

SCHEDULE 6

Regulation 22(6).

REQUIREMENTS AS RESPECTS UK INSTITUTIONS

Requirements for carrying on activities etc.

1.—(1) In relation to the carrying on of a home-regulated activity by the provision of services, the requirements of this paragraph are that the institution has given to the UK authority a notice in accordance with paragraph 2 below.

- (2) In relation to the establishment of a branch, the requirements of this paragraph are—
- (a) that the institution has given to the UK authority a notice in accordance with paragraph 2 below;
 - (b) that the UK authority has given to the relevant supervisory authority in the member State concerned the notice which, subject to paragraph 4 below, it is required by paragraph 3(1) or (2) below to give; and
 - (c) that either—
 - (i) the relevant supervisory authority has informed the institution that it may establish the branch; or
 - (ii) the period of two months beginning with the day on which the UK authority gave the relevant supervisory authority the notice mentioned in paragraph (b) above has elapsed.

2. A notice given by an institution to the UK authority is given in accordance with this paragraph if it states—

- (a) the member State in which the institution proposes to carry on home-regulated activities;
- (b) whether the institution intends to establish a branch in that member State;
- (c) if the notice states that the institution does not intend to establish such a branch, the home-regulated activities in relation to which the notice is given; and
- (d) if the notice states that the institution intends to establish such a branch, the requisite details of the branch.

3.—(1) The notice which, subject to paragraph 4 below, the UK authority is required to give in respect of a UK authorised institution is a notice which is addressed to the relevant supervisory authority in the member State identified in the institution's notice under paragraph 2 above and which—

- (a) certifies that the institution is a credit institution which is for the time being authorised by the UK authority under the Banking Act(1) or, as the case may be, the Building Societies Act(2);
- (b) contains the information stated in the institution's notice; and
- (c) if the institution intends to establish a branch in the member State, contains—
 - (i) a statement of the amount of the institution's own funds and the solvency ratio of the institution (calculated in accordance with the Solvency Ratio Directive(3)); and
 - (ii) details of any deposit guarantee scheme which is intended to secure the protection of depositors in the branch.

(1) 1987 c. 22.

(2) 1986 c. 53.

(3) Council Directive 89/647/EEC (OJNo. L386, 30.12.89, p.14), as amended by Commission Directive 91/31/EEC (OJ No. L17, 23.1.91, p.20).

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(2) The notice which, subject to paragraph 4 below, the UK authority is required to give in respect of a UK subsidiary is a notice which is addressed to the relevant supervisory authority in the member State identified in the institution's notice under paragraph 2 above and which—

- (a) certifies that the institution is a financial institution which is a 90 per cent. subsidiary undertaking of a UK authorised institution;
- (b) certifies that the conditions mentioned in regulation 20(5) of these Regulations are fulfilled in relation to the institution;
- (c) certifies that the institution's business is being conducted in a prudent manner;
- (d) contains the information stated in the institution's notice; and
- (e) if the institution intends to establish a branch in the member State, contains a statement of the amount of the institution's own funds and the consolidated solvency ratio of the institution's parent undertaking (calculated in accordance with the Solvency Ratio Directive).

4.—(1) Where the institution's notice under paragraph 2 above states that the institution does not intend to establish a branch in the member State, the notice referred to in paragraph 3(1) or (2) above shall be given within the period of one month beginning with the date on which the institution's notice was received by the UK authority.

(2) Where the institution's notice under paragraph 2 above states that the institution intends to establish a branch in the member State, the UK authority shall, within the period of three months beginning with the date on which the institution's notice was received—

- (a) give the notice referred to in paragraph 3(1) or (2) above; or
- (b) refuse to give such a notice.

(3) The UK authority may not refuse to give such a notice unless, having regard to the homeregulated activities proposed to be carried on, the UK authority doubts the adequacy of the administrative structure or the financial situation of the institution.

(4) Before determining to give or to refuse to give such a notice, the UK authority—

- (a) shall seek and take into account the views of every other authority which it knows is a connected UK authority in relation to any of the home-regulated activities proposed to be carried on; and
- (b) may regard itself as satisfied in relation to any matter relating to those activities which is relevant to the decision if any such authority informs the UK authority that it is so satisfied.

(5) In reaching a determination as to the adequacy of the administrative structure, the UK authority may have regard to the adequacy of management, systems and controls and the presence of relevant skills needed for the activities proposed to be carried on.

