

## SCHEDULE 9 Change in Ownership of Company: Disallowance of Trading Losses

Sections 401 and 679 (4).

FA73 Sch5 Ptl pars 1 to 7 and 9; FA97 s146(1) and Sch 9 Ptl par5(3)

Change in ownership of company

1. For the purposes of sections 401 and 679 (4), there shall be a change in the ownership of a company if—

(a) a single person acquires more than 50 per cent of the ordinary share capital of a company,

(b) 2 or more persons each acquire a holding of 5 per cent or more of the ordinary share capital of the company and those holdings together amount to more than 50 per cent of the ordinary share capital of the company, or

(c) 2 or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than 50 per cent of the ordinary share capital of the company, but disregarding a holding of less than 5 per cent unless it is an addition to an existing holding and the 2 holdings together amount to 5 per cent or more of the ordinary share capital of the company.

2. In applying paragraph 1—

(a) the circumstances at any 2 points in time with not more than 3 years between them may be compared, and a holder at the later time may be regarded as having acquired whatever such holder did not hold at the earlier time, irrespective of what such holder has acquired or disposed of between such 2 points in time;

(b) so as to allow for any issue of shares or other reorganisation of capital, the comparison referred to in subparagraph (a) may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;

(c) in deciding for the purposes of subparagraphs (b) and (c) of paragraph 1 whether any person has acquired a holding of at least 5 per cent or a holding which makes at least 5 per cent when added to an existing holding, acquisitions by, and holdings of, persons who are connected with each other shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;

(d) any acquisition of shares under the will or on the intestacy of a deceased person and any gift of shares, if it is shown that the gift is unsolicited and made without regard to section 401 or 679 (4), shall be disregarded.

3. Where persons, whether members of the company or not, possess extraordinary rights or powers under

the articles of association or under any other document regulating the company and as a consequence ownership of ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses or capital allowances may ultimately enure, then, in considering whether there has been a change in ownership of the company for the purposes of section 401 or 679 (4), holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

4. Where section 401 or 679 (4) has operated to restrict relief by reference to a change in ownership taking place at any time, no transaction or circumstance before that time shall be taken into account in determining whether there is any subsequent change in ownership.

#### Groups of companies

5. (1) For the purposes of sections 401 and 679 (4), a change in the ownership of a company shall be disregarded if—

(a) immediately before the change the company is a 75 per cent subsidiary of another company, and

(b) that other company continues after the change, despite a change in the direct ownership of the first-mentioned company, to own that first-mentioned company as a 75 per cent subsidiary.

(2) If there is a change in the ownership of a company which has a 75 per cent subsidiary, whether owned directly or indirectly, section 401 or 679 (4), as the case may be, shall apply as if there had also been a change in the ownership of that subsidiary unless the change in ownership of the first-mentioned company is to be disregarded under subparagraph (1).

#### Provisions as to ownership

6. For the purposes of sections 401 and 679 (4) and this Schedule—

(a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly,

(b) a company shall be deemed to be a 75 per cent subsidiary of another company if and so long as not less than 75 per cent of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies,

(c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 9, and

(d) “share” includes “stock”.

#### Time of change in ownership

7. (1) Where any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change in ownership of a company—

(a) was made in pursuance of a contract of sale or option or other contract, or

(b) was made by a person holding such a contract,

the time when the change in ownership took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of the contract was assigned to the holder so that, in the case of a person exercising an option to purchase shares, such person shall be regarded as having purchased the shares when such person acquired the option.

(2) Subparagraph (1) shall not apply where the contract was made before the 16th day of May, 1973.

#### Information

8. Any person in whose name any shares or securities of a company are registered shall, if required by notice in writing by an inspector given for the purposes of section 401 or 679 (4), state whether or not that person is the beneficial owner of those shares or securities or any of them and, if that person is not the beneficial owner of those shares or securities or any of them, that person shall furnish the name and address of the person or persons on whose behalf those shares or securities are registered in that person's name.