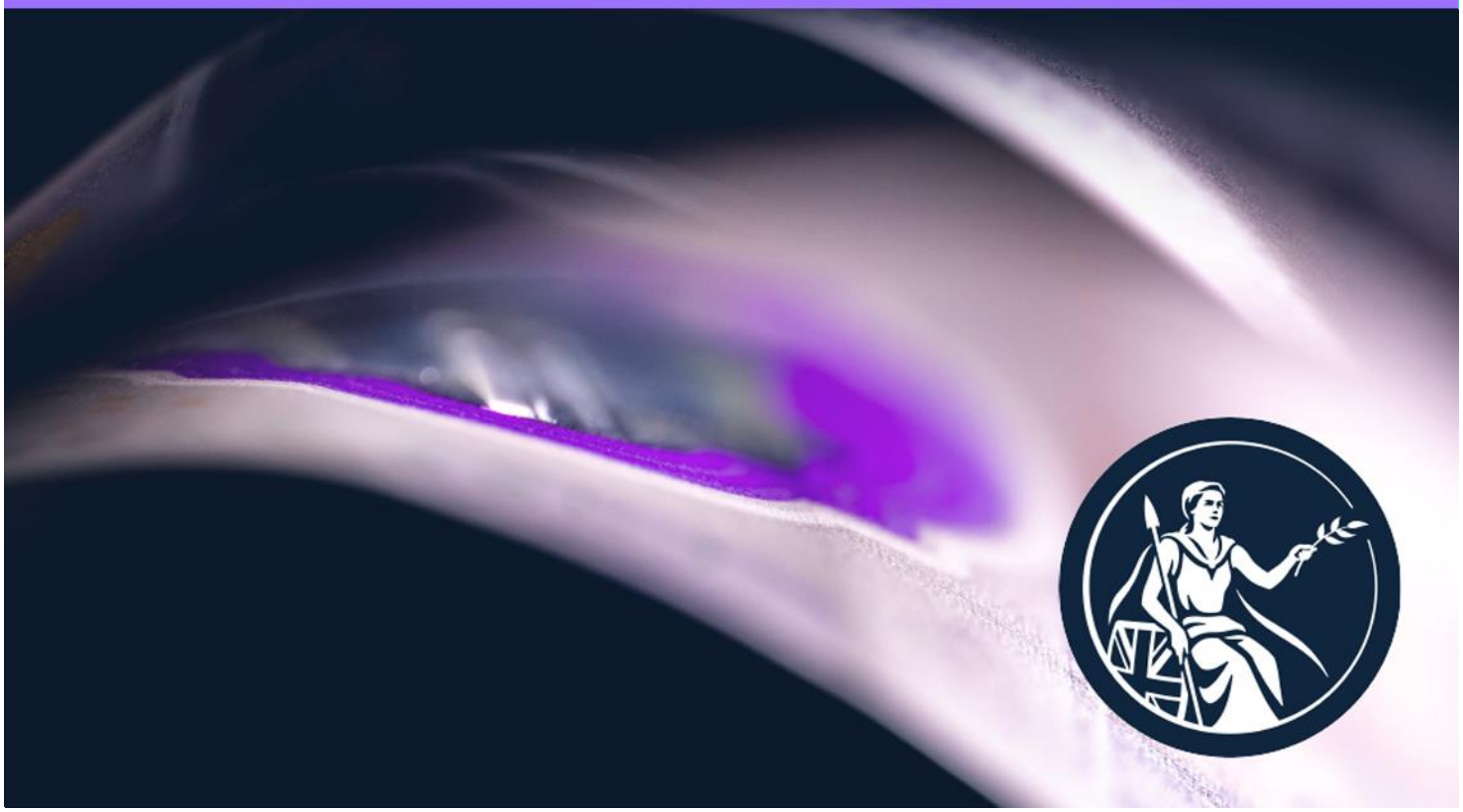
Bank of England PRA

Supervisory statement – Prudential assessment of acquisitions and increases in control

Supervisory statement | SS10/24

November 2024



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Prudential Regulation Authority | 20 Moorgate | London EC2R 6DA

Contents

1: Introduction

1.1 Unless stated otherwise, this supervisory statement (SS) is relevant to all PRA-authorised firms and other persons to whom requirements in the Change in Control Part of the PRA Rulebook apply. It is also relevant to firms seeking to apply for PRA authorisation in identifying who their controllers are (Chapter 2 (except 'decision to acquire'), Annex 1 and Annex 2).

1.2 This statement should be read in conjunction with the legislative requirements set out in:

- the Financial Services and Markets Act 2000 **Part XII Control Over Authorised Persons;**[1]
- the Financial Services and Markets Act 2000 **Part XXIX Interpretation,**[2] specifically s422;
- the Financial Services and Markets Act 2000 **(Controllers) (Exemption) Order 2009**[3] (referred within this document as the exemption order);
- **schedule 7**[4] and **section 1162**[5] of the Companies Act 2006; and
- the Change in Control and Close Links parts of the **PRA Rulebook.**[6]

1.3 Chapter 2 (combined with Annex 1 and Annex 2) sets out the PRA's expectations as to how the concepts of decision to acquire,[7] significant influence,[8] aggregation of holdings (SS33/15) and acting in concert[9] should be interpreted. These concepts have an impact on whether a person would be considered to be a controller as part of a proposed acquisition (and whether there would be considered to be an 'increase in control') of PRA-authorised firms. Significant influence, aggregation of holdings and acting in concert are also relevant to a new firm authorisation and a PRA-authorised-firm reporting of their controllers (significant influence or acting in concert agreement can become apparent at any time).

1 **https://www.legislation.gov.uk/ukpga/2000/8/part/XII**.
2 **https://www.legislation.gov.uk/ukpga/2000/8/part/XXIX**.
3 **https://www.legislation.gov.uk/uksi/2009/774/made**.
4 **https://www.legislation.gov.uk/ukpga/2006/46/schedule/7**.
5 **https://www.legislation.gov.uk/ukpga/2006/46/section/1162**.
6 https://www.prarulebook.co.uk/.
7 S178(1) FSMA.
8 S422(2)(c) (controller definition) and s181(2)(c) FSMA (Acquiring control).
9 S422(3) FSMA.

1.4 Further, Chapter 2 provides the expectations of the PRA in relation to indirect holdings and how one person's holding of shares or voting power should be aggregated with that of another person for the purpose of determining whether those persons have decided to acquire or increase control over a UK PRA-authorised firm, such that notice must be given to the PRA in accordance with s178 of Financial Services Market Act (FSMA).

1.5 Chapter 3 sets out the PRA's expectations in relation to submitting the change in control notification (in accordance with s178 FSMA) to acquire and increase control in a UK domestic firm that is PRA-authorised (referred within the document as a UK PRA-authorised firm), the additional information that may be required and the approach to completeness. This chapter does not apply with regard to acquiring or increasing control over overseas firms that are PRA authorised.

1.6 Chapter 4 sets out the PRA's approach to the assessment criteria (in accordance with s186 FSMA) used to assess notifications to acquire or increase control in a UK domestic firm that is PRA-authorised. This chapter does not apply with regard to acquiring or increasing control over overseas firms that are PRA authorised.

1.7 Chapter 5 sets out how the PRA will use its statutory power to impose conditions on a change in control approval when it advances its objectives. This chapter does not apply to UK overseas firms that are PRA-authorised.

1.8 This supervisory statement, including the illustrative diagrams in Annex 1, provides some indication of how the PRA may expect firms and those acquiring or increasing control in UK authorised persons to identify 'controllers' for the purposes FSMA. The illustrative guidance offered is not exhaustive, particularly in relation to broad concepts such as 'acting in concert'. There may be cases where it is necessary for the PRA to take an approach that is not described in this guidance.

2: Controller concepts and identification

Decision to acquire

2.1 S178(1) FSMA requires a person who decides to acquire or increase control over a UK authorised person to give the appropriate regulator notice in writing before making the acquisition.

2.2 The PRA expects the following non-exhaustive list of elements to be relevant to an assessment as to whether or not a decision to acquire a UK PRA-authorised firm has been made:

a) whether the proposed acquirer was aware of or, considering information it could have had access to, should have been aware of the acquisition/increase in control and the transaction giving rise to it; and
b) whether the proposed acquirer had the ability to influence, object to or prevent the proposed acquisition or increase in control.

2.3 The PRA expects there to be a finding of a decision to acquire in most circumstances, as almost always the acquirer will have taken or omitted to take certain action which will have contributed to the circumstances leading to an acquisition[10] or a control threshold being crossed.[11]

2.4 In circumstances where a person may not be aware in advance of the investments made, nor have the ability to influence, object to, or prevent the proposed acquisition or increase in control, our expectation is that information regarding those investors will be provided proactively by the notice giver at the point of submission of the s178 notification. The PRA may request further information regarding the investors as part of its assessment of the suitability of the proposed controllers.

2.5 Should a person cross a controller threshold[12] involuntarily they should notify the PRA immediately upon becoming aware of such event, even if they intend to reduce their level of shareholding so that it once again falls below the threshold level.

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10 Acquisition threshold is set out in s181 FSMA (Acquiring control) and should be read in conjunction with the Exemption Order (**https://www.legislation.gov.uk/uksi/2009/774/made**).

11 Thresholds are set out in s182 FSMA (Increasing control) and should read in conjunction with the Exemption Order**(https://www.legislation.gov.uk/uksi/2009/774/made**).

12 Thresholds set out in in s181 FSMA (Acquiring control) and s182 FSMA (Increasing control), both should be read in conjunction with the Exemption Order **(https://www.legislation.gov.uk/uksi/2009/774/made**).

