

*Status: Point in time view as at 01/01/1993.*

*Changes to legislation: There are currently no known outstanding effects for the Banking Act 1987 (repealed), SCHEDULE 3. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3

#### MINIMUM CRITERIA FOR AUTHORISATION

##### **Modifications etc. (not altering text)**

**C1** Sch. 3 applied with modifications (1.1.1993) by S.I. 1992/3218, reg. 23(3).

##### *Directors etc. to be fit and proper persons*

- 1 (1) Every person who is, or is to be, a director, controller or manager of the institution is a fit and proper person to hold the particular position which he holds or is to hold.
- (2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of depositors or potential depositors of the institution are, or are likely to be, in any way threatened by his holding that position.
- (3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—
  - (a) committed an offence involving fraud or other dishonesty or violence;
  - (b) contravened any provision made by or under any enactment appearing to the Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
  - (c) engaged in any business practices appearing to the Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business;
  - (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

##### *Business to be directed by at least two individuals*

- 2 At least two individuals effectively direct the business of the institution.

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### *Composition of board of directors*

- 3 In the case of an institution incorporated in the United Kingdom the directors include such number (if any) of directors without executive responsibility for the management of its business as the Bank considers appropriate having regard to the circumstances of the institution and the nature and scale of its operations.

### *Business to be conducted in prudent manner*

- 4 (1) The institution conducts, or, in the case of an institution which is not yet carrying on a deposit-taking business, will conduct its business in a prudent manner.
- (2) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain [<sup>F1</sup>own funds]which, together with other financial resources available to the institution of such nature and amount as are considered appropriate by the Bank, are—
- (a) of an amount which is commensurate with the nature and scale of the institution's operations; and
  - (b) of an amount and nature sufficient to safeguard the interests of its depositors and potential depositors, having regard to the particular factors mentioned in sub-paragraph (3) below and any other factors appearing to the Bank to be relevant.
- [<sup>F2</sup>(3) The particular factors referred to above are—
- (a) the nature and scale of the institution's operations; and
  - (b) the risks inherent in those operations and in the operations of any other undertaking in the same group so far as capable of affecting the institution.
- (3A) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain own funds which amount to not less than ecu 5 million (or an amount of equal value denominated wholly or partly in another unit of account).]
- (4) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets mature, to the factors mentioned in sub-paragraph (3) above and to any other factors appearing to the Bank to be relevant.
  - (5) For the purposes of sub-paragraph (4) above the Bank may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the institution and facilities available to it which are capable of providing liquidity within a reasonable period.
  - (6) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets (including provision for bad or doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which it will or may incur.
  - (7) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and

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other records of its business and adequate systems of control of its business and records.

(8) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the institution to be prudently managed and the institution to comply with the duties imposed on it by or under this Act and in determining whether those systems are adequate the Bank shall have regard to the functions and responsibilities in respect of them of any such directors of the institution as are mentioned in paragraph 3 above.

(9) Sub-paragraphs (2) to (7) above are without prejudice to the generality of sub-paragraph (1) above.

[<sup>F3</sup>(10) In this paragraph 'ecu' and 'own funds' have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.]

#### Textual Amendments

- F1** Words in Sch. 3 para. 4(2) substituted (1.1.1993) by S.I. 1992/3218, reg. 27(1) (with savings in reg. 46(a)).
- F2** Sch. 3 paras. 4(3)(3A) substituted (1.1.1993) for para. 4(3) by S.I. 1992/3218, reg. 27(2) (with savings in reg. 46(a)).
- F3** Sch. 3 para. 4(10) substituted (1.1.1993) by S.I. 1992/3218, reg. 27(3) (with savings in reg. 46(a)).

#### Modifications etc. (not altering text)

- C2** Sch. 3 para. 4(3A) amended (1.1.1993) by S.I. 1992/3218, reg. 83, Sch. 11 Pt. II para. 4(2).

#### *Integrity and skill*

5 The business of the institution is or, in the case of an institution which is not yet carrying on a deposit-taking business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

#### *Minimum net assets*

[<sup>F4</sup>6 (1) The institution will at the time when authorisation is granted to it have initial capital amounting to not less than ecu 5 million (or an amount of equal value denominated wholly or partly in another unit of account).

(2) In this paragraph 'ecu' and 'initial capital' have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.]

#### Textual Amendments

- F4** Sch. 3 para. 6 substituted (1.1.1993) by S.I. 1992/3218, reg. 27(4) (with savings in 46(a)).

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