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## SCHEDULES

### SCHEDULE 12

Sections 77, 78, 79.

#### SHARE OPTION AND SHARE INCENTIVE SCHEMES

##### PART I

###### APPROVAL OF SCHEMES

###### *Conditions of approval*

- 1 The Board shall, on the application of a body corporate (in this Schedule referred to as "the company"), approve a share option scheme or a share incentive scheme if—
- (a) the conditions set out in Part II of this Schedule are satisfied with respect to the adoption of the scheme, the persons eligible to participate in it and the shares to be acquired under it or in pursuance of rights conferred under it; and
  - (b) the further conditions set out in Part III of this Schedule are satisfied if the scheme is a share option scheme and those set out in Part IV of this Schedule if it is a share incentive scheme.
- 2 If, at the time the application is pending, the Board have no evidence that the condition set out in paragraph 6 of Part III or paragraph 5 of Part IV of this Schedule is satisfied, then, if the other conditions are satisfied, the Board may approve the scheme subject to the remaining condition being satisfied; and if that condition is not satisfied the approval shall be of no effect.

###### *Application for approval*

- 3 An application under this Schedule shall be made in writing and shall contain such particulars and be supported by such evidence as may be prescribed by regulations made by the Board by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.

###### *Withdrawal of approval*

- 4 If, at any time after the Board have approved a scheme, any of the conditions mentioned in paragraph 1 above ceases to be satisfied the Board may withdraw the approval with effect from that time.

###### *Appeals*

- 5 If the company is aggrieved by the failure of the Board to approve the scheme or to decide that a condition subject to which the approval has been given is satisfied, or by the withdrawal of the approval, it may, by notice in writing given to the Board within thirty days from the date on which it is notified of the Board's decision,

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require the matter to be determined by the Special Commissioners, and the Special Commissioners shall hear and determine the matter in like manner as an appeal.

## PART II

### CONDITIONS APPLICABLE TO SHARE OPTION AND SHARE INCENTIVE SCHEMES

#### *Adoption of scheme*

- 1        The scheme must have been adopted by a resolution of the holders of the ordinary share capital of the company shares in which (or an interest in, or right to acquire, shares in which) are to be acquired under the scheme, and the shares, interest or right must not be capable of being acquired under the scheme more than ten years after its adoption.

#### *Type of shares*

- 2        The shares must be shares in the company of which the persons participating in the scheme are directors or employees or in a company controlling that company or in a company which, being a member of a consortium owning either that company or a company controlling it, beneficially owns not less than three-twentieths of the ordinary share capital of the company so owned.

For the purposes of this paragraph a company is a member of a consortium owning another company if it is one of not more than five companies which between them beneficially own not less than three-quarters of the other company's ordinary share capital and each of which beneficially owns not less than one-twentieth of that capital.

- 3        The shares must be either—
- (a) shares of a class quoted on a recognised stock exchange, or
  - (b) shares in a company which is not under the control of another company.
- 4        The majority of shares of the same class must be shares acquired otherwise than as mentioned in section 79(1) of this Act and otherwise than by the exercise of a right obtained as mentioned in section 78(1) of this Act.

#### *Limitation on issue of shares*

- 5        In the period of ten years beginning with the adoption of the scheme the issue of shares under the scheme, or in pursuance of rights conferred under the scheme, must be so limited that the nominal value of those shares, when added to that of any shares issued under any other scheme approved under this Schedule and relating to the same body's shares, or in pursuance of rights conferred under any such scheme, does not exceed the following, that is to say—
- (a) if the ordinary share capital of that body does not exceed £2 million, 10 per cent. of that ordinary share capital; and
  - (b) if that ordinary share capital exceeds £2 million, 5 per cent. of that ordinary share capital or £200,000, whichever is the greater.

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### *Participants*

- 6 No person must be eligible to participate in the scheme unless he is a full-time director or full-time employee of the company concerned.

## **PART III**

### FURTHER CONDITIONS APPLICABLE TO SHARE OPTION SCHEMES

#### *Limitation of rights*

- 1 The rights obtainable under the scheme by any person in any year of assessment must be so limited that the amount for which shares may be acquired in pursuance of the rights does not, when added to the amount for which shares remain to be acquired under such rights obtained by him earlier, exceed four times the amount of the relevant emoluments for that or the preceding year of assessment (whichever is the greater); and for this purpose the relevant emoluments are such of the emoluments of the office or employment by virtue of which he is eligible to participate in the scheme as are liable to be paid under deduction of tax pursuant to section 204 of the Taxes Act (pay-as-you-earn), after deducting therefrom amounts included by virtue of Chapter II of Part VIII of that Act.
- 2 If rights are obtainable by any person under the scheme and rights have also been obtained or are obtainable by him under share option schemes previously approved under this Schedule, the limit specified in paragraph 1 above applies to the aggregate of the rights obtainable or obtained under all the schemes.
- 3 If rights are obtainable by any person under the scheme and shares or interests in shares may be or have been acquired by him under a share incentive scheme approved under this Schedule, the limit under this Part of this Schedule applies to the aggregate of the amount mentioned therein and the amount or value limited under Part IV of this Schedule.

