

SCHEDULES

SCHEDULE 10

CONVERTIBLE SECURITIES

PART I

INTRODUCTION

Qualifying provision for redemption

- 1 For the purposes of this Schedule a qualifying provision for redemption, in relation to a security, is a provision which—
- (a) provides for redemption before maturity only at the option of the person holding the security for the time being,
 - (b) provides for such redemption on one occasion only,
 - (c) provides for such redemption to occur on the last day of an income period, and
 - (d) is such that the amount payable on redemption on exercise of the option is fixed (as opposed to variable), is determined at the time the security becomes subject to the provision, and constitutes a deep gain.

Qualifying convertible securities

- 2 (1) For the purposes of this Schedule a security is a qualifying convertible security at the time of its issue if—
- (a) it fulfils each of the first eight conditions mentioned below, and
 - (b) it fulfils the ninth condition mentioned below (where it applies) or it fulfils the ninth and tenth conditions mentioned below (where they apply).
- (2) The first condition is that the security was issued by a company on or after 9th June 1989.
- (3) The second condition is that the security—
- (a) is not a share in a company,
 - (b) is redeemable, and
 - (c) was not issued in circumstances such that, by virtue of section 209(2)(c) of the Taxes Act 1988, it (or part of it) constituted or fell within a distribution of a company.
- (4) The third condition is that at the time the security was issued it was quoted in the official list of a recognised stock exchange.
- (5) The fourth condition is that under the terms of issue—

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- (a) the security can be converted into ordinary share capital in the company which issued it,
 - (b) the security either carries no right to interest, or carries a right to interest at a rate which is fixed (as opposed to variable) and determined at the time of issue, and
 - (c) any amount payable on redemption (at any time), and any amount payable by way of interest, is payable in the currency in which the issue price is denominated.
- (6) The fifth condition is that at the time of issue of the security it is subject to one (and one only) qualifying provision for redemption.
- (7) The sixth condition is that the yield to redemption for the relevant redemption period represents no more than a reasonable commercial return; and the relevant redemption period is the redemption period which ends with the day on which the occasion for redemption under the qualifying provision for redemption falls.
- (8) The seventh condition is that the security—
 - (a) is a deep discount security but would not be one if it were not for the qualifying provision for redemption, or
 - (b) is a deep gain security but would not be one if it were not for the qualifying provision for redemption;and paragraph 21 of Schedule 4 to the Taxes Act 1988, and paragraph 22B(1) of Schedule 11 to the Finance Act 1989, shall be ignored in construing paragraphs (a) and (b) above.
- (9) The eighth condition is that the obtaining of a tax advantage by any person was not the main benefit, or one of the main benefits, that might be expected to accrue from issuing the security.
- (10) The ninth condition applies where the security carries a right to interest, and is that—
 - (a) the first (or only) interest payment day falls on a day which bears the same date in the month as the day of issue bears, but which occurs in the sixth month after the month in which that day falls, or
 - (b) the first (or only) interest payment day falls on the first anniversary of the day of issue.
- (11) The tenth condition applies where there is more than one interest payment day, and is that—
 - (a) if sub-paragraph (10)(a) above applies, each interest payment day (other than the first) falls on a day which bears the same date in the month as the interest payment day immediately preceding it bears, but which occurs in the sixth month after the month in which that day falls;
 - (b) if sub-paragraph (10)(b) above applies, each interest payment day (other than the first) falls on the first anniversary of the interest payment day immediately preceding it.
- (12) If a security is quoted in the official list of a recognised stock exchange at a time after it was issued but before the end of the qualifying period, for the purposes of sub-paragraph (4) above it shall be deemed to have been quoted in that list at the time it was issued; and the qualifying period is the period of one month beginning with the day on which the security was issued.

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Events after issue

- 3 (1) A security which was a qualifying convertible security at the time of its issue shall continue to be a qualifying convertible security for the purposes of this Schedule.
- (2) But sub-paragraph (1) above shall have effect subject to paragraphs 4(2) and 5(2) below.

