



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XII

#### CONTROL OVER AUTHORISED PERSONS

##### *[<sup>F1</sup> Assessment procedure*

#### Textual Amendments

- F1** Ss. 178-191G and cross-headings substituted (21.3.2009) for ss. 178-191 and cross-headings by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), reg. 3, [Sch. 1](#) (with reg. 8)

#### <sup>x1</sup>185 **Assessment: general**

- (1) Where the Authority receives a section 178 notice, it must—
  - (a) determine whether to approve the acquisition to which it relates unconditionally; or
  - (b) propose to—
    - (i) approve the acquisition subject to conditions (see section 187); or
    - (ii) object to the acquisition.
- (2) The Authority must—
  - (a) consider the suitability of the section 178 notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the UK authorised person;
  - (b) have regard to the likely influence that the section 178 notice-giver will have on the UK authorised person; and
  - (c) disregard the economic needs of the market.
- (3) The Authority may only object to an acquisition—

*Status: Point in time view as at 16/04/2012.*

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- (a) if there are reasonable grounds for doing so on the basis of the matters set out in section 186; or
- (b) if the information provided by the section 178 notice-giver is incomplete.

#### **Editorial Information**

**X1** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

### <sup>x2</sup>**186 Assessment criteria**

The matters specified in section 185(3)(a) are—

- (a) the reputation of the section 178 notice-giver;
- (b) the reputation and experience of any person who will direct the business of the UK authorised person as a result of the proposed acquisition;
- (c) the financial soundness of the section 178 notice-giver, in particular in relation to the type of business that the UK authorised person pursues or envisages pursuing;
- (d) whether the UK authorised person will be able to comply with its prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);
- (e) if the UK authorised person is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to—
  - (i) exercise effective supervision;
  - (ii) exchange information among regulators; and
  - (iii) determine the allocation of responsibility among regulators; and
- (f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition—
  - (i) money laundering or terrorist financing (within the meaning of Article 1 of Directive [2005/60/EC](#) of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing) is being or has been committed or attempted; or
  - (ii) the risk of such activity could increase.

#### **Editorial Information**

**X2** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

### <sup>x3</sup>**187 Approval with conditions**

- (1) The Authority may impose conditions on its approval of an acquisition.

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- (2) The Authority may only impose conditions where, if it did not impose those conditions, it would propose to object to the acquisition.
- (3) The Authority may not impose conditions requiring a particular level of holding to be acquired.
- (4) The Authority may vary or cancel the conditions.

#### **Editorial Information**

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#### **<sup>x4</sup>188 Assessment: consultation with EC competent authorities**

- (1) The Authority must consult any appropriate home state regulator before making a determination under section 185 and, in doing so, must comply with such requirements as to consultation as may be prescribed.
- (2) Where the Authority makes a determination under section 185, it must indicate any views or reservations received from any home state regulator it consults in accordance with subsection (1).
- (3) The Authority must cooperate with any equivalent consultation by a host state regulator in relation to a UK authorised person.
- (4) In order to comply with an obligation under subsection (1) or (3), the Authority must provide the regulator with—
  - (a) any relevant information that it requests; and
  - (b) any information that the Authority considers that it needs.

#### **Editorial Information**

**X4** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### **<sup>x5</sup>189 Assessment: Procedure**

- (1) The Authority must act under section 185 within a period of 60 working days beginning with the day on which the Authority acknowledges receipt of the section 178 notice (“the assessment period”).
- (2) The assessment period may be interrupted, no more than once, in accordance with section 190.
- (3) The Authority must inform the section 178 notice-giver in writing of—
  - (a) the duration of the assessment period;
  - (b) its expiry date; and

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- (c) any change to the expiry date by virtue of section 190.
- (4) The Authority must, within two working days of acting under section 185 (and in any event no later than the expiry date of the assessment period)—
  - (a) notify the section 178 notice-giver that it has determined to approve the acquisition unconditionally; or
  - (b) give a warning notice stating that it proposes to—
    - (i) approve the acquisition subject to conditions; or
    - (ii) object to the acquisition.
- (5) Where the Authority gives a warning notice stating that it proposes to approve the acquisition subject to conditions—
  - (a) it must, in the warning notice, specify those conditions; and
  - (b) the conditions take effect as interim conditions.
- (6) The Authority is treated as having approved the acquisition if, at the expiry of the assessment period, it has neither—
  - (a) given notice under subsection (4); nor
  - (b) informed the section 178 notice-giver that the section 178 notice is incomplete.
- (7) If the Authority decides to approve an acquisition subject to conditions or to object to an acquisition it must give the section 178 notice-giver a decision notice.
- (8) Following receipt of a decision notice under this section, the section 178 notice-giver may refer the Authority's decision to the Tribunal.

#### **Editorial Information**

- X5** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### **<sup>x6</sup>190 Requests for further information**

- (1) The Authority may, no later than the 50th working day of the assessment period, in writing ask the section 178 notice-giver to provide any further information necessary to complete its assessment.
- (2) On the first occasion that the Authority asks for further information, the assessment period is interrupted from the date of the request until the date the Authority receives the requested information (“the interruption period”).
- (3) But the interruption period may not exceed 20 working days, unless subsection (4) applies.
- (4) The interruption period may not exceed 30 working days if the notice-giver—
  - (a) is situated or regulated outside the [F<sup>2</sup>European Union]; or
  - (b) is not subject to supervision under—
    - (i) the UCITS directive;
    - (ii) the insurance directives;

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- (iii) the markets in financial instruments directive;
  - (iv) the reinsurance directive; or
  - (v) the banking consolidation directive.
- (5) The Authority may make further requests for information (but a further request does not result in a further interruption of the assessment period).
- (6) The Authority must acknowledge in writing receipt of further information before the end of the second working day following receipt.

#### **Editorial Information**

**X6** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### **Textual Amendments**

**F2** Words in s. 190(4)(a) substituted (22.4.2011 with application in accordance with art. 3 of the amending S.I.) by virtue of [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), **art. 4**

### **<sup>x7</sup>191 Duration of approval**

- (1) Approval of an acquisition (whether granted unconditionally or subject to conditions) is effective for such period as the Authority may specify in writing.
- (2) Where the Authority has specified a period under subsection (1), it may extend the period.
- (3) Where the Authority has not specified a period, the approval is effective for one year beginning with the date—
- (a) of the notice given under section 189(4)(a) or (b)(i);
  - (b) on which the Authority is treated as having given approval under section 189(6); or
  - (c) of a decision on a reference to the Tribunal which results in the person receiving approval.]

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