THE EMPLOYEES SHARE OWNERSHIP PLAN ACT, 1994

(Act 7 of 1994)

ARRANGEMENT OF SECTIONS

1. Short title, commencement and application.

2. Interpretation.

3. Approval of plans.

4. Prerequisites for approval of plans.

5. Alteration of approved plan.

6. Withdrawal of approval.

7. Eligibility.

8. Participation.

9. Compulsory rights and obligations in plan.

10. Participation not to be compulsory for existing employees.

11. Participation of related enterprises or their employees.

12. Plans of foreign companies.

13. Relief from income tax, transfer tax and stamp duty.

14. Compliance certificate of independent auditor.

15. No tax relief unless shares acquired at initial market value.

16. Limit on income tax relief in relation to annual allocation of shares.

17. Relief from transfer tax for estates of deceased shareholders.

18. Review by Revenue Court.

19. Regulations.

20. Power of Minister of Labour to investigate complaints re operations of a plan.

21. Transitional provision re existing plans.

22. Amendment of other Acts.

SCHEDULES.

JAMAICA

No. 7—1994

I assent,

[L.S.]

Governor-General

AN ACT to Provide Incentives for the ownership by employees of shares in the company in which they are employed and for connected purposes.

[17/3/95]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1.—(1) This Act may be cited as the Employees Share Ownership Plan Act, 1994, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title, commencement and application.

(2) Subject to the provisions of this Act, the provisions of the Income Tax Act shall apply for the administration

and all other purposes of, or incidental to, this Act; and accordingly, without prejudice to the generality of the foregoing—

(a) the Commissioner of Income Tax, the Commissioner of Inland Revenue and any other person exercising functions in relation to income tax under the Income Tax Act or the Revenue Administration Act shall have like functions in relation to this Act;

(b) the functions and jurisdiction of any Court pursuant to either of the Acts referred to in paragraph (a) shall extend to matters arising under this Act; and

(c) the penalties, interest and other charges and any limitations applicable to any contravention of the Acts referred in paragraph (a) shall be fully applicable to contraventions involving any provision in this Act relating to income tax.

(3) Save as otherwise expressly provided in this Act, nothing in this Act shall be construed as entitling any person to relief from income tax, stamp duty or transfer tax, as the case may be, under any plan in respect of any period prior to the date of approval of a plan under this Act.

Interpretation.

2. In this Act —

"allocate" in relation to a participant in a plan, means the appropriation in the prescribed manner by the trustees of that plan of the beneficial interest in particular assets of the plan to that participant, and "allocation" shall be construed accordingly;

"approved overseas stock exchange" means a stock exchange which—

(a) is situated outside Jamaica; and

(b) is approved by the Minister by order for the purposes of this Act;

"Commissioner" means the Commissioner of Income Tax;

"company" means—

(a) a company as defined in section 2 of the Companies Act; or

(b) any body or association incorporated by or under any enactment;

"control" in relation to a company means the power of a person to secure by means of the holding or possession of voting power in or in relation to that company, or by virtue of any other powers conferred by the articles of association or other document regulating the company, that the company's affairs are conducted in accordance with that person's wishes;

"credit purchase" in relation to shares in a plan, means a purchase on terms whereby the shares are transferred to the trustees prior to payment in full of the price;

"employee" means any individual employed by a company under a contract of service;

"employee share ownership plan" or "plan" means a plan approved for the time being by the Commissioner for the purposes of this Act or deemed to be so approved pursuant to section 3 (4) (b);

"ESOP shares" means shares of a grantor vested in the trustees of a plan in their capacity as such;

"functions" includes powers and duties;

"grantor" has the meaning specified in section 3;

"group" in relation to a company, means that company and—

(a) any other company which is its holding company or subsidiary;

(b) any other company which is a subsidiary of the holding company;

(c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b);

(d) any company which is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c);

"group plan" means a plan which is expressed to extend to employees of some or all companies in the group;

"independent auditor" as respects any grantor means a person who is a registered public accountant as defined in section 2 of the Public Accountancy Act and is not—

(a) an officer or employee of the grantor or of any member of a group which includes the grantor;

(b) a person who is a partner of, or in the employment of, an officer or employee of the grantor or of any member of a group which includes the grantor; or

(c) a body corporate;

"initial market value" means—

(a) in relation to shares allocated to a participant, the market value of those shares on the date of their acquisition by the trustees of the plan; and

(b) in relation to share options, the market value, at the time the option is granted, of the shares which are the subject matter of the option,

determined in the prescribed manner;

"lender" as respects any plan, means a person who, not being the grantor or a member of the same group as the grantor, finances the acquisition of shares for the plan by lending money to the grantor or the trustees of the plan;

"participant" as respects any plan means, subject to section 11 (related enterprise participants) an individual who, being an employee of any participating company, is recorded as a participant in that plan and who—

(a) is or, in accordance with this Act, will be allocated a beneficial interest therein; or

(b) in the case of a share option plan, acquires a right to subscribe for shares in the grantor in accordance with that plan;

"participating company" means the grantor and any other company in the same group, employees of which are for the time being participants in a plan promoted by the grantor;

"recognized stock exchange" means—

(a) a stock exchange in Jamaica approved by the Minister for the purposes of this Act; or

(b) an approved overseas stock exchange;

"release date" means the sixth anniversary of the date of allocation of shares under a plan;

"retention period" means in relation to—

(a) any ESOP shares vested in the trustees of a plan, the period commencing with the date of allocation of those shares; or

(b) any ESOP shares diversified into other plan assets, the period commencing with the date on which the ESOP shares so diversified were allocated to the participant,

and ending on the second anniversary of that date or the date of termination of the participant's employment in specified circumstances, whichever is the earlier;

"share" has the same meaning as in section 2 of the Companies Act;

"share option plan" means a plan having the characteristics described in Part III of the First Schedule;

First Schedule.