2.6 An example of a scenario in which persons may cross a threshold involuntarily include a repurchase of shares held by other persons, which leads directly to such threshold being exceeded.

Significant influence

2.7 There are several factors relevant to any assessment of whether a person would be considered to be a controller via significant influence including the ownership structure (current and proposed) of the PRA-authorised firm and the actual level of involvement of the proposed controller in the management of the PRA-authorised firm.

2.8 PRA expects the following non-exhaustive list of factors to be relevant to any determination of whether significant influence over the management of the PRA-authorised firm may be exercised:

a) the ability to direct or influence decisions made by the board, which could be via a shareholder board appointment (to the UK authorised person or its parent) or other arrangement, as set out in 2.8(b) to 2.8(f) below;
b) making recommendations to the board of the PRA-authorised firm which are almost always followed, as demonstrated by board minutes;
c) the ability to appoint or remove a member of the board of the PRA-authorised firm;
d) the existence of material and regular transactions between a person and the PRA-authorised firm eg, a proposed acquirer's ownership of intellectual property or a material outsourcing vehicle utilised by the PRA-authorised firm which may influence how its business is run;
e) additional rights in the PRA-authorised firm, by virtue of a contract entered into or of a provision contained in the PRA-authorised firm's articles of association, other constitutional documents or shareholder agreements; and
f) the existence of veto rights over material matters in relation to the running of the PRA-authorised firm such as changes to the business plan or strategy.

2.9 The factors contained in this chapter can also assist firms seeking PRA authorisation in identifying any persons who will hold less than 10% of the shares or voting power but will be able to exercise significant influence.

2.10 The PRA also recognises that significant influence can become apparent at any time and therefore this chapter can also assist PRA-authorised firms to meet their requirements as set out in the Change in Control part of the PRA Rulebook.[13]

13 **https://www.prarulebook.co.uk/rulebook/Content/Part/302604/16-10-2023** (banks) and **https://www.prarulebook.co.uk/rulebook/Content/Sector/211132/16-10-2023** (insurance).

Aggregation of holdings (including acting in concert)

2.11 The PRA expects there to be no more than two situations which would require the holdings of two or more persons to be aggregated for the purpose of determining whether they are acquiring or increasing control within the meaning of s181 or s182 FSMA.

2.12 These situations are where:

a) shares or voting power are held, or to be held, by persons acting in concert; and
b) where one person's holding of voting power is attributed to another person (deemed voting power) in addition to any other voting power held.

2.13 These situations may apply concurrently, for example, where a person ('A') could be acting in concert pursuant to s178(2) FSMA and have deemed voting power under s422(5)(a)(i) FSMA where A has concluded an agreement that obliges them and a third-party shareholder in the PRA-authorised firm to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the PRA-authorised firm.

Acting in concert

2.14 There is no definition of the phrase 'acting in concert' in FSMA. The PRA view persons as 'acting in concert' when each of them decides to exercise their rights linked to the shares they acquire in accordance with an explicit or implicit agreement made between them. The PRA expects that the relevant persons would therefore:

a) hold shares and/or voting power in the PRA-authorised firm or a parent undertaking of the PRA-authorised firm; and
b) each take a decision to exercise the rights linked to those shares in accordance with an agreement (in writing or otherwise) between them.

2.15 The PRA expects that while the rights 'linked to' for these purposes are most likely going to be voting rights, persons may be acting in concert where they decide to exercise other share-related rights, either in addition to, or instead of, voting rights, in accordance with an agreement made between them.

2.16 Persons will begin acting in concert when they take the decision to exercise their rights in accordance with an agreement between them. This decision may be taken before or after the time the relevant persons decide to purchase shares in the PRA-authorised firm.

2.17 The PRA does not expect such agreements to require persons to always exercise the rights attached to a person's respective shares in the same way.

2.18 Once this decision has been taken, shares or voting rights must be aggregated to determine whether control has been, or will be, acquired. The same analysis applies to increases in control and reductions in control, as set out in s182 and s183 FSMA, respectively. The requirement to aggregate the holdings of shares and/or voting power under s178(2) FSMA may apply to existing holdings, as well as to new purchases, of shares and/or voting power.

2.19 Although the term 'acting in concert' has a potentially wide meaning, not all common actions taken by persons, in relation to shares or voting power, will require the aggregation of holdings of shares or voting power for the purposes of s178 FSMA.

2.20 In particular, there may be circumstances in which persons (who between them hold the percentage level or more of the shares or voting power in a PRA-authorised firm or its parent undertaking prompting notification) may engage in a concerted exercise of voting power, without this amounting to acting in concert in a manner requiring aggregation of their holdings.

2.21 The indicative approach is that voting rights of persons acting in concert will not be aggregated for the purposes of deeming them to be a parent of an undertaking and/or the undertaking to be a controlled undertaking for the purpose of s422(5)(a)(v) FSMA.

2.22 Further PRA expectations in relation to acting in concert are provided in Annex 2 and covers deemed voting power, passive shareholder agreements, conditional agreements, pre-emption rights, drag along rights and tag along rights and takeover code definition of acting in concert.

Indirect controllers

2.23 In accordance with s422 FSMA, a controller can include persons with a direct and indirect holding in a PRA-authorised firm which (a) represents 10% or more of the shares or of the voting rights or (b) make it possible to exercise significant influence over the management of the PRA-authorised firm.

2.24 When determining whether an indirect holding results in a person being a controller or increasing control, it is important to note that s422(5) FSMA includes in the definition of voting power indirect holdings of 'voting power' in the PRA-authorised firm. Annex 1 sets out for the sake of clarity a number of examples of how the criteria in s422(5) apply in practice (also refer to deemed voting rights in Annex 2).

Limited Partnership Structures

2.25 The majority of private equity and fund manager transactions are typically executed through Limited Partnership (Fund) structures with one or more General Partners (GP) with unlimited liability and one or more Limited Partners (LPs) with limited liability. GPs typically have the power to exercise the voting rights associated with the Fund's interest in an undertaking or exercise dominant influence over the Fund. There may also be circumstances in which the Fund has arrangements with an Investment Manager to manage its portfolio. In these situations, it should be considered, dependent upon the specific arrangements, whether this person(s) would be a controller.

2.26 Where there are different funds which individually have a holding below the 10% threshold, but share a common GP, consideration should be given to whether the aggregation of voting rights of the Funds is attributable to the GP meaning that the GP is an indirect controller. The Fund may have several LPs investing, who may have no role in its management. However, in certain cases, some LPs may be considered a controller depending on their proportional interest.

2.27 Given that private equity structures and similar types of fund structures can vary in size, nature and complexity, the PRA would look to determine these on a case-by-case basis.

2.28 The PRA would encourage legal advice to be sought for complex ownership structures to determine how s422 FSMA applies.

Minority controllers and their parents

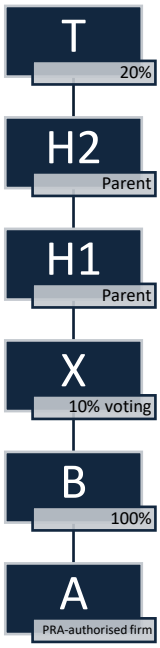
2.29 The extended definition of voting power in s422(5)(a)(v) FSMA, provides that voting power includes in relation to a person ('H'), voting power held by a controlled undertaking[14], such as a subsidiary of H.

2.30 Therefore, all the parent undertakings in the ownership chain of a minority controller (ie, non-parent controllers, with voting rights, of the PRA-authorised firm) are captured as controllers of the PRA-authorised firm, and that the size of the holding of each indirect acquirer should be deemed to be the equal to the holding acquired directly.

14 The four limbs of what is considered to be a controlled undertaking is set in s89J(4) FSMA.

2.31 For example, in the below structure (diagram A) the following would apply:[15]

Diagram A



- B – 50% or more (parent) controller via them being the parent of the PRA-authorised firm;
- X– 10% or more but less than 20% controller via their 10% holding in a parent of the PRA-authorised firm;
- H1 – 10% or more but less than 20% controller via X being a controlled undertaking of H1;
- H2 – 10% or more but less than 20% controller via them H1, and therefore also X, being a controlled undertaking of H2;
- T – Is not a controller as H2 is not a controlled undertaking of T as it is not a parent undertaking of H2; and
- Note – This example exclusively looks at voting rights. It assumes that H2 is not a controlled undertaking of T for any other reason and also does not have significant influence over the management of A.

15 This example does not include any disregarded holdings. When identifying controllers, you should consider s422(A) FSMA (disregarded holdings): **www.legislation.gov.uk/ukpga/2000/8/section/422A**.

3: Notices of proposed acquisitions and increases in control

Submitting the notification (including pre-notification engagement)

3.1 The PRA has published on the change in control webpage[16] the form (and supporting documentation) which proposed controllers are expected to submit as part of their notification. However, the PRA is likely to impose additional information requirements in certain cases (based on the impact on the UK PRA-authorised firm post-acquisition). The information required may vary depending on the proposals, so acquirers are encouraged to engage with the PRA prior to submitting their notification to discuss what additional information may be required.

3.2 The focus of these discussions will be on the information required by the PRA to start its assessment of an acquisition or increase in control. Engaging with the PRA prior to the submission of the notification will increase the chances of the notification being deemed as complete on receipt and allowing the PRA to commence its assessment of the substance of the notification. For some cases, the PRA may request sight of draft documentation prior to submission of the notification.

