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FCA Proposal: New requirement to provide criminal background checks on owners and controllers from January 2025

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In July 2024, the UK's Financial Conduct Authority ("**FCA**") published its "Quarterly Consultation Paper No. 44" ("**Consultation**"), which proposed introducing a requirement to provide criminal background checks on owners and controllers at the authorisations gateway.

Background

The FCA currently employs a risk-based approach to conducting criminal background checks, whereby such checks are performed only when specific concerns about an individual's fitness and propriety arise. This is in contrast to the approach taken by other statutory anti-money laundering ("**AML**") and counter-terrorist financing ("**CFT**") supervisors, such as His Majesty's Revenues & Customs ("**HMRC**") and the Gambling Commission, where such checks are performed routinely.

The Financial Action Task Force ("**FATF**") has advised the FCA to consider the broader implementation of criminal background checks on owners and controllers of financial institutions. This recommendation is designed to prevent criminals and their associates from owning or controlling financial institutions.

Proposal

The FCA (in agreement with the Prudential Regulation Authority ("**PRA**")) is now proposing to require controllers and beneficial owners to obtain criminal background checks from the Disclosure and Barring Service ("**DBS**") (or equivalent for persons outside of England and Wales). This requirement will apply to those making an application for authorisation or registration with the FCA and for a notice of an intended acquisition or increase in control ("**Change in Control**").

Applicants or notice givers are required to confirm that a DBS check for controllers has been undertaken within the last six months when submitting the relevant application or change in control. Furthermore, the FCA may request a copy of the DBS certificate at its discretion on a case-by-case basis.

Next steps

The Consultation is closed now, and the FCA is expected to issue the final rules before the end of 2024. If the rules are implemented as proposed, the new requirements will apply to all new applications or notifications submitted from January 2025.

We are monitoring these developments as the cost and administration involved in obtaining criminal background checks in some jurisdictions is extremely burdensome and could cause delays to transactions for which a FCA or PRA change in control is a condition to closing.

For further information in relation to the Consultation or the Change in Control process in general, please reach out to UKRegulatory@proskauer.com.

View original.

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