Section 519.

FA97 Sch 3.

Interpretation

1. (1) For the purposes of this Schedule—

“ordinary share capital” has the same meaning as in section 2;

“securities” means shares (including stock) and debentures.

(2) For the purposes of this Schedule, the question whether one company is controlled by another shall be construed in accordance with section 432.

(3) For the purposes of this Schedule, a person shall be regarded as an employee or a director of a company within the founding company's group at a particular time if, at the time or within 18 months before the time, that person is or was an employee or director of—

(a) the founding company, being a company resident in the State,

(b) a company resident in the State and controlled by the founding company, or

(c) a company, being the founding company or a company controlled by the founding company, which carries on a trade in the State through a branch or agency in which that person is employed.

(4) (a) In this subparagraph—

“associate” has the meaning assigned to it by section 433;

“control” shall be construed in accordance with section 432.

(b) For the purposes of this Schedule, a person shall be treated as having a material interest in a company if the person, either on his or her own or with any one or more of his or her associates, or if any associate of his or her with or without any such other associates, is the beneficial owner of, or able directly or through the medium of other companies or by any other indirect means to control, more than 5 per cent of the ordinary share capital of the company.

(5) For the purposes of this Schedule, a trust shall be established when the deed under which it is established is executed.

Approval of Qualifying Trusts

2. On the application of a body corporate (in this Schedule referred to as “the founding company”) which has established an employee share ownership trust, the Revenue Commissioners shall approve of the trust as a qualifying employee share ownership trust if they are satisfied that the conditions in paragraphs 6 to 18 are met in relation to the trust.

3. (1) Where at any time after the Revenue Commissioners have approved of a trust—

(a) there is with respect to the operation of the trust any contravention of the conditions in paragraphs 6 to 18, or

(b) any shares of a class of which shares have been acquired by the trustees receive different treatment in any respect from the other shares of that class, in particular, different treatment in respect of—

(i) the dividend payable,

(ii) repayment,

(iii) the restrictions attaching to the shares, or

(iv) any offer of substituted or additional shares, securities or rights of any description in respect of the shares,

the Revenue Commissioners may, subject to subparagraph (3), withdraw the approval with effect from that time or from such later time as they may specify.

(2) Where at any time after the Revenue Commissioners have approved of a trust an alteration is made to the terms of the trust, the approval shall not have effect after the date of the alteration unless the Revenue Commissioners have approved of the alteration.

(3) It shall not be a ground for withdrawal of approval of a trust that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which the shares were issued, treatment which is less favourable than that accorded to shares issued before that date.

(4) The Revenue Commissioners may by notice in writing require any person to furnish to them, within such time as they may direct which is not less than 30 days, such information as they think necessary to enable them to either or both—

(a) determine whether to approve of an employee share ownership trust or withdraw an approval already given, and

(b) determine the liability to tax of any beneficiary under an approved employee share ownership trust.

4. (1) Where the founding company is aggrieved by—

(a) the failure of the Revenue Commissioners to approve of an employee share ownership trust,

(b) the failure of the Revenue Commissioners to approve of an alteration as mentioned in paragraph 3(2), or

(c) the withdrawal of approval,

the company may, by notice in writing given to the Revenue Commissioners within 30 days from the date on which it is notified of their decision, make an application to have its claim for relief heard and determined by the Appeal Commissioners.

(2) Where an application is made under subparagraph (1), the Appeal Commissioners shall hear and determine the claim in the like manner as an appeal made to them against an assessment and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

5. The Revenue Commissioners may nominate any of their officers, including an inspector, to perform any acts and discharge any functions authorised by this Schedule to be performed or discharged by them.

General

6. (1) The trust shall be established under a deed referred to as “the trust deed”).

(2) The trust shall be established by the founding company which at the time the trust is established is not controlled by another company.

Trustees

7. The trust deed shall provide for the establishment of a body of trustees complying with paragraph 8, 9 or 10.

8. (1) The trust deed shall—

(a) appoint the initial trustees;

(b) contain rules for the retirement and removal of trustees;

(c) contain rules for the appointment of replacement and additional trustees.