3.3 Please refer to the PRA change in control webpage for further information and details of how to contact the PRA. If the proposed acquirer or firms being acquired are FCA authorised, then you should also reach out to the FCA.[17]

3.4 The PRA recommends prior engagement in particular scenarios due to their complexity and high-risk nature. Examples where additional information might be required are:

a) **Transformative change in control –** This scenario refers to proposed acquisitions that indicate a material change in the UK PRA-authorised firm's: (i) business plan (eg, changes to strategy or rapid growth), (ii) governance arrangements, or (iii) capital/liquidity position at the time of acquisition or in the foreseeable future (usually three years). Although the information requirements will be set out during pre-notification discussions, please refer to New Banks Start-Up Unit[18] or New Insurers

16 Available at: **www.bankofengland.co.uk/prudential-regulation/authorisations/change-in-control**.
17 Available at: **www.fca.org.uk/firms/change-control**.
18 Available at: **www.bankofengland.co.uk/prudential-regulation/new-bank-start-up-unit**.

Start-Up Unit[19] as a guide as to what additional information/documents we may require as part of the change in control notification.

b) **Complex groups –** Transactions where the proposed acquirer or the UK PRA-authorised firm has a complex group structure may require additional information to assist the PRA in its assessments of the supervisibility of the UK PRA-authorised firm and group. This includes where the proposed transaction is likely to create a larger firm/group with significant market share.

c) **Cross-border transactions –** Additional information on the timings and progress of linked transactions happening in other jurisdictions will likely be necessary.

d) **Transactions involving the use of substantial debt financing –** The PRA is likely to request further information and have further questions when the acquisition involves substantial debt financing in order to be satisfied as to the financial soundness of the transaction and the potential impact on the UK PRA-authorised firm. Examples of the type of information we may require include: copies of external and internal debt/loan agreements, evidence to support ability to repay the debt/loan, including any dividend upstreaming debt/loan repayment profile, and liquidity ratios/projections.

e) **Private equity or hedge fund ownership at 20% or more –** The additional information likely to be requested in these cases are:

- **(i)** a detailed description of the performance of previous acquisitions by the proposed acquirer (or any person in their ownership structure that would be deemed to be a controller) of the UK PRA-authorised firm in financial institutions;
- **(ii)** details of the proposed acquirer's investment policy and any restrictions on investment, including details on investment monitoring, factors serving the proposed acquirer as a basis for investment decisions related to the UK PRA-authorised firm and factors that would trigger changes to the proposed acquirer's exit strategy;
- **(iii)** the proposed acquirer's decision-making framework for investment decisions, including the name and position of the individuals responsible for making such decisions; and
- **(iv)** Where the private equity or hedge fund is not authorised by the FCA, a detailed description of the proposed acquirer's anti-money laundering procedures and of the anti-money laundering legal framework applicable to it.

f) **Sovereign Wealth fund ownership at 20% or more –** The additional information likely to be requested in these cases are:

- **(i)** the name of the ministry or government department in charge of defining the investment policy of the fund;
- **(ii)** details of the investment policy and any restrictions on investment;

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19 Available at: **www.bankofengland.co.uk/prudential-regulation/new-insurer-start-up-unit**.

(iii) the name and position of the individuals responsible for making the investment decisions for the fund; and

(iv) details of any influence exerted by the identified ministry or government body/department/ministry on the day-to-day operations of the fund and the UK PRA-authorised firm.

g) **Proposed acquirer will become a parent financial holding company, or a parent mixed financial holding company –** Where the proposed transaction means the proposed acquirer becomes a parent financial holding company or a parent mixed financial holding company in the UK, Part 12b FSMA requires the company to be approved by the PRA or for the PRA to confirm that the company is exempt from the requirement for approval. Details of how to apply for approval or exemption can be found on the Holding Company Approvals[20] page of the Bank of England's (the Bank) website (proposed acquirers should also include details on any dependence with other transactions).

h) **Linked PRA or FCA granted Waivers –** If a UK PRA-authorised firm has been granted any waivers by PRA or FCA, the PRA expects to require information on the impact on these waivers post-acquisition.

i) **Linked Variations of Permissions –** If the proposed business plan for the UK PRA-authorised firm includes a variation of permission (VoP), then this will not be fully assessed (only the PRA-authorised firm can submit a VoP application) until post-acquisition when an application can be submitted. However, the PRA expects further information on the proposals will need to be submitted as part of the change in control in order for the PRA to complete its assessment (depending on the VoP being proposed, the PRA may consider this to be transformative and therefore early engagement is encouraged). The PRA also expects to need information on what would happen if the VoP was not approved.

Information requirements – varying or waiving

3.5 The PRA may set out on its website reductions in the information required as part of the notification (eg, specific forms for intra-group changes in control or for fund managers with holdings of less than 20%). It may also vary or waive some of its information requirements on a case-by-case basis, where it is proportionate to do so.

3.6 Prior engagement with the PRA is encouraged and will allow it to make judgements on the information required as part of the notification.

3.7 Under certain circumstances, such as in the case of acquisitions by means of a public offer, it is recognised the proposed acquirer may encounter difficulties in obtaining

20 Available at: **www.bankofengland.co.uk/prudential-regulation/authorisations/holding-company-approvals**.

information which is usually required. In these cases, the proposed acquirer should bring such difficulties to the attention of the PRA.

3.8 The PRA recognises that where the proposed controller is a government or government body/department/ministry providing the information set out in the change in control forms may not be relevant and/or difficult to provide. In these circumstances the PRA may accept significantly reduced notification requirements, but these should be discussed with the PRA in advance.

Forms to be submitted for multiple entities controlled by same person

3.9 The PRA may accept one s178 notification form covering multiple controllers where they are part of the same group or controlled by the same legal or natural person and where the s178 information is common across multiple controllers. The form should explicitly state the controllers being captured under the single form and be signed by an authorised signatory on behalf of those controllers. This approach is particularly applicable to intra-group changes in control but can also apply to other types of acquisitions or increases in control, so should be discussed with the PRA in advance.

Completeness of the notification

3.10 The PRA will deem a notification as complete (as per s180(1) FSMA this commences the assessment period) when it includes all the required information (see previous chapter on information requirements) to a satisfactory level for the purposes of commencing the prudential assessment. This acknowledgement does not prejudice the PRA's entitlement to request further information, nor is it an indication as to the outcome of the PRA's prudential assessment.

3.11 The information provided as part of the notification may still subsequently be assessed to be incomplete, especially if any new information comes to light or there are amendments to the specifics of the proposed acquisition.

3.12 Receipt of the notification will be deemed as being received the next following working day if received after 4pm. The day of receipt is considered to be day zero.

3.13 For complete notifications, FSMA provides that the PRA must inform the notice giver within two working days.

3.14 For incomplete notifications, FSMA only provides that the PRA must inform the notice giver as soon as reasonably practicable. The PRA expects to acknowledge the incomplete notification in writing before the end of the second working day and endeavour to confirm the missing information in writing within five working days.

4: Assessment of a proposed acquisition

The PRA's approach

4.1 Notifications for a change in control are assessed in accordance with the procedure set out in s189 FSMA and the criteria set out in, s185 (Assessment: general) and s186 (Assessment criteria) FSMA.

4.2 When carrying out its assessment, the PRA, as per s185(2)(b) FSMA will have regard to the likely influence that the s178 notice-giver will have on the UK authorised person. In addition, the PRA may vary the nature, intensity of the assessment and composition of the required information based on the size and complexity of the transaction, as well as taking into account the UK regulatory history of the controller and whether or not the proposed acquirer (or its group) is supervised in a third country deemed equivalent.

4.3 Non-exhaustive examples of where the PRA may take this approach include:

a) **Intra-group transactions –** Firms should use the 'Form for a firm undertaking an internal re-organisation' which contains reduced information requirements. The PRA's assessment may only be focussed on the impact of the change in group structure.
b) **Investment managers below 20% –** Acquirers can usually benefit from using the 'investment manager' form which contains a declaration, rather than information requirements.
c) **Where the proposed acquirer is known to the PRA and is in possession of up-to-date information –** The PRA may deem it sufficient to only assess the corporate at the top of the control chain.
d) **Where there is a change in the nature of the controller (ie, moving up a control threshold) –** The PRA may limit its assessment to the changes having occurred since the date of the last assessment and/or any proposed changes that may impact the PRA-authorised firm.

4.4 The PRA will assess all matters on a case-by-case basis. There may be circumstances where the PRA requires further information in order to conduct its assessment and this may depend on factors such as the nature of the changes being proposed, the length of time since the last assessment, and the materiality of information provided. The PRA will communicate any changes in approach to the proposed acquirer.

4.5 There may be circumstances where the PRA contacts other UK authorities or non-UK prudential regulators. This is usually when approvals are required from those authorities or regulators for the acquisition to proceed. The PRA's contact with these authorities and regulators is to understand their timelines in their process. The PRA may also,

where appropriate, request information relevant to our assessment against the criteria of s186 FSMA. Any contact with other authorities or regulators will be in accordance with our legal obligations of confidentiality.

4.6 Under certain circumstances, such as in the case of acquisitions by means of a public offer, the proposed acquirer may encounter difficulties in obtaining information which is needed to establish a full business plan or provide other information that the PRA would usually expect. In these cases, the proposed acquirer should bring such difficulties to the attention of the PRA and point out the aspects of its business plan that might be modified in the near future.

4.7 The PRA encourages early engagement from proposed acquirers (or those seeking to increase control) to discuss notification requirements.

The reputation of the proposed controller

4.8 The PRA's assessment of the reputation of the proposed acquirer covers two elements: (a) integrity; and (b) professional competence.

