

SCHEDULES

SCHEDULE 2

APPROVED SHARE INCENTIVE PLANS

PART 9

TRUSTEES

Requirements etc. relating to trustees: introduction

- 70 (1) A SIP must meet the plan requirements contained in—
paragraph 71(1) and (2) (establishment of trustees), and
paragraph 79 (meeting by trustees of PAYE obligations).
- (2) The following provisions also relate to the trustees—
paragraph 71(3) to (6) (the trust instrument and classes of trustees)
paragraph 72 (duty to act in accordance with participant's directions),
paragraph 73 (duty not to dispose of plan shares),
paragraph 74 (duty to make payments to participants),
paragraph 75 (duty to give notice of award of shares etc.),
paragraph 76 (power to borrow),
paragraph 77 (power to raise funds to subscribe for rights issue),
paragraph 78 (acquisition of shares from employee share ownership trust), and
paragraph 80 (other duties in relation to tax liabilities).

Establishment of trustees

- 71 (1) The plan must provide for the establishment of a body of trustees consisting of persons resident in the United Kingdom (“the trustees”).
- (2) The plan must provide that the trustees are required—
- (a) in the case of free or matching shares, to acquire shares and appropriate them to employees in accordance with the plan,
 - (b) in the case of partnership shares, to apply partnership share money in acquiring shares on behalf of employees in accordance with the plan, and
 - (c) in the case of dividend shares, to apply cash dividends in acquiring shares on behalf of participants in accordance with the plan.
- (3) The functions of the trustees with respect to shares held by them must be regulated by a trust (“the plan trust”)—
- (a) which is constituted under the law of a part of the United Kingdom, and
 - (b) the terms of which are embodied in an instrument which complies with the requirements of this Part of this Schedule (“the trust instrument”).

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- (4) The trust instrument must not contain any terms which are neither essential nor reasonably incidental to complying with the requirements of this Part of this Schedule.
- (5) The trust instrument may contain terms that—
 - (a) define who is a professional trustee and who is a non-professional trustee;
 - (b) require the trustees to include at least one person who is a professional trustee and at least two who are non-professional trustees;
 - (c) require at least half of the non-professional trustees to have been, before being appointed as trustees, selected in accordance with a specified process of selection;
 - (d) require the trustees so selected to be persons who are employees of the company or, in the case of a group plan, of a participating company.
- (6) The terms mentioned in sub-paragraph (5) are to be regarded as reasonably incidental to complying with the requirements of this Part of this Schedule for the purposes of sub-paragraph (4).

Duty to act in accordance with participant's directions

- 72 (1) The trust instrument must require the trustees—
- (a) to dispose of a participant's plan shares, and
 - (b) to deal with any right conferred in respect of any of a participant's plan shares to be allotted other shares, securities or rights of any description,
- only in accordance with a direction given by or on behalf of the participant.
- (2) Sub-paragraph (1) is subject to—
- (a) paragraph 73 (duty not to dispose of plan shares), and
 - (b) any provision in the plan made in accordance with paragraph 79 (meeting by trustees of PAYE obligations).
- (3) The plan may provide for participants to give such general directions, to such effect and in such terms, as are specified in the plan.

Duty not to dispose of plan shares

- 73 (1) This paragraph applies to a participant's plan shares that are free, matching or dividend shares.
- (2) The trust instrument must prohibit the trustees from disposing of any of those shares (to the participant or otherwise) at any time during the holding period, unless the participant has at that time ceased to be in relevant employment.
- (3) Sub-paragraph (2) is subject to—
- (a) paragraph 37 (holding period: power to direct trustees to accept general offers etc.),
 - (b) paragraph 77 (power of trustees to raise funds to subscribe for rights issue),
 - (c) paragraph 79 (meeting by trustees of PAYE obligations), and
 - (d) paragraph 90(5) (termination of plan: early removal of shares with participant's consent).

Duty to make payments to participants

- 74 (1) The trust instrument must require the trustees to pay over to a participant as soon as practicable—
- (a) any money received by them in respect of, or by reference to, any of the participant's shares, or
 - (b) any money's worth so received unless it consists of new shares within the meaning of paragraph 87 (company reconstructions).
- (2) Sub-paragraph (1) is subject to—
- (a) paragraphs 62 to 69 (cash dividends and dividend shares),
 - (b) the trustees' obligations under sections 510 to 514 (PAYE: shares ceasing to be subject to plan; capital receipts), and
 - (c) the trustees' PAYE obligations.

Duty to give notice of award of shares etc.