(2) The trust deed shall provide that at any time while the trust subsists (in this subparagraph referred to as “the relevant time”)—

(a) the number of trustees shall not be less than 3;

(b) all the trustees shall be resident in the State;

(c) the trustees shall include one person who is a trust corporation, a solicitor, or a member of such other professional body as the Revenue Commissioners may from time to time allow for the purposes of this paragraph;

(d) the majority of the trustees shall be persons who are not and have never been directors of any company within the founding company's group at the relevant time;

(e) the majority of the trustees shall be representatives of the employees of the companies within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company;

(f) the trustees to whom subparagraph (e) relates shall, before being appointed as trustees, have been selected by a majority of the employees of the companies within the founding company's group at the time of the selection.

9. (1) The trust deed shall—

(a) appoint the initial trustees;

(b) contain rules for the retirement and removal of trustees;

(c) contain rules for the appointment of replacement and additional trustees.

(2) The trust deed shall be so framed that at any time while the trust subsists the conditions in subparagraph (3) are fulfilled as regards the persons who are then trustees, and in that subparagraph “the relevant time” means that time.

(3) The conditions referred to in subparagraph (2) are that—

(a) the number of trustees is not less than 3;

(b) all the trustees are resident in the State;

(c) the trustees include at least one person who is a professional trustee and at least 2 persons who are non-professional trustees;

(d) at least half of the non-professional trustees were, before being appointed as trustees, selected in accordance with subparagraph (6) or (7);

(e) all the trustees so selected are persons who are employees of companies within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company.

(4) For the purposes of this paragraph, a trustee shall be a professional trustee at a particular time if—

(a) the trustee is then a trust corporation, a solicitor, or a member of such other professional body as the Revenue Commissioners allow for the purposes of this subparagraph,

(b) the trustee is not then an employee or director of any company then within the founding company's group, and

(c) the trustee meets the requirements of subparagraph (5),

and for the purposes of this paragraph a trustee shall be a non-professional trustee at a particular time if the trustee is not then a professional trustee for those purposes.

(5) A trustee shall meet the requirements of this subparagraph if—

(a) he or she was appointed as an initial trustee and, before being appointed as trustee, was selected only by the persons who later became the non-professional initial trustees, or

(b) he or she was appointed as a replacement or additional trustee and, before being appointed as trustee, was selected only by the persons who were the non-professional trustees at the time of the selection.

(6) Trustees shall be selected in accordance with this subparagraph if the process of selection is one under which—

(a) all the persons who are employees of the companies within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are, in so far as is reasonably practicable, given the opportunity to stand for selection,

(b) all the employees of the companies within the founding company's group at the time of the selection are, in so far as is reasonably practicable, given the opportunity to vote, and

(c) persons gaining more votes are preferred to those gaining less.

(7) Trustees shall be selected in accordance with this subparagraph if they are selected by persons elected to represent the employees of the companies within the founding company's group at the time of the selection.

10. (1) This paragraph shall apply where the trust deed provides that at any time while the trust subsists there shall be a single trustee.

(2) The trust deed shall—

(a) be so framed that at any time while the trust subsists the trustee is a company which at that time is resident in the State and controlled by the founding company;

(b) appoint the initial trustee;

(c) contain rules for the removal of any trustee and for the appointment of a replacement trustee.

(3) The trust deed shall be so framed that at any time while the trust subsists the company which is then the trustee is a company so constituted that the conditions in subparagraph (4) are then fulfilled as regards the persons who are then directors of the company, and in that subparagraph “the relevant time” means that time and “the trust company” means that company.

(4) The conditions referred to in subparagraph (3) are that—

(a) the number of directors is not less than 3;

(b) all the directors are resident in the State;

(c) the directors include at least one person who is a professional director and at least 2 persons who are non-professional directors;

(d) at least half of the non-professional directors were, before being appointed as directors, selected in accordance with subparagraph (7) or (8);

(e) all the directors so selected are persons who are employees of companies within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company.

(5) For the purposes of this paragraph, a director shall be a professional director at a particular time if—

(a) the director is then a solicitor or a member of such other professional body as the Revenue Commissioners may at that time allow for the purposes of this subparagraph,

(b) the director is not then an employee of any company then within the founding company's group,

(c) the director is not then a director of any such company other than the trust company, and

(d) the director meets the requirements of subparagraph (6),

and for the purposes of this paragraph a director shall be a nonprofessional director at a particular time if the director is not then a professional director for those purposes.

(6) A director shall meet the requirements of this subparagraph if—

(a) he or she was appointed as an initial director and, before being appointed as director, was selected only by the persons who later became the non-professional initial directors, or

(b) he or she was appointed as a replacement or additional director and, before being appointed as director, was selected only by the persons who were the non-professional directors at the time of the selection.