4.9 In carrying out this assessment, the PRA expects to consider the UK PRA-authorised firm and the proposed acquirer's role in that firm.

Integrity

4.10 The integrity assessment will be applied to all acquisitions and increases in control. The PRA expects the assessment to extend to cover the legal and beneficial owners of the proposed acquirer. If the proposed acquirer is a legal person, the assessment of integrity will also cover the persons who effectively direct the business of the proposed acquirer.

4.11 The PRA will always carry out an integrity assessment in respect of the proposed acquirer(s), even when the proposed acquirer is known, as there may have been further developments since the date of the previous assessment. However, the PRA may draw on the outcome of previous relevant integrity assessments when deciding on the level and extent of new information sought.

4.12 All relevant information available for the assessment will be taken into account, without prejudice to any limitations imposed by national law and regardless of the country where any relevant events occurred. The proposed acquirer will be considered to be of good repute if there is no reliable evidence to suggest otherwise and the PRA has no reasonable grounds to doubt the proposed acquirer's good repute.

4.13 Any criminal or relevant administrative records will be taken into account. As part of the assessment the PRA may consider the type of conviction or indictment or other administrative action, the level of appeal, the sanction received, the phase of the judicial process reached and the effect of any rehabilitation measures.

4.14 Other matters which the PRA may consider include the surrounding (including mitigating) circumstances and the seriousness of any relevant offence or administrative or supervisory action, the time period elapsed and the proposed acquirer's conduct since the offence, as well as the relevance of the offence or administrative or supervisory action to the proposed acquirer's status as a current controller of a PRA-authorised firm. The PRA may judge the relevance of criminal records differently according to the type of conviction or decision, whether it is still possible to appeal against the sanction (definitive vs non-definitive convictions), the type of punishment (imprisonment vs. less severe sanctions), the length of the sentence (more vs less than a specified period), the phase of the judicial process reached (conviction, trial, indictment) and the effect of rehabilitation.

4.15 The cumulative effects of more minor incidents, which individually do not impinge on the reputation of a proposed acquirer but might collectively have a material impact, may also be considered.

4.16 The PRA may take particular account of the following factors, which may call into question the integrity of a proposed acquirer:

a) any conviction or prosecution of a criminal offence, in particular: (i) any offences under the laws governing banking, financial, securities and insurance activity, or concerning securities markets or securities or payment instruments; (ii) any offences of dishonesty, fraud or financial crime, including money laundering and terrorist financing, market manipulation, insider trading, usury and corruption; (iii) any tax offences; and (iv) any other offences under legislation relating to companies, bankruptcy, insolvency or consumer protection;

b) any relevant findings from onsite and off-site controls or inspections, from investigations or enforcement actions, to the extent that they relate to the proposed acquirer either directly or indirectly, by way of its ownership or control, and the imposition of any administrative sanctions for non-compliance with provisions governing banking, financial, securities or insurance activities or those concerning securities markets, securities or payment instruments, or any financial services legislation and regulation or other matters contemplated in sub-paragraph (a) above;

c) any relevant enforcement actions by any other regulatory or professional bodies for non-compliance with any relevant provisions; and

d) any other information from credible and reliable sources that is relevant in this context. When considering whether information from other sources is credible and reliable, the PRA may consider both the extent to which the source is public and trustworthy, as well as the extent to which the information is provided by several independent and reputable sources, is consistent over a period of time and that there are no reasonable grounds to suspect that it is false.

4.17 Among other things, the PRA may consider the impact of allegations, their nature and re-occurrence and pending criminal, administrative or enforcement investigations and may seek to mitigate risks by imposing conditions on an approval.

4.18 The PRA considers that the absence of a criminal conviction or prosecution, administrative or enforcement action may not constitute in and of itself sufficient evidence of a proposed acquirer's integrity.

4.19 Attention may be paid to the following factors regarding the propriety of the proposed acquirer in past business dealings:

a) any evidence that the proposed acquirer has not been transparent, open and cooperative in its dealings with supervisory or regulatory authorities;
b) any refusal of any registration, authorisation, membership or licence to carry out a trade, business or profession, any revocation, withdrawal or termination of such registration, authorisation, membership or licence and any expulsion from a professional body or association;
c) the reasons for any dismissal from employment or any position of trust, fiduciary relationship or other similar situation, as well as any request to resign from such a position; and
d) any disqualification by either the PRA or the FCA (and potentially non-UK regulators) from acting as a person who directs the business.

4.20 The PRA may assess the relevance of such situations on a case-by-case basis, recognising that the characteristics of each situation may be more or less severe and that the aggregation of some situations may be significant when considered together, even though each of them in isolation may not be significant.

4.21 In cases involving a person becoming a controller the information requirements on which the assessment of integrity is based may vary according to the nature of the acquirer (natural vs legal person, regulated or supervised entity vs unregulated entity).

4.22 The PRA may take risk-sensitive measures to verify the existence of adverse events relating to the proposed acquirer, including by asking the proposed acquirer, to the

extent not already provided, to supply documents evidencing that no such events have occurred (for instance, recent extracts from the criminal register, if the relevant authority issues such extracts) and, if necessary, by requesting confirmation from other authorities (including judicial authorities or other regulators), regardless of whether such authorities are domestic or foreign. The PRA may also consider, to the extent they are relevant, and the source appears trustworthy, other indications of wrongdoing, such as adverse media reports and allegations.

4.23 Failure by the proposed acquirer to provide the extracts contemplated in paragraphs 4.9 to 4.21, or the delayed submission thereof or the submission of an incomplete declaration may impact the PRA's integrity assessment.

4.24 When assessing the integrity of the proposed acquirer, the PRA may take into consideration the integrity of any person linked to the proposed acquirer, meaning any person who has, or appears to have, a close family or business relationship with the proposed acquirer.

Professional competence

4.25 In its assessment of professional competence, the PRA expects to take into account the influence that the proposed acquirer will exercise over the UK PRA-authorised firm. Therefore, the PRA may reduce the competence requirements for proposed acquirers who are not in a position to exercise, or undertake not to exercise, significant influence over the UK PRA-authorised firm. In such circumstances, the evidence of adequate management competence may be sufficient.

4.26 If the proposed acquirer is a legal person, the PRA expects to assess both the legal person and all of the persons who effectively direct its business.

4.27 The professional competence of the proposed acquirer covers competence in management (the 'management competence') and in the area of the financial activities carried out by the UK PRA-authorised firm (the 'technical competence').

4.28 The management competence may be based on the proposed acquirer's previous experience in acquiring and managing holdings in companies. The PRA considers that such experiences should demonstrate due skill, care, diligence and compliance with the relevant standards.

4.29 The PRA may base its assessment of the technical competence on the proposed acquirer's previous experience in operating and managing financial institutions as a controlling shareholder or as a person who effectively directs the business of a financial firm. In this case also, the PRA considers the experience should demonstrate due skill,

care, diligence and compliance with the relevant standards.

4.30 In the case of an increase in an existing qualifying holding, and to the extent that the professional competence of the proposed acquirer has been assessed previously by the PRA, the PRA expects the relevant information to be updated as appropriate.

4.31 Persons may acquire significant holdings in financial companies with the aim of diversifying their portfolio and/or obtaining dividends or capital gains, rather than with the aim of becoming involved in the management of the UK PRA-authorised firm concerned. The PRA expects to consider the likely influence of the proposed acquirer over the UK PRA-authorised firm and may reduce the professional competence requirements for this type of acquirer.

4.32 Similarly, when the acquisition of control or of a shareholding allows the proposed acquirer to exercise a strong influence, the PRA considers that the need for technical competence will be greater, considering that the controlling shareholders will be able to define and/or approve the business plan and strategies of the PRA-authorised firm concerned. In the same way, the PRA expects to consider the nature and complexity of activities envisaged in determining the degree of technical competence needed.

4.33 The PRA may also consider the following situations regarding past and present business performance and financial soundness of a proposed acquirer with regard to their potential impact on the persons professional competence:

a) any inclusion on any list of unreliable debtors or any similar negative records with a credit bureau, if available;

b) the financial and business performance of any entities owned or directed by the proposed acquirer or in which the proposed acquirer had or has a significant share with special consideration to any rehabilitation, bankruptcy and winding-up proceedings and whether and how the proposed acquirer has contributed to the situation that led to the proceedings;

c) any declaration of personal bankruptcy; and

d) any civil lawsuits, administrative or criminal proceedings, large investments or exposures and loans taken out, in so far as they can have a significant impact on the financial soundness.

The reputation, knowledge, skills and experience of those who will direct the business of the UK authorised person as a result of the proposed acquisition

4.34 Where the proposed acquirer is in a position to appoint new persons to direct the business of the UK PRA-authorised firm as a result of the proposed acquisition and proposes to do so, such persons need to be fit and proper.[21]

4.35 Such persons will likely be captured by the Senior Managers and Certification Regime (SM&CR).[22] Where possible the appropriate Senior Management Function (SMF) application should be submitted by the PRA-authorised firm being acquired at the same time, or shortly after, the change in control s178 FSMA notification is submitted.

4.36 It may not always be possible to submit the form in advance, as the form must be submitted by the PRA-authorised firm where the SMF will be performed, and such firm may refuse to do so. Under these circumstances, the PRA is likely to request draft SMF applications as part of its assessment under this criterion. However, this initial assessment is without prejudice to the subsequent assessment that will be made when the formal notification is submitted.

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21 See the Fitness and Propriety Parts in the PRA Rulebook: Banking – **www.prarulebook.co.uk/rulebook/Content/Part/212552** and insurance – **www.prarulebook.co.uk/rulebook/Content/Part/212600**.