"specified circumstances" in relation to the termination of a participant's employment, means death, disability, the attainment of retirement age or involuntary dismissal due to redundancy;

"spouse" includes—

(i) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of his death;

(ii) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than five years immediately preceding the date of her death;

"subsidiary" and "holding company" have the meanings ascribed in section 149 of the Companies Act.

Approval of plans.

3.—(1) The Commissioner shall, in writing, approve as an employee share ownership plan for the purposes of this Act any proposed plan submitted for approval by any company as defined in Paragraph (a) of the definition of Company in section 2 (in this Act referred to as "the grantor") whose shares are available for acquisition by or on behalf of employees of the grantor under the terms of that plan, or, in the case of a group plan, by employees of any participating company included in that plan, where the Commissioner is satisfied that the proposed plan is not inconsistent with the

provisions of the memorandum and articles of association of the grantor and conforms to—

First Schedule. Third Schedule.

(a) the provisions of the First and Third Schedules; and

(b) such other provisions of this Act as apply thereto.

(2) In exercise of his powers under subsection (1) as respects a proposed plan submitted by a grantor the Commissioner may, to such extent as he thinks fit, take into account a certificate signed by an independent auditor that the proposed plan meets the provisions and requirements mentioned in subsection (1).

(3) Subject to subsection (5), where a certificate referred to in subsection (2) has been furnished to the Commissioner with an application for approval of a plan the Commissioner shall, in writing within three months of receipt of the application or such other period as may be prescribed—

(a) notify the applicant of the Commssioner's approval or disapproval, as the case may be, of the proposed plan; or

(b) specify further information which he requires for the purposes of this Act with regard to the application.

(4) Where no action is taken by the Commissioner under paragraph (a) or (b) of subsection (3) or if the Commissioner fails to take action after receiving further information requested by him under paragraph (b) of that subsection then—

(a) the applicant may, by notice in writing to the Commissioner, at any time after the expiration of the period of three months referred to in that subsection or forty-five days after the date on which further information is furnished to the Commissioner, whichever is later, require the Commissioner to take action under subsection (3); and

(b) if within forty-five days of the receipt of the notice referred to in paragraph (a), the Commissioner fails to take action as requested, he shall, subject to subsection (6), be deemed to have approved the plan with effect from the date of receipt of the application for approval of the plan.

(5) Whenever the Commissioner notifies an applicant that a plan is not approved the Commissioner shall, in that notice, state the reasons for disapproval of the plan and if the Commissioner fails to do so, the notice shall be of no effect.

(6) Subsection (4) (b) shall not apply as respects any plan if—

(a) there are participants in the plan who are not eligible to participate within the meaning of section 7 (eligibility); or

(b) the plan is operated in contravention of any of the provisions of section 8 (participation).

(7) An application for approval of a proposed plan under this section shall be made in writing and contain such particulars and be supported by such documents and information as may be prescribed or as the Commissioner may in writing require.

(8) Where the grantor is a member of a group, the grantor may submit a group plan for approval.

Prerequisites for approval of plans.

4.—(1) Except as provided in section 3 (3), a plan shall not be approved under that section unless the Commissioner is satisfied—

(a) that there are no factors of the plan (other than any which are included to satisfy the requirements of this Act) which have or would have the effect of discouraging any categories of employees who fulfill the conditions specified in section 7 (eligibility) from acquiring shares under the plan;

(b) that the plan is not, and if approved will not operate as, a top-heavy plan as provided in section 8 (participation);

(c) that participants in a plan who are full time employees of a participating company are entitled under the plan to participate in the plan on similar terms;

(d) that in the case of a group plan, the choice of participating company is not likely to have the effect of excluding lower paid employees of the group as a whole; and

(e) that the plan contains a provision to the effect that no shares shall be acquired under the plan unless and until the minimum percentage of eligible employees as specified in section 8 (1) (a) have consented to become participants under the plan within such time as shall be specified in the plan.

(2) For the purposes of this Act—

(a) persons shall be regarded as being entitled to participate in a plan on similar terms notwithstanding that the plan provides for a distinction between participants in the allocation of ESOP shares based on the level of their remuneration or length of service or both; and

(b) persons shall not be regarded as being entitled to participate in a plan on similar terms if the pricing or funding on any particular occasion in relation to the acquisition of ESOP shares (whether by way of grant or loan) discriminates between the participants as regards such pricing or in the terms or form of such funding, so, however, that—

(i) differentiation in the quantum of funds made available to participants for the purpose only of enabling such participants to be allocated ESOP shares in accordance with

the plan's allocation formula shall be disregarded; and

(ii) discrimination in favour of lower paid employees as compared with higher paid employees shall be disregarded;

(c) in the case of share option plans, persons shall not be regarded as being entitled to participate in a plan on similar terms if the price per share payable on the grant or exercise of a share option, or the period allowed for payment thereof, differs as between participants in the plan, so, however, that discrimination in favour of lower paid employees as compared with higher paid employees shall be disregarded.

(3) In relation to share option plans, references in subsection (2) to the allocation of ESOP shares shall be construed as references to the grant of share options.

(4) Subject to section 11, (related enterprise participation) the Commissioner shall not approve a plan if it appears to him that it contains features which are neither essential nor reasonably incidental to the purpose of providing for employees of participating companies benefits in the nature of rights to acquire shares or interests in shares or both.

Alteration of approved plan.

5.—(1) Where an alteration is made in a plan at any time after the Commissioner has approved, or is deemed to have approved, the plan—

(a) the grantor shall in writing notify the Commissioner of the particulars of the alteration not later than thirty days after the date of alteration; and

(b) the approval of the plan shall cease upon the date of alteration unless the Commissioner approves the alteration.

