person” means an authorised person who—
  - (a) is a body incorporated in, or an unincorporated association formed under the law of, any part of the United Kingdom; and
  - (b) is not a person authorised as a result of paragraph 1 of Schedule 5.
- (5) A notice under subsection (1) or (2) is referred to in this Part as “a notice of control”.

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*Acquiring, increasing and reducing control*

**179 Acquiring control**

- (1) For the purposes of this Part, a person (“the acquirer”) acquires control over a UK authorised person (“A”) on first falling within any of the cases in subsection (2).
- (2) The cases are where the acquirer—
  - (a) holds 10% or more of the shares in A;
  - (b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;
  - (c) holds 10% or more of the shares in a parent undertaking (“P”) of A;
  - (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;
  - (e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A;
  - (f) is able to exercise significant influence over the management of A by virtue of his voting power in A;
  - (g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or
  - (h) is able to exercise significant influence over the management of P by virtue of his voting power in P.
- (3) In subsection (2) “the acquirer” means—
  - (a) the acquirer;
  - (b) any of the acquirer’s associates; or
  - (c) the acquirer and any of his associates.
- (4) For the purposes of this Part, each of the following is to be regarded as a kind of control—
  - (a) control arising as a result of the holding of shares in A;
  - (b) control arising as a result of the holding of shares in P;
  - (c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in A;
  - (d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.
- (5) For the purposes of this section and sections 180 and 181, “associate”, “shares” and “voting power” have the same meaning as in section 422.

**180 Increasing control**

- (1) For the purposes of this Part, a controller of a person (“A”) who is a UK authorised person increases his control over A if—
  - (a) the percentage of shares held by the controller in A increases by any of the steps mentioned in subsection (2);
  - (b) the percentage of shares held by the controller in a parent undertaking (“P”) of A increases by any of the steps mentioned in subsection (2);
  - (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A increases by any of the steps mentioned in subsection (2);

- (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P increases by any of the steps mentioned in subsection (2); or
  - (e) the controller becomes a parent undertaking of A.
- (2) The steps are—
- (a) from below 10% to 10% or more but less than 20%;
  - (b) from below 20% to 20% or more but less than 33%;
  - (c) from below 33% to 33% or more but less than 50%;
  - (d) from below 50% to 50% or more.
- (3) In paragraphs (a) to (d) of subsection (1) “the controller” means—
- (a) the controller;
  - (b) any of the controller’s associates; or
  - (c) the controller and any of his associates.
- (4) In the rest of this Part “acquiring control” or “having control” includes—
- (a) acquiring or having an additional kind of control; or
  - (b) acquiring an increase in a relevant kind of control, or having increased control of a relevant kind.

## **181 Reducing control**

- (1) For the purposes of this Part, a controller of a person (“A”) who is a UK authorised person reduces his control over A if—
- (a) the percentage of shares held by the controller in A decreases by any of the steps mentioned in subsection (2),
  - (b) the percentage of shares held by the controller in a parent undertaking (“P”) of A decreases by any of the steps mentioned in subsection (2),
  - (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A decreases by any of the steps mentioned in subsection (2),
  - (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P decreases by any of the steps mentioned in subsection (2), or
  - (e) the controller ceases to be a parent undertaking of A,
- unless the controller ceases to have the kind of control concerned over A as a result.
- (2) The steps are—
- (a) from 50% or more to 33% or more but less than 50%;
  - (b) from 33% or more to 20% or more but less than 33%;
  - (c) from 20% or more to 10% or more but less than 20%;
  - (d) from 10% or more to less than 10%.
- (3) In paragraphs (a) to (d) of subsection (1) “the controller” means—
- (a) the controller;
  - (b) any of the controller’s associates; or
  - (c) the controller and any of his associates.

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*Acquiring or increasing control: procedure*

**182 Notification**

- (1) A notice of control must—
  - (a) be given to the Authority in writing; and
  - (b) include such information and be accompanied by such documents as the Authority may reasonably require.
- (2) The Authority may require the person giving a notice of control to provide such additional information or documents as it reasonably considers necessary in order to enable it to determine what action it is to take in response to the notice.
- (3) Different requirements may be imposed in different circumstances.

**183 Duty of Authority in relation to notice of control**

- (1) The Authority must, before the end of the period of three months beginning with the date on which it receives a notice of control (“the period for consideration”), determine whether—
  - (a) to approve of the person concerned having the control to which the notice relates; or
  - (b) to serve a warning notice under subsection (3) or section 185(3).
- (2) Before doing so, the Authority must comply with such requirements as to consultation with competent authorities outside the United Kingdom as may be prescribed.
- (3) If the Authority proposes to give the person concerned a notice of objection under section 186(1), it must give him a warning notice.

