

Schedule 1

[ss. 16 & 911]

Parent Undertakings and Subsidiary Undertakings**1. Interpretation**

In this Schedule—

shares (股份)—

- (a) in relation to an undertaking having a share capital, means the allotted shares;
- (b) in relation to an undertaking having capital in a form other than share capital, means the right to share in the capital of the undertaking; or
- (c) in relation to an undertaking not having any capital, means—
 - (i) the interest giving a right to share in the profits, or giving rise to a liability to contribute to the losses, of the undertaking; or
 - (ii) the interest giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of its being wound up;

undertaking (企業) means—

- (a) a body corporate;
- (b) a partnership; or
- (c) an unincorporated association carrying on a trade or business, whether for profit or not.

2. Parent undertaking

- (1) For the purposes of this Ordinance, an undertaking is a parent undertaking of another undertaking if—

- (a) where both undertakings are bodies corporate, it is a holding company of that other undertaking; or
 - (b) in any other case—
 - (i) it holds a majority of the voting rights in that other undertaking;
 - (ii) it is a member of that other undertaking and has the right to appoint or remove a majority of that other undertaking's board of directors; or
 - (iii) it is a member of that other undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in that other undertaking.
- (2) For the purposes of this Ordinance, an undertaking is also a parent undertaking of another undertaking if it has the right to exercise a dominant influence over that other undertaking by virtue of—
- (a) the provisions contained in any document constituting or regulating that other undertaking; or
 - (b) a contract in writing that—
 - (i) is of a kind authorized by any document constituting or regulating that other undertaking; and
 - (ii) is permitted by the law under which that other undertaking is established.
- (3) In subsection (1)(b), a reference to the voting rights in an undertaking is—
- (a) in the case of an undertaking having a share capital, a reference to the rights given to the members in respect of their shares; or
 - (b) in the case of an undertaking not having a share capital—

- (i) if the undertaking is required to hold general meetings at which matters are decided by the exercise of voting rights, a reference to the rights given to the members to vote at the general meetings on all matters or on substantially all matters; or
 - (ii) if the undertaking is not required to hold such general meetings, a reference to the rights under the undertaking's constitution to direct the undertaking's overall policy or to alter the terms of that constitution.
- (4) For the purposes of subsection (1)(b), an undertaking is a member of another undertaking if—
 - (a) a person acting on behalf of it, or of any of its subsidiary undertakings, holds shares in that other undertaking; or
 - (b) any of its subsidiary undertakings is a member of that other undertaking.
- (5) For the purposes of subsection (1)(b)(ii), a reference to the right to appoint or remove a majority of a board of directors is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the directors on all matters or on substantially all matters.
- (6) For the purposes of subsection (5)—
 - (a) in determining whether an undertaking has the right to appoint or remove a director, a right that is exercisable only with another person's consent is to be disregarded unless no other person has the right; and
 - (b) an undertaking has the right to appoint a director if—
 - (i) it necessarily follows from a person's appointment as a director of the undertaking that the person is appointed as a director of that other undertaking; or

- (ii) the directorship is held by the undertaking itself.
- (7) For the purposes of subsection (2), an undertaking does not have any right to exercise a dominant influence over another undertaking unless—
- (a) it has a right to give directions with respect to the operating and financial policies of that other undertaking; and
 - (b) that other undertaking's directors are, or a majority of them is, obliged to comply with the directions, whether or not the directions are for that other undertaking's benefit.

3. Provisions supplementary to section 2 of this Schedule

- (1) For the purposes of this Schedule, a right held by a subsidiary undertaking of another undertaking is to be regarded as being held by that other undertaking.
- (2) For the purposes of this Schedule—
 - (a) without limiting paragraph (b), a right that is exercisable only in certain circumstances is taken into account—
 - (i) only when the circumstances have arisen and for so long as they continue to exist; or
 - (ii) only when the circumstances are within the control of the person having the right; and
 - (b) a right that is normally exercisable but is temporarily incapable of being exercised continues to be taken into account.
- (3) For the purposes of this Schedule—
 - (a) a right held by a person in a fiduciary capacity is to be regarded as not being held by the person; and

- (b) a right held by a person as nominee for another is to be regarded as being held by that other.
- (4) For the purposes of this Schedule, a right is to be regarded as being held by a person as nominee for another if it is exercisable only on the instructions, or with the consent, of that other.
- (5) For the purposes of this Schedule, a right attached to shares held by way of security is to be regarded as being held by the person providing the security—
 - (a) if, except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in accordance with that person's instructions; or
 - (b) if—
 - (i) the shares are held in connection with the granting of loans as part of normal business activities; and
 - (ii) except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in that person's interests.
- (6) Subsections (3) and (5) do not require a right held by a parent undertaking to be regarded as being held by any of its subsidiary undertakings.
- (7) For the purposes of subsection (5), a right is to be regarded as being exercisable in accordance with the instructions, or in the interests, of an undertaking if it is exercisable in accordance with the instructions, or in the interests (as the case may be) of any group undertaking of the undertaking.
- (8) In this section, an undertaking is a group undertaking of another undertaking if—

- (a) it is a parent or subsidiary undertaking of that other undertaking; or
- (b) it is a subsidiary undertaking of any parent undertaking of that other undertaking.

4. Subsidiary undertaking

- (1) For the purposes of this Ordinance, an undertaking is a subsidiary undertaking of another undertaking if that other undertaking is a parent undertaking of it.
 - (2) For the purposes of this Ordinance, an undertaking is also a subsidiary undertaking of another undertaking if a parent undertaking of it is a subsidiary undertaking of that other undertaking.
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