(2) For the purposes of subsection (1), a change in the allocation formula of a plan shall not be regarded as an

alteration of the plan if the formula as changed conforms with the requirements of paragraphs 7 (2) and 7 (3) of Part II of the First Schedule (allocation formula). First Schedule.

(3) If the Commissioner, within three months after receipt of a notification under subsection (1), does not notify the grantor of approval or disapproval of the alteration or does not in writing require the grantor to supply further information, then, subject to subsection (4), the Commissioner shall be deemed to have approved the alteration as from the date of the alteration.

(4) Subsection (3) shall not apply as respect any alteration if—

(a) the alteration permits participation in a plan of persons who are not eligible to participate within the meaning of section 7 (eligibility); or

(b) the alteration permits the plan to be operated in contravention of any of the provisions of section 8 (participation).

(5) Where approval of a plan ceases to have effect pursuant to this section, the Commissioner may, if he thinks fit, disallow any claim for income tax relief related to that plan in respect of the year of assessment in which the alteration took place.

(6) The Commissioner may, where he is satisfied that the circumstances so warrant, reinstate in writing any approval which ceases to have effect pursuant to this section.

6.—(1) If, at any time after approval of a plan, any of the requirements of this Act relevant to the approval of that plan ceases to be satisfied, the Commisioner may, subject to subsection (3), withdraw the approval with effect from that time or such later time as the Commissioner may specify. Withdrawal of approval.

(2) If at any time after approval of a plan—

(a) there is, with respect to the operation of the plan,

any contravention of any of the requirements or terms of the plan; or

(b) any shares of a class of which some portion thereof has been acquired as ESOP shares receive different treatment in any respect from the other shares of that class, and in particular, different treatment (other than as permitted by this Act) in respect of—

(i) the dividend payable;

(ii) voting rights;

(iii) any 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; or

(c) the trustees, the grantor or, in the case of a group plan, a company which is or has been a participating company fails to furnish any information required for the purposes of this Act by the Commissioner to be furnished,

the Commissioner may, subject to subsection (3), withdraw in writing the approval with effect from that time or from such later time as he may specify.

(3) Where the Commissioner proposes to withdraw the approval pursuant to subsection (1) or (2) he shall notify the grantor in writing accordingly and allow him a period, not less than six months, to bring the plan into compliance with this Act or, as the case may be, not less than thirty days to supply the requested information.

(4) Where approval is withdrawn pursuant to this section, the Commissioner may disallow to the grantor, other participating companies or participants, or all of them, some or all of the income tax relief provided in this Act in relation to any year of assessment during which there existed any ground for withdrawal of approval.

(5) The Commissioner may, where he is satisfied that the circumstances so warrant, reinstate in writing any approval which ceases to have effect pursuant to this section.

Eligibility.

7.—(1) Every individual—

(a) who is a full time employee of a participating company; and

(b) who has been such an employee at all times during such minimum qualifying period as, subject to subsection (3), may be specified in the plan; and

(c) whose emoluments, by reason of such employment, fall within section 5 (1) (c) of the Income Tax Act,

shall, for the purposes of this Act, be eligible to participate in the plan promoted by the grantor unless he is excluded from allocation of shares under a plan by reason of paragraph 6 of Part II of the First Schedule; and no other individual shall be so eligible.

First Schedule.

(2) A person shall be regarded as a full time employee if the terms of his employment require him to work not less than one thousand hours per year or such other number of hours as the Minister may prescribe, by order subject to affirmative resolution of the House of Representatives.

(3) The minimum qualifying period referred to in subsection (1) shall not exceed two years or such other period of employment with a participating company as may be prescribed and, for the purposes of meeting any minimum qualifying period, any prior service of the employee with a participating company shall be taken into account in meeting that requirement.

(4) Nothing in subsection (1) shall prevent a grantor from including in a plan, part time employees, persons in seasonal employment as defined in section 2 of the Employment (Termination and Redundancy Payments) Act or individuals referred to in section 11 (related enterprise participants).

(5) Nothing in subsection (1) shall—

(a) prevent a plan from permitting a participant who joined the plan as an eligible person to remain in the plan after his employment is terminated; or

(b) prevent a participant who, during the course of his participation in a plan acquires a material interest in the grantor as defined in paragraph 6 of Part II of the First Schedule, from being eligible to remain in the plan notwithstanding that no further allocation may be made to him under the plan.

First Schedule.

Participation.

8.—(1) Notwithstanding approval of a plan pursuant to section 3, the grantor, other participating companies and participants or any of them may be disallowed, at the discretion of the Commissioner, some or all of the income tax relief provided by this Act in respect of any year of assessnent and shall not qualify for the other reliefs and exemptions pursuant to this Act unless—

(a) during that year of assessment, at least fifty per cent of individuals who are eligible employees pursuant to section 7 (1) or (5) (b), are participants in the plan on similar terms; and

(b) the assets of the plan are allocated to the participants, or, in relation to share option plans, share options have been granted to participants, in a manner which does not render the plan top-heavy.

(2) A plan shall, as respects any year of assessment, be deemed to be top-heavy if—

(a) in relation to share option plans—

(i) more than seventy per cent in value of the options granted under the plan in the year of assessment have been granted to participants comprising the most highly compensated thirty per cent of all participants; or

(ii) the grant of share options as between participants has resulted in any participant being

granted in that year of assessment less than ten per cent in value of the share options granted in that year of assessment to any other participant; or

(iii) any participant has been granted more than ten per cent in value of the share options granted under the plan; and

(b) in relation to any other plan—

(i) more than seventy per cent in value of the assets of that plan are allocated to participants comprising the most highly compensated thirty per cent of all participants; or

(ii) the allocation of ESOP shares as between participants has resulted in any participant being allocated in that year of assessment less than ten per cent of the number of ESOP shares allocated in that year of assessment to any other participant; or

(iii) any participant's allocation of ESOP shares (including for this purpose any assets into which such shares have been diversified) amounts in value to more than ten per cent of the total value of plan assets held by the trustees.