**184 Approval of acquisition of control**

- (1) If the Authority decides to approve of the person concerned having the control to which the notice relates it must notify that person of its approval in writing without delay.
- (2) If the Authority fails to comply with subsection (1) of section 183 it is to be treated as having given its approval and notified the person concerned at the end of the period fixed by that subsection.
- (3) The Authority’s approval remains effective only if the person to whom it relates acquires the control in question—
  - (a) before the end of such period as may be specified in the notice; or
  - (b) if no period is specified, before the end of the period of one year beginning with the date—
    - (i) of the notice of approval;
    - (ii) on which the Authority is treated as having given approval under subsection (2); or
    - (iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.

## **185 Conditions attached to approval**

- (1) The Authority's approval under section 184 may be given unconditionally or subject to such conditions as the Authority considers appropriate.
- (2) In imposing any conditions, the Authority must have regard to its duty under section 41.
- (3) If the Authority proposes to impose conditions on a person it must give him a warning notice.
- (4) If the Authority decides to impose conditions on a person it must give him a decision notice.
- (5) A person who is subject to a condition imposed under this section may apply to the Authority—
  - (a) for the condition to be varied; or
  - (b) for the condition to be cancelled.
- (6) The Authority may, on its own initiative, cancel a condition imposed under this section.
- (7) If the Authority has given its approval to a person subject to a condition, he may refer to the Tribunal—
  - (a) the imposition of the condition; or
  - (b) the Authority's decision to refuse an application made by him under subsection (5).

## **186 Objection to acquisition of control**

- (1) On considering a notice of control, the Authority may give a decision notice under this section to the person acquiring control ("the acquirer") unless it is satisfied that the approval requirements are met.
- (2) The approval requirements are that—
  - (a) the acquirer is a fit and proper person to have the control over the authorised person that he has or would have if he acquired the control in question; and
  - (b) the interests of consumers would not be threatened by the acquirer's control or by his acquiring that control.
- (3) In deciding whether the approval requirements are met, the Authority must have regard, in relation to the control that the acquirer—
  - (a) has over the authorised person concerned ("A"), or
  - (b) will have over A if the proposal to which the notice of control relates is carried into effect,to its duty under section 41 in relation to each regulated activity carried on by A.
- (4) If the Authority gives a notice under this section but considers that the approval requirements would be met if the person to whom a notice is given were to take, or refrain from taking, a particular step, the notice must identify that step.
- (5) A person to whom a notice under this section is given may refer the matter to the Tribunal.
- (6) "Consumers" means persons who are consumers for the purposes of section 138.

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### **187 Objection to existing control**

- (1) If the Authority is not satisfied that the approval requirements are met, it may give a decision notice under this section to a person if he has failed to comply with a duty to notify imposed by section 178.
- (2) If the failure relates to subsection (1) or (2) of that section, the Authority may (instead of giving a notice under subsection (1)) approve the acquisition of the control in question by the person concerned as if he had given it a notice of control.
- (3) The Authority may also give a decision notice under this section to a person who is a controller of a UK authorised person if the Authority becomes aware of matters as a result of which it is satisfied that—
  - (a) the approval requirements are not met with respect to the controller; or
  - (b) a condition imposed under section 185 required that person to do (or refrain from doing) a particular thing and the condition has been breached as a result of his failing to do (or doing) that thing.
- (4) A person to whom a notice under this section is given may refer the matter to the Tribunal.
- (5) “Approval requirements” has the same meaning as in section 186.

### **188 Notices of objection under section 187: procedure**

- (1) If the Authority proposes to give a notice of objection to a person under section 187, it must give him a warning notice.
- (2) Before doing so, the Authority must comply with such requirements as to consultation with competent authorities outside the United Kingdom as may be prescribed.
- (3) If the Authority decides to give a warning notice under this section, it must do so before the end of the period of three months beginning—
  - (a) in the case of a notice to be given under section 187(1), with the date on which it became aware of the failure to comply with the duty in question;
  - (b) in the case of a notice to be given under section 187(3), with the date on which it became aware of the matters in question.
- (4) The Authority may require the person concerned to provide such additional information or documents as it considers reasonable.
- (5) Different requirements may be imposed in different circumstances.
- (6) In this Part “notice of objection” means a notice under section 186 or 187.

### *Improperly acquired shares*

### **189 Improperly acquired shares**

- (1) The powers conferred by this section are exercisable if a person has acquired, or has continued to hold, any shares in contravention of—
  - (a) a notice of objection; or
  - (b) a condition imposed on the Authority’s approval.

