

PRICEWATERHOUSECOOPERS LLP

RESPONSE TO HM TREASURY CONSULTATION -FSMA TWO YEAR REVIEW: CHANGES TO SECONDARY LEGISLATION

APPENDIX I: Scenario analysis - reflecting the revised Article 70 Regulated Activities Order and the revised Article 69 FP Order

	Scenario	Art 70 analysis when advising X (or Art 69 analysis when the counterparty is sending a Financial Promotion to X)				Article 70 analysis when advising the counterparty to X (or Article 69 analysis when X is sending a financial Promotion to the relevant counterparty)			
		Existing Art 70 or 62 applies	Revised part (2) applies of Art 70/ 69	Revised part (3) applies of Art 70/ 69	Comment	Existing Art 70 or 62 applies	Revised part (2) applies of Art 70/ 69	Revised part (3) applies of Art 70/ 69	Comment
1	<p>Company X holds 30% of Company Y and looks to acquire 25% from:</p> <p>a) another corporate</p> <p>b) two managers</p> <p>c) two unconnected shareholders</p>	Y	Y	-		Y	N	N*	<p>Art 70 (2) does not apply because the counterparty in a, b or c, defined as S, is only disposing of 25%. N* - Yes if Co Y has less than 50 shareholders or is unlisted and whether the counterparties are deemed to have day to day control to dispose of even though they only own 25% of the shares and also for b) and c) if the managers or shareholders respectively can be deemed to be ‘acting together’.</p>
	a)	Y	Y	-		Y	N	N*	
	c)	Y	Y	-		Y	N	N*	
2	<p>Company X looks to acquire 40% shareholding in an unlisted Company Y from Mr A. Company Y has z other shareholders.</p> <p>a) z < 50</p> <p>b) z > 50</p>	N*	N	N**	<p>N* - yes if objective of Co X is to acquire day to day control N** - as Company Y is an unlisted company, exemption only applies if objective of Co X is to acquire day to day control.</p>	N*	N	N**	<p>N* - yes if objective of Co X is to acquire day to day control N** -as Co Y is unlisted, exemption only applies if the objective of Mr A is deemed to be disposing of day to day control</p>
	b)	N*	N	N**		N*	N	N**	

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		Existing Art 70 or 62 applies	Revised part (2) applies of Art 70/ 69	Revised part (3) applies of Art 70/ 69	Comment	Existing Art 70 or 62 applies	Revised part (2) applies of Art 70/ 69	Revised part (3) applies of Art 70/ 69	Comment
3	<p>Company X looks to acquire 51% shareholding in an unlisted Company Y from Mr A. Company Y has z other shareholders.</p> <p>a) z < 50 b) z > 50</p> <p>At the same time Company X wants to acquire the 49% from the z other shareholders:</p> <p>c) z <50 connected with Mr A d) z <50 unconnected e) z >50 connected with Mr A f) z >50 unconnected</p>								
		Y	Y	-		Y	Y	-	
		Y	Y	-		Y	Y	-	
		Y	Y	-		Y	Y	-	
		Y	Y	-		Y	N	N*	N* - as Y is an unlisted Company, exemption only applies if the shareholders and Mr A can be deemed to be ‘acting together’.
		Y	Y	-		Y	Y	-	
		Y	Y	-		Y	N	N*	Also if Y were an unlisted PLC then the analysis would be unchanged.

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		Existing Art 70 or 62 applies	Revised part (2) applies of Art 70/ 69	Revised part (3) applies of Art 70/ 69	Comment	Existing Art 70 or 62 applies	Revised part (2) applies of Art 70/ 69	Revised part (3) applies of Art 70/ 69	Comment
4	<p>Management team and VC (together X) are looking to acquire 100% of a large limited Company Y from z shareholders:</p> <p>a) z <50 connected</p> <p>b) z <50 unconnected</p> <p>c) z >50 connected</p> <p>d) z >50 unconnected</p>				<p>Management + VC are not ‘connected individuals’ but are ‘a group of persons acting together’</p>				<p>- If the group of z connected shareholders were not disposing of more than 50%, but were deemed to have effective control, could they be assumed to be ‘a group of persons acting together’?</p> <p>N*-Unless shareholders are ‘acting together’</p>
		Y	N	Y		Y	Y	-	
		Y	N	Y		Y	N	N*	
		Y	N	Y		Y	Y	-	
		Y	N	Y		Y	N	N*	

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		Existing Art 70 or 62 applies	Revised part (2) applies of Art 70/ 69	Revised part (3) applies of Art 70/ 69	Comment	Existing Art 70 or 62 applies	Revised part (2) applies of Art 70/ 69	Revised part (3) applies of Art 70/ 69	Comment
5	a) Same scenario as 4 but Company Y is a listed PLC (i.e. a Public to Private transaction)	Y	N	N	Management + VC are not ‘connected individuals’ but are ‘a group of persons acting together’ so para 70 (2) cannot apply and as Company Y is listed it does not meet the definition of BD [assuming Company Y has more than 50 shareholders in order to be listed] and so 70 (3) does not apply.	Y	As 4 a-b above	N	If individuals disposing were ever connected Art 70 (2) would apply. However, Art 70 (3) would never apply as disposing of shares in a listed entity (assuming listed PLC had over 50 shareholders).
	b) What if we say that Management and VC are acquiring 100% of newco and Newco is then acquiring 100% of Co Y	Y	N	Y		Y	Y		
	- for man+VC acquisition of newco	Y	Y	-		Y	As 5a	As 5a	
6	Management and VC are acquiring effective control but <50% shareholding in BD.	Y	N	Y	Management and VC are not connected individuals but are deemed to be “acting together”.	Y	N	N*	N*- Unless the object of the selling shareholder, single person or group acting together is transfer of day to day control