Securities becoming subject to later options

- 4 (1) This paragraph applies where—
- (a) a security becomes at any time (the time in question) subject to a qualifying provision for redemption (the new provision), and
 - (b) immediately before that time it was a qualifying convertible security.
- (2) If the relevant requirement is not satisfied, the security shall cease to be a qualifying convertible security for the purposes of this Schedule at the time in question.
- (3) For the purposes of this paragraph the relevant requirement is satisfied if—
- (a) the security becomes subject to the new provision on or after the relevant day but not after the day on which the occasion for redemption under the old provision falls,
 - (b) the person who issued the security did not indicate, at any time falling before the relevant day, that the security might become subject to a qualifying provision for redemption (in addition to any other such provision or provisions),
 - (c) the day on which the occasion for redemption under the new provision falls is not less than one year after the day on which the occasion for redemption under the old provision falls,
 - (d) the amount payable on redemption on exercise of the option for which the new provision provides is not less than the amount payable on redemption on exercise of the option for which the old provision provides,
 - (e) the yield to redemption for the relevant redemption period represents no more than a reasonable commercial return, and
 - (f) the obtaining of a tax advantage by any person is not the main benefit, or one of the main benefits, that might be expected to accrue from the new provision.
- (4) For the purposes of this paragraph the relevant day is the day falling 30 days before the day on which the occasion for redemption under the old provision falls.
- (5) For the purposes of this paragraph the old provision is—
- (a) if the security became subject to one other qualifying provision for redemption before the time in question, that provision, or
 - (b) if the security became subject to more than one qualifying provision for redemption before the time in question, the one to which it last became subject.
- (6) For the purposes of this paragraph the relevant redemption period is the redemption period which ends with the day on which the occasion for redemption under the new provision falls.

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Other later events in relation to securities

- 5 (1) This paragraph applies where—
- (a) a prohibited event occurs in relation to a security at any time (the time in question), and
 - (b) immediately before that time it was a qualifying convertible security.
- (2) The security shall cease to be a qualifying convertible security for the purposes of this Schedule at the time in question.
- (3) For the purposes of this paragraph, a prohibited event occurs in relation to a security if—
- (a) it ceases to be quoted in the official list of a recognised stock exchange,
 - (b) it becomes subject to a provision under which it carries a right to interest at a rate which is variable or falls to be determined at a time other than issue (or both),
 - (c) it becomes subject to a provision under which any amount payable on redemption (at any time) is payable in a currency different from that in which the issue price is denominated,
 - (d) it becomes subject to a provision under which any amount payable by way of interest is payable in a currency different from that in which the issue price is denominated,
 - (e) it becomes subject to a provision which would be a qualifying provision for redemption but for the fact that one or more of sub-paragraphs (b) to (d) of paragraph 1 above is (or are) not fulfilled as regards the provision, or
 - (f) there is a time when more than 10 per cent. of the securities issued under the relevant prospectus are held by companies which are linked companies at that time.
- (4) For the purposes of sub-paragraph (3)(f) above the relevant prospectus is the prospectus under which the security concerned was issued.
- (5) For the purposes of sub-paragraph (3)(f) above, the question whether companies are linked companies at a particular time shall be determined in accordance with paragraph 4 of Schedule 11 to the Finance Act 1988.

Deep gain

- 6 (1) For the purposes of this Schedule the amount payable on redemption, on exercise of the option under a provision for redemption (the provision concerned), constitutes a deep gain if it constitutes such a gain by virtue of sub-paragraph (2) or (4) below (or both).
- (2) The amount payable on redemption (on exercise of the option under the provision concerned) constitutes a deep gain if the issue price of the security is less than the amount so payable, and the amount by which it is less represents more than—
- (a) 15 per cent. of the amount so payable, or
 - (b) half Y per cent. of the amount so payable, where Y is the number of complete years between the day of issue and the day on which the occasion for redemption under the provision concerned falls.
- (3) Sub-paragraph (4) below applies where the security became subject to—
- (a) a qualifying provision for redemption (the prior provision), or

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- (b) qualifying provisions for redemption (the prior provisions), before it became subject to the provision concerned.
- (4) The amount payable on redemption (on exercise of the option under the provision concerned) constitutes a deep gain if the base amount is less than the amount so payable, and the amount by which it is less represents more than—
 - (a) 15 per cent. of the amount so payable, or
 - (b) half Y per cent. of the amount so payable, where Y is the number of complete years between the base day and the day on which the occasion for redemption under the provision concerned falls.
- (5) For the purposes of sub-paragraph (4) above—
 - (a) the base amount is the amount payable on redemption on exercise of the option provided for by the prior provision (if there is only one) or the last of the prior provisions (if there are two or more), and
 - (b) the base day is the day on which the occasion for redemption falls under the prior provision (if there is only one) or the last of the prior provisions (if there are two or more).
- (6) For the purposes of sub-paragraph (5) above the last of the prior provisions is the one to which the security last became subject.

