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SCHEDULES.

SCHEDULE 11

MEANING OF " DISTRIBUTION ".

PART I

GENERAL MEANING.

Matters to be treated as distributions.

- 1 (1) In relation to any company " distribution " means—
- (a) any dividend paid by the company, including a capital dividend;
 - (b) any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except so much of the distribution, if any, as represents a repayment of capital on the shares or is, when it is made, equal in amount or value to any new consideration given for the distribution;
 - (c) any redeemable share capital or security issued by the company in respect of shares in the company otherwise than wholly for new consideration, or such part of any redeemable share capital or security so issued as is not properly referable to new consideration;
 - (d) any interest or other distribution out of assets of the company in respect of securities of the company (except so much, if any, of any such distribution as represents the principal thereby secured), where the securities are either—
 - (i) securities issued as mentioned in paragraph (c) above; or
 - (ii) securities convertible directly or indirectly into shares in the company and not securities quoted on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so quoted; or
 - (iii) securities under which the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company's business or any part of it, or under which the consideration so given represents more than a reasonable commercial return for the use of that principal; or
 - (iv) securities issued by the company to a company not resident in the United Kingdom, where the former is a subsidiary of the latter or both are subsidiaries of a third company (" subsidiary " having the meaning assigned to it by section 42(1) of the Finance Act 1938);
 - (e) any such amount as is required to be treated as a distribution by subparagraph (2) or (3) below.
- (2) Where on a transfer of assets or liabilities by a company to its members or to a company by its members, the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of

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any new consideration given by him, the company shall be treated as making a distribution to him of an amount equal to the difference.

- (3) Where a company—
- (a) repays any share capital, or has done so at any time after 6th April, 1965 ; and
 - (b) at or after the time of that repayment (but not before the year 1966-67) issues as paid up otherwise than by the receipt of new consideration any share capital, not being redeemable share capital;

the amount so paid up shall be treated as a distribution made in respect of the shares on which it is paid up, except in so far as that amount exceeds the amount or aggregate amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this sub-paragraph as distributions.

Matters to be treated or not treated as repayments of share capital.

- 2 (1) Where—
- (a) a company issues any share capital as paid up otherwise than by the receipt of new consideration, or has done so after 6th April, 1965 ; and
 - (b) any amount so paid up does not fall to be treated as a distribution;

then for the purposes of paragraph 1 above distributions afterwards made by the company in respect of shares representing that share capital shall not be treated as repayments of share capital, except to the extent to which those distributions, together with any relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after that date and not falling to be treated as distributions.

- (2) In sub-paragraph (1) above " relevant distribution " means so much of any distribution made in respect of shares representing the relevant share capital as apart from that sub-paragraph would be treated as a repayment of share capital, but by virtue of that sub-paragraph cannot be so treated.
- (3) For the purposes of this paragraph all shares of the same class shall be treated as representing the same share capital, and where shares are issued in respect of other shares, or are directly or indirectly converted into or exchanged for other shares, all such shares shall be treated as representing the same share capital.

- 3 (1) Where share capital is issued at a premium representing new consideration, the amount of the premium is to be treated as forming part of that share capital for the purpose of determining under this Part of this Schedule whether any distribution made in respect of shares representing the share capital is to be treated as a repayment of share capital:

Provided that this sub-paragraph shall not have effect in relation to any part of the premium after that part has been applied in paying up share capital.

- (2) Subject to sub-paragraph (1) above, premiums paid on redemption of share capital are not to be treated as repayments of capital.

" New consideration ".

- 4 In this Part of this Schedule " new consideration " means consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution:

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Provided that where share capital has been issued at a premium representing new consideration, any part of that premium afterwards applied in paying up share capital shall be treated as new consideration also for that share capital, except in so far as the premium has been taken into account under paragraph 3 above so as to enable a distribution to be treated as a repayment of share capital.

- 5 A distribution shall be treated under this Schedule as made, or consideration as provided, out of assets of a company if the cost falls on the company.

Expressions relating to shares or securities.

- 6 (1) In this Part of this Schedule " share " includes stock, and any other interest of a member in a company.
- (2) References in this Part of this Schedule to issuing share capital as paid up apply also to the paying up of any issued share capital.
- 7 (1) For purposes of this Part of this Schedule " security " includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.
- (2) Where securities are issued at a price less than the amount repayable on them, and are not quoted on a recognised stock exchange, the principal secured shall not be taken for the purposes of this Part of this Schedule to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities so quoted.
- 8 (1) For purposes of this Part of this Schedule a thing is to be regarded as done in respect of a share if it is done to a person as being the holder of the share, or as having at a particular time been the holder, or is done in pursuance of a right granted or offer made in respect of a share; and anything done in respect of shares by reference to share holdings at a particular time is to be regarded as done to the then holders of the shares or the personal representatives of any share holder then dead.
- (2) Sub-paragraph (1) above shall apply in relation to securities as it applies in relation to shares.