

## SCHEDULE

### PART II

#### INTERPRETATION

##### **Meaning of specified type of body corporate**

1. In this Schedule “specified type of body corporate” means a body corporate which is—
- (i) a company or an industrial and provident society,
  - (ii) a body corporate formed in a member State other than the United Kingdom,
  - (iii) a body corporate formed in a relevant British overseas territory (within the meaning of section 14 (power to make advances secured on land overseas) of the Act), or
  - (iv) a body corporate formed in any of the following countries: Austria, Iceland, Norway, Sweden, Switzerland, Finland and Liechtenstein.

##### **Meaning of one tier organisation**

2. In this Schedule “one tier organisation” means a body corporate which does not have the capacity to have subordinate organisations.

##### **Meaning of making advances indirectly secured on land**

3.—(1) In this Schedule “making advances indirectly secured on land” means that the appropriate vehicle, together with one or more persons (who together with the appropriate vehicle shall be known as “the lenders”), makes an advance to another person (“the borrower”) in consideration for which the borrower mortgages legal estate in land to one or more persons (who may or may not be any one or more of the lenders) who may hold the mortgage on trust for the lenders; provided that the appropriate vehicle holds a beneficial and legal, or beneficial, interest in such land and is satisfied that at the time of making such an advance the total amount advanced or to be advanced by the lenders does not exceed the value at that time or the expected value at that time of the land which is to secure such total amount.

(2) For the purposes of sub-paragraph (1) above, “land” means land in the United Kingdom or in any country or territory for the time being designated by Order under section 14 (power to make advances secured on land overseas) of the Act.

(3) For the purposes of sub-paragraph (1) above, where the advance is made by instalments, in relation to land which is to secure the first instalment the appropriate vehicle must be satisfied that the amount of the first instalment does not exceed the value of such land at the time the first instalment is paid.

(4) For the purposes of this Schedule, where the advance is made by instalments, reference to the time or occasion when the appropriate vehicle makes an advance is reference to the time or occasion when it pays the first of the instalments, disregarding for this purpose any instalment which is to be applied towards payment of the deposit in respect of the purchase of the land which is to secure the advance.

##### **Meaning of group interest provision**

- 4.—(1) In this Schedule “the group interest provision” means a condition to the effect that—
- (a) where a society has a relevant holding in an appropriate vehicle and becomes aware that a subordinate organisation of that appropriate vehicle is within the prohibited range, the

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society shall dispose of sufficient shares or corresponding membership rights, as the case may be, that it ceases to have a relevant holding, and shall do so as soon as it is conveniently practicable to do so without undue loss, and

- (b) where a society holds 2% or more of shares or corresponding membership rights in an appropriate vehicle and by virtue of that investment in that appropriate vehicle has a relevant holding amounting to a relevant interest in a relevant body corporate, the society shall, within four months of the end of each financial year of that relevant body corporate at which year end the society has such an interest, seek to obtain a group income certificate in relation to that relevant body corporate, and, if no such certificate as is required by this paragraph is so obtained by the society for two successive financial years of the relevant body corporate, the society shall—
  - (i) notify the Commission in writing, within 14 days of the end of the four months following the end of the second such financial year, that sub-paragraph (ii) below applies to it,
  - (ii) as soon as it is conveniently practicable to do so without undue loss, dispose of sufficient shares or corresponding membership rights that it ceases to have a relevant interest in that body corporate, and
  - (iii) within 14 days following that cessation, notify the Commission in writing thereof.

(2) For the purposes of sub-paragraph (1)(a) above, a subordinate organisation comes within the prohibited range where it comes within a description in paragraph 6(2)(a), (b) or (c) below (or would do if it were a vehicle subject to the provisions of paragraph 6(2) below).

(3) For the purposes of sub-paragraph (1)(b) above, “relevant interest” means—

- (a) shares or corresponding membership rights in a body corporate which is not a company limited by shares, or
- (b) sufficient shares in a body corporate which is a company limited by shares to give the society direct ownership or direct and indirect ownership (determined as specified in the definition of “subordinate organisation” in paragraph 9 below) of 15% or more of the ordinary share capital (as defined within that definition) of that company.

