SCHEDULES

SCHEDULE 6

Section 134.

TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: SUCCESSOR COMPANIES

Interpretation

1 (1) In this Schedule—

"the Charter" means the Royal Charter of 1st May 1996 for the continuance of the British Broadcasting Corporation;

"preparatory scheme" means a transfer scheme whose main purpose is to provide for a transfer of property, rights or liabilities from the BBC to a wholly-owned subsidiary of the BBC;

"successor company" means a company to which property, rights or liabilities are transferred in accordance with a preparatory scheme at a time when the company is a wholly-owned subsidiary of the BBC;

"transfer" includes—

(a) any transfer effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by a provision contained in a preparatory scheme by virtue of paragraph 2(1)(g) of Schedule 5;

(b) the creation of interests, rights or liabilities by or under any such agreement or instrument; and

(c) the creation of interests, rights or liabilities by virtue of any provision contained in a preparatory scheme by virtue of paragraph 2 of Schedule 5;

and references to a transfer in accordance with a preparatory scheme shall be construed accordingly;

"wholly-owned subsidiary" has the meaning given by section 736 of the Companies Act 1985.

(2) Any reference in this Schedule to vesting in accordance with a preparatory scheme or vesting effected by a preparatory scheme shall be construed as a reference to vesting as a result of a transfer in accordance with a preparatory scheme.

Statutory accounts

2 (1) The following provisions of this paragraph shall have effect for the purposes of any statutory accounts of a successor company.

(2) The vesting in the company effected by any preparatory scheme shall be taken—

(a) to have been effected immediately after the end of the last financial year of the BBC to end before the coming into force of the scheme, and

(b) to have been a vesting of such property, rights and liabilities as are determined by or under the scheme.

(3) The value of any asset and the amount of any liability which is taken by virtue of sub-paragraph (2) to have been vested in the company shall be taken to have been—

(a) in the case where the value or amount is determined by or under the preparatory scheme, that value or amount, and

(b) in any other case, the value or amount assigned to the asset or liability for the purposes of the Account or Accounts prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of their last financial year to end before the day on which the preparatory scheme comes into force.

(4) If an Account or Accounts are prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of the residual part of a financial year, that residual part shall be treated as a financial year of the BBC for the purposes of sub-paragraph (3).

(5) In this paragraph "statutory accounts", in relation to a company, means any accounts of that company prepared for the purposes of any provision of the Companies Act 1985 (including group accounts).

Distributable reserves

3 (1) Where statutory accounts of a 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 transferred to it in accordance with any preparatory scheme, of its undistributable reserves,

then, for the purposes of section 263 of the Companies Act 1985 (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 otherwise direct, as representing an excess of the company's accumulated realised profits over its accumulated realised losses.

(2) For the purposes of section 264 of the Companies Act 1985 (restriction on distribution of assets) so much of any excess of a company's net assets as falls, in accordance with a direction under this paragraph, 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 a wholly-owned subsidiary of the BBC) 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) 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 successor company at any time after the company has ceased to be a wholly-owned subsidiary of the BBC.

(5) The consent of the Treasury shall be required for the giving of a direction under this paragraph.

(6) In this paragraph—

"called-up share capital" has the same meaning as in the Companies Act 1985;

"net assets" has the meaning given by subsection (2) of section 264 of that Act;

"undistributable reserves" has the meaning given by subsection (3) 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.

Dividends

4 (1) Where a distribution is proposed to be declared during any accounting reference period of a successor company which includes a transfer date or before any accounts are laid or filed in respect of such a period, sections 270 to 276 of the Companies Act 1985 (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—

(a) references in section 270 to the company's accounts or to accounts relevant under that section, and

(b) references in section 273 to initial accounts,

included references to such accounts as, on the assumptions stated in sub-paragraph (2), would have been prepared under section 226 of that Act in respect of the relevant year (in this paragraph referred to as "the relevant accounts").

(2) Those assumptions are—

(a) that the relevant year had been a financial year of the successor company,

(b) that the vesting in accordance with the preparatory scheme had been a vesting of all the property, rights and liabilities transferred to the company in accordance with that scheme and had been effected immediately after the beginning of that year,

(c) that the value of any asset and the amount of any liability of the BBC vested in the successor company in accordance with the preparatory scheme had been the value or (as the case may be) amount determined by or under the scheme or (if there is no such determination) the value or amount assigned to the asset or liability for the purposes of the Account or Accounts prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of their financial year immediately preceding the relevant year,

(d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year, and

(e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.

(3) If an Account or Accounts are prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of the residual part of a financial year, that residual part shall be treated as a financial year of the BBC for the purposes of sub-paragraph (2)(c).

(4) The relevant accounts shall not be regarded as statutory accounts for the purposes of paragraph 2.

(5) In this paragraph—

"accounting reference period" has the meaning given by section 224 of the Companies Act 1985;

"complete financial year" means a financial year ending with 31st March;

"the relevant year", in relation to any transfer date, means the last complete financial year ending before that date;

"a transfer date", in relation to a successor company, means the date of the coming into force of any preparatory scheme in accordance with which property, rights or liabilities are transferred to that company.

Application of the Trustee Investments Act 1961

5 (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of a successor company during the calendar year in which the transfer date falls ("the first investment year") or during any year following that year, the successor company shall be deemed to have paid a dividend as there mentioned—

(a) in every year preceding the first investment year which is included in the relevant five years, and

(b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.

(2) In sub-paragraph (1)—

"the relevant five years" means the five years immediately preceding the year in which the investment in question is made or proposed to be made;

"the transfer date", in relation to a successor company, means the first date on which any preparatory scheme in accordance with which property, rights or liabilities are transferred to that company comes into force.