(7) Directors shall be selected in accordance with this subparagraph if the process of selection is one under which—

(a) all the persons who are employees of the companies within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are, in so far as is reasonably practicable, given the opportunity to stand for selection,

(b) all the employees of the companies within the founding company's group at the time of the selection are, in so far as is reasonably practicable, given the opportunity to vote, and

(c) persons gaining more votes are preferred to those gaining less.

(8) Directors shall be selected in accordance with this subparagraph if they are selected by persons elected to represent the employees of the companies within the founding company's group at the time of the selection.

Beneficiaries

11. (1) The trust deed shall contain provision as to the beneficiaries under the trust in accordance with this paragraph.

(2) The trust deed shall provide that a person is a beneficiary at a particular time (in this subparagraph referred to as “the relevant time”) if—

(a) the person is at the relevant time an employee or director of a company at that time within the founding company's group,

(b) at each given time in a qualifying period the person was such an employee or director of a company within the founding company's group at that given time, and

(c) in the case of a director, at that given time the person worked as a director of the company concerned at the rate of at least 20 hours a week (disregarding such matters as holidays and sickness).

(3) The trust deed may provide that a person is a beneficiary at a particular time (in this subparagraph referred to as “the relevant time”) if—

(a) the person has at each given time in a qualifying period been an employee or director of a company within the founding company's group at that given time,

(b) the person has ceased to be an employee or director of the company or the company has ceased to be within that group, and

(c) at the relevant time a period of not more than 18 months has elapsed since the person so ceased or the company so ceased, as the case may be.

(4) The trust deed may provide for a person to be a beneficiary if the person is a charity and the circumstances are such that—

(a) there is no person who is a beneficiary within the rule which is included in the deed and conforms with subparagraph (2) or with any rule which is so included and conforms with subparagraph (3), and

(b) the trust is in consequence being wound up.

(5) For the purposes of subparagraph (2), a qualifying period shall be a period—

(a) whose length is not more than 5 years,

(b) whose length is specified in the trust deed, and

(c) which ends with the relevant time (within the meaning of that subparagraph).

(6) For the purposes of subparagraph (3), a qualifying period shall be a period—

(a) whose length is equal to that of the period specified in the trust deed for the purposes of a rule which conforms with subparagraph (2), and

(b) which ends when the person or company, as the case may be, ceased as mentioned in subparagraph (3)(b).

(7) The trust deed shall not provide for a person to be a beneficiary unless the person is within the rule which is included in the deed and conforms with subparagraph (2) or any rule which is so included and conforms with subparagraph (3) or (4).

(8) The trust deed shall provide that, notwithstanding any other rule which is included in it, a person cannot be a beneficiary at a particular time (in this subparagraph referred to as “the relevant time”) by virtue of a rule which conforms with subparagraph (2), (3) or (4) if—

(a) at the relevant time the person has a material interest in the founding company, or

(b) at any time in the period of one year preceding the relevant time the person has had a material interest in that company.

(9) For the purposes of this paragraph, “charity” means any body of persons or trust established for charitable purposes only.

Trustees' functions

12. (1) The trust deed shall contain provision as to the functions of the trustees.

(2) The functions of the trustees shall be so expressed that it is apparent that their general functions are—

(a) to receive sums from the founding company and other sums, by means of loan or otherwise;

(b) to acquire securities;

(c) to grant rights to acquire shares to persons who are beneficiaries under the terms of the trust deed;

(d) to transfer either or both securities and sums to persons who are beneficiaries under the terms of the trust deed;

(e) to transfer securities to the trustees of profit sharing schemes approved under Part 2 of Schedule 11;

(f) pending transfer, to retain the securities and to manage them, whether by exercising voting rights or otherwise.

Sums

13. (1) The trust deed shall require that any sum received by the trustees—

(a) shall be expended within the expenditure period,

(b) may be expended only for one or more of the qualifying purposes, and

(c) shall, while it is retained by them, be kept as cash, or be kept in an account with a relevant deposit taker).

(2) For the purposes of subparagraph (1), the expenditure period shall be the period of 9 months beginning on the day determined as follows—

(a) in a case where the sum is received from the founding company, or a company which is controlled by that company at the time the sum is received, the day following the end of the accounting period in which the sum is expended by the company from which it is received;

(b) in any other case, the day the sum is received.