#### *Exercise of rights*

- 4 A right obtained by a person under the scheme must not be capable of being exercised later than seven years after it is obtained nor later than six months after he ceases to hold the office or employment by virtue of which he is eligible to participate in the scheme except that it may be capable of being exercised within twelve months of his death if he dies at a time when it was still capable of being exercised by him.

#### *Restriction on transfer*

- 5 A right obtained by a person under the scheme must not be capable of being transferred by him.

#### *Minimum price of shares*

- 6 The price at which shares may be acquired by the exercise of a right obtained under the scheme must be stated at the time the right is obtained and must not be manifestly less than the market value at that time of shares of the same class, but the

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scheme may provide for such variation of the price so stated as may be necessary to take account of any variation in the share capital of the body issuing the shares.

*Freedom from special restrictions*

- 7 The shares must not be subject to any restrictions other than restrictions attaching to all shares of the same class.

**PART IV**

FURTHER CONDITIONS APPLICABLE TO SHARE INCENTIVE SCHEMES

*Limitation of rights*

- 1 The acquisition by any person of shares or interests in shares under the scheme must be so limited that the amount or value of the consideration for the shares and interests so acquired in any year of assessment does not, when added to the amount or value of the consideration for the shares and interests so acquired by him earlier (and remaining subject to restrictions not attaching to all shares of the same class), exceed four times the amount of the relevant emoluments for that or the preceding year of assessment (whichever is the greater) ; and for this purpose the relevant emoluments are such of the emoluments of the office or employment by virtue of which he is eligible to participate in the scheme as are liable to be paid under deduction of tax pursuant to section 204 of the Taxes Act, after deducting therefrom amounts included by virtue of Chapter II of Part VIII of that Act.
- 2 If shares or interests in shares may be acquired by a person under the scheme and shares or interests in shares may also be or have been acquired by him under share incentive schemes previously approved under this Schedule, the limit specified in paragraph 1 above applies to the aggregate of the shares or interests that may be or have been acquired under all the schemes.
- 3 Where shares or interests in shares may be acquired by a person under the scheme and rights are obtainable or have been obtained by him under a share option scheme approved under this Schedule the limit under this Part of this Schedule applies to the aggregate of the amount or value mentioned therein and the amount limited under Part III of this Schedule.

*Restriction on transfer*

- 4 Shares or interests in shares acquired by a person under the scheme must not be capable of being transferred by him while any restrictions attach to the shares which do not attach to all shares of the same class.

*Minimum price of shares*

- 5 (1) The price at which shares may be acquired under the scheme must not be—
- (a) manifestly less than the market value of the shares at the time of their acquisition; nor
  - (b) less than 80 per cent. of the market value at that time of shares of the same class to which no other restrictions attach than restrictions attaching to all shares of that class;

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and similarly with respect to the acquisition of interests in shares; and where part of the price is payable after the acquisition the price shall be treated for the purposes of this paragraph as reduced to such extent as may be necessary to take account of the period for which the payment of that part is or may be deferred.

- (2) This paragraph shall not prevent the scheme from providing for a reduction in the price at which shares are acquired under the scheme in a case where the person acquiring them is called upon to pay any outstanding part of that price or to repay a loan made to him to acquire the shares, and—
- (a) at the time he is so called upon the market value of shares of the same class to which no other restrictions attach than restrictions attaching to all shares of that class is less than the price at which the shares were acquired ; and
  - (b) the reduction provided for is not greater than the amount by which the market value mentioned in paragraph (a) above falls short of the price mentioned therein, after adjusting that value and that price to such extent (if any) as may be necessary to take account both of any deferment of the payment of any part thereof and of any variation in the share capital of the body issuing the shares.

#### *Time limit for special restrictions*

- 6 Any restriction attaching to the shares and not attaching to all shares of the same class must cease not later than seven years after the shares or an interest in them is acquired under the scheme (or if acquired in substitution for shares or interests previously acquired not later than seven years after the earliest such acquisition).

#### *Conditions governing bonus and rights issues*

- 7 The scheme must provide that where shares are issued otherwise than under the scheme and otherwise than for a consideration to persons who have acquired shares or interests in shares under the scheme the same restrictions must attach to the shares so issued as are for the time being attaching to the shares which, or interests in which, those persons have acquired under the scheme.
- 8 The scheme must provide that where an offer to acquire shares is made otherwise than under the scheme to persons who have acquired shares or an interest in shares in pursuance of the scheme, the offer must be on the same terms as offers to acquire shares of the same class which are made to shareholders generally.

## **PART V**

### **CONDITIONS TO BE SATISFIED BY DIRECTOR OR EMPLOYEE**

- 1 He must retain the beneficial ownership of or his interest in the shares until whichever is the earliest—
- (a) the end of the period of three years beginning with his acquisition of his right under the share option scheme or, as the case may be, his acquisition of the shares or interest under the share incentive scheme ; and
  - (b) his ceasing to be a director or employee by reason of injury, disability or dismissal for redundancy (within the meaning of the Redundancy Payments Act 1965 or of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965); and

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(c) his death ;

but he shall not be deemed to fail to satisfy this condition by reason only that the shares are acquired by a company which is entitled and bound to do so under section 209 of the Companies Act 1948 or section 200 of the Companies Act (Northern Ireland) 1960 (acquisition of shares from dissenting shareholders).