22 Available at: **www.bankofengland.co.uk/prudential-regulation/authorisations/senior-managers-regime-approvals**.

4.37 Where the proposed acquirer intends to appoint an individual to a position that directs the business of the UK PRA-authorised firm that is not fit and proper, then the PRA may oppose the proposed acquisition.

The financial soundness of the proposed controller

4.38 In assessing the financial soundness of the proposed acquirer, the PRA expects to consider the capacity of the proposed acquirer to finance the proposed acquisition and to maintain, for the foreseeable future (usually three years), a sound financial structure in respect of the proposed acquirer and of the UK PRA-authorised firm. This capacity should be reflected in the overall aim of the acquisition and the policy of the proposed acquirer regarding the acquisition, but also – if the proposed acquisition would result in a qualifying holding of 50% or more in the UK PRA-authorised firm or otherwise becoming a subsidiary of the proposed acquirer – in the forecast financial objectives, consistent with the strategy identified in the business plan.

4.39 The PRA will determine whether the proposed acquirer is sufficiently sound from a financial point of view to ensure the sound and prudent management of the UK PRA-authorised firm for the foreseeable future, considering the nature of the proposed acquirer and of the acquisition.

4.40 The PRA may oppose the acquisition if it concludes, based on its analysis of the information received, that the proposed acquirer is likely to face financial difficulties during the acquisition process or in the foreseeable future.

4.41 The PRA may also analyse whether the financial mechanisms put in place by the proposed acquirer to finance the acquisition, or existing financial relationships between the proposed acquirer and the UK PRA-authorised firm, could give rise to conflicts of interest that could affect the UK PRA-authorised firm.

4.42 In determining the depth of the assessment of the financial soundness of the proposed acquirer necessary, the PRA may consider the likely influence of the proposed acquirer, the nature of the proposed acquirer (for instance, whether the proposed acquirer is a strategic or a financial investor, including whether it is a private equity fund or a hedge fund) and the nature of the acquisition (for instance, whether the transaction is significant or complex). The PRA expects that differences in the characteristics of the acquisition may justify differences in the depth and methods of the analysis.

4.43 The information required for the assessment of the financial soundness of the proposed acquirer may depend on the status of the proposed acquirer, for example, whether it is:

(a) already supervised by the PRA and the FCA or (b) a natural person.

4.44 While the use of borrowed funds to finance the acquisition should not, in and of itself, lead to the conclusion that the proposed acquirer is unsuitable, the PRA may assess if such indebtedness negatively affects the financial soundness of the proposed acquirer or the UK PRA-authorised firm's capacity to comply with prudential requirements (including, where relevant, the commitments provided by the proposed acquirer to meet prudential requirements).

4.45 The PRA's assessment may also cover, where relevant, the capacity of the proposed acquirer to provide further capital to the UK PRA-authorised firm in the short to medium term, and if necessary, its stated intentions in respect of whether it would provide such capital.

Whether the UK authorised person will be able to comply with its prudential requirements (including the threshold conditions)

4.46 The proposed acquisition should not adversely affect the UK PRA-authorised firm's compliance with prudential requirements, including the Threshold Conditions.[23] The specific assessment of the proposed acquirer's plan at the time of the acquisition is complementary to the responsibilities of the PRA for the ongoing supervision of the UK PRA-authorised firm.

4.47 The PRA may take into consideration the proposed acquirer's declared intentions towards the UK PRA-authorised firm expressed in its strategy (including as reflected in the business plan). The PRA expects this to be backed up by appropriate commitments and evidence from the proposed acquirer, where appropriate, to support the UK PRA-authorised firm meet their prudential requirements. These commitments may include, for example, financial support in case of liquidity or solvency problems, corporate governance issues, the proposed acquirer's future share in the UK PRA-authorised firm and directions and goals for development.

4.48 The PRA will assess the ability of the UK PRA-authorised firm to comply at the time of the proposed acquisition, and to continue to comply after the acquisition, with all prudential requirements, including capital requirements, liquidity requirements and large exposures limits, as well as with requirements related to governance arrangements, regulatory reporting, internal control, risk management and compliance.

23 **https://www.legislation.gov.uk/ukpga/2000/8/section/55B**.

4.49 If the UK PRA-authorised firm will be part of a group as a result of the proposed acquisition, the PRA will need to be satisfied it will not be prevented from exercising effective supervision, from effectively exchanging information with other relevant supervisors within the group, and from determining the allocation of responsibilities among the relevant subsidiary supervisors by the close links of the new group of the UK PRA-authorised firm to other natural or legal persons. In addition, the PRA will need to be satisfied that it will not be prevented from fulfilling its monitoring duties by the laws, regulations or administrative provisions of another country governing a natural or legal person with close links to the UK PRA-authorised firm, or by difficulties in the enforcement of those laws, regulations or administrative provisions.

4.50 The PRA will also consider the proposed acquirer's capacity to support adequate organisation of the UK PRA-authorised firm within its new group. The PRA expects both the UK PRA-authorised firm, and the group should have clear and transparent corporate governance arrangements and adequate organisation.

4.51 The group of which the UK PRA-authorised firm will become a part should be adequately capitalised. Under certain circumstances, the group may itself become subject to prudential requirements on a consolidated basis. In those circumstances, the PRA would take into account any relevant supervisory statements it has issued on group supervision.

4.52 The PRA expects to consider whether the proposed acquirer will be able to provide the UK PRA-authorised firm with the financial support it may need for the type of business pursued by and/or envisaged for it, to provide any new capital that the UK PRA-authorised firm may require for future growth in its activities and to implement any other appropriate solution to accommodate the UK PRA-authorised firm's needs for additional own funds.

4.53 If the proposed acquisition would result in a qualifying holding of 50% or more, or in the UK PRA-authorised firm becoming a subsidiary of the proposed acquirer, this criterion may be assessed as part of the assessment process as at the time of acquisition and on a continuous basis for the foreseeable future (three to five years). Therefore, the business plan provided by the proposed acquirer to PRA should cover at least this period.

4.54 The business plan should clarify the plans of the proposed acquirer concerning the future activities and organisation of the UK PRA-authorised firm. This should include a description of its proposed group structure. The plan should also evaluate the financial consequences of the proposed acquisition and include a medium-term forecast.

Whether there are reasonable grounds to suspect that in connection with the proposed acquisition — (i) money laundering or terrorist financing is being or has been committed or attempted; or (ii) the risk of such activity could increase

4.55 The PRA will object (or be directed to object by the FCA) to the proposed acquisition or increase in control if:

a) it knows or suspects, or has reasonable grounds for knowing or suspecting, that the proposed acquirer or any connected party is or was involved in money laundering operations or attempts, irrespective of whether it is directly or indirectly linked to the proposed acquisition;
b) it knows or suspects, or has reasonable grounds for knowing or suspecting, that the proposed acquirer or any connected party has carried out terrorist activities or terrorist financing; or
c) the proposed acquisition increases the risk of money laundering or terrorist financing.

4.56 This assessment criterion may also cover persons with close personal or business links (including through any family member or persons known to be close associates) to the proposed acquirer, including the legal and beneficial owners of the proposed acquirer.

4.57 In order to assess the above, the PRA will consider the information available such as evaluations, assessments or reports drawn up by international organisations and standard setters such as Transparency International,[24] the Organization for Economic Co-operation and Development OECD,[25] the World Bank[26] and the Financial Action Task Force (FATF),[27] as well as open media searches and such other sources as may be available to the PRA.

4.58 The PRA may consider in relation to all available information:

a) if the proposed acquirer or a connected party is subject to a financial sanctions regime;
b) if the proposed acquirer or a connected party is a politically exposed person as defined by the UK's Politically Exposed Persons Regime;
c) the source of the funds that will be used for the proposed acquisition. The PRA will verify the activity which gave rise to the funds and that the source can be traced back

24 Available at: **www.transparency.org/en**.
25 Available at: **www.oecd.org**.
26 Available at: **www.worldbank.org/en/home**.
27 Available at: **www.fatf-gafi.org/en/home.html**.

to its origin by an uninterrupted trail. The funds should be channelled through institutions subject to effective anti-money laundering and terrorist financing supervision;

d) whether there is information that is considered incomplete, insufficient or liable to give rise to suspicion – for example, capital movements not accounted for, cross-border relocations of headquarters, reshuffles in management or legal person owners, earlier associations of the owners, or the management of the company by criminals;

e) whether the proposed acquirer's business itself has insufficient anti-money laundering and terrorist financing controls as determined by the PRA;

f) if the UK PRA-authorised firm has failed to register with the relevant competent authority for anti-money laundering and terrorist financing supervision;

g) if the proposed acquirer has valued the UK PRA-authorised firm significantly higher than its market value considering its status as either a trading or dormant firm;

h) whether the proposed acquirer is established in or has relevant personal or business links itself (or through any family member or persons known to be close associates) with a country or territory on FATF Black and Grey lists;[28] and

i) whether the proposed acquirer is established in or has relevant personal or business links itself (or through any family member or persons known to be close associates) with a country or territory where the legislation does not allow for the application of anti-money laundering and terrorist financing combating measures as that of the UK.

4.59 In the absence of specific evidence such as no criminal records, or where there are currently no reasonable grounds to suspect that money laundering is being committed or attempted, if the proposed acquisition nevertheless gives rise to reasonable grounds to suspect an increased risk of money laundering or terrorist financing the PRA will consider objecting. The PRA may also be directed to object (or add conditions to an approval) by the FCA.