(3) For the purposes of subsection (2) (a), references to the value of options are references to the initial market value of those options.

(4) The Minister may, by order subject to affirmative resolution, vary any percentage specified in subsection (1) or (2), so, however, that any variation which—

(a) increases the percentage of eligible employees who are required to participate; or

(b) decreases the permitted maximum proportion of share options which may be granted or plan assets

which may be allocated to any participant or group of participants in relation to any other participant or group of participants,

shall apply only to plans submitted to the Commissioner for approval after the effective date of the order.

(5) For the purposes of subsection (1) (a), a person shall be deemed to be a participant in a plan in any relevant year of assessment notwithstanding that, during that year of assessment, all assets allocated to him under the plan are transferred to him by the trustees.

(6) Any trust of a participant's beneficial interest in ESOP shares voluntarily created shall, unless such trust is in favour of the participant's spouse or lineai descendants, be void and unenforceable.

Compulsory rights and obligations in plan. Third Schedule.

9. A plan shall contain provisions creating the rights and obligations set out in the Third Schedule unless, by virtue of any provisions of this Act, those rights and obligations are not appropriate to that plan.

Participation not to be compulsory for existing employees.

10.—(1) Participation in a plan shall not be made a condition of employment in relation to persons employed by a participating company at the date when the plan is submitted for approval pursuant to section 3.

(2) Deductions shall not be made from the emoluments of an employee in respect of any plan unless and until the employer has provided the employee with a summary description in writing of the plan containing such information as may be prescribed; and any agreement to the contrary shall be unenforceable against the employee.

Participation of related enterprises or their employees.

11.—(1) A plan which satisfies the requirements for approval under section 3 may provide for the inclusion of individuals (in this Act referred to as "related enterprise participants") who, although not employees of a participating company, are—

(a) employed by a company (hereinafter referred to as a "related enterprise") having a significant economic relationship with any participating company; or

(b) independent contractors supplying goods or services to a participating company to such extent that they have a significant economic relationship with the participating company,

and may be approved by the Commissioner under this Act; and references in this Act to participants shall include, where appropriate, related enterprise participants.

(2) In subsection (1) "significant economic relationship" means a relationship whereby sixty per cent or more of the annual income of the related enterprise or of the independent contractor is derived from the supply of goods or services to one or more of the participating companies.

(3) The provisions of section 3 shall apply to a plan referred to in this section and accordingly if the certificate of the independent auditor referred to in subsection (2) of that section certifies that a significant economic relationship as referred to in subsections (1) and (2) of this section exists, the Commissioner may, to such extent as he thinks fit, take that into account.

(4) The related enterprise participants shall not be taken into account in determining whether the provisions of section 8 (1) (a) (50% participation) have been satisfied in relation to any plan.

(5) Related enterprise participants shall not be taken into account in determining whether a plan is top-heavy for the purposes of section 8 but, as respects a year of assessment, a plan shall be regarded as top-heavy if—

(a) in relation to share option plans—

(i) the grant of share options in that year of assessment results in any participant in the

plan (other than a related enterprise participant) being granted share options the value of which is less than ten per cent of the value of the share options granted in that year of assessment to any related enterprise participant; or

(ii) any related enterprise participant has in that year of assessment been granted share options amounting in value to more than ten per cent of the total value of all share options granted under that plan;

(iii) the allocation of share options to a related enterprise participant amounts to more than ten per cent of all share options granted under the plan; and

(b) in relation to any other plan—

(i) the allocation of ESOP shares in that year of assessment results in any participant in the plan (other than a related enterprise participant) being allocated less than ten per cent of the number of ESOP shares allocated in that year of assessment to any related enterprise participant; or

(ii) any related enterprise participant has been allocated in that year of assessment more than ten per cent of the ESOP shares held by the trustees; or

(iii) the allocation of shares to a related enterprise participant amounts to more than ten per cent of the ESOP shares held by the trustees.

(6) For the purpose of subsection (5) (a) share options shall be valued in the manner specified in section 8 (3).

(7) The provisions of section 8 (4) shall apply in relation to the percentages specified in subsection (5) of this section.

Plans of foreign companies.

12.—(1) A plan submitted for approval by a foreign company may only be approved under section 3 if the shares of the company are listed on an approved overseas stock exchange and if the employees to which the plan relates are restricted to the following categories of employees, that is to say—

(a) where the foreign company is registered under Part X of the Companies Act, such employees of the foreign company as are employed in Jamaica; or

(b) employees in Jamaica of any subsidiary of the foreign company, where such subsidiary is either incorporated in Jamaica or is registered under Part X of the Companies Act; or

(c) both the categories of employees referred to in paragraphs (a) and (b),

and upon such approval the provisions of sections 7 and 8 and such other provisions made by or pursuant to this Act relating to eligibility and participation shall be applied as if such employees were the only employees of a participating company referred to in section 7 (1).

(2) In this section "foreign company" means a company incorporated outside Jamaica and any reference to shares means shares of such a company.

Relief from income tax, transfer tax and stamp duty.

Second Schedule.

Fourth Schedule.

13.—(1) Participating companies, participants, lenders and other persons shall, in relation to plans, be entitled to relief from income tax, transfer tax, and stamp duty in accordance with the provisions of section 17 and the Second and Fourth Schedules.