(6) Where the institution's notice under paragraph 2 above states that the institution proposes to establish a branch, the UK authority shall, within the period of three months referred to in subparagraph (2) above, notify the institution—

- (a) that it has given the notice referred to in paragraph 3(1) or (2) above, stating the date on which it did so; or
- (b) that it has refused to give the notice, stating the reasons for the refusal and giving particulars of the rights conferred by section 27 of the Banking Act or, as the case may be, section 46 of the Building Societies Act.

Requirements for changing requisite details of branch

5.—(1) Subject to sub-paragraph (2) below, the requirements of this paragraph are—

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- (a) that the institution has given a notice to the UK authority, and to the relevant supervisory authority in the member State in which it has established the branch, stating the details of the proposed change;
- (b) that that authority has received from the UK authority a notice under paragraph 6(1) below; and
- (c) that either that authority has informed the institution that it may make the change, or the period of one month beginning with the day on which it gave that authority the notice mentioned in paragraph (a) above has elapsed.

(2) In the case of a change occasioned by circumstances beyond the institution's control, the requirements of this paragraph are that the institution has, as soon as practicable (whether before or after the change), given a notice to the UK authority, and to the relevant supervisory authority in the member State in which it has established the branch, stating the details of the change.

6.—(1) The UK authority shall, within the period of one month beginning with the date on which the notice under paragraph 5(1) above was received—

- (a) give a notice to the relevant supervisory authority informing it of the details of the proposed change; or
- (b) refuse to give such a notice.

(2) The UK authority may not refuse to give a notice under sub-paragraph (1) above unless, having regard to the changes and to the home-regulated activities proposed to be carried on, the UK authority doubts the adequacy of the administrative structure or the financial situation of the institution.

(3) Before determining to give or to refuse to give such a notice, the UK authority—

- (a) shall seek and take into account the views of any connected UK authority in relation to any changes to the home-regulated activities proposed to be carried on; and
- (b) may regard itself as satisfied in relation to any matter relating to those activities which is relevant to the decision if any such authority informs the UK authority that it is so satisfied.

(4) In reaching a determination as to the adequacy of the administrative structure, the UK authority may have regard to the adequacy of management, systems and controls and the presence of relevant skills needed for the activities proposed to be carried on.

(5) The UK authority shall, within the period of one month referred to in sub-paragraph (1) above, notify the institution—

- (a) that it has given the notice referred to in that sub-paragraph, stating the date on which it did so; or
- (b) that it refused to give the notice, stating the reasons for the refusal and giving particulars of the rights conferred by section 27 of the Banking Act or, as the case may be, section 46 of the Building Societies Act.

Cancellation of compliance with certain requirements

7.—(1) The UK authority may, on an application by a UK subsidiary, direct that any compliance with the requirements of paragraph 1 above in relation to—

- (a) its carrying on of any activity in another member State; or
- (b) its establishment of a branch in another member State,

shall cease to have effect as from such date as may be specified in the direction.

(2) The UK authority shall not give a direction under this paragraph unless—

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- (a) the applicant has given notice of the application to the relevant supervisory authority in the member State concerned; and
 - (b) the UK authority has agreed with the relevant supervisory authority that the direction should be given.
- (3) The date specified in a direction under this paragraph—
- (a) shall not be earlier than the date requested in the application; but
 - (b) subject to that, shall be such date as may be agreed between the UK authority and the relevant supervisory authority.
- (4) The UK authority shall as soon as practicable send a copy of any direction given under this paragraph to the applicant, to the relevant supervisory authority and to every other authority which it knows is a connected UK authority.

Appeals

8.—(1) Section 27 of the Banking Act⁽⁴⁾ (rights of appeal) shall have effect as if the decisions mentioned in subsection (1) included a decision of the Bank to refuse to give a notice under paragraph 3(1) or (2) or 6(1) above.

(2) Section 29 of the Banking Act (determination of appeals) shall have effect as if it included provision that, where the tribunal reverses a decision of the Bank to refuse to give a notice under paragraph 3(1) or (2) or 6(1) above, the tribunal shall direct the Bank to give the notice.

9.—(1) Section 46 of the Building Societies Act⁽⁵⁾ (rights of appeal) shall have effect as if—

- (a) the decisions mentioned in subsection (1) included a decision of the Commission to refuse to give a notice under paragraph 3(1) or (2) or 6(1) above; and
- (b) in relation to such a decision, the reference in that subsection to a building society included a reference to a UK subsidiary.

(2) Section 47 of the Building Societies Act (determination of appeals) shall have effect as if it included provision that, where the tribunal reverses a decision of the Commission to refuse to give a notice under paragraph 3(1) or (2) or 6(1) above, the tribunal shall direct the Commission to give the notice.

(4) 1987 c. 22.

(5) 1986 c. 53.