

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Trustees. (See end of Document for details)

SCHEDULES

SCHEDULE 5

EMPLOYEE SHARE OWNERSHIP TRUSTS

Modifications etc. (not altering text)

- C1** Sch. 5 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the applying Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [ss. 228\(7\), 235\(8\), 289](#) (with [ss. 60, 101\(1\), 171, 201\(3\)](#))

Trustees

- 3 (1) The trust deed must provide for the establishment of a body of trustees.
- (2) The trust deed must—
- (a) appoint the initial trustees;
 - (b) contain rules for the retirement and removal of trustees;
 - (c) contain rules for the appointment of replacement and additional trustees.
- (3) The trust deed must provide that at any time while the trust subsists (therelevant time)—
- (a) the number of trustees must not be less than three;
 - (b) all the trustees must be resident in the United Kingdom;
 - (c) the trustees must include one person who is a trust corporation, a solicitor, or a member of such other professional body as the Board may from time to time allow for the purposes of this paragraph;
 - (d) most of the trustees must be persons who are not and have never been directors of any company which falls within the founding company's group at the relevant time;
 - (e) most of the trustees must be persons who are employees of companies which fall within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company;
 - (f) the trustees falling within paragraph (e) above must, before being appointed as trustees, have been selected by a majority of the employees of the companies falling within the founding company's group at the time of their selection or by persons elected to represent those employees.
- (4) For the purposes of sub-paragraph (3) above a company falls within the founding company's group at a particular time if—
- (a) it is the founding company, or
 - (b) it is at that time resident in the United Kingdom and controlled by the founding company.
- [^{F1}(5) This paragraph applies in relation to trusts established on or before the day on which the Finance Act 1994 was passed.]

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Textual Amendments

F1 Sch. 5 para. 3(5) inserted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 2**

Modifications etc. (not altering text)

C1 See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

C2 Schedule 5 para. 3(3)(c) amended (1.1.1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch. 1**

C3 Sch. 5 para. 3(3)(c) applied (with modifications) (E.W.) (23.12.2011) by The Legal Services Act 2007 (Designation as a Licensing Authority) (No. 2) Order 2011 (S.I. 2011/2866), art. 1(2), **Sch. 2**

- [^{F2}3A** Where a trust is established after the day on which the Finance Act 1994 was passed, the trust deed must make provision as mentioned in one of paragraphs (a) to (c) below—
- (a) provision for the establishment of a body of trustees and complying with paragraph 3(2) to (4) above;
 - (b) provision for the establishment of a body of trustees and complying with paragraph 3B(2) to (9) below;
 - (c) provision that at any time while the trust subsists there must be a single trustee.]

Textual Amendments

F2 Sch. 5 paras. 3A-3C inserted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 3**

- ^{F3}3B** (1) The following are the provisions that must be complied with under paragraph 3A(b) above.
- (2) The trust deed must—
 - (a) appoint the initial trustees;
 - (b) contain rules for the retirement and removal of trustees;
 - (c) contain rules for the appointment of replacement and additional trustees.
 - (3) The trust deed must be so framed that at any time while the trust subsists the conditions set out in sub-paragraph (4) below are fulfilled as regards the persons who are then trustees; and in that sub-paragraph “the relevant time” means that time.
 - (4) The conditions are that—
 - (a) the number of trustees is not less than three;
 - (b) all the trustees are resident in the United Kingdom;
 - (c) the trustees include at least one person who is a professional trustee and at least two persons who are non-professional trustees;
 - (d) at least half of the non-professional trustees were, before being appointed as trustees, selected in accordance with sub-paragraph (7) or (8) below;
 - (e) all the trustees so selected are persons who are employees of companies which fall within the founding company’s group at the relevant time, and who do not have and have never had a material interest in any such company.
 - (5) For the purposes of this paragraph a trustee is a professional trustee at a particular time if—

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- (a) the trustee is then a trust corporation, a solicitor, or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,
 - (b) the trustee is not then an employee or director of any company then falling within the founding company's group, and
 - (c) the trustee meets the requirements of sub-paragraph (6) below;
- and for the purposes of this paragraph a trustee is a non-professional trustee at a particular time if the trustee is not then a professional trustee for those purposes.
- (6) A trustee meets the requirements of this sub-paragraph if—
 - (a) he was appointed as an initial trustee and, before being appointed as trustee, was selected by (and only by) the persons who later became the non-professional initial trustees, or
 - (b) he was appointed as a replacement or additional trustee and, before being appointed as trustee, was selected by (and only by) the persons who were the non-professional trustees at the time of the selection.
 - (7) Trustees are selected in accordance with this sub-paragraph if the process of selection is one under which—
 - (a) all the persons who are employees of the companies which fall within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,
 - (b) all the employees of the companies falling within the founding company's group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and
 - (c) persons gaining more votes are preferred to those gaining less.
 - (8) Trustees are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.
 - (9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—
 - (a) it is at that time resident in the United Kingdom, and
 - (b) it is the founding company or it is at that time controlled by the founding company.

Textual Amendments

F3 Sch. 5 paras. 3A-3C inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 3

- ^{F43C} (1) This paragraph applies where the trust deed provides that at any time while the trust subsists there must be a single trustee.
- (2) The trust deed must—
 - (a) be so framed that at any time while the trust subsists the trustee is a company which at that time is resident in the United Kingdom and controlled by the founding company;
 - (b) appoint the initial trustee;
 - (c) contain rules for the removal of any trustee and for the appointment of a replacement trustee.

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- (3) The trust deed must be so framed that at any time while the trust subsists the company which is then the trustee is a company so constituted that the conditions set out in sub-paragraph (4) below are then fulfilled as regards the persons who are then directors of the company; and in that sub-paragraph “the relevant time” is that time and “the trust company” is that company.
- (4) The conditions are that—
- (a) the number of directors is not less than three;
 - (b) all the directors are resident in the United Kingdom;
 - (c) the directors include at least one person who is a professional director and at least two persons who are non-professional directors;
 - (d) at least half of the non-professional directors were, before being appointed as directors, selected in accordance with sub-paragraph (7) or (8) below;
 - (e) all the directors so selected are persons who are employees of companies which fall within the founding company’s group at the relevant time, and who do not have and have never had a material interest in any such company.
- (5) For the purposes of this paragraph a director is a professional director at a particular time if—
- (a) the director is then a solicitor or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,
 - (b) the director is not then an employee of any company then falling within the founding company’s group,
 - (c) the director is not then a director of any such company (other than the trust company), and
 - (d) the director meets the requirements of sub-paragraph (6) below;
- and for the purposes of this paragraph a director is a non-professional director at a particular time if the director is not then a professional director for those purposes.
- (6) A director meets the requirements of this sub-paragraph if—
- (a) he was appointed as an initial director and, before being appointed as director, was selected by (and only by) the persons who later became the non-professional initial directors, or
 - (b) he was appointed as a replacement or additional director and, before being appointed as director, was selected by (and only by) the persons who were the non-professional directors at the time of the selection.
- (7) Directors are selected in accordance with this sub-paragraph if the process of selection is one under which—
- (a) all the persons who are employees of the companies which fall within the founding company’s group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,
 - (b) all the employees of the companies falling within the founding company’s group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and
 - (c) persons gaining more votes are preferred to those gaining less.
- (8) Directors are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company’s group at the time of the selection.

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- (9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—
- (a) it is at that time resident in the United Kingdom, and
 - (b) it is the founding company or it is at that time controlled by the founding company.

Textual Amendments

F4 Sch. 5 paras. 3A-3C inserted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 3**

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