(2) Where pursuant to this Act or the provisions of a plan any person is required to pay to the trustees of a plan an amount in respect of income tax the trustees shall be obliged—

(a) to receive the amount; and

(b) to pay and account for the same to the Commissioner of Inland Revenue in like manner as if—

(i) the amount received were an amount of tax which the trustees were required by the Income Tax Act to deduct on a payment by them; and

(ii) they were required by that Act to pay and account for the amount so deducted to the Commissioner of Inland Revenue,

and accordingly, as respects that amount, the provisions of section 41 of that Act shall apply.

Compliance certificate of independent auditor.

14. For the purposes of this Act the Commissioner may accept a certificate signed by an independent auditor as evidence that—

(a) a plan was operated during a year of assessment in accordance with its terms and the provisions of this Act; and

(b) where in any year of assessment any of the participants in a plan were related enterprise participants, as regards those participants, a significant economic relationship as defined in section 11 (2) was maintained with a participating company in that year of assessment.

No tax relief unless shares acquired at initial market value.

15. A participating company shall not be entitled to claim any relief from income tax in respect of funds applied in the acquisition of shares in a grantor under a plan or of share options under a share option plan unless the initial market value of the shares or share options so acquired is at least as great as the funds so applied.

Limit on income tax relief in relation to anual allocation of shares.

16.—(1) Where in any year of assessment the total of the initial market value of—

(a) the shares allocated to a participant in that year of assessment; and

(b) where relevant, any share options granted to a participant under a share option plan in that year of assessment,

exceeds the exempted amount for that year of assessment, the provisions in relation to income tax specified by or pursuant to the Fifth Schedule shall apply in relation to the excess. Fifth Schedule.

(2) In this section and in the Fifth Schedule—

"exempted amount"—

(a) in relation to a related enterprise participant referred to in section 11 (1) (b), means ten per-cent of such amount of that participant's chargeable income as is attributable to a participating company, or such other percentage thereof as may be prescribed; and

(b) in relation to any other participant, means ten percent or such other percentage of that participant's annual emoluments from a participating company or a related enterprise as may be prescribed;

"annual emoluments" means the emoluments chargeable to tax pursuant to section 5 (1) (c) of the Income Tax Act provided that for the purposes of this section the said section 5 (1) (c) shall be read and construed as if proviso (viii) thereto were deleted.

Relief from transfer tax for estates of deceased shareholders.

17.—(1) Where at the time of death of any individual (hereinafter in this section referred to as "the shareholder")—

(a) the shareholder holds (whether or not as a participant in a plan) the beneficial interest in shares in the grantor; and

(b) not less than fifteen per cent of the value of the grantor's share capital has, for at least two years

immediately preceding the date of the shareholder's death, consisted of ESOP shares,

then the shares so held (whether or not ESOP shares) shall for the purposes of the transfer tax payable on death, be deemed to be of a value equal to fifty per cent of their value as established under the Transfer Tax Act.

(2) Where, as respects any plan, at the time of the death of a shareholder he has held the beneficial interest in shares of the grantor (whether or not ESOP shares) for one year or more then, if the personal representatives of the shareholder sell any amount of such shares to the trustees of the plan—

(a) fifty per cent of the shares so sold shall be exempt from the transfer tax which would, but for such exemption, be payable on the death of the shareholder; and

(b) subject to subsection (3), no transfer tax shall be payable in respect of the sale and transfer of the shares to the trustees of the plan.

(3) Where the personal representatives are paid on a sale of shares referred to in subsection (2) more than the value of those shares as assessed in the manner provided in the Transfer Tax Act, the provisions of subsection (2) (b) shall not apply to the amount of such excess.

(4) Where, as respects any plan, by agreement between the personal representatives of a shareholder and the trustees of the plan, the trustees, subject to subsection (5), assume responsibility for the payment of any amount of transfer tax payable by the estate of the shareholder in exchange for the transfer to them from the deceased shareholder's estate of shares (whether or not ESOP shares) in the grantor of a value not less than the amount of such tax then, notwithstanding anything to the contrary in the Transfer Tax Act—

(a) the trustees shall be allowed to pay such transfer tax in substantially equal instalments in the prescribed manner over a period not in excess of ten years; and

(b) no interest shall be payable by the trustees on any outstanding balance of the transfer tax aforesaid not related to a default in payment under paragraph (a).

(5) Subsection (4) shall apply only if the grantor guarantees the payment of the transfer tax liability incurred by the trustees.

(6) The grantor may, by way of loans or grants, defray the liability of the trustees of the plan in respect of any transaction entered into by the trustees pursuant to subsection (4) and—

(a) the grantor may borrow sums from a lender for that purpose; and

(b) in relation to any such loan or grant as aforesaid the grantor and the lender shall be entitled to such income tax relief as may be prescribed.

(7) The shares acquired by the trustees pursuant to this section shall be available for allocation to participants proportionately as the transfer tax is paid to the Commissioner of Stamp Duty and Transfer Tax.

(8) The Minister may by order vary any percentage or period specified in this section.

Review by Revenue Court.

18. If aggrieved in any case by a decision of the Commissioner—

(a) not to approve an application for approval of a plan or for an alteration in a plan or by the withdrawal of approval; or

(b) not to accept that a condition subject to which the approval has been given is satisfied; or

(c) not to approve an alteration in the terms of the plan,

the grantor may, by notice given to the Commissioner within thirty days from the date on which it is notified of the decision, require the matter to be reviewed by the Revenue Court, and the Revenue Court shall make such order as it thinks fit.

Regulations.

19.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations—

(a) prescribing the manner of the keeping of accounts, books, documents or records relating to plans;

(b) in relation to the provisions of section 16 and the Fifth Schedule; Fifth Schedule.

