

SCHEDULE 4

Regulation 35.

“[SCHEDULE 2D TO 1982 ACT]

FURTHER PROVISIONS WITH RESPECT TO CONTROLLERS OF UK COMPANIES

Provisions supplementing sections 60 to 61A

(1) This paragraph applies where—

- (a) a UK company which proposes to appoint a person as managing director or chief executive of the company;
- (b) a person who proposes to become a controller of such a company; or
- (c) a person who is a controller of such a company and who proposes to acquire a notifiable holding in the company,

has served notice on the Secretary of State under subsection (1)(a) of section 60, 61 or 61A above (“the relevant section”).

(2) The Secretary of State may by notice in writing require the person serving the notice or, in a case falling within sub-paragraph (1)(a) above, the person proposed to be appointed to provide such additional information or documents as the Secretary of State may reasonably require for the purpose of deciding whether to serve—

- (a) a notice of objection under the relevant section; or
- (b) a notice imposing conditions under paragraph 3 below.

(3) Where additional information or documents are required from any person by a notice under sub-paragraph (2) above, the time between the giving of that notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b) of the relevant section.

(4) The notice shall be of no effect for the purposes of subsection (1) of the relevant section if either the notice is withdrawn or—

- (a) in the case of a notice under section 60(1)(a) above, the person proposed to be appointed as managing director or chief executive of the company is not so appointed;
- (b) in the case of notice under section 61(1)(a) above, the person by whom it was served does not become a controller of the company; or
- (c) in the case of notice under section 61A(1)(a) above, the person by whom it was served does not acquire the holding specified in the notice,

before the end of the period of one year beginning with the date mentioned in sub-paragraph (5) below.

(5) The date referred to in sub-paragraph (4) above is as follows—

- (a) in a case where the Secretary of State has, before the end of the period mentioned in subsection (1)(b) of the relevant section, given to the person serving the notice such a notification as is mentioned in that provision, the date of that notification;
- (b) in a case where the Secretary of State has, before the end of that period, served a notice imposing conditions on that person in accordance with paragraph 3 below, the date of the service of that notice; and
- (c) in any other case, the date immediately following the end of that period.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(6) The period mentioned in subsection (1)(b) of the relevant section shall be deemed not to expire until fourteen days after the end of the period within which representations may be made in accordance with that section.

Notice of objection where requisite notice not given

(1) This paragraph applies where—

- (a) a UK company appoints a person as managing director or chief executive of the company;
- (b) a person becomes a controller of such a company otherwise than by virtue of an appointment in relation to which section 60 above has effect; or
- (c) a person who is a controller of such a company acquires a notifiable holding in the company,

in contravention of subsection (1)(a) of section 60, 61 or 61A above; and references in this paragraph to the person in breach shall be construed accordingly.

(2) The Secretary of State—

- (a) may serve the person in breach with a notice of objection at any time within three months after he becomes aware of the contravention; and
- (b) for the purpose of deciding whether to serve the person in breach with such a notice or with a notice imposing conditions under paragraph 3 below, may require that person by notice in writing to provide such information or documents as the Secretary of State may reasonably require.

(3) Before serving a notice of objection under sub-paragraph (2) above, the Secretary of State shall serve on the person in breach and, in a case falling within sub-paragraph (1)(a) above, on the person appointed as managing director or chief executive a preliminary written notice—

- (a) stating that he is considering serving a notice of objection on the person in breach; and
- (b) specifying the matters mentioned in sub-paragraph (5) below as respects which he is not satisfied.

(4) A person served with a preliminary notice under sub-paragraph (3) above may, within the period of one month from the date of service of that notice—

- (a) make written representations to the Secretary of State; and
- (b) if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for that purpose by the Secretary of State.

(5) The Secretary of State shall not serve a notice of objection under sub-paragraph (2) above unless it appears to him—

- (a) that the person appointed is or may not be a fit and proper person to be the managing director or chief executive of the company or, as the case may be, that the person in breach is not or may not be a fit and proper person to be a controller of the company or to retain the notifiable holding in the company; or
- (b) that the interests of policy holders and potential policy holders of the company are or may in some other manner be jeopardised by that person's ability to influence the company.