- 2 If the shares are shares in a close company he must not have a material interest in that company or in a company controlling that company at the time he obtains the right or is given the opportunity to acquire the shares or his interest therein or thereafter until the end of the period during which under paragraph 1 above he is required to retain the beneficial ownership of or his interest in the shares, nor at any time thereafter while any restrictions attach to the shares which do not attach to all shares of the same class.

## PART VI

### EFFECT OF PARTIAL COMPLIANCE WITH CONDITIONS

- 1 Where—
- (a) a person has before 6th April 1972 obtained a right as mentioned in section 78 of this Act in pursuance of a share option scheme which is not approved under this Schedule ; and
  - (b) the right is exercised by him before 6th April 1973 or, if he dies before that date, is exercised within twelve months of his death ;
- section 186 of the Taxes Act shall not apply to any gain realised by the exercise, if or to the extent that the right is within the limit imposed by paragraph 1 of Part III of this Schedule.
- 2 If that person obtained the right within the first twelve months during which he held the office or employment by virtue of which he was eligible to participate in the scheme paragraph 1 above shall have effect as if for the limit referred to therein there were substituted the greater of the following, that is to say, that limit and what would be that limit if the relevant emoluments for those twelve months were specified in paragraph 1 of Part III of this Schedule instead of those mentioned therein.
- 3 In relation to a right which cannot be exercised before 6th April 1973 paragraph 1 above shall have effect as if for the references to that date there were substituted references to six months after the earliest date at which it can be exercised.

## PART VII

### SUPPLEMENTARY PROVISIONS

#### *Procedure on assessment under section 78(2)*

- 1 For the purposes of any assessment made or to be made in pursuance of section 78(2) of this Act the market value at any time of any shares shall be determined by the Board and their determination shall be notified to the body corporate by which the shares were issued; and that body, as well as the person on whom the assessment is or is to be made, may appeal against the determination to the Special Commissioners.

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- 2 On any such appeal all persons who have obtained a right in pursuance of the same scheme and on the same day may take part in the proceedings, and the determination of the Special Commissioners shall be binding on all such persons, whether or not they have taken part in the proceedings.

#### *Furnishing of information*

- 3 Where in any year of assessment a person acquires shares or an interest in shares as mentioned in section 79(1) of this Act and the acquisition is not made in pursuance of a scheme approved under this Schedule, the body from which the shares are or the interest is acquired shall deliver to the inspector, within thirty days of the end of the year, particulars in writing of the shares and of the acquisition.
- 4 The Board may by statutory instrument make regulations requiring such information to be given about the names and addresses of persons participating in schemes approved under this Schedule, the shares issued or rights acquired in pursuance of such schemes and the exercise, assignment or release of such rights as appears to the Board necessary for the discharge of their functions under this Schedule and sections 78 and 79 of this Act; and any such statutory instrument shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.
- 5 In section 98 of the Taxes Management Act 1970 (penalty for failure to furnish information etc.) the following shall be added in the second column of the Table: " Paragraph 3 of Part VII of Schedule 12 to the Finance Act 1972 or regulations under paragraph 4 of that Part ".

#### *Interpretation*

- 6 In sections 77 to 79 of this Act and in this Schedule—
- " associated company " has the same meaning as, by virtue of section 302 of the Taxes Act, it has in Chapter III of Part XI of that Act;
  - " close company " has the same meaning as in the Corporation Tax Acts;
  - " control " has the meaning assigned to it by section 534 of the Taxes Act;
  - " director " includes a person who is to be a director;
  - " employee " includes a person who is to be an employee;
  - " full-time ", in relation to a director or employee, means required to devote substantially the whole of his time to service as a director or employee;
  - " market value " has the same meaning as, for the purposes of Part III of the Finance Act 1965, it has by virtue of section 44 of that Act;
  - " recognised stock exchange " has the same meaning as in the Corporation Tax Acts;
  - " share incentive scheme " means a scheme in pursuance of which shares or interests in shares may be acquired as mentioned in section 79(1) of this Act;
  - " share option scheme " means a scheme in pursuance of which rights may be obtained as mentioned in section 78(1) of this Act;
  - " shares " includes stock and also includes securities as defined in section 237(5) of the Taxes Act; and references to an interest in any shares include references to an interest in the proceeds of sale of part of the shares.

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- 7 Section 186(9) of the Taxes Act shall apply, with the necessary modifications, for determining for the purposes of sections 78 and 79 of this Act and of this Schedule whether a person obtains a right or acquires shares or an interest in shares as a director or employee of a body corporate.
- 8 Section 285(6) of the Taxes Act shall apply for determining for the purposes of this Schedule whether a person has a material interest in a company.
- 9 Section 533 of the Taxes Act (connected persons) shall apply for the purposes of sections 78 and 79 of this Act and of this Schedule.