(c) prescribing the procedure on any review pursuant to section 18;

(d) for the prevention of fraud on the Revenue;

(e) prescribing the method of collection and remittance of tax consequent on the operation of any plan;

(f) amending or replacing the Schedules;

(g) in relation to the allocation and distribution of shares to participants;

(h) prescribing the terms and conditions which are required to be attached to loans if they are to qualify for tax relief under this Act;

(i) prescribing the content of notices to participants with respect to their accounts under a plan and the intervals within which such notices shall be given;

(j) modifying the provisions of this Act for the purpose of facilitating and regulating the approval

and operation of plans referred to in section 12 (foreign companies);

(k) in relation to the conduct and operation of any internal market established pursuant to the terms of a plan;

(l) in relation to the payment to and the investment by trustees, of salary deductions made by a participating company from the emoluments of participants in a plan towards the acquisition of shares under the plan;

(m) prescribing any other matter required by this Act to be prescribed.

(2) Any regulations made pursuant to paragraph (b), (f) or (j) of subsection (1) shall be subject to affirmative resolution of the House of Representatives and shall contain transitional provisions in relation to plans which are approved plans immediately prior to the commencement of the regulations.

Power of Minister of Labour to investigate complaints re operations of a plan.

20.—(1) The Minister responsible for labour relations shall have power, on his own initiative or on receipt of a complaint from a participant in a plan, or his personal representative, or any trustee of a plan, to investigate the operations of the plan and make a report to the Commissioner.

(2) The Minister aforesaid may assign such officers and designate such persons as he may think necessary for the purpose of an investigation pursuant to subsection (1) and otherwise securing the proper observance of the provisions of this Act.

(3) Any such officer or person shall have power to require any interested parties, including the participating

company, the trustees of the plan or the independent auditors of the plan to furnish, in writing, information with respect to the operation of the plan.

(4) If any person without reasonable excuse, the proof whereof shall be on him, fails or refuses to furnish information which he is required to produce pursuant to subsection (3) he shall be liable on summary conviction in a Resident Magistrate's Court in respect of each offence to a penalty not exceeding ten thousand dollars.

Transitional provision re existing plans.

21.—(1) Notwithstanding section 1 (3), where the Commissioner approves under this Act a plan which was in operation prior to such approval then if—

(a) he is satisfied that, prior to such approval, the plan was operated substantially in accordance with the requirements stipulated in sections 7 and 8; and

(b) the application for approval of that plan is made not later than June 30, 1994 or such later date as the Commissioner may approve,

he may by notice in writing to the grantor determine that from a date not earlier than January 1, 1993 the provisions of this Act relating to income tax relief shall apply in relation to that plan.

(2) For the purpose of this provision, the Commissioner may rely to such extent as he sees fit on a certificate of an independent auditor as evidence that a plan has been operated during a period prior to approval substantially in accordance with the provisions of sections 7 and 8.

Amendment of other Acts. Sixth Schedule.

22. The Acts specified in the first column of the Sixth Schedule are amended in the manner specified in relation thereto in the second column of that Schedule.

FIRST SCHEDULE (Section 3)

PART I.—*Provisions generally applicable to plans under this Act*

1. Subject to Part III, the provisions of this Part apply in relation to all plans under this Act unless otherwise stated. **Application.**

2. Every plan shall contain provisions— **Recording of employees consent.**

(a) setting out procedures to record the consent of employees to be participants in the plan; and

(b) requiring the grantor to furnish a summary description in writing of the plan containing such information as may be prescribed—

(i) to eligible employees, within sixty days of the approval or deemed approval of the plan; and

(ii) to employees engaged after institution of the plan, within thirty days of their employment.

3.—(1) The plan shall establish as part of the plan a trust by virtue of which the assets of the plan are vested in the trustees of the plan who shall hold such assets in trust for the participants in accordance with this Act. **The trust and retention of shares.**

(2) A plan shall not be approved unless the Commissioner is satisfied that, under the terms of the plan, every participant therein is required—

(a) to permit his shares to remain in the hands of the trustees throughout the retention period; and

(b) subject to sub-paragraph (3), not to assign, charge or dispose of his beneficial interest in his shares during that period; and

(c) if he directs the trustees to transfer to him at any time before the release date any of the shares allocated to him, to pay, in relation to his income tax liability, to the trustees before the transfer takes place a sum equal to the amount of income tax payable on the appropriate percentage of the initial market value of the shares at the time of the direction.

(3) A plan may provide for the disposal of the beneficial interest in ESOP shares by a participant to another participant or eligible employee whether or not the retention period has expired.

4. A plan shall provide that the Commissioner shall be notified of any alteration made to the plan within thirty days of the alteration. **Alteration.**

5.—(1) A plan shall provide for participants to obtain rights to acquire ESOP shares and other assets vested in the trustees of the plan. **Right to acquire ESOP assets.**

(2) Subject to the provisions of this Act relating to the diversification of plan assets, a plan shall be established and operate for the purpose of acquiring and distributing ESOP shares to participants.

Nature of ESOP shares.

6.—(1) ESOP shares shall be—

(a) fully paid up voting shares;

(b) not redeemable other than pursuant to the exercise of an option referred to in the Third Schedule; and

(c) not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorized by sub-paragraph (3);

(d) shares which rank at least equally for all purposes with the best class of voting shares of the grantor.

(2) For the purposes of sub-paragraph (1) (d), any share which is convertible into a voting share shall be deemed to be a voting share.

(3) Except as provided in sub-paragraph (4), the shares may be subject to a restriction imposed by the company's articles of association requiring all shares held by employees of the company or of any other company in the same group or by related enterprise participants to be sold to the grantor or the trustees of the plan on ceasing to be so held.

(4) A restriction is not authorized by sub-paragraph (3) unless any sale required by the restriction will be by way of sale at market value for a consideration in money and, in the case of shares not listed on a recognized stock exchange, market value shall be deemed to be the value determined by independent auditors in the prescribed manner.

