

## SCHEDULES

### SCHEDULE 13

Section 66

#### CONTROL OF A PERSON BY A FOREIGN POWER

##### PART 1

###### CONDITIONS FOR CONTROL

- 1 (1) A person is controlled by a foreign power if one or more of the following conditions are met.
  - (2) Condition 1 is that the foreign power has the right to direct or control, or actually directs or controls, the person's activities (in whole or in part).
  - (3) Condition 2 is that the foreign power holds, directly or indirectly, more than 25% of the shares in the person.
  - (4) Condition 3 is that the foreign power holds, directly or indirectly, more than 25% of the voting rights in the person.
  - (5) Condition 4 is that the foreign power holds the right, directly or indirectly, to appoint or remove an officer of the person.
  - (6) Condition 5 is that—
    - (a) the trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed meet one or more of conditions 1 to 4 (in their capacity as such) in relation to the person, and
    - (b) the foreign power has the right to direct or control, or actually directs or controls, the activities of that trust or entity (in whole or in part).
- 2 In this Schedule “officer”—
  - (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity;
  - (b) in relation to a partnership, means a partner or person purporting to act as a partner;
  - (c) in relation to an unincorporated association other than a partnership, means a person who is concerned in the management or control of the association or purports to act in the capacity of a person so concerned.

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## PART 2

### INTERPRETATION OF PART 1

#### *Interpretation*

3 This Part makes provision about the interpretation of Part 1 of this Schedule.

#### *Joint interests*

4 If a foreign power holds a share or right jointly with another person (whether or not a foreign power), each of those persons is to be taken to hold that share or right.

#### *Joint arrangements*

5 (1) If shares or rights held by a foreign power and shares or rights held by another person (whether or not a foreign power) are the subject of a joint arrangement between those persons, each of those persons is to be taken to hold the combined shares or rights of both persons.

(2) A “joint arrangement” is an arrangement between the holders of shares (or rights) that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement.

(3) For the meaning of “arrangement”, see [paragraph 12](#).

#### *Calculating shareholdings*

6 (1) In relation to a person that has a share capital, a reference to holding more than 25% of the shares in that person is to holding shares comprised in the issued share capital of that person of a nominal value exceeding (in aggregate) 25% of that share capital.

(2) In relation to a person that does not have a share capital—

- (a) a reference to holding shares in that person is to holding a right to share in the capital or, as the case may be, profits of that person;
- (b) a reference to holding more than 25% of the shares in that person is to holding a right or rights to share in more than 25% of the capital or, as the case may be, profits of that person.

#### *Voting rights*

7 (1) A reference to the voting rights in a person is to the rights conferred on shareholders in respect of their shares (or, in the case of a person not having a share capital, on members) to vote at general meetings of the person on all or substantially all matters.

(2) In relation to a person that does not have general meetings at which matters are decided by the exercise of voting rights—

- (a) a reference to exercising voting rights in the person is to be read as a reference to exercising rights in relation to the person that are equivalent to those of a person entitled to exercise voting rights in a company;
- (b) a reference to exercising more than 25% of the voting rights in the person is to be read as a reference to exercising the rights under the constitution of the

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person to block changes to the overall policy of the person or to the terms of its constitution.

- 8 In applying this Schedule, the voting rights in a person are to be reduced by any rights held by that person.

*Shares or rights held “indirectly”*

- 9 (1) A foreign power holds a share “indirectly” if the foreign power has a majority stake in a person and that person—
- (a) holds the share in question, or
  - (b) is part of a chain of persons—
    - (i) each of which (other than the last) has a majority stake in the person immediately below it in the chain, and
    - (ii) the last of which holds the share.
- (2) A foreign power holds a right “indirectly” if the foreign power has a majority stake in a person and that person—
- (a) holds that right, or
  - (b) is part of a chain of persons—
    - (i) each of which (other than the last) has a majority stake in the person immediately below it in the chain, and
    - (ii) the last of which holds that right.
- (3) For the purposes of sub-paragraphs (1) and (2), a foreign power has a “majority stake” in a person if—
- (a) the foreign power holds a majority of the voting rights in the person,
  - (b) the foreign power is a member of the person and has the right to appoint or remove an officer of the person,
  - (c) the foreign power is a member of the person and controls alone, or pursuant to an agreement with other shareholders or members, a majority of the voting rights in the person, or
  - (d) the foreign power has the right to exercise, or actually exercises, dominant influence or control over the person.

*Shares held by nominees*

- 10 A share held by a person as a nominee for another is to be treated as held by the other (and not by the nominee).

*Rights treated as held by person who controls their exercise*

- 11 (1) Where a person controls a right, the right is to be treated as held by that person (and not by the person who in fact holds the right, unless that person also controls it).
- (2) A person “controls” a right if, by virtue of any arrangement between that person and others, the right is exercisable only—
- (a) by that person,
  - (b) in accordance with that person’s directions or instructions, or
  - (c) with that person’s consent or concurrence.
- 12 (1) For the purposes of this Schedule, “arrangement” includes—

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- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
  - (b) any convention, custom or practice of any kind.
- (2) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

*Rights exercisable only in certain circumstances etc*

- 13 (1) Rights that are exercisable only in certain circumstances are to be taken into account only—
- (a) where 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.
- (2) But rights that are exercisable by an administrator or by creditors while a person is in relevant insolvency proceedings are not to be taken into account even while the person is in those proceedings.
- (3) “Relevant insolvency proceedings” means—
- (a) administration within the meaning of the Insolvency Act 1986,
  - (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (c) proceedings under the insolvency law of another country or territory during which a person’s assets and affairs are subject to the control or supervision of a third party or creditor.
- (4) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account.

*Rights attached to shares held by way of security*

- 14 Rights attached to shares held by way of security provided by a person are to be treated for the purposes of this Schedule as held by that person—
- (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 that person’s 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 the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person’s interests.

**PART 3**

POWER TO AMEND THRESHOLDS ETC

- 15 (1) The Secretary of State may by regulations amend this Schedule for a permitted purpose.
- (2) The permitted purposes are—

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- (a) to replace any or all references in this Schedule to a percentage figure with references to some other (larger or smaller) percentage figure;
- (b) to change or supplement [Part 1](#) of this Schedule so as to include circumstances (for example, circumstances involving more complex structures) that give a foreign power a level of control over a person broadly similar to the level of control given by the conditions in [paragraph 1](#);
- (c) in consequence of any provision made by virtue of [paragraph \(b\)](#), to change or supplement [Part 2](#) of this Schedule so that circumstances specified in that Part in which a person is to be regarded as holding an interest in another person correspond to any of the conditions in [paragraph 1](#), or would do so but for the extent of the interest.