Income period

- 7
- (1) This paragraph applies for the purposes of this Schedule.
 - (2) In relation to a security which carries a right to interest each of the following is an income period—
 - (a) the period beginning with the day of issue and ending with the first (or only) interest payment day, and
 - (b) any period beginning with the day after one interest payment day and ending with the next interest payment day.
 - (3) In relation to a security which does not carry a right to interest each of the following is an income period—
 - (a) the period beginning with the day of issue and ending with the first relevant day, and
 - (b) the period beginning with the day after one relevant day and ending with the next relevant day.
 - (4) For the purposes of sub-paragraph (3) above each day on which an anniversary of the day of issue falls is a relevant day.

Redemption period

- 8
- (1) For the purposes of this Schedule each of the following is a redemption period in relation to a security—
 - (a) the period beginning with the day of issue and ending with the day on which the first (or only) relevant redemption occasion falls, and
 - (b) any period beginning with the day after the day on which one relevant redemption occasion falls and ending with the day on which the next relevant redemption occasion falls.

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- (2) For the purposes of sub-paragraph (1) above a relevant redemption occasion is an occasion for redemption under a qualifying provision for redemption.

Yield to redemption

- 9 (1) For the purposes of this Schedule the yield to redemption for a redemption period is a rate (expressed as a percentage) such that if a sum equal to the relevant amount were to be invested at that rate on the assumption that—
- (a) the rate would be applied on a compounding basis at the end of each relevant income period, and
 - (b) the amount of any interest payable in respect of a relevant income period would be deducted after applying the rate,
- the value of that sum on the relevant redemption day would be equal to the amount payable on redemption of the security on that day under the relevant redemption provision.
- (2) For the purposes of this paragraph the relevant amount is the issue price, in a case where the redemption period concerned is the period falling within paragraph 8(1)(a) above.
- (3) For the purposes of this paragraph the relevant amount is the amount payable on redemption on the last relevant occasion, in a case where the redemption period concerned is one falling within paragraph 8(1)(b) above; and the last relevant occasion is the occasion for redemption, under a qualifying provision for redemption, last occurring before the redemption period begins.
- (4) For the purposes of this paragraph—
- (a) a relevant income period is any income period which consists of or falls within the redemption period,
 - (b) the relevant redemption day is the last day of the redemption period, and
 - (c) the relevant redemption provision is the qualifying provision for redemption providing for redemption on that day.

Transfer etc.

- 10 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Transfer”, in relation to a security, means transfer by way of sale, exchange, gift or otherwise.
- (3) But (notwithstanding sub-paragraph (2) above) “transfer” does not include a transfer made on a conversion of a security into ordinary share capital in a company.
- (4) Where an agreement for the transfer of a security is made, it is transferred, and the person to whom it is agreed to be transferred becomes entitled to it, when the agreement is made and not on a later transfer made pursuant to the agreement; and “entitled”, “transfer” and cognate expressions shall be construed accordingly.
- (5) A person holds a security at a particular time if he is entitled to it at the time.
- (6) A person acquires a security when he becomes entitled to it.
- (7) If an agreement is conditional (whether on the exercise of an option or otherwise) for the purposes of sub-paragraph (4) above it is made when the condition is satisfied.

Miscellaneous

- 11 (1) This paragraph applies for the purposes of this Schedule.
- (2) In relation to a security—
- (a) the amount payable (or paid) on redemption does not include any amount payable (or paid) by way of interest,
 - (b) the day of issue is the day on which the security is issued, and
 - (c) an interest payment day is a day on which interest is payable under the security.
- (3) A deep discount security is a security which is a deep discount security for the purposes of Schedule 4 to the Taxes Act 1988.
- (4) A deep gain security is a security which is a deep gain security for the purposes of Schedule 11 to the Finance Act 1989.
- (5) Ordinary share capital, in relation to a company, means any share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- (6) “Tax advantage” has the meaning given by section 709(1) of the Taxes Act 1988.