(6) Where representations are made in accordance with this paragraph the Secretary of State shall take them into consideration before serving a notice of objection.

(7) The Secretary of State shall not be obliged to disclose to the person in breach any particulars of the ground on which he is considering the service of a notice of objection.

(8) The period mentioned in sub-paragraph (2)(a) above shall be deemed not to expire until fourteen days after the end of the period within which representations may be made in accordance with this paragraph.

(9) After a notice of objection has been served on a company in relation to a person who is a managing director or chief executive, the company shall forthwith remove that person from that office.

Notices imposing conditions

(1) This paragraph applies where either—

- (a) paragraph 1 above applies and the Secretary of State is entitled to serve a notice of objection under the relevant section; or
- (b) paragraph 2 above applies;

and in this paragraph expressions which are also used in paragraph 1 or 2 above have the same meanings as in that paragraph.

(2) If, in a case falling within sub-paragraph (1)(a) above, the Secretary of State considers that, if certain conditions were complied with—

- (a) by the person serving the notice under subsection (1)(a) of the relevant section; or
- (b) where the notice is under section 60(1)(a) above, by the person proposed to be appointed as managing director or chief executive,

the criteria of sound and prudent management would continue to be or, as the case may be, would be fulfilled in respect of the company, he may, instead of serving a notice of objection under the relevant section, serve a notice requiring the conditions in question to be complied with by that person (“the person concerned”).

A notice under this sub-paragraph shall be served—

- (a) on the person concerned, and
- (b) where that person is proposed to be appointed as managing director or chief executive, on the company.

(3) If, in a case falling within sub-paragraph (1)(b) above, the Secretary of State considers that, if certain conditions were complied with—

- (a) by the person in breach; or
- (b) where the contravention is of section 60(1)(a) above, by the person appointed as managing director or chief executive,

the criteria of sound and prudent management would continue to be or, as the case may be, would be fulfilled in respect of the company, he may, instead of serving a notice of objection under paragraph 2 above, serve a notice requiring the conditions in question to be complied with by that person (“the person concerned”).

A notice under this sub-paragraph shall be served—

- (a) on the person concerned, and
- (b) where that person has been appointed as managing director or chief executive, on the company.

(4) Before serving a notice under sub-paragraph (2) or (3) above, the Secretary of State shall serve on the person concerned and, where that person is proposed to be or has been appointed as managing director or chief executive, on the company a preliminary written notice stating—

- (a) that the Secretary of State is considering serving a notice under that sub-paragraph;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) the conditions which would be required by such a notice to be complied with by the person concerned;
 - (c) the criteria of sound and prudent management which he considers would not be fulfilled in respect of the company if he served neither such a notice nor a notice of objection under subsection (1)(a) of the relevant section or, as the case may be, paragraph 2 above; and
 - (d) that the person on whom the preliminary notice is served may, within the period of one month from the date of service of that notice—
 - (i) make written representations to the Secretary of State; and
 - (ii) if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.
- (5) Where representations are made in accordance with this paragraph the Secretary of State shall take them into consideration before serving a notice under sub-paragraph (2) or (3) above.
- (6) The Secretary of State shall not be obliged to disclose—
- (a) to the person concerned; or
 - (b) where that person is proposed to be or has been appointed as managing director or chief executive, to the company,
- any particulars of the ground on which he is considering the service of a notice under sub-paragraph (2) or (3) above or a notice of objection under the relevant section or, as the case may be, paragraph 2 above.

