

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1985, SCHEDULE 10A. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 10A

#### PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTARY PROVISIONS]

##### Textual Amendments

- F1** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), Sch. 9 (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9)

##### *Introduction*

- 1 The provisions of this Schedule explain expressions used in section 258 (parent and subsidiary undertakings) and otherwise supplement that section.

##### *[<sup>F2</sup> Voting rights in an undertaking]*

##### Textual Amendments

- F2** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), Sch. 9 (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9)

- 2 (1) In section 258(2)(a) and (d) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.
- (2) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

##### *[<sup>F3</sup> Right to appoint or remove a majority of the directors]*

##### Textual Amendments

- F3** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), Sch. 9 (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9)

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- 3
- (1) In section 258(2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.
  - (2) An undertaking shall be treated as having the right to appoint to a directorship if—
    - (a) a person’s appointment to it follows necessarily from his appointment as director of the undertaking, or
    - (b) the directorship is held by the undertaking itself.
  - (3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

*[<sup>F4</sup> Right to exercise dominant influence]*

**Textual Amendments**

**F4** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), Sch. 9 (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9)

- 4
- (1) For the purposes of section 258(2)(c) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking.
  - (2) A “control contract” means a contract in writing conferring such a right which—
    - (a) is of a kind authorised by the memorandum or articles of the undertaking in relation to which the right is exercisable, and
    - (b) is permitted by the law under which that undertaking is established.
  - (3) This paragraph shall not be read as affecting the construction of the expression “actually exercises a dominant influence” in section 258(4)(a).

*[<sup>F5</sup> Rights exercisable only in certain circumstances or temporarily incapable of exercise]*

**Textual Amendments**

**F5** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), Sch. 9 (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9)

- 5
- (1) Rights which are exercisable only in certain circumstances shall be taken into account only—
    - (a) when the circumstances have arisen, and for so long as they continue to obtain, or
    - (b) when the circumstances are within the control of the person having the rights.

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- (2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

**Modifications etc. (not altering text)**

**C1** Sch. 10A paras. 5–11 applied by Companies Act 1989 (c. 40, SIF 27), ss. 30(5), 213(2), Sch. 11 para. 5(6)

*[<sup>F6</sup> Rights held by one person on behalf of another]*

**Textual Amendments**

**F6** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), Sch. 9 (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9)

- 6 Rights held by a person in a fiduciary capacity shall be treated as not held by him.

**Modifications etc. (not altering text)**

**C2** Sch. 10A paras. 5–11 applied by Companies Act 1989 (c. 40, SIF 27), ss. 30(5), 213(2), Sch. 11 para. 5(6)

- 7 (1) Rights held by a person as nominee for another shall be treated as held by the other.  
(2) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

**Modifications etc. (not altering text)**

**C3** Sch. 10A paras. 5–11 applied by Companies Act 1989 (c. 40, SIF 27), ss. 30(5), 213(2), Sch. 11 para. 5(6)

*[<sup>F7</sup> Rights attached to shares held by way of security]*

**Textual Amendments**

**F7** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), Sch. 9 (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9)

- 8 Rights attached to shares held by way of security shall be treated as held by the person providing the security—
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions, and
  - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for

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the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

**Modifications etc. (not altering text)**

**C4** Sch. 10A paras. 5–11 applied by Companies Act 1989 (c. 40, SIF 27), ss. 30(5), 213(2), **Sch. 11 para. 5(6)**

*[<sup>F8</sup> Rights attributed to parent undertaking]*

**Textual Amendments**

**F8** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), **Sch. 9** (subject to the transitional and saving provisions mentioned in S.I. 1990/355, **arts. 6–9**)

- 9 (1) Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.
- (2) Nothing in paragraph 7 or 8 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.
- (3) For the purposes of paragraph 8 rights shall be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

**Modifications etc. (not altering text)**

**C5** Sch. 10A paras. 5–11 applied by Companies Act 1989 (c. 40, SIF 27), ss. 30(5), 213(2), **Sch. 11 para. 5(6)**

*[<sup>F9</sup> Disregard of certain rights]*

**Textual Amendments**

**F9** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), **Sch. 9** (subject to the transitional and saving provisions mentioned in S.I. 1990/355, **arts. 6–9**)

- 10 The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

**Modifications etc. (not altering text)**

**C6** Sch. 10A paras. 5–11 applied by Companies Act 1989 (c. 40, SIF 27), ss. 30(5), 213(2), **Sch. 11 para. 5(6)**

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*[<sup>F10</sup> Supplementary]*

**Textual Amendments**

**F10** Sch. 10A added by Companies Act 1989 (c. 40, SIF 27), ss. 21(2), 213(2), Sch. 9 (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9)

- 11           References in any provision of paragraphs 6 to 10 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.

**Modifications etc. (not altering text)**

**C7** Sch. 10A paras. 5–11 applied by Companies Act 1989 (c. 40, SIF 27), ss. 30(5), 213(2), Sch. 11 para. 5(6)

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