(3) For the purposes of subparagraph (1), each of the following shall be a qualifying purpose—

(a) the acquisition of shares in the founding company;

(b) the repayment of sums borrowed;

(c) the payment of interest on sums borrowed;

(d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;

(e) the meeting of expenses.

(4) The trust deed shall provide that, in ascertaining for the purposes of a relevant rule (being a provision which is included in the trust deed and conforms with subparagraph (1)) whether a particular sum has been expended, sums received earlier by the trustees shall be treated as expended before sums received by them later.

(5) The trust deed shall provide that, where the trustees pay sums to different beneficiaries at the same time, all the sums shall be paid on similar terms.

(6) For the purposes of subparagraph (5), the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service or similar factors shall not be regarded as meaning that the terms are not similar.

Securities

14. (1) Subject to paragraph 15, the trust deed shall provide that securities acquired by the trustees shall be shares in the founding company which—

(a) form part of the ordinary share capital of the company,

(b) are fully paid up,

(c) are not redeemable, and

(d) are not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by subparagraph (2).

(2) Subject to subparagraph (3), a restriction shall be authorised by this subparagraph if—

(a) it is imposed by the founding company's articles of association,

(b) it requires all shares held by directors or employees of the founding company, or of any other company which it controls for the time being, to be disposed of on ceasing to be so held, and

(c) it requires all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not, or have ceased to be, such directors or employees to be disposed of when they are acquired.

(3) A restriction shall not be authorised by subparagraph (2) unless—

(a) any disposal required by the restriction will be by means of sale for a consideration in money on terms specified in the articles of association, and

(b) the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in subparagraph (2)) may be required to sell them on terms which are the same as those mentioned in clause (a).

(4) The trust deed shall provide that shares in the founding company may not be acquired by the trustees at a price exceeding the price they might reasonably be expected to fetch on a sale in the open market.

(5) The trust deed shall provide that shares in the founding company may not be acquired by the trustees at a time when that company is controlled by another company.

15. The trust deed may provide that the trustees may acquire securities other than shares in the founding company—

(a) if they are securities acquired by the trustees as a result of a reorganisation or reduction of share capital, and the original shares the securities represent are shares in the founding company), or

(b) if they are securities issued to the trustees in exchange in circumstances mentioned in section 586.

16. (1) The trust deed shall provide that—

(a) where the trustees transfer securities to a beneficiary, they shall do so on qualifying terms;

(b) the trustees shall transfer securities before the expiry of 20 years beginning on the date on which they acquired them.

(2) For the purposes of subparagraph (1), a transfer of securities shall be made on qualifying terms if—

(a) all the securities transferred at the same time are transferred on similar terms,

(b) securities have been offered to all the persons who are beneficiaries under the terms of the trust deed when the transfer is made, and

(c) securities are transferred to all such beneficiaries who have accepted.

(3) For the purposes of subparagraph (2), the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service or similar factors shall not be regarded as meaning that the terms are not similar.

(4) The trust deed shall provide that, in ascertaining for the purposes of a relevant rule (being a provision which is included in the trust deed and conforms with subparagraph (1)) whether particular securities are transferred, securities acquired earlier by the trustees shall be treated as transferred by them before securities acquired by them later.

Other features

17. The trust deed shall not contain features which are not essential or reasonably incidental to the purpose of acquiring sums and securities, transferring sums and securities to employees and directors, and transferring securities to the trustees of profit sharing schemes approved under Part 2 of Schedule 11.

18. (1) The trust deed shall provide that for the purposes of the deed the trustees—

(a) acquire securities when they become entitled to them;

(b) transfer securities to another person when that other person becomes entitled to them;

(c) retain securities if they remain entitled to them.

(2) Where the trust deed provides for the matter set out in paragraph 15, the trust deed shall provide for the following exceptions to any rule which is included in it and conforms with subparagraph (1) (a), namely—

(a) if the trustees become entitled to securities as a result of a reorganisation or reduction of share capital, they shall be treated as having acquired them when they became entitled to the original shares which those securities represent);

(b) if securities are issued to the trustees in exchange in circumstances mentioned in section 586, they shall be treated as having acquired them when they became entitled to the securities for which they are exchanged.

(3) The trust deed shall provide that—

(a) if the trustees agree to take a transfer of securities, for the purposes of the deed they become entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement;

(b) if the trustees agree to transfer securities to another person, for the purposes of the deed the other person becomes entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.