28 Available at: **www.fatf-gafi.org/en/countries/black-and-grey-lists.html**.

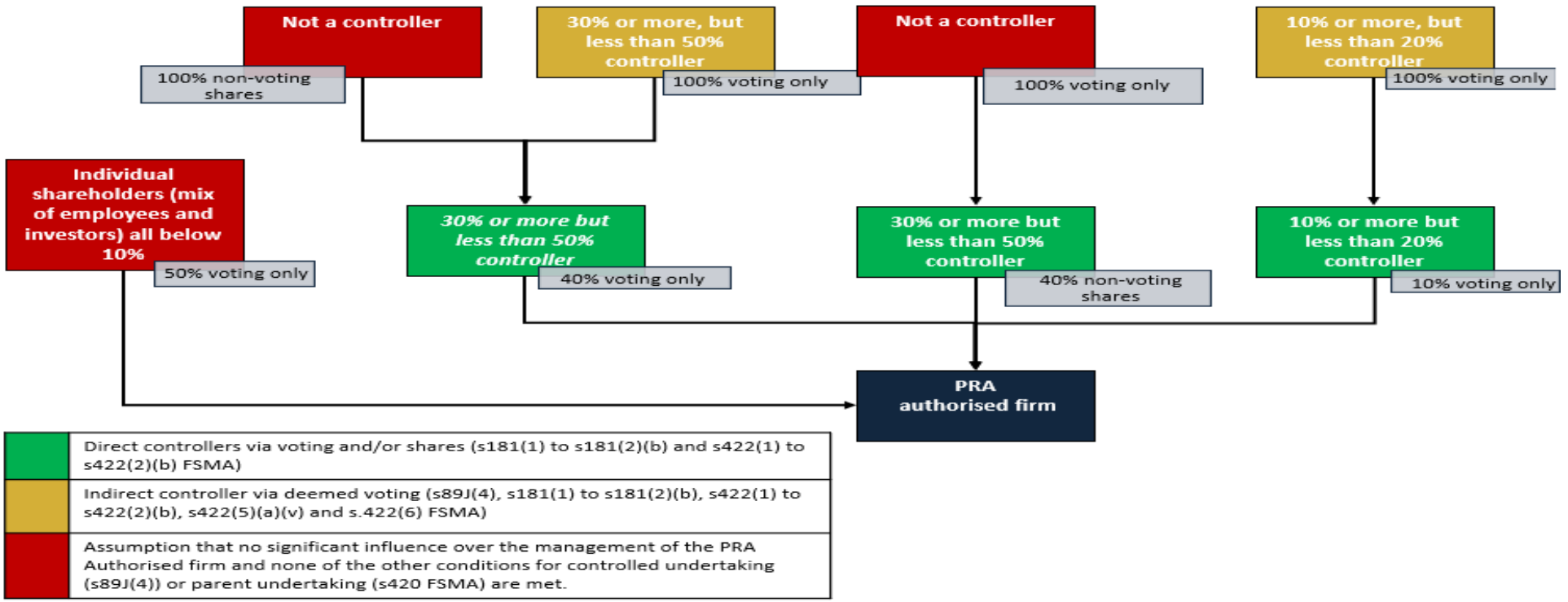
5: PRA approach to the use of conditional approvals to advance its objectives

5.1 The PRA can impose conditions (subject to the statutory process) when approving a change in control where it advances its primary objectives.

5.2 The PRA may use conditions where there are outstanding matters the effect of which on the transaction are uncertain. For example, when there are outstanding proceedings against a proposed acquirer.

Annex 1: Practical examples of the determination of controllers[29]

Diagram B [30]



29 Illustrations used to demonstrate how controller test applies, it does not aim to conclude all control chains to where control, as per FSMA, ends (ie, the red boxes.

30 Example emphasises the impact of voting power in any determination as to whether there is a controlled undertaking (and thus deemed voting). To note shareholding and voting power are separate calculations.

Diagram C (all % represent shares and voting)

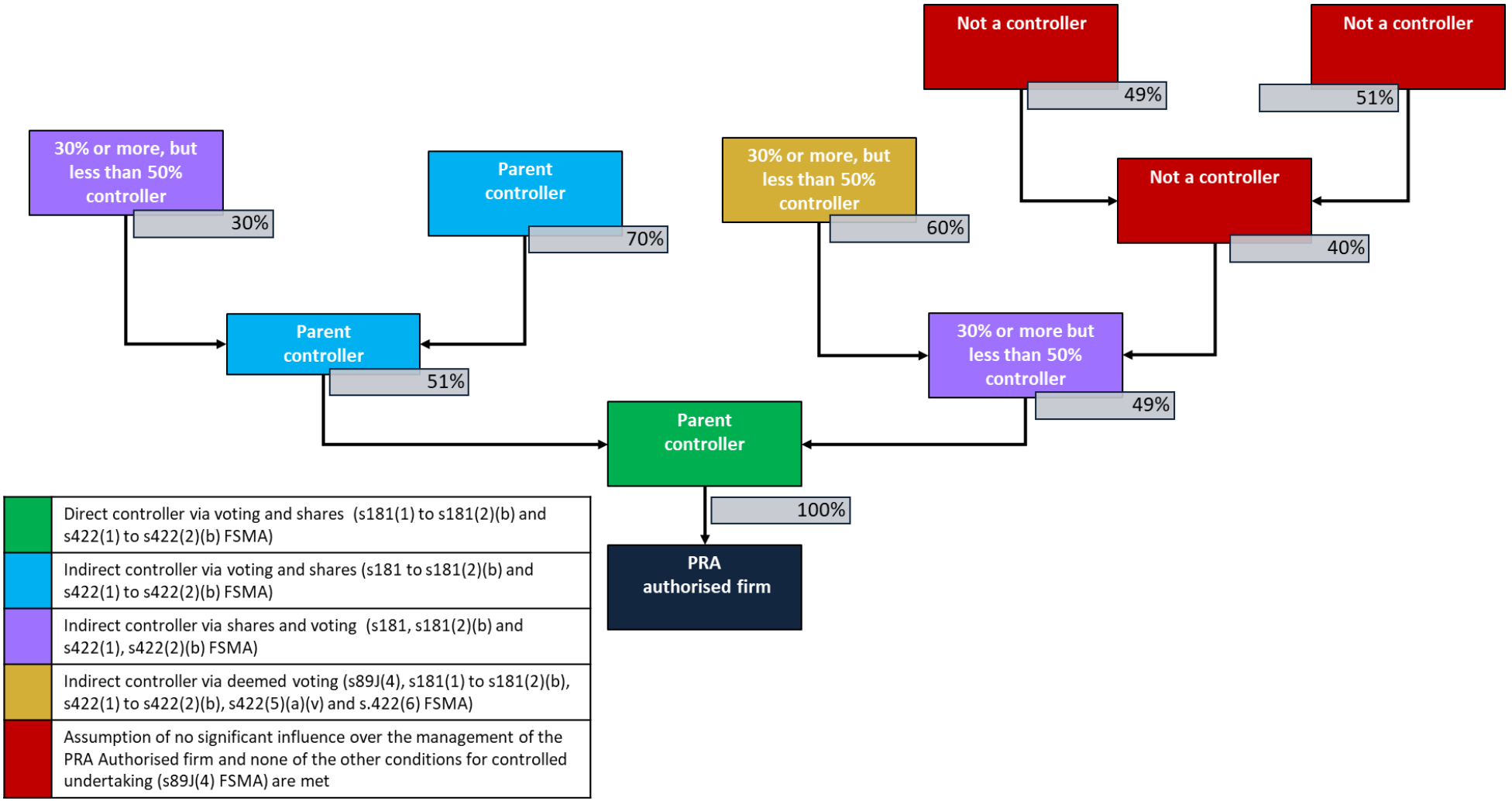


Diagram D (all % represent shares and voting)

