

## Definition of “subsidiary”

7. (1) In this section the expressions “superior company” and “lower company” are used solely to assist the understanding of its terms and—

(a) are not indicative of the status (in any manner not relevant to this section) of the respective companies vis a vis one another; and

(b) do not constitute definitions to which regard must be had for any other purpose of this Act.

(2) For the purposes of this Act, a company (the “lower company”) is, subject to subsection (5), a subsidiary of another (the “superior company”) if, but only if—

(a) the superior company—

(i) is a shareholder or member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(iii) holds more than half in nominal value of its shares carrying voting rights (other than voting rights which arise only in specified circumstances); or

(iv) holds a majority of the shareholders' or members' voting rights in the lower company; or

(v) is a shareholder or member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the shareholders' or members' voting rights;

or

(b) the superior company has the right to exercise a dominant influence over it—

(i) by virtue of provisions contained in the lower company's constitution; or

(ii) by virtue of a control contract;

or

(c) the superior company has the power to exercise, or actually exercises, dominant influence or control over it; or

(d) the superior company and the lower company are managed by the superior company on a unified basis; or

(e) the lower company is a subsidiary (by virtue of the application of any of the provisions of this section) of any company which is the superior company's subsidiary (by virtue of such application).

(3) For the purposes of subsection (2)(a)(i), the composition of the lower company's board of directors shall be regarded as being controlled by the superior company if, but only if, the latter company, by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships.

(4) In applying subsection (3), the superior company shall be deemed to have power to appoint to a directorship in relation to which any of the following conditions is satisfied—

(a) that a person cannot be appointed to the directorship without the exercise in his or her favour by the superior company of such a power as is mentioned in that subsection; or

(b) that a person's appointment to the directorship follows necessarily from his or her appointment as director of the superior company.

(5) In determining whether the lower company is a subsidiary of the superior company—

(a) any shares held or power exercisable by the superior company in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for the superior company (except where the latter company is concerned only in a fiduciary capacity), or

(ii) by, or by a nominee for, a subsidiary of the superior company, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by the superior company;

(c) any shares held or power exercisable by the superior company or a nominee for the superior company or a subsidiary of it shall be treated as not held or exercisable by the superior company where the shares are so held or the power is so exercisable by way of security but only if such power or the rights attaching to such shares are exercised in accordance with instructions received from the person providing the security;

(d) any shares held or power exercisable by the superior company or by a nominee for the superior company or a subsidiary of it shall be treated as not held or exercisable by the superior company if the ordinary business of the superior company or its subsidiary, as the case may be, includes the lending of money and the shares are so held or the power is so exercisable by way of security but only if such power or the rights attaching to such shares are exercised in the interests of the person providing the security.

(6) For the purposes of subsection (2)(a)(iv) and (v), the total of the voting rights of the shareholders or members in the lower company shall be reduced by the following—

(a) the voting rights attached to shares held by the lower company in itself; and

(b) the voting rights attached to shares held in the lower company by any of its subsidiaries; and

(c) the voting rights attached to shares held by a person acting in his or her own name but on behalf of the lower company or one of the lower company's own subsidiaries.

(7) For the purposes of subsection (2)(b), a company shall not be regarded as having the right to exercise a dominant influence over another company unless it has a right to give directions with respect to the operating and financial policies of that other company which its directors are obliged to comply with.

(8) In subsection (2)(b) “control contract” means a contract in writing conferring such a right as is there referred to which—

(a) is of a kind authorised by the constitution of the company in relation to which the right is exercisable; and

(b) is permitted by the law under which that company is established.

(9) Subsection (7) shall not be read as affecting the construction of the expression “actually exercises dominant influence” in subsection (2)(c).

(10) If a document created before the commencement of this section defines the expression “subsidiary” by reference to section 155 of the Act of 1963, then, for the avoidance of doubt, the construction provided in respect of that expression by the document is not affected by this section in the absence of an agreement to the contrary by the parties to the document.

(11) In this section—

“company” includes any body corporate;

“equity share capital” means, in relation to a company, its issued share capital excluding any part of it which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.