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## SCHEDULES

### SCHEDULE 3

Section 15.

#### FINANCIAL STRUCTURE OF SUCCESSOR COMPANIES

##### *Meaning of “relevant successor company”*

- 1 In this Schedule “relevant successor company” means any successor company which is limited by shares.

##### *Initial Government holding in companies*

- 2 (1) As a consequence of the vesting in a relevant successor company, at a time when it is wholly owned by the Crown and in accordance with any restructuring scheme, of any property, rights and liabilities, that company shall issue such securities of the company as the Secretary of State may from time to time direct—
- (a) to the Treasury or the Secretary of State; or
  - (b) to any person entitled to require the issue of the securities following their initial allotment, in accordance with directions of the Secretary of State, to the Treasury or the Secretary of State.
- (2) The Secretary of State shall not give a direction under sub-paragraph (1) above at a time when the relevant successor company in question has ceased to be wholly owned by the Crown.
- (3) Securities to be issued in pursuance of this paragraph shall be issued at such time or times, and (subject to sub-paragraph (4) below) on such terms, as the Secretary of State may direct.
- (4) Any shares of a relevant successor company issued in pursuance of this paragraph—
- (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of [F1 the Companies Act 2006] as if they had been paid up by virtue of the payment to the company of their nominal value in cash.
- (5) The Secretary of State may not exercise any power conferred on him by this paragraph, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this paragraph, without the consent of the Treasury.

#### Textual Amendments

- F1 Words in Sch. 3 para. 2(4)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 147(4) (with art. 10)

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*Government investment in companies*

- 3 (1) Subject to section 16 of this Act, the Treasury or, with the consent of the Treasury, the Secretary of State may at any time acquire—
- (a) securities of a relevant successor company; or
  - (b) rights to subscribe for any such securities.
- (2) The Secretary of State shall not dispose of any securities or rights acquired by him by virtue of this paragraph without the consent of the Treasury.
- (3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this paragraph shall be paid out of money provided by Parliament.

*Exercise of functions through nominees*

- 4 (1) The Treasury or, with the consent of the Treasury, the Secretary of State may, for the purposes of paragraphs 2 and 3 above, appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State; but—
- (a) the issue or allotment in pursuance of paragraph 2 above of securities of a relevant successor company to any nominee of the Treasury or the Secretary of State appointed for the purposes of that paragraph,
  - (b) the issue in pursuance of that paragraph of any such securities to any person entitled to be issued with the securities following their initial allotment to any such nominee, and
  - (c) the acquisition under paragraph 3 above by any nominee of the Treasury or the Secretary of State appointed for the purposes of that paragraph 3 of any securities or rights,
- shall be in accordance with such directions as may be given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.
- (2) Any person holding any securities or rights as a nominee of the Treasury or the Secretary of State by virtue of this paragraph shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

*Payment of dividends etc. into Consolidated Fund*

- 5 Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired by virtue of paragraph 2 or 3 above shall be paid into the Consolidated Fund.

*Distributable reserves of companies*

- 6 (1) Where statutory accounts of a relevant successor company prepared as at any time would show the company as having net assets in excess of the aggregate of—
- (a) its called-up share capital, and
  - (b) the amount, apart from any property, rights and liabilities to which the company has become entitled or subject in accordance with any restructuring scheme, of its undistributable reserves,
- then, for the purposes of [F2section 830 of the Companies Act 2006] (profits available for distribution) and of the preparation as at that time of any statutory accounts of the company, that excess shall be treated, except so far as the Secretary of State may

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otherwise direct, as representing an excess of the company's accumulated realised profits over its accumulated realised losses.

- (2) For the purposes of [<sup>F3</sup>section 831 of the Companies Act 2006] (restriction on distribution of assets) so much of any excess of a company's net assets as falls, in accordance with a direction under sub-paragraph (1) above, to be treated otherwise than as representing an excess of the company's accumulated realised profits over its accumulated realised losses shall be treated (subject to any modification of that direction by a subsequent direction under this paragraph) as comprised in the company's undistributable reserves.
- (3) A direction under this paragraph may provide, in relation to any amount to which it applies, that, on the realisation (whether before or after the company in question ceases to be wholly owned by the Crown) of such profits and losses as may be specified or described in the direction, so much of that amount as may be determined in accordance with the direction is to cease to be treated as mentioned in sub-paragraph (2) above and is to fall to be treated as comprised in the company's accumulated realised profits.
- (4) The Secretary of State shall not give a direction under this paragraph in relation to a relevant successor company at any time after the company has ceased to be wholly owned by the Crown.
- (5) In exercising his power to give a direction under this paragraph, the Secretary of State shall have regard, in particular, to the provisions of Schedule 4 to this Act and to any provision contained in any restructuring scheme by virtue of any provision of that Schedule.
- (6) The consent of the Treasury shall be required for the giving of a direction under this paragraph.
- (7) In this paragraph—
  - “called-up share capital” has the same meaning as in the [<sup>F4</sup>Companies Act 2006];
  - “net assets” has the meaning given by subsection (2) of [<sup>F5</sup>section 831] of that Act; and
  - “undistributable reserves” has the meaning given by [<sup>F6</sup>subsection (4)] of that section;