(4) For the purposes of sub-paragraph (1)(b) above, “relevant body corporate” means a particular body designated under section 18 of the Act or any body corporate designated by description under this or another Order under section 18 of the Act, which has any subordinate organisation which is not an associated body of the society.

(5) For the purposes of this paragraph—

- (a) “group income certificate”, in relation to a relevant body corporate, means a certificate signed by a director of the relevant body corporate (and adequately supported by a report of its auditors) stating that at least 60% of the consolidated gross income of the relevant body corporate and its subordinate organisations for the financial year to which the certificate relates was derived, subject to sub-paragraph (6) below, from carrying on qualifying activities, and
- (b) “qualifying activities” means activities for which purpose a society has power to invest in and support, or support a qualifying body.

(6) For the purposes of sub-paragraph (5)(a) above—

- (a) in calculating the consolidated gross income of the relevant body corporate and its subordinate organisations derived from carrying on qualifying activities, any income derived by such a subordinate organisation, or by any particular body designated under section 18 of the Act, or any body corporate designated by description under this Order or another Order under section 18 of the Act, other than an appropriate estate agency vehicle, from activities which are qualifying activities only if they are undertaken together with

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estate agency work, shall be deemed to be derived from carrying on activities which are not qualifying activities, and

- (b) a certificate is adequately supported by a report of the auditors of a relevant body corporate where the auditors have reported at least to the effect that—
  - (i) they have examined the certificate,
  - (ii) they have inquired into the affairs of the relevant body corporate, and obtained information from the society, to an extent necessary to consider whether there is any significant likelihood that the certificate is untrue in any material particular, and
  - (iii) they consider that there is no significant likelihood that the certificate is untrue in any material particular.

### **Meaning of lending certification condition for appropriate lending vehicles**

5.—(1) In this Schedule “the lending certification condition for appropriate lending vehicles” means a condition to the effect that where a society holds shares or corresponding membership rights in an appropriate vehicle—

- (a) the society shall for each financial year of the appropriate vehicle ending more than 18 months after the acquisition of such shares or corresponding membership rights seek to obtain within four months after the end of that year a certificate signed by a director of the appropriate vehicle stating that throughout that year the appropriate vehicle complied with the determined requirements, and
- (b) if no such certificate is so obtained by the society for two successive financial years of the appropriate vehicle, the society shall dispose of its shares or corresponding membership rights, as the case may be, in that appropriate vehicle as soon as it is conveniently practicable to do so without undue loss.

(2) In sub-paragraph (1)(a) above “the determined requirements” means the following requirements—

- (a) a requirement that the appropriate vehicle shall maintain a system for ensuring (or shall satisfy itself that adequate arrangements are made for ensuring) the safe custody of all documents relating to the arrangement referred to in paragraph 3 above or otherwise relating to land which is mortgaged to the appropriate vehicle;
- (b) a requirement that the arrangements made for assessing the adequacy of the security for any advance to be directly or indirectly secured on land which is to be made by the appropriate vehicle shall be such as may reasonably be expected to ensure that—
  - (i) an assessment will be made on the occasion of each advance;
  - (ii) each assessment will be made by a person holding office in or employed by the appropriate vehicle who is competent to make the assessment and is not a person disqualified from assessment;
  - (iii) each person making the assessment will have furnished to him a written report on the value and, as appropriate, the expected value of the land at that time and any factors likely materially to affect its value made by a person who is competent to value the land in question and who is not a person disqualified from valuation, and
  - (iv) no authorisation of any advance will be made by a person disqualified from assessment.

(3) For the purposes of sub-paragraph (2)(b) above—

- (a) in relation to any land which is to secure an advance where the advance is to be made following a disposition of the land, the following persons are persons disqualified from assessment, that is to say—

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- (i) any person, other than the appropriate vehicle making the loan, having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer; and
- (ii) any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his; and
- (b) in relation to any land which is to secure an advance, the following persons are persons disqualified from valuation, that is to say—
  - (i) the directors and any other officer or employee of the appropriate vehicle who makes assessments of the adequacy of securities for advances by the appropriate vehicle or who authorises the making of such advances;
  - (ii) where the appropriate vehicle has made, or undertaken to make, to any person a payment for introducing to it an applicant for the advance, that person;
  - (iii) where the advance is to be made following a disposition of the land, any person having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer; and
  - (iv) where the advance is to be made following a disposition of the land, any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.
- (4) For the purposes of sub-paragraph (3) above—
  - (a) any two employers are associated if one is a body corporate of which the other (directly or indirectly) has control or if both are bodies corporate of which a third person directly or indirectly has control; and the expression “associated employer” shall be construed accordingly;
  - (b) “commission” includes any gift, bonus or benefit; and
  - (c) a person shall be taken to have a financial interest in the disposition of any land if, but only if, he would, on a disposition of that land, be entitled (whether directly or indirectly, and whether in possession or not) to the whole or part of the proceeds of the disposition.