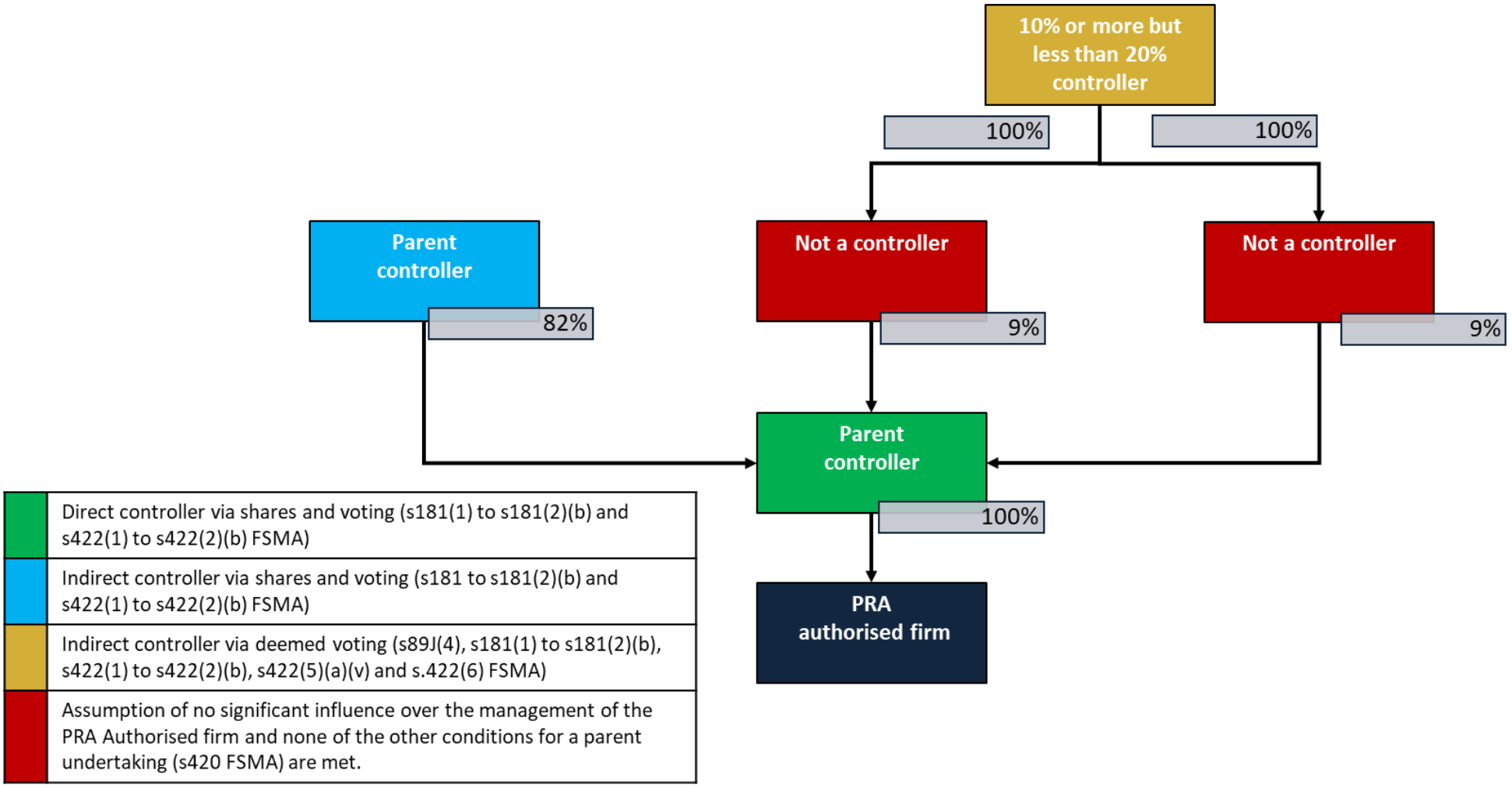
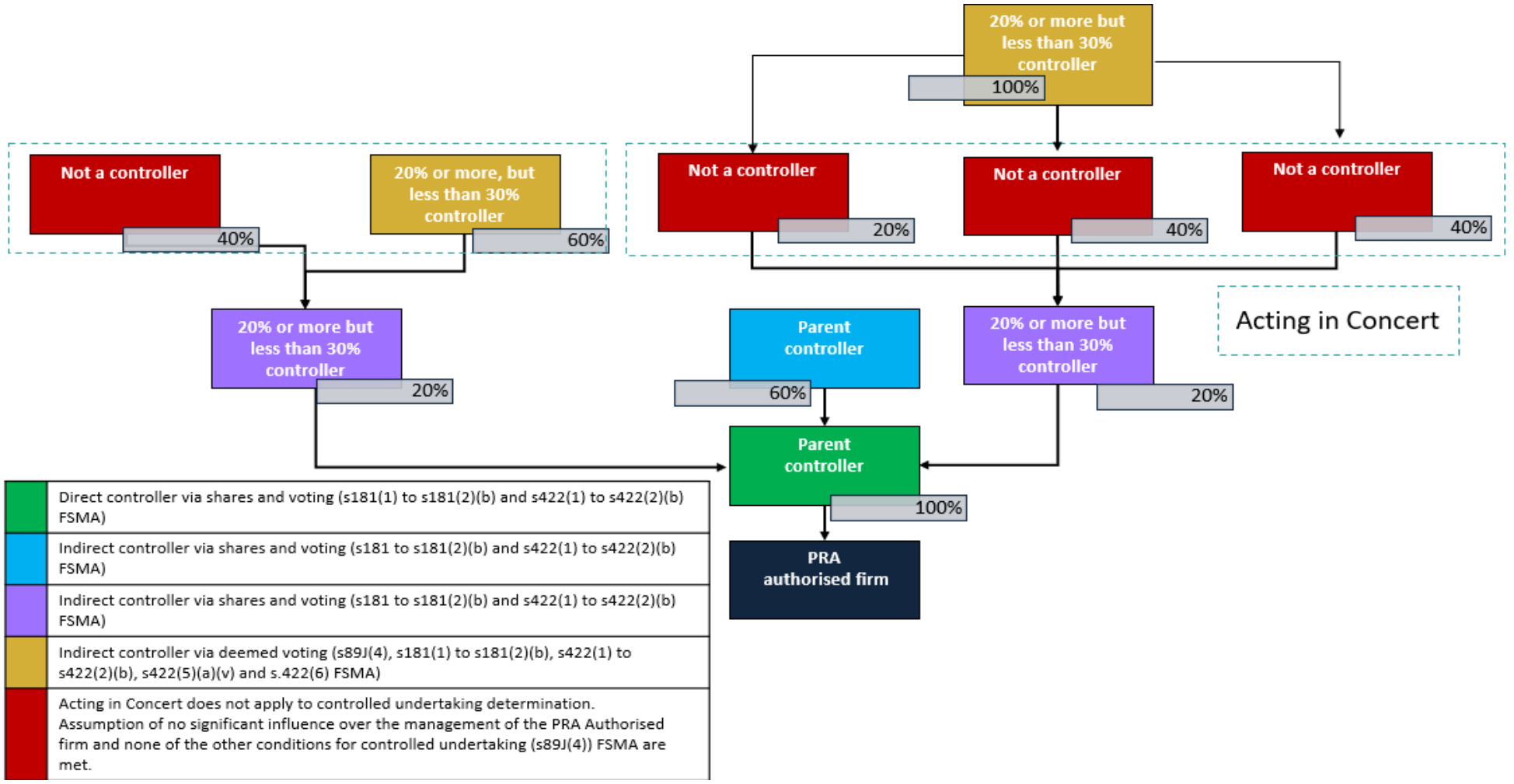


Diagram E (all % represent shares and voting)[31]



31 Diagram is to demonstrate that acting in concert does not apply for the purpose of determining whether an undertaking controls another for the purpose of deemed voting (s.422(5)(a)(v)). See paragraph 2.29.

Diagram F (all % represent shares and voting)

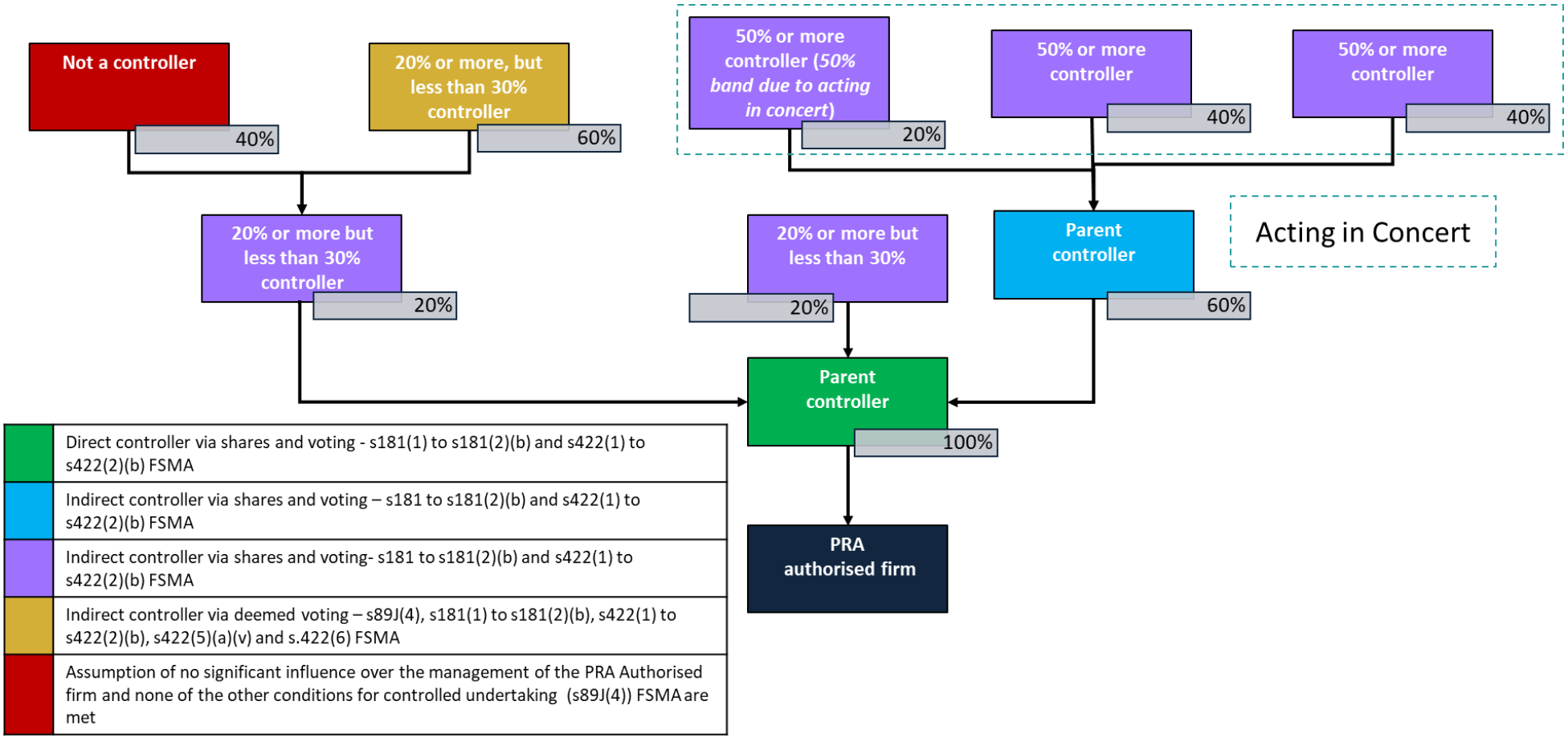
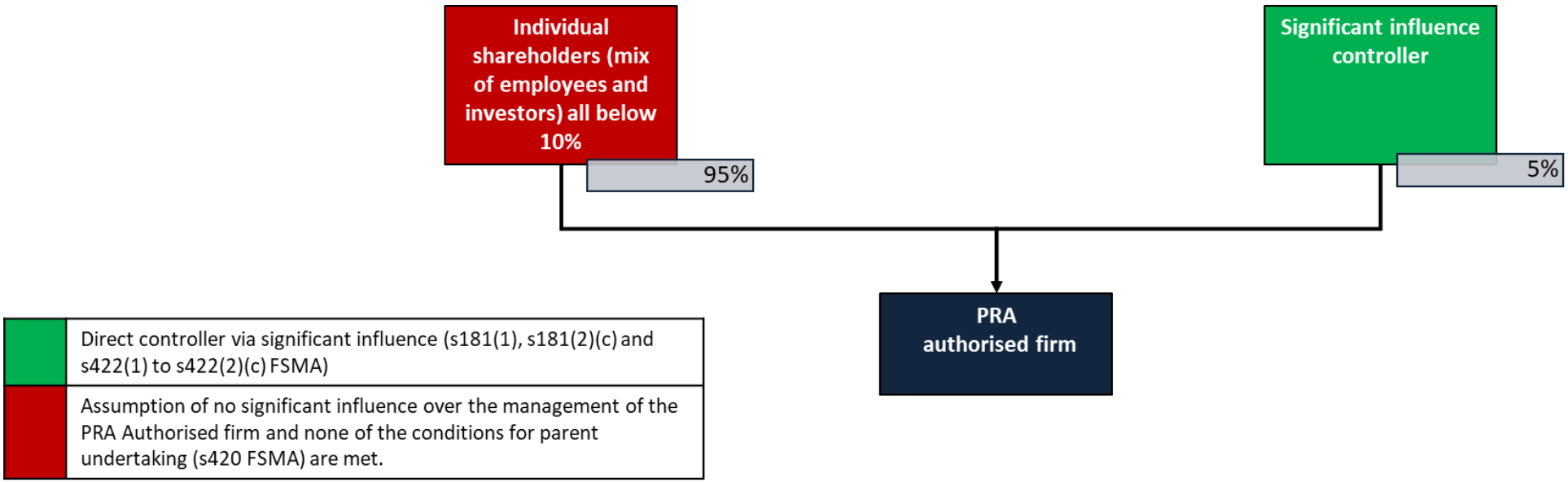


