

## SCHEDULES

### SCHEDULE 3

#### APPROVED SAYE OPTION SCHEMES

##### PART 7

##### EXCHANGE OF SHARE OPTIONS

###### *Exchange of options on company reorganisation*

- 38 (1) An SAYE option scheme may provide that if—
- (a) there is a company reorganisation affecting a scheme company (that is, a company whose shares may be acquired by the exercise of share options obtained under the scheme: see paragraph 18), and
  - (b) a participant has obtained share options under the scheme which are to acquire shares of the scheme company (“the old options”),
- the participant may agree with the acquiring company to release the old options in consideration of the participant being granted new share options.
- (2) For the purposes of this paragraph there is a company reorganisation affecting a scheme company if another company (“the acquiring company”)—
- (a) obtains control of the scheme company—
    - (i) as a result of making a general offer to acquire the whole of the issued ordinary share capital of the scheme company which is made on a condition such that, if it is met, the person making the offer will have control of that company, or
    - (ii) as a result of making a general offer to acquire all the shares in the scheme company which are of the same class as those subject to the old options;
  - (b) obtains control of the scheme company as a result of a compromise or arrangement sanctioned by the court under—
    - (i) section 425 of the Companies Act 1985 (power to compromise with creditors and members), or
    - (ii) Article 418 of the Companies (Northern Ireland) Order 1986 (corresponding provision for Northern Ireland); or
  - (c) becomes bound or entitled to acquire shares in the scheme company under—
    - (i) sections 428 to 430 of that Act (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), or
    - (ii) Articles 421 to 423 of that Order (corresponding provision for Northern Ireland).

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*Status: This is the original version (as it was originally enacted).*

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- (3) A scheme that makes provision under sub-paragraph (1) must require the agreement referred to in that sub-paragraph to be made—
- (a) where control is obtained in the way set out in sub-paragraph (2)(a)(i) or (ii), within the period of 6 months beginning with the time when the acquiring company obtains control and any condition subject to which the offer is made is met,
  - (b) where control is obtained in the way set out in sub-paragraph (2)(b), within the period of 6 months beginning with the time when the court sanctions the compromise or arrangement, and
  - (c) where sub-paragraph (2)(c) applies, within the period during which the acquiring company remains bound or entitled as mentioned in that provision.

*Requirements about share options granted in exchange*

- 39 (1) This paragraph applies to a scheme that makes provision under paragraph 38 (exchange of options on company reorganisation).
- (2) The scheme must require the new share options to relate to shares in a company which—
- (a) is different from the company whose shares are subject to the old options, and
  - (b) is either the acquiring company itself or some other company within sub-paragraph (b) or (c) of paragraph 18 (shares must be ordinary shares of certain companies), namely—
    - (i) a company which has control of the scheme organiser, or
    - (ii) a company which is, or has control of a company which is, a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.

For this purpose the control in question may be through the medium of the acquiring company.
- (3) The scheme must also require the new share options to be equivalent to the old options.
- (4) For the new options to be regarded as equivalent to the old options—
- (a) the shares to which they relate must meet the conditions in paragraphs 18 to 22 (types of share that may be used),
  - (b) they must be exercisable in the same manner as the old options and subject to the provisions of the scheme as it had effect immediately before the release of the old options,
  - (c) the total market value of the shares subject to the old options immediately before the release of those options by the participant must equal the total market value, immediately after the grant of the new options to the participant, of the shares subject to those options, and
  - (d) the total amount payable by the participant for the acquisition of shares under the new options must be equal to the total amount that would have been so payable under the old options.
- (5) For the purposes of the SAYE code, new share options granted under the terms of a provision included in a scheme under paragraph 38 are to be treated as having been granted at the time when the corresponding old options were granted.

- (6) This also applies for the purposes of the provisions of the scheme in their operation, after the grant of the new options, by virtue of a condition complying with subparagraph (4)(b).