- (2) The Authority may by notice in writing served on the person concerned (“a restriction notice”) direct that any such shares which are specified in the notice are, until further notice, subject to one or more of the following restrictions—
- (a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares any transfer of (or agreement to transfer) the right to be issued with them, is void;
  - (b) no voting rights are to be exercisable in respect of the shares;
  - (c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;
  - (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.
- (3) The court may, on the application of the Authority, order the sale of any shares to which this section applies and, if they are for the time being subject to any restriction under subsection (2), that they are to cease to be subject to that restriction.
- (4) No order may be made under subsection (3)—
- (a) until the end of the period within which a reference may be made to the Tribunal in respect of the notice of objection; and
  - (b) if a reference is made, until the matter has been determined or the reference withdrawn.
- (5) If an order has been made under subsection (3), the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.
- (7) This section applies—
- (a) in the case of an acquirer falling within section 178(1), to all the shares—
    - (i) in the authorised person which the acquirer has acquired;
    - (ii) which are held by him or an associate of his; and
    - (iii) which were not so held immediately before he became a person with control over the authorised person;
  - (b) in the case of an acquirer falling within section 178(2), to all the shares held by him or an associate of his at the time when he first became aware that he had acquired control over the authorised person; and
  - (c) to all the shares in an undertaking (“C”)—
    - (i) which are held by the acquirer or an associate of his, and
    - (ii) which were not so held before he became a person with control in relation to the authorised person,where C is the undertaking in which shares were acquired by the acquirer (or an associate of his) and, as a result, he became a person with control in relation to that authorised person.
- (8) A copy of the restriction notice must be served on—
- (a) the authorised person to whose shares it relates; and

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- (b) if it relates to shares held by an associate of that authorised person, on that associate.
- (9) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

*Reducing control: procedure*

**190 Notification**

- (1) If a step which a controller of a UK authorised person proposes to take would result in his—
- (a) ceasing to have control of a relevant kind over the authorised person, or
  - (b) reducing a relevant kind of control over that person,
- he must notify the Authority of his proposal.
- (2) A controller of a UK authorised person who, without himself taking any such step, ceases to have that control or reduces that control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that—
- (a) he has ceased to have the control in question; or
  - (b) he has reduced that control.
- (3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give a notice to the Authority—
- (a) on ceasing to have the control in question; or
  - (b) on reducing that control.
- (4) A notice under this section must—
- (a) be given to the Authority in writing; and
  - (b) include details of the extent of the control (if any) which the person concerned will retain (or still retains) over the authorised person concerned.

*Offences*

**191 Offences under this Part**

- (1) A person who fails to comply with the duty to notify the Authority imposed on him by section 178(1) or 190(1) is guilty of an offence.
- (2) A person who fails to comply with the duty to notify the Authority imposed on him by section 178(2) or 190(2) is guilty of an offence.
- (3) If a person who has given a notice of control to the Authority carries out the proposal to which the notice relates, he is guilty of an offence if—
- (a) the period of three months beginning with the date on which the Authority received the notice is still running; and
  - (b) the Authority has not responded to the notice by either giving its approval or giving him a warning notice under section 183(3) or 185(3).



- (4) A person to whom the Authority has given a warning notice under section 183(3) is guilty of an offence if he carries out the proposal to which the notice relates before the Authority has decided whether to give him a notice of objection.
- (5) A person to whom a notice of objection has been given is guilty of an offence if he acquires the control to which the notice applies at a time when the notice is still in force.
- (6) A person guilty of an offence under subsection (1), (2), (3) or (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person guilty of an offence under subsection (5) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (8) A person guilty of an offence under subsection (5) is also liable on summary conviction to a fine not exceeding one tenth of the statutory maximum for each day on which the offence has continued.
- (9) It is a defence for a person charged with an offence under subsection (1) to show that he had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.
- (10) If a person—
  - (a) was under the duty to notify the Authority imposed by section 178(1) or 190(1) but had no knowledge of the act or circumstances by virtue of which that duty arose, but
  - (b) subsequently becomes aware of that act or those circumstances,he must notify the Authority before the end of the period of 14 days beginning with the day on which he first became so aware.
- (11) A person who fails to comply with the duty to notify the Authority imposed by subsection (10) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### *Miscellaneous*

## **192 Power to change definitions of control etc**

The Treasury may by order—

- (a) provide for exemptions from the obligations to notify imposed by sections 178 and 190;
- (b) amend section 179 by varying, or removing, any of the cases in which a person is treated as having control over a UK authorised person or by adding a case;
- (c) amend section 180 by varying, or removing, any of the cases in which a person is treated as increasing control over a UK authorised person or by adding a case;
- (d) amend section 181 by varying, or removing, any of the cases in which a person is treated as reducing his control over a UK authorised person or by adding a case;

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- (e) amend section 422 by varying, or removing, any of the cases in which a person is treated as being a controller of a person or by adding a case.