

SCHEDULE 1

Regulation 2(3).

MEANING OF “CLOSELY LINKED”: MODIFICATIONS OF COMPANIES ACT PROVISIONS

Preliminary

1. The modifications of sections 258 to 260 of and Schedule 10A to the Companies Act 1985 which are referred to in regulation 2(3) above are as follows.

Ability to appoint majority of directors

2.—(1) After subsection (2) of section 258 the insertion of the following subsection—

“(2A) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—

(a) it is a member of the undertaking and, at all times since the beginning of the undertaking’s immediately preceding financial year, a majority of the undertaking’s board of directors have been directors who were appointed solely as a result of the exercise of its voting rights, and

(b) no other person is the undertaking’s parent undertaking by virtue of paragraph (a), (b) or (c) of subsection (2).”

(2) In subsection (3) of that section, after the words “subsection (2)” the insertion of the words “or (2A)”.

Participation without control

3.—(1) After subsection (3) of section 258 the insertion of the following subsections—

“(3A) Subject to subsection (3B) below, an undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking which—

(a) entitles it to 20 per cent or more of the voting rights in the undertaking, or

(b) comprises 20 per cent or more of the shares of the undertaking.

(3B) For the purpose of determining whether a person has a participating interest in an undertaking which is a building society (within the meaning of the Building Societies Act 1986), subsection (3A) above shall have effect as if the reference in paragraph (b) to shares were a reference to deferred shares (within the meaning of that Act).”

(2) After subsection (5) of that section the insertion of the following subsection—

“(5A) An undertaking (“A”) shall not be treated as a parent undertaking of an undertaking (“B”) by reason only that another undertaking which is A’s subsidiary undertaking by virtue of subsection (3A) is a parent undertaking of B.”

(3) After subsection (4) of section 259 the insertion of the following subsection—

“(4A) Two subsidiary undertakings of the same parent undertaking shall not be fellow subsidiary undertakings if either of them is a subsidiary undertaking by virtue of section 258(3A).”

(4) In subsection (5) of section 260, for the words “section 258(4)” the substitution of the words “section 258(3A) or (4)”.

(5) In paragraph 2(1) of Schedule 10A, after the words “section 258(2)(a) and (d)” the insertion of the words “and (3A)(a)”.