#### **Specification of particular restrictions for appropriate lending vehicles**

6.—(1) In this Schedule “the particular restrictions for appropriate lending vehicles” means the provisions set out in sub-paragraph (2) below.

- (2) A body corporate is not an appropriate lending vehicle for a society where—
  - (a) it is a market maker,
  - (b) it is an authorised institution, or its business requires it to be authorised, for the purposes of the Banking Act 1987(1), or
  - (c) its business includes activities in the range from which the society is restricted.

(3) The restriction in sub-paragraph (2) will not apply where there is no relevant holding of the society in the appropriate vehicle.

#### **Meaning of “relevant holding”**

- 7. A “relevant holding” for the purposes of paragraphs 4 and 6 above means:
  - (a) in the case of a company limited by shares sufficient shares to result in the society having direct ownership or direct and indirect ownership (determined as specified in the definition of “subordinate organisation” in paragraph 9 below) of 2% or more of the issued ordinary

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(1) 1987 c. 22.

share capital (as defined within the definition of “subordinate organisation” in paragraph 9 below) of the company; or

- (b) in the case of any other body corporate, 2% or more of the issued shares or corresponding membership rights in the body corporate.

### **Meaning of activities in the range from which a society is restricted**

**8.—(1)** For the purpose of paragraph 6(2)(c) above an activity of a body corporate is an activity in the range from which a society is restricted where it is an activity which the society could not undertake by reason of the fact that—

- (a) it has not adopted a particular adoptable power, whether because the power is not available to it or for any other reason, or
- (b) the activity would be in contravention of a restriction upon the extent of a power the society has adopted being either a restriction derived from the Act or any instrument under the Act or a restriction assumed by the society.

(2) Notwithstanding sub-paragraph (1) above, an activity of a body corporate is not an activity within the range from which a society is restricted where it is an activity which comprises the continuation, during the first fifteen months following the date on which the body corporate first became associated with the society, of any activity carried on as part of the business of that body corporate immediately before that date.

### **Other definitions**

**9.** In this Schedule, except where the context otherwise requires—

“company limited by shares” has the meaning which it bears for the purposes of the Companies Act 1985(2) or the Companies (Northern Ireland) Order 1986(3);

“estate agency work” has the meaning which it bears in the Estate Agents Act 1979(4);

“investment” in the definition of “market maker” has the meaning which it bears in section 1 (investment business) of the Financial Services Act 1986(5);

“market maker” means—

- (a) in relation to the United Kingdom, a market maker in securities of a particular kind,
- (b) in relation to any country or territory outside the United Kingdom, a person who holds himself out at all normal times as willing to buy and sell at a price specified by him investments of a particular kind which are traded on any exchange in that country or territory;

“market maker in securities of a particular kind” means a person who, for the purposes of subsection (4) of section 67 (depository receipts) of the Finance Act 1986(6), is so described in section 69(7) (depository receipts: supplementary) of that Act;

“subordinate organisation” means, in relation to a body corporate, another body corporate of which the first owns directly or indirectly 5% or more of the ordinary share capital, and for this purpose—

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(2) 1985 c. 6.

(3) S.I.1986/1032 (N.I.6).

(4) 1979 c. 38; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 1, Part I, paragraph 40.

(5) 1986 c. 60.

(6) 1986 c. 41.

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- (a) “ordinary share capital” shall have the meaning which it has in section 832 (interpretation) of the Income and Corporation Taxes Act 1988(7), and
- (b) direct and indirect ownership shall be determined in accordance with methods the same as those set out in section 838 (subsidiaries) of that Act for determining whether a body corporate is a class of subsidiary of another.

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(7) 1988 c. 1.