Objection to existing controller

- (1) Where it appears to the Secretary of State that the criteria of sound and prudent management are not or may not be fulfilled in respect of a UK company by reason of the ability of a person who is a controller of the company to influence the company, he may—
- (a) where that person is the managing director or chief executive, serve on the company; and
 - (b) in any other case, serve on that person,
- a written notice of objection to that person continuing to be a controller of the company.
- (2) Before serving a notice of objection under this paragraph, the Secretary of State shall serve—
- (a) on the person concerned; and
 - (b) where that person is the managing director or chief executive, on the company, a preliminary written notice stating that the Secretary of State is considering serving a notice of objection under this paragraph.
- (3) A notice under sub-paragraph (2) above shall—
- (a) give particulars of the rights conferred by sub-paragraph (4) below; and
 - (b) specify the criteria of sound and prudent management which are not or may not be fulfilled in respect of the company.
- (4) A person served with a notice under sub-paragraph (2) above may, within the period of one month beginning with the day on which the notice is served—
- (a) make written representations to the Secretary of State; and
 - (b) if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.
- (5) Where representations are made in accordance with this paragraph, the Secretary of State shall take them into consideration before serving a notice of objection.

(6) The Secretary of State shall not be obliged to disclose to the person concerned or to the company any particulars of the ground on which he is considering the service of a notice of objection.

(7) After a notice of objection has been served on a company in relation to a person who is a managing director or chief executive, the company shall forthwith remove that person from that office.

Restrictions etc. as respects shareholdings

(1) This paragraph applies where a person—

- (a) has contravened section 61 or 61A above by becoming a shareholder controller of a UK company, or by acquiring a notifiable holding in such a company;
- (b) having become such a controller or acquired such a holding in contravention of section 61 or 61A above, continues to be such a controller or to retain that holding after being served with a notice of objection under paragraph 2 above;
- (c) having been served with a notice imposing conditions under paragraph 3 above in a case where—
 - (i) a notice of objection to his becoming such a controller or acquiring such a holding would otherwise have been served under section 61 or 61A above, or
 - (ii) a notice of objection to his continuing to be such a controller or retaining such a holding would otherwise have been served under paragraph 2 above,has failed to comply with any of the conditions specified in the notice under paragraph 3 above; or
- (d) having been served with a notice of objection under paragraph 4 above to his continuing to be such a controller,

continues to be such a controller; and references in this paragraph to the person in breach shall be construed accordingly.

(2) The Secretary of State may by notice in writing served on the person in breach direct that any specified shares to which this paragraph applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of or agreement to transfer the shares, or (in the case of unissued shares) any transfer of or agreement to transfer the right to be issued with the shares, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of the shares or in pursuance of any offer made to the holder of the shares;
- (d) except in a liquidation, no payment shall be made of any sums due from the company in respect of the shares, whether by way of a repayment of capital or otherwise.

(3) The court may, on the application of the Secretary of State, by order direct that any specified shares to which this paragraph applies—

- (a) shall be sold; and
- (b) if they are for the time being subject to any restrictions under sub-paragraph (2) above, shall cease to be subject to those restrictions.

(4) Where an order has been made under sub-paragraph (3) above the court may, on the application of the Secretary of State, make such further order relating to the sale or transfer of the shares as it thinks fit.

(5) Where the shares are sold in pursuance of an order under this section—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) the net proceeds of the sale shall be paid into court for the benefit of persons beneficially interested in them; and
 - (b) any such person may apply to the court for the whole or any part of the proceeds to be paid to him.
- (6) This paragraph applies to—
- (a) all shares in the company which—
 - (i) are held by the person in breach; and
 - (ii) were not so held immediately before he became a shareholder controller of the company or, as the case may be, acquired a notifiable holding in the company; and
 - (b) where the person in breach became such a controller or acquired such a holding as a result of the acquisition by him of shares or voting rights in another company, all shares in that company which—
 - (i) are held by him; and
 - (ii) were not so held immediately before he became such a controller or acquired such a holding.
- (7) Sub-paragraph (6) above shall have effect as if references to the person in breach acquiring a notifiable holding in the company were—
- (a) in a case falling within paragraph (a), (b) or (c)(ii) of sub-paragraph (1) above, references to his doing so in contravention of section 61 or 61A above; and
 - (b) in a case falling within paragraph (c)(i) of sub-paragraph (1) above, references to his doing so after the service of the notice imposing conditions under paragraph 3 above.
- (8) A copy of the notice served on the person in breach under sub-paragraph (2) above shall be served on the company to whose shares or voting rights it relates.
- (9) The jurisdiction conferred by this paragraph shall be exercisable by the High Court and the Court of Session.”