

SCHEDULES

SCHEDULE 2

APPROVED SHARE INCENTIVE PLANS

PART 4

TYPES OF SHARES THAT MAY BE AWARDED

Types of share that may be awarded: introduction

- 25 (1) The requirements of the following paragraphs must be met with respect to any shares that may be awarded under a SIP—
- paragraph 26 (shares must be part of ordinary share capital of certain companies),
 - paragraph 27 (requirement as to listing etc.),
 - paragraph 28 (shares must be fully paid up and not redeemable),
 - paragraph 29 (prohibited shares), and
 - paragraph 30 (only certain kinds of restriction allowed).
- (2) In this Part of this Schedule “eligible shares” means shares that may be awarded under the plan.

Shares must be part of ordinary share capital of certain companies

- 26 Eligible shares must form part of the ordinary share capital of—
- (a) the company,
 - (b) a company which has control of the company, or
 - (c) a company which either is, or has control of, a company which is a member of a consortium owning either the company or a company having control of the company.

Requirement as to listing etc.

- 27 (1) Eligible shares must be—
- (a) shares of a class listed on a recognised stock exchange,
 - (b) shares in a company which is not under the control of another company, or
 - (c) shares in a company which is under the control of a listed company.
- (2) A “listed company” is a company whose shares are listed on a recognised stock exchange, other than—
- (a) a close company, or
 - (b) a company that would be a close company if resident in the United Kingdom.

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Shares must be fully paid up and not redeemable

- 28 (1) Eligible shares must be—
- (a) fully paid up, and
 - (b) not redeemable.
- (2) For the purposes of sub-paragraph (1)(a) shares are not to be regarded as fully paid up if there is an undertaking to pay cash at a future date to the company whose shares they are.
- (3) For the purposes of sub-paragraph (1)(b) “redeemable” shares include shares that may become redeemable at a future date.
- (4) Sub-paragraph (1)(b) does not apply to shares in a registered industrial and provident society which is a co-operative society.
- (5) In sub-paragraph (4)—
- “registered industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)), and
- “co-operative society” has the same meaning as in section 1 of the 1965 Act or, as the case may be, the 1969 Act.

Prohibited shares

- 29 (1) Eligible shares must not be shares in—
- (a) a service company, or
 - (b) a company that—
 - (i) has control of a service company, and
 - (ii) is under the control of a person or persons who fall within sub-paragraph (2)(b)(i) or (ii) as it applies to a service company.
- (2) For the purposes of this paragraph a company is a “service company” if—
- (a) the business carried on by it consists substantially in the provision of the services of persons employed by it, and
 - (b) the majority of those services are provided to—
 - (i) a person who has control of the company,
 - (ii) two or more persons who together have control of the company, or
 - (iii) a company associated with the company.
- (3) For the purposes of sub-paragraph (2)(b)(iii) a company is associated with another company if both companies are under the control of the same person or persons.
- (4) For the purposes of sub-paragraphs (1) to (3)—
- (a) a partnership is to be treated as a single person; and
 - (b) where a partner (alone or together with others) has control of a company, the partnership is to be treated as having (in the same way) control of that company.
- (5) For the purposes of this paragraph the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA.

Only certain kinds of restriction allowed

- 30 (1) Eligible shares must not be subject to any restrictions other than—
- (a) those affecting all ordinary shares in the company,
 - (b) those permitted by—
 - (i) paragraph 31 (voting rights),
 - (ii) paragraph 32 (provision for forfeiture), or
 - (iii) paragraph 33 (pre-emption conditions), or
 - (c) those involved in there being a holding period (see paragraphs 36, 61 and 67).
- (2) For the purposes of this paragraph shares are subject to a restriction if there is any contract, agreement, arrangement or condition—
- (a) by which a person's freedom to dispose of the shares or of any interest in them or of the proceeds of their sale or to exercise any right conferred by them is restricted, or
 - (b) by which such a disposal or exercise may result in any disadvantage to the person or to a person connected with the person.
- This is subject to sub-paragraphs (3) and (4).
- (3) Sub-paragraph (2) does not extend to so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to any of the provisions of the Model Code as (for the time being) set out in the listing rules issued by the competent authority for listing in the United Kingdom under section 74(4) of the Financial Services and Markets Act 2000 (c. 8).
- (4) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares is to be disregarded for the purposes of this paragraph if the directors—
- (a) have undertaken to the Inland Revenue not to exercise it in such a way as to discriminate against participants, and
 - (b) have notified all qualifying employees of the existence of the undertaking.

Permitted restrictions: voting rights

- 31 Eligible shares may be shares carrying no voting rights or limited voting rights.

Permitted restrictions: provision for forfeiture

- 32 (1) Free or matching shares may be subject to provision for forfeiture—
- (a) on the participant ceasing to be in relevant employment at any time in the forfeiture period,
 - (b) on the participant withdrawing the shares from the plan at any such time, or
 - (c) in the case of matching shares, on the participant withdrawing from the plan at any such time the partnership shares in respect of which those shares were awarded.
- (2) Sub-paragraph (1)(a) does not, however, authorise the making of provision for forfeiture on the participant ceasing to be in relevant employment—
- (a) because of injury or disability,
 - (b) on being dismissed by reason of redundancy,

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- (c) by reason of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply,
 - (d) if the relevant employment is employment by an associated company (see paragraph 95(2)), by reason of a change of control or other circumstances ending that company's status as an associated company,
 - (e) by reason of the participant's retirement on or after reaching the specified retirement age (see paragraph 98), or
 - (f) on the participant's death.
- (3) Forfeiture may not be linked to the performance of any person or persons.
- (4) The same provision for forfeiture must apply in relation to all free or matching shares included in the same award under the plan.
- (5) In this paragraph "the forfeiture period" means the forfeiture period specified in the plan, which must be a period of not more than 3 years beginning with the date on which the shares were awarded to the participant.

Permitted restrictions: pre-emption conditions

- 33 (1) If the requirements of this paragraph are met, eligible shares may be subject to provision requiring shares—
- (a) that were awarded to an employee under the plan, and
 - (b) that are held by an employee or a permitted transferee,
- to be offered for sale on the employee ceasing to be in relevant employment.
- (2) For the purposes of sub-paragraph (1)(b) a "permitted transferee" means a person to whom, under the articles of association of the company, the employee is permitted to transfer the shares.
- (3) The requirements of this paragraph are that under the articles of association of the company—
- (a) the same provision applies to all employees of the company or, in the case of a parent company, to all employees of that company or any company of which that company has control,
 - (b) the shares are required to be offered for sale at a specified consideration, and
 - (c) anyone disposing of shares of the same class (whether or not as an employee) is required to offer the shares for sale on no better terms.