and references in this paragraph, in relation to a company, to statutory accounts are references to accounts of that company prepared in respect of any period in accordance with the requirements of that Act, or with those requirements applied with such modifications as are necessary where that period is not an accounting reference period.

#### Textual Amendments

- F2** Words in Sch. 3 para. 6(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), Sch. 1 para. 196(2) (with arts. 6, 11, 12)
- F3** Words in Sch. 3 para. 6(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), Sch. 1 para. 196(3) (with arts. 6, 11, 12)
- F4** Words in Sch. 3 para. 6(7) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), Sch. 1 para. 196(4)(a) (with arts. 6, 11, 12)

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- F5** Words in Sch. 3 para. 6(7) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 196\(4\)\(b\)](#) (with arts. 6, 11, 12)
- F6** Words in Sch. 3 para. 6(7) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 196\(4\)\(c\)](#) (with arts. 6, 11, 12)

*Temporary restrictions on borrowing of companies*

- 7 (1) If articles of association of a relevant successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised during any period by the group to which that company belongs, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (2) For the purposes of this paragraph an alteration of the articles of association of a relevant successor company shall be disregarded if the alteration—
- (a) has the effect of conferring or extending any such power as is mentioned in sub-paragraph (1) above; and
  - (b) is made at a time when that company has ceased to be wholly owned by the Crown.
- (3) In this paragraph “group”, in relation to a company, means that company and all of its subsidiaries taken together.

*Government lending to the companies*

- 8 (1) Subject to the following provisions of this Schedule, the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to a relevant successor company.
- (2) The Secretary of State shall not make a loan to a company under this paragraph except at a time when it is wholly owned by the Crown.
- (3) Any loans which the Secretary of State makes under this paragraph shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.
- (4) The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are required by him for making loans under this paragraph.
- (5) Any sums received under sub-paragraph (3) above by the Secretary of State shall be paid into the National Loans Fund.
- (6) It shall be the duty of the Secretary of State as respects each financial year—
- (a) to prepare, in such form as the Treasury may direct, an account of sums issued to him in pursuance of sub-paragraph (4) above and of sums received by him under sub-paragraph (3) above and of the disposal by him of the sums so issued or received; and
  - (b) to send the account to the Comptroller and Auditor General not later than the end of the month of August in the following financial year;
- and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it, and of his report, before each House of Parliament.

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*Treasury guarantees for loans made to companies*

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- (1) Subject to the following provisions of this Schedule, the Treasury may guarantee, in such manner and on such terms as they may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State by any relevant successor company.
  - (2) The Treasury shall not give a guarantee under this paragraph except at a time when the company in question is wholly owned by the Crown.
  - (3) Immediately after a guarantee is given under this paragraph, the Treasury shall lay a statement of the guarantee before each House of Parliament; and immediately after any sum is issued for fulfilling a guarantee so given, the Treasury shall so lay a statement relating to that sum.
  - (4) Any sums required by the Treasury for fulfilling a guarantee under this paragraph shall be charged on and issued out of the Consolidated Fund.
  - (5) If any sums are issued in fulfilment of a guarantee given under this paragraph, the company whose obligations are so fulfilled shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct—
    - (a) payments of such amounts as the Treasury may so direct in or towards repayment of the sums so issued; and
    - (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Treasury may so direct.
  - (6) Any sums received under sub-paragraph (5) above by the Treasury shall be paid into the Consolidated Fund.

*Limit on Government financial assistance for companies*

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- The aggregate of—
- (a) any amounts outstanding by way of principal in respect of loans made by the Secretary of State under paragraph 8 above, and
  - (b) sums issued under paragraph 9 above in fulfilment of guarantees given under that paragraph,
- shall not exceed £3,000 million.

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