

FINANCIAL REGULATORY QUICK START GUIDE

CHANGE IN CONTROL: PRIOR REGULATORY APPROVAL FOR ACQUISITIONS OF UK FINANCIAL SERVICES FIRMS

The UK change in control regime requires acquirers to obtain regulatory approval prior to acquiring “control” over a UK authorised firm, and can have a significant impact on M&A deal timetables.

OVERVIEW

The UK regulators want to ensure that all controllers, or potential controllers, of UK authorised firms are suitable and will not prevent effective supervision of the firm. As such, any person who decides to acquire “control” over a UK authorised firm must obtain prior regulatory approval.

Failure to obtain prior regulatory approval for a change in control is a criminal offence, potentially punishable by way of a fine or imprisonment.

This requirement applies regardless of whether the proposed controller is a natural or legal person, is based in the UK or overseas, or is itself an authorised firm. The regime also applies to intra-group transactions.

Approval must be sought for both direct and indirect controllers, which can often result in approval needing to be sought in relation to a number of controllers.

Broadly speaking, a person will become a controller if he acquires 10% or more of the shares or voting rights in a UK authorised firm, or a parent of the firm.

In addition, prior approval must be obtained when an existing minority controller wishes to increase his holding past certain other control thresholds (see “Controller bands” box, below).

Prior notification must be given (but no prior approval is required) for reductions in control (based on the same controller bands) and cessations of control.

Special “light touch” regimes exist for certain types of firm (such as consumer credit firms and retail intermediaries), where there is just one controller band of 20% or 33%.

THE APPLICATION

Applications must be made by submitting the prescribed form, along with detailed supporting documentation.

The threshold for acquiring control is set very low, so the regime captures a wide variety of transactions and reorganisations.

This includes, for example, transaction structure charts, CVs for directors or members of the proposed controller (if applicable), proof of funding and three years’ worth of financial statements. If the controller will become a parent undertaking of the firm, a detailed business plan needs to be provided.

The application must be prepared with care, as it is a criminal offence knowingly or recklessly to give the regulator information that is false or misleading.

Controller bands

10% or more of the shares or voting rights

20% or more of the shares or voting rights

30% or more of the shares or voting rights

50% or more of the shares or voting rights

Parent undertaking

TIMING

Once the regulator has acknowledged receipt of a complete application (which it may not do without first requesting further information), it has up to 60 working days to consider and determine the application. This assessment period can be interrupted once for up to 30 working days if the regulator wishes to request further information.

Although applications are often determined much more quickly than the maximum 60 working days, timing

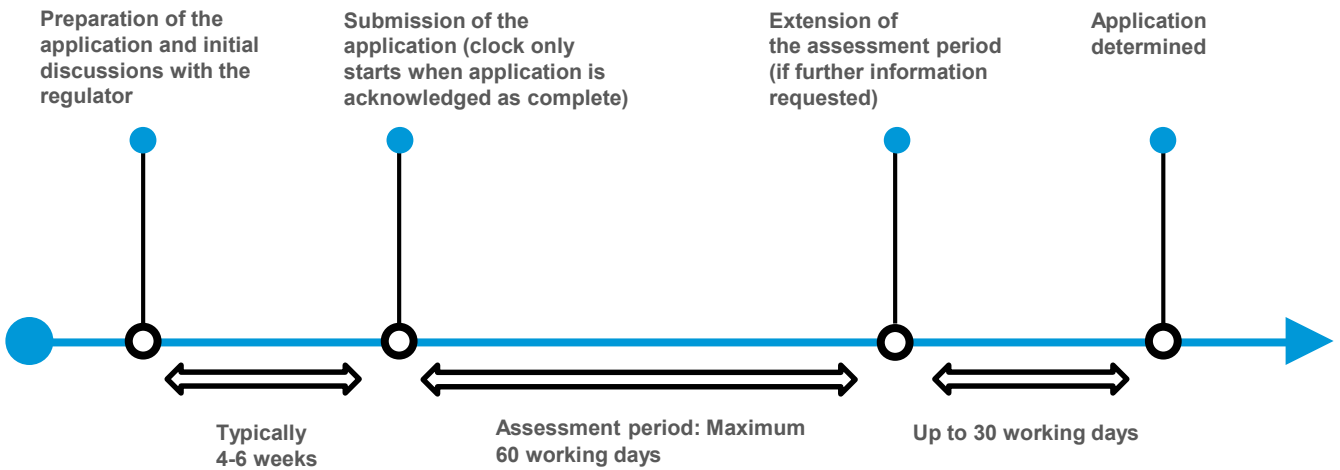
depends on the complexity of the transaction and how busy the regulator is at the time. The regulator will never agree to determine an application in a shorter timeframe.

COMPLETING THE DEAL

Approval may be granted unconditionally, or subject to conditions. Approval will be limited to a certain time period (typically 3 months, but it can be up to one year) and so the change in control must take place within this window.

Potential acquirers must always build time into the timetable for the full assessment period, as even though the regulator may well determine the application more quickly, this can never be guaranteed.

THE ASSESSMENT TIMELINE



CONTACTS



David Berman
Partner, London
 T +44.20.7710.3080
 E david.berman@lw.com



Nicola Higgs
Partner, London
 T +44.20.7710.1154
 E nicola.higgs@lw.com



Rob Moulton
Partner, London
 T +44.20.7710.4523
 E rob.moulton@lw.com