Effect of contract etc. re ESOP shares.

7. In determining for the purposes of paragraph 6 (1) (c) whether ESOP shares which are, or are to be, acquired by any person are subject to any restrictions, there shall be regarded as a restriction attaching to the shares any contract, agreement, arrangement or condition which, other than as provided in this Act—

(a) restricts his freedom to dispose of the shares or of any interest in them or of the proceeds of their sale or to exercise any right conferred by them; or

(b) may result in any disadvantage to him.

Replacement shares on take-over of a company.

8.—(1) A plan may provide that if any company ("the acquiring company")—

(a) obtains control of the grantor as a result of making a general offer—

(i) to acquire the whole of the issued ordinary share capital of the grantor which is made on a condition that if it is

satisfied the person making the offer will have control of the grantor; or

(ii) to acquire all the shares in the grantor which are of the same class as the ESOP shares;

(b) obtains control of the grantor in pursuance of a compromise or arrangement sanctioned by the court under the Companies Act; or

(c) becomes bound or entitled to acquire shares in the grantor, under that Act,

any participant in the plan may, at any time within the appropriate period, by agreement with the acquiring company, release his rights under the plan (in this paragraph referred to as "the old rights") in return for rights which are equivalent to the old rights but relate to shares in a different company (whether the acquiring company itself or some other company).

(2) In this paragraph "the appropriate period" means—

(a) in a case falling within sub-paragraph (1) (a), the period of six months beginning with the time when the person making the offer has obtained control of the company and any condition subject to which the offer is made is satisfied;

(b) in a case falling within sub-paragraph (1) (b), the period of six months beginning with the time when the court sanctions the compromise or arrangement; and

(c) in a case falling within sub-paragraph (1) (c), the period during which the acquiring company remains bound or entitled as mentioned in that sub-paragraph.

(3) The new rights shall not be regarded for the purposes of this paragraph as equivalent to the old rights unless—

(a) the shares to which they relate satisfy the conditions specified, in relation to ESOP shares, in paragraphs 6 and 7; and

(b) the new rights will be exercisable on terms no less favourable to participants than the old rights and be subject to the provisions of the plan as it had effect immediately before the release of the old rights; and

(c) the total market value, immediately before the release, of the shares which were subject to the participant's old rights is not less than the total market value, immediately after the grant, of the shares in respect of which the new rights are granted to the participant; and

(d) the total amount payable by the participant for the acquisition of shares in pursuance of the new rights is not more than the total amount that would have been payable for the acquisition of shares in pursuance of the old rights.

(4) Where any new rights are granted pursuant to a provision included in a plan by virtue of this paragraph they shall be regarded—

(a) for the purposes of this Act; and

(b) for the purposes of the subsequent application (by virtue of a condition complying with sub-paragraph (3) (b)) of the provisions of the plan,

as having been granted at the time when the corresponding old rights were granted.

PART II.—*The Form of and other general requirements relating to plans*

Writing required.

1. The terms of the plan be set out in writing.

Identification of grantor.

2. The plan shall identify the grantor.

Identification of person paying emoluments.

3. If the grantor does not pay the emoluments of all the employees to whom the plan relates, the plan shall identify each of the persons who pays the emoluments of any of those employees.

Participants

Suspense accounts.

4.—(1) The plan shall provide that where the acquisition of shares by the plan is funded by way of a loan, whether to or by a participating company, the shares shall be allocated to participants no less rapidly than as the outstanding principal of the loan is amortized or at such other time as may be prescribed and, until so allocated, may be held by the trustees in a suspense account which may designate the relationship of each participant to particular shares so held.

(2) Where trustees acquire shares by way of credit purchase, those shares may be held by the trustees in a suspense account and allocated to participants no less rapidly than as the outstanding purchase moneys are paid.

(3) Where the acquisition of ESOP shares by the trustees has been funded by a grant by a participating company, the participating company may require the trustees to appropriate any part of the shares to a suspense account and to allocate such shares to participants in accordance with the directions of the participating company over a period not exceeding six years from the date of the grant.

Identification of participants.

5. The plan shall contain provisions by reference to which the participants to whom it relates may be identified and shall provide for the maintenance of records by way of an account of each participant's allocation of plan assets.

6.—(1) The plan shall contain provisions ensuring that no allocation or further allocation of assets under the plan is made to any individual who has or acquires a material interest in the grantor. Exclusion of persons materially interested in grantor.

(2) For the purposes of this paragraph, a person shall be treated as having a material interest in a grantor if he (whether individually or with one or more associates), is--

(a) the beneficial owner of shares conferring a right to 5% or more of votes at any general meeting of the grantor; or

(b) able directly or indirectly to control any company which is the beneficial owner of shares conferring a right to 5% or more of the votes at any general meeting of the grantor.

(3) In this paragraph—

"associate" means, in relation to a person—

(a) the spouse of that person;

(b) the minor child of that person;

(c) the minor grandchild of that person; and

(d) any partner of that person, where the shares in the grantor are partnership assets.

Allocation

7.—(1) The plan shall provide an allocation formula with which trustees shall comply in allocating to the participants the assets acquired by the trustees in their capacity as such. Allocation formula.

(2) The allocation formula shall not discriminate between participants on any grounds other than one or both of the following—

(a) length of service with a participating company; or

(b) level of remuneration.

(3) The allocation formula shall be such that in its application it does not result in the plan becoming a top-heavy plan.

(4) The grantor may from time to time change the allocation formula:

Provided that—

(a) the allocation formula shall at all times conform with sub-paragraphs (2) and (3);

(b) the grantor shall forthwith notify the trustees and the Commissioner of any such change.

Trustees

Nature and function of trustees.