- 75 (1) The trust instrument must make the following provision regarding notices.
- (2) It must provide that, as soon as practicable after any free or matching shares have been awarded to an employee, the trustees must give the employee notice of the award—
- (a) specifying the number and description of those shares,
 - (b) stating their market value on the date on which they were awarded to the employee, and
 - (c) stating the holding period applicable to them.
- (3) It must provide that, as soon as practicable after any partnership shares have been awarded to an employee, the trustees must give the employee notice of the award—
- (a) specifying the number and description of those shares,
 - (b) stating the amount of partnership share money applied by the trustees in acquiring the shares on behalf of the employee, and
 - (c) stating their market value on the acquisition date (as defined by paragraph 50(4) or, if there is an accumulation period, by paragraph 52(5)).
- (4) It must provide that, as soon as practicable after any dividend shares have been acquired on behalf of a participant, the trustees must give the participant notice of the acquisition—
- (a) specifying the number and description of those shares,
 - (b) stating their market value on the acquisition date (as defined by paragraph 66(4)),
 - (c) stating the holding period applicable to them, and
 - (d) informing the participant of any amount carried forward under paragraph 68 (reinvestment: amounts to be carried forward).
- (5) It must provide that, where any foreign cash dividend is received in respect of plan shares held on behalf of a participant, the trustees must give the participant notice of the amount of any foreign tax deducted from the dividend before it was paid.
- (6) In sub-paragraph (5) “foreign cash dividend” means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom.

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Power of trustees to borrow

- 76 The trust instrument may provide that the trustees have power to borrow—
- (a) to acquire shares for the purposes of the plan, and
 - (b) for such other purposes as may be specified in the trust instrument.

Power of trustees to raise funds to subscribe for rights issue

- 77 (1) The trustees may dispose of some of the rights arising under a rights issue in order to be able to obtain sufficient funds to exercise other such rights.
- (2) The power conferred by sub-paragraph (1) is subject to paragraph 72 (duty to act in accordance with participant's directions).

Acquisition by trustees of shares from employee share ownership trust

- 78 (1) The trust instrument must provide that, where there is a qualifying transfer of shares to the trustees, the shares—
- (a) must not be awarded to participants under the plan as partnership shares, and
 - (b) must be included in any award of free or matching shares made after the date of the transfer in priority to other shares available for inclusion in that award.
- (2) For the purposes of this paragraph there is a qualifying transfer of shares to the trustees if—
- (a) relevant shares (as defined by section 69(3AC) of FA 1989) are transferred to them by the trustees of an employee share ownership trust, and
 - (b) the transfer is a qualifying transfer within section 69(3AA) of that Act (transfer of shares in, or shares purchased from money in, an employee share ownership trust immediately before 21st March 2000).

Meeting by trustees of PAYE obligations

- 79 (1) The plan must make provision to ensure that, where a PAYE obligation is imposed on the trustees as a result of any of a participant's plan shares ceasing to be subject to the plan, the trustees are able to meet that obligation—
- (a) by disposing of any of those shares, or
 - (b) if there are any remaining plan shares of the participant, by disposing of any of those shares, or
 - (c) by the participant paying to the trustees a sum equal to the amount required to discharge the obligation.
- (2) A "PAYE obligation" includes an obligation under any of sections 510 to 512 (PAYE: shares ceasing to be subject to the plan).
- (3) For the purposes of sub-paragraph (1) any reference to the trustees disposing of shares includes a reference to their acquiring the shares as trustees for the purposes of the trust.
- (4) A disposal of any of the participant's plan shares in accordance with provision made under sub-paragraph (1)(b) may give rise to a charge to tax under—
- section 505 (charge on free or matching shares ceasing to be subject to plan),
 - section 506 (charge on partnership shares ceasing to be subject to plan), or

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section 68B(2) or 251C(1) of ICTA (charge under Case V of Schedule D or Schedule F on dividend shares ceasing to be subject to plan).

Other duties of trustees in relation to tax liabilities

- 80 (1) The trust instrument must require the trustees to maintain such records as may be necessary for the purposes of—
- (a) their own PAYE obligations, or
 - (b) the PAYE obligations of the employer company so far as they relate to the plan.
- (2) In sub-paragraph (1)—
- “PAYE obligations”, in relation to the trustees, includes obligations under sections 510 to 514 (PAYE: shares ceasing to be subject to plan and capital receipts);
 - “the employer company” has the same meaning as in section 513.
- (3) The trust instrument must require the trustees, where the participant becomes liable to income tax under—
- (a) this Act, or
 - (b) Case V of Schedule D or Schedule F,
- by reason of the occurrence of any event, to inform the participant of any facts relevant to determining that liability.
- (4) Section 234A(4) to (11) of ICTA (information relating to distributions to be provided by nominee) applies in relation to—
- (a) the balance of any cash dividend paid over to the participant under paragraph 64(3),
 - (b) any amount paid over to a participant under paragraph 68(4) (dividend retained for reinvestment and later paid out), or
 - (c) any relevant dividend (see sub-paragraph (5)),
- as if it were a payment to which section 234A(4)(b) applied (and, in the case of an amount within paragraph (b) above, as if the cash dividend had been paid at the time of the payment to the participant under paragraph 68(4)).
- (5) In a case where dividend shares cease to be subject to the plan before the end of the period of 3 years beginning with the date on which they were acquired on a participant’s behalf, the cash dividend applied to acquire dividend shares on the participant’s behalf is a “relevant dividend” for the purposes of sub-paragraph (4)(c).