Diagram G (all % represent shares and voting)



Annex 2: Further guidance on acting in concert

Deemed voting power

Deemed voting power' is the term used to describe those cases set out in s422(5)(a) FSMA in which one person's holding of voting power is attributed to another.

There may be circumstances in which deemed voting power must be aggregated with other (actual or deemed) voting power for the purposes of determining whether s181(2)(b) FSMA applies.

The cases set out in s422(5)(a) FSMA may result in the attribution of voting power to a person (H) without aggregation where H holds no other actual or deemed voting power in the relevant firm and is not acting in concert with any other person (for example, where H exercises the voting power attaching to shares deposited with them pursuant to a discretion granted to him in the absence of (1) specific instructions from the actual shareholders, and (2) any agreement with the shareholders as to how he should exercise that voting power or any other rights attached to those shares).

The PRA would not generally regard shareholders as acting in concert for the purposes of s178(2) FSMA or as having deemed voting power requiring aggregation pursuant to s422(5)(a)(i) FSMA simply because they have agreed to vote together on a particular issue, for example:

a) rejection of a proposal for the remuneration of directors;
b) appointment or removal of a particular director; or
c) approval or rejection of an acquisition or disposal proposed by the firm's board of directors.

However, there may be circumstances in which voting together on a specific issue would amount to acting in concert for these purposes. Where, for example, shareholders who have no previous agreement in relation to the exercise of their voting rights agree to act together for the purpose of voting to enable them to obtain control of the board of a firm. This may not fall within s422(5)(a)(i) FSMA, if those shareholders have no lasting common policy towards the firm's management. However, those circumstances are likely to be exceptional.

An agreement that does no more than require particular management actions to be put to a vote of shareholders, such as major acquisitions, disposals or new issues of shares, would not of itself trigger the requirement to notify. This is because there is no agreement as to how

the shareholders will exercise their rights on, or whether the shareholders will adopt a common policy towards, those proposals.

Acting in concert covers all agreements as to how to exercise voting power on future issues generally. It would, therefore, require the aggregation of holdings by the parties to the agreement, for the purposes of s178 FSMA. It may also fall within the ambit of s422(5)(a)(i) FSMA, but this will depend on whether the parties to the agreement have adopted a lasting common policy that relates to the management of the relevant firm.

Passive shareholder agreements

The PRA considers that acting in concert may also arise as a result of passive shareholder agreements. In these, a shareholder (the passive shareholder) agrees explicitly or implicitly with another shareholder or group of shareholders (the 'active shareholder') that it will not exercise its voting power.

For example, where the passive shareholder holds 2% of the voting power and the active shareholder holds 9% of the voting power, each would be regarded as having control (11% of the voting power) because their holdings are required to be aggregated under the acting in concert provisions.

However, persons that acquire shares as part of an investment or hedging programme and adhere consistently to a stated policy of not voting those shares, would not be regarded by the PRA as having entered into an agreement with other shareholders, and would not be regarded as acting in concert with them.

There may be circumstances where multiple purchasers of shares, who are each party to a share purchase agreement and whose combined shareholding will fall within s181(2) FSMA, are required to give notice pursuant to s178(1) FSMA, on the basis that the existence of the agreement means they are acting in concert.

If it is clear that the only agreement between one or more persons consists in there being parties to the same share purchase agreement, and the terms which relate strictly to the purchase of shares and do not govern or seek to regulate the purchasers' relationship with each other following completion of the share purchase, the purchasers would not be regarded by the PRA as acting in concert for the purpose of requiring notification under s178 FSMA.

If; however, the share purchase agreement contains provisions governing or otherwise regulating the exercise of the rights linked to the shares to be acquired by the purchasers (or the purchasers have entered into, or propose to enter into, a shareholders' or other agreement with similar effect), the proposed acquirers may be regarded by the PRA to be acting in concert as per s178 FSMA, depending on the terms of the relevant agreement(s).

Where there is evidence to suggest that the parties do in fact intend to co-operate in relation to the exercise of voting or other rights relating to the shares they are acquiring, notwithstanding that no provisions to that effect appear in the share purchase or other written agreement, this may warrant the conclusion that there is an implicit agreement between them by virtue of which they are acting in concert.

Conditional agreements

Where an agreement is conditional on any necessary approval by the PRA, notice must be given under s178(1) FSMA before control is acquired. The point in time at which this occurs may depend on a number of circumstances. In the context of a share purchase agreement that provides for the PRA's approval of the purchaser to be obtained before the acquisition is completed, the purchaser will not usually be required to give a s178(1) FSMA notice prior to entering into the agreement.

However, there may be circumstances in which control is acquired at the time the agreement is entered into, for example, where the parties have agreed that the purchaser will be entitled (whether by virtue of a power of attorney contained in the agreement or otherwise) to exercise the voting rights attached to the shares being acquired in the period between signing and completion. In that case, the purchaser will need to consider whether to give notice under s178(1) FSMA prior to entering into the agreement pre-emption rights, drag along rights and tag along rights.

'Pre-emption' rights, 'drag along' rights and 'tag along' rights are unlikely to trigger the requirement to notify under s178(1) FSMA. Bare pre-emption rights will simply indicate each shareholder's (the offeror) agreement to give fellow shareholders an option to purchase these shares, if they wish to sell. The acquisition of shares under these arrangements cannot take place until the offeror decides to sell these shares and other shareholders decide to buy them.

Shareholders will not usually be regarded as acting in concert in holding or acquiring shares simply by agreeing to give each other future pre-emption rights.

The existence of 'drag along' and 'tag along' rights in a shareholders' agreement (designed to ensure equivalent treatment of shareholders of the same class in the event an offer is made, or to be made, by a non-shareholder to purchase the shares of any single shareholder in a private company) would not result in the shareholders who have the benefit of those rights being considered as acting in concert in their holding or acquiring of shares.

Takeover code definition of acting in concert

The definition of acting in concert in the Takeover Code (the Code) derives from the Takeover Directive.[32] It has relevance in determining whether the relationship between persons with interests in shares carrying voting rights requires those rights to be aggregated for the purpose of assessing whether the threshold for the making of a mandatory offer to all other shareholders in a company, to which the Code applies, has been reached.

The notes on the definition in the Code confirm that the Takeover Panel's views in relation to acting in concert '...relate only to the Code and should not be taken as guidance on any other statutory or regulatory provisions'.

The information in this supervisory statement is given for a different purpose and has no relevance to how acting in concert is to be interpreted in the context of the Code. It is relevant to considering whether the holdings of persons who have reached an agreement in relation to the shares or voting rights they do, or will, hold must be aggregated, for the purpose of determining whether they are subject to the requirements for prudential assessment specified in FSMA.

32 2004/25/EC.