8.—(1) The plan shall provide for the establishment of a body of persons resident in Jamaica ("the trustees")—

(a) who are required by the plan to acquire ESOP shares with moneys paid to them for that purpose;

(b) who are under a duty to appropriate, in the prescribed manner, shares acquired by them to participants in the plan; and

(c) whose functions with respect to shares held by them are regulated by a trust which is constituted under the law of Jamaica and the terms of which are embodied in an instrument which complies with the provisions cf this Act.

(2) Trustees shall be either—

(a) a trust corporation who shall act in respect of prescribed matters after consultation with a committee of at least three persons; or

(b) not less than three individuals.

(3) The selection of trustees comprised of individuals or of members of a committee under sub-paragraph (2) (a) shall be made as follows—

(a) one shall be selected by participants in the prescribed manner;

(b) one shall be selected by the grantor;

(c) any other shall be selected by agreement between the grantor and the participants; and

(d) whenever a vacancy arises it shall be filled in the manner required for the selection of the trustee or committee member being replaced.

(4) Trustees or members of the committee referred to in sub-paragraph (2) (a) may be removed from office by the person or persons having power under the plan to select them.

(5) Trustees shall—

(a) vote allocated shares in accordance with the directions of participants ascertained in the prescribed manner; and

(b) vote unallocated shares, and shares in respect of which no directions are received, in the same proportion as those shares for which the trustees receive direction.

(6) Trustees may for the purpose of defraying reasonable expenses in administering the plan, appropriate such proportion of income earned on unallocated plan assets as they think necessary for that purpose.

(7) Any money or money's worth received by the trustees in respect of or by reference to allocated shares shall be deemed to be allocated assets.

(8) Where a trust corporation is appointed a trustee of a plan by a grantor, then so long as it is functioning in that capacity, neither that corporation nor any company in the same group as that corporation shall function as a lender for the purpose of financing the acquisition of ESOP shares or share options under that plan.

(9) The plan may contain detailed provisions for the day to day administration of the plan by the trustees and, without prejudice to the generality of the foregoing, may provide for—

(a) the payment of—

(i) fees to the trustees for services rendered in administering the trust; and

(ii) payment of professional fees to any trustee who is a person skilled in a profession and renders services related to that profession to the plan;

(b) relieving or limiting a trustee's liability in cases otherwise than in relation to any act of fraud or dishonesty committed by him;

(c) the placing by the trustees of cash balances on deposit with any bank or any licensee under the Financial Institutions Act;

(d) the entering into arrangements by the trustees for the acquisition of shares in the grantor (whether for cash or by way of credit purchase and whether funded by grants, loans or employee contributions) to be allocated to participants in accordance with the plan and such requirements as may be prescribed; and

(e) empowering the trustees to decline to effect the transfer of the beneficial interest in shares if such a transfer would render the plan top-heavy or result in a transfer of a beneficial interest in ESOP shares to a person having a material interest in the grantor within the meaning of paragraph 6 of this Part.

Trustees to notify participants.

9. The plan shall provide that, as soon as practicable after any shares have been allocated to a participant, the trustees will give him notice of the allocation—

(a) specifying the number and description of those shares; and

(b) stating their initial market value.

Restraint on trustees during and after retention period.

10.—(1) The plan shall contain a provision prohibiting the trustees from disposing of any shares during the retention period (whether by transfer to the participant or otherwise).

(2) The plan shall contain a provision prohibiting the trustees from disposing of any shares after the end of the retention period and before the release date except—

(a) pursuant to a direction given by or on behalf of the participant or, if the circumstances so require, any other person in whom the beneficial interest in the shares is for the time being vested; and

(b) by a transaction which would not involve a breach of the participant's obligations under paragraph 3 (2) (c) of Part I of this Schedule.

Duties of trustees re rights, dividends, income tax, etc.

11. The plan shall contain a provision requiring the trustees—

(a) subject to such requirements as may be prescribed with regard to recovery of income tax, to pay over to the participant, within sixty days of receipt, any money or money's worth received by them in respect of or by reference to any of the shares allocated to him other than money's worth consisting of new shares consequent on a company reconstruction pursuant to paragraph 8 (1) of Part I of this Schedule;

(b) to deal with any right in respect of shares allocated to a participant only pursuant to a direction given by or on behalf of the participant, or, if the circumstances so require, any other person in whom the beneficial interest in the shares is for the time being vested; and

(c) without prejudice to the provisions of paragraph 8 (6), where money or money's worth is received by the trustees in respect of or by reference to any ESOP shares which are unallocated, to apply such money or money's worth towards the reduction of any loan, or any unpaid purchase money, in respect of those shares.

Prohibition on pledging allocated assets.

12. The plan shall provide that the trustees shall not enter into any transaction whereby allocated plan assets may be encumbered in respect of any liability, but may permit unallocated assets to be encumbered in respect of any liability incurred in the course of the acquisition by the plan of the unallocated assets.

Trustee to maintain records and inform participants.

13.—(1) The plan shall impose an obligation on the trustees—

(a) to maintain such records as may be necessary to enable the trustees to carry out the requirements referred to in paragraph 11 (a); and

(b) where the participant becomes liable to income tax by reason of the occurrence of any event affecting his interests under the plan, to inform him of any facts relevant to determining that liability.

(2) Without prejudice to the general responsibilities of trustees, nothing in sub-paragraph (1) shall preclude the trustees from engaging

the services of the grantor or any other competent person in the performance of their duties under that sub-paragraph.

Valuation of shares.

14.—(1) The plan shall provide that—

(a) where the shares of the grantor are not listed on a recognized stock exchange an appraisal of their value shall be made by an independent auditor in the prescribed manner at least once per year and at intervals which do not exceed in any case fifteen months;

(b) subject to paragraph 3