

SCHEDULES

SCHEDULE 9

APPROVED SHARE OPTION SCHEMES AND PROFIT SHARING SCHEMES

PART I

GENERAL

- 1 (1) Subject to the provisions of this Schedule, on the application of a body corporate (“the grantor”) which has established a share option scheme or a profit sharing scheme, the Board shall approve the scheme if they are satisfied that it fulfils such requirements of Part II and this Part as apply in relation to the scheme in question, and the requirements of Part III, IV or V of this Schedule; and in this Schedule—
 - “the relevant requirements” means, in relation to any scheme, the requirements of this Schedule by reference to which the scheme is approved; and
 - “savings-related share option scheme” means a scheme in relation to which the relevant requirements include the requirements of Part III of this Schedule.
- (2) An application under sub-paragraph (1) above shall be made in writing and contain such particulars and be supported by such evidence as the Board may require.
- (3) Where the grantor has control of another company or companies, the scheme may be expressed to extend to all or any of the companies of which it has control and in this Schedule a scheme which is expressed so to extend is referred to as a “group scheme”.
- (4) In relation to a group scheme the expression “participating company” means the grantor or any other company to which for the time being the scheme is expressed to extend.
- 2 (1) The Board shall not approve a scheme under this Schedule if it appears to them that it contains features which are neither essential nor reasonably incidental to the purpose of providing for employees and directors benefits in the nature of rights to acquire shares or, in the case of a profit sharing scheme, in the nature of interests in shares.
- (2) A profit sharing scheme shall not be approved under paragraph 1 above unless the Board are satisfied that, whether under the terms of the scheme or otherwise, every participant in the scheme is bound in contract with the grantor—
 - (a) to permit his shares to remain in the hands of the trustees throughout the period of retention; and
 - (b) not to assign, charge or otherwise dispose of his beneficial interest in his shares during that period; and
 - (c) if he directs the trustees to transfer the ownership of his shares to him at any time before the release date, to pay to the trustees before the transfer

Status: This is the original version (as it was originally enacted).

- takes place a sum equal to income tax at the basic rate on the appropriate percentage of the locked-in value of the shares at the time of the direction; and
- (d) not to direct the trustees to dispose of his shares at any time before the release date in any other way except by sale for the best consideration in money that can reasonably be obtained at the time of the sale or, in the case of redeemable shares in a workers' cooperative, by redemption.
- (3) The Board must be satisfied in the case of a savings-related share option scheme or a profit sharing scheme—
- (a) that there are no features of the scheme (other than any which are included to satisfy requirements of this Schedule) which have or would have the effect of discouraging any description of employees or former employees who fulfil the conditions in paragraph 26(1) or, as the case may be, 36(1) below from actually participating in the scheme; and
- (b) where the grantor is a member of a group of companies, that the scheme does not and would not have the effect of conferring benefits wholly or mainly on directors of companies in the group or on those employees of companies in the group who are in receipt of the higher or highest levels of remuneration.
- (4) For the purposes of sub-paragraph (3) above “a group of companies” means a company and any other companies of which it has control.
- 3 (1) If, at any time after the Board have approved a share option scheme, any of the relevant requirements ceases to be satisfied or the grantor fails to provide information requested by the Board under paragraph 6 below, the Board may withdraw the approval with effect from that time or such later time as the Board may specify; but where rights obtained under a savings-related share option scheme before the withdrawal of approval from the scheme under this paragraph are exercised after the withdrawal, section 185(3) shall apply in respect of the exercise as if the scheme were still approved.
- (2) If at any time after the Board have approved a profit sharing scheme—
- (a) a participant is in breach of any of his obligations under paragraph 2(2)(a), (c) and (d) above; or
- (b) there is, with respect to the operation of the scheme, any contravention of any of the relevant requirements, Schedule 10, the scheme itself or the terms of the trust referred to in paragraph 30(1)(c) below; or
- (c) any shares of a class of which shares have been appropriated to the participants receive different treatment in any respect from the other shares of that class, in particular, different treatment in respect of—
- (i) the dividend payable;
- (ii) repayment;
- (iii) the restrictions attaching to the shares; or
- (iv) any offer of substituted or additional shares, securities or rights of any description in respect of the shares; or
- (d) the Board cease to be satisfied that the scheme complies with the requirements of paragraph 2(3) above or paragraph 36 below; or
- (e) the trustees, the grantor or, in the case of a group scheme, a company which is or has been a participating company fail or fails to furnish any information which they are or it is required to furnish under paragraph 6 below,

the Board may, subject to sub-paragraph (3) below, withdraw the approval with effect from that time or from such later time as the Board may specify.

- (3) It shall not be a ground for withdrawal of approval of a profit sharing scheme that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which the shares were issued, treatment which is less favourable than that accorded to shares issued before that date.

- 4 If an alteration is made in the scheme at any time after the Board have approved the scheme, the approval shall not have effect after the date of the alteration unless the Board have approved the alteration.

- 5 If aggrieved—

- (a) in any case, by the failure of the Board to approve the scheme or to approve an alteration in the scheme or by the withdrawal of approval; or
- (b) in the case of a savings-related share option scheme, by the failure of the Board to decide that a condition subject to which the approval has been given is satisfied; or
- (c) in the case of a profit sharing scheme, by the failure of the Board to approve an alteration in the terms of the trust referred to in paragraph 30(1)(c) below;

the grantor may, by notice given to the Board within 30 days from the date on which it is notified of the Board's decision, require the matter to be determined by the Special Commissioners, and the Special Commissioners shall hear and determine the matter in like manner as an appeal.

- 6 The Board may by notice require any person to furnish them, within such time as the Board may direct (not being less than 30 days), with such information as the Board think necessary for the performance of their functions under the relevant provisions and as the person to whom the notice is addressed has or can reasonably obtain, including in particular information—

- (a) to enable the Board to determine—
 - (i) whether to approve a scheme or withdraw an approval already given; or
 - (ii) the liability to tax, including capital gains tax, of any person who has participated in a scheme; and
- (b) in relation to the administration of a scheme and any alteration of the terms of a scheme.