

SCHEDULES

SCHEDULE 3

APPROVED SAYE OPTION SCHEMES

PART 3

ELIGIBILITY OF INDIVIDUALS TO PARTICIPATE IN SCHEME

Requirements relating to the eligibility of individuals: introduction

- 9 An SAYE option scheme must meet the requirements of—
paragraph 10 (the employment requirement), and
paragraph 11 (the “no material interest” requirement).

The employment requirement

- 10 (1) The scheme must ensure that an individual is not eligible to participate in the scheme at a particular time unless the individual is then a director or employee of—
(a) the scheme organiser, or
(b) in the case of a group scheme, a constituent company.
- (2) The requirement of this paragraph is not infringed by a provision of the scheme required or authorised by a provision of this Schedule.

The “no material interest” requirement

- 11 (1) The scheme must ensure that an individual is not eligible to participate in the scheme on any date if the individual has on that date, or has had within the 12 months ending with that date, a material interest in a close company—
(a) whose shares may be acquired as a result of exercising share options granted under the scheme, or
(b) which has control of a company whose shares may be acquired as a result of exercising share options granted under the scheme, or
(c) which is a member of a consortium which owns a company within paragraph (b).
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—
(a) the individual, or
(b) the individual together with one or more of the individual’s associates, or
(c) any such associate, with or without any other such associates,
has a material interest in the company.
- (3) This paragraph is supplemented—

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- (a) as regards the meaning of “material interest”, by paragraphs 12 and 13, and
 - (b) as regards the meaning of “associate”, by paragraph 14 (read with paragraphs 15 and 16).
- (4) In this paragraph and paragraph 12 “close company” includes a company that would be a close company but for—
- (a) section 414(1)(a) of ICTA (exclusion of companies not resident in the United Kingdom), or
 - (b) section 415 of ICTA (exclusion of certain quoted companies).

Meaning of “material interest”

- 12 (1) In paragraph 11 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
 - (b) a material interest in its assets.
- (2) A material interest in the share capital of a company means—
- (a) beneficial ownership of, or
 - (b) the ability to control (directly or through the medium of other companies or by any other indirect means),
- more than 25% of the ordinary share capital of the company.
- (3) A material interest in the assets of a company means—
- (a) possession of, or
 - (b) an entitlement to acquire,
- such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 25% of the assets that would then be available for distribution among the participators.
- (4) In this paragraph “participator” has the meaning given by section 417(1) of ICTA.
- (5) This paragraph is supplemented by paragraph 13 (material interest: options etc.).

Material interest: options and interests in SIPs

- 13 (1) For the purposes of paragraph 12 (meaning of “material interest”) a right to acquire shares (however arising) is to be treated as a right to control them.
- (2) Sub-paragraph (3) also applies for the purposes of paragraph 12 in a case where—
- (a) the shares to be attributed to an individual consist of or include shares which the individual or another person has a right to acquire, and
 - (b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company would be contractually bound to issue in the event of the exercise of the right.
- (3) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds 25% of the ordinary share capital of the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (2)(b).

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- (4) The references in sub-paragraphs (2) and (3) to the shares to be attributed to an individual are to the shares which—
- (a) for the purposes of paragraph 12(2) (material interest in share capital), and
 - (b) in accordance with paragraph 11(2) (material interest can consist of or include that of individual’s associates),
- fall to be brought into account in the individual’s case so that it can be determined whether their number exceeds 25% of the company’s ordinary share capital.
- (5) In applying paragraph 12 the following are to be disregarded—
- (a) the interest of the trustees of any approved SIP (within the meaning of the SIP code: see section 488(4)) in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
 - (b) any rights exercisable by the trustees as a result of that interest.

Meaning of “associate”

- 14 (1) In paragraph 11(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—
- (a) any relative or partner of that individual,
 - (b) the trustee or trustees of any settlement in relation to which that individual, or any of the individual’s relatives (living or dead), is or was a settlor, or
 - (c) where that individual is interested in any shares or obligations of the company mentioned in paragraph 11(2) which are subject to any trust or are part of the estate of a deceased person—
 - (i) the trustee or trustees of the settlement concerned, or
 - (ii) the personal representatives of the deceased,as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 15 and 16 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—
- “relative” means—
 - (a) spouse,
 - (b) parent, child or remoter relation in the direct line, or
 - (c) brother or sister;
 - “settlor” and “settlement” have the same meaning as in Chapter 1A of Part 15 of ICTA (see section 660G(1) and (2)).

Meaning of “associate”: trustees of employee benefit trust

- 15 (1) This paragraph applies for the purposes of paragraph 14(1)(c) (meaning of “associate”: trustees of settlement) where the individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 11(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the individual as a result only of the individual’s being so interested if neither—
- (a) the individual, nor

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- (b) the individual together with one or more of the individual’s associates, nor
 - (c) any such associate, with or without any other such associates,
- has at any time after 13th March 1989 been the beneficial owner of, or been able (directly or through the medium of other companies or by any other indirect means) to control, more than 25% of the ordinary share capital of the company.
- (3) In sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 14(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
 - (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
 - (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

Meaning of “associate”: trustees of discretionary trust

- 16 (1) This paragraph applies for the purposes of paragraph 14(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
 - (b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company mentioned in paragraph 11(2),
 - (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
 - (i) an irrevocable disclaimer or release executed by the beneficiary, or
 - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,
 - (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company that were subject to the trust, and
 - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters referred to in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
 - (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 14(1) but with the omission of paragraph (c).