Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXVIII

MISCELLANEOUS

Third countries

405 Directions.

(1) For the purpose of implementing a third country decision, the Treasury may direct the Authority to—

(a) refuse an application for permission under Part IV made by a body incorporated in, or formed under the law of, any part of the United Kingdom;

(b) defer its decision on such an application either indefinitely or for such period as may be specified in the direction;

(c) give a notice of objection to a person who has served a notice of control to the effect that he proposes to acquire a 50% stake in a UK authorised person; or

(d) give a notice of objection to a person who has acquired a 50% stake in a UK authorised person without having served the required notice of control.

(2) A direction may also be given in relation to—

(a) any person falling within a class specified in the direction;

(b) future applications, notices of control or acquisitions.

(3) The Treasury may revoke a direction at any time.

(4) But revocation does not affect anything done in accordance with the direction before it was revoked.

(5) "Third country decision" means a decision of the Council or the Commission under—

[[F1](a) Article 15(3) of the markets in financial instruments directive;**]**

(b) [F2]. . . . . .

(c) Article 29b(4) of the first non-life insurance directive; or

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[[F3](d) Article 59(4) of the life assurance consolidation directive.**]**

Textual Amendments

F1 S. 405(5)(a) substituted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 17**

F2 S. 405(5)(b) repealed (1.1.2007) by The Capital Requirements Regulations 2006 (S.I. 2006/3221), reg. 29(1), **Sch. 3 para. 1**

F3 S. 405(5)(d) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(4)**

Commencement Information

I1 S. 405 wholly in force at 1.12.2001; s. 405 not in force at Royal Assent see s. 431(2); s. 405 (except (1)(c)(d)) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 405 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

406 Interpretation of section 405.

(1) For the purposes of section 405, a person ("the acquirer") acquires a 50% stake in a UK authorised person ("A") on first falling within any of the cases set out in subsection (2).

(2) The cases are where the acquirer—

(a) holds 50% or more of the shares in A;

(b) holds 50% or more of the shares in a parent undertaking ("P") of A;

(c) is entitled to exercise, or control the exercise of, 50% or more of the voting power in A; or

(d) is entitled to exercise, or control the exercise of, 50% or more of the 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) "Associate", "shares" and "voting power" have the same meaning as in section 422.

407 Consequences of a direction under section 405.

(1) If the Authority refuses an application for permission as a result of a direction under section 405(1)(a)—

(a) subsections (7) to (9) of section 52 do not apply in relation to the refusal; but

(b) the Authority must notify the applicant of the refusal and the reasons for it.

(2) If the Authority defers its decision on an application for permission as a result of a direction under section 405(1)(b)—

(a) the time limit for determining the application mentioned in section 52(1) or (2) stops running on the day of the deferral and starts running again (if at all) on the day the period specified in the direction (if any) ends or the day the direction is revoked; and

(b) the Authority must notify the applicant of the deferral and the reasons for it.

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(3) If the Authority gives a notice of objection to a person as a result of a direction under section 405(1)(c) or (d)—

(a) sections 189 and 191 have effect as if the notice was a notice of objection within the meaning of Part XII; and

(b) the Authority must state in the notice the reasons for it.

Commencement Information

I2 S. 407 wholly in force at 1.12.2001; s. 407 not in force at Royal Assent see s. 431(2); s. 407(1)(2) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 407 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

408 EFTA firms.

(1) If a third country decision has been taken, the Treasury may make a determination in relation to an EFTA firm which is a subsidiary undertaking of a parent undertaking which is governed by the law of the country to which the decision relates.

(2) "Determination" means a determination that the firm concerned does not qualify for authorisation under Schedule 3 even if it satisfies the conditions in paragraph 13 or 14 of that Schedule.

(3) A determination may also be made in relation to any firm falling within a class specified in the determination.

(4) The Treasury may withdraw a determination at any time.

(5) But withdrawal does not affect anything done in accordance with the determination before it was withdrawn.

(6) If the Treasury make a determination in respect of a particular firm, or withdraw such a determination, they must give written notice to that firm.

(7) The Treasury must publish notice of any determination (or the withdrawal of any determination)—

(a) in such a way as they think most suitable for bringing the determination (or withdrawal) to the attention of those likely to be affected by it; and

(b) on, or as soon as practicable after, the date of the determination (or withdrawal).

(8) "EFTA firm" means a firm, institution or undertaking which—

(a) is an EEA firm as a result of paragraph 5(a), (b) or (d) of Schedule 3; and

(b) is incorporated in, or formed under the law of, an EEA State which is not a member State.

(9) "Third country decision" has the same meaning as in section 405.

Commencement Information

I3 S. 408 wholly in force at 1.12.2001; s. 408 not in force at Royal Assent see s. 431(2); s. 408 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 408 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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409 Gibraltar.

(1) The Treasury may by order—

(a) modify Schedule 3 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;

(b) modify Schedule 3 so as to make provision in relation to the exercise by UK firms of rights under the law of Gibraltar which correspond to EEA rights;

(c) modify Schedule 4 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;

(d) modify section 264 so as to make provision in relation to collective investment schemes constituted under the law of Gibraltar;

(e) F4 . . . . . .

(f) provide for this Act to apply to a Gibraltar recognised scheme as if the scheme were a scheme recognised under section 264.

(2) The fact that a firm may qualify for authorisation under Schedule 3 as a result of an order under subsection (1) does not prevent it from applying for a Part IV permission.

(3) "Gibraltar firm" means a firm which has its head office in Gibraltar or is otherwise connected with Gibraltar.

(4) "Gibraltar recognised scheme" means a collective investment scheme—

(a) constituted in an EEA State other than the United Kingdom, and

(b) recognised in Gibraltar under provisions which appear to the Treasury to give effect to the provisions of a relevant **[**F5EU**]** instrument.

(5) "Specified" means specified in the order.

(6) "UK firm" and "EEA right" have the same meaning as in Schedule 3.

Textual Amendments

F4 S. 409(1)(e) omitted (1.7.2011) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(30)**

F5 Word in s. 409(4) 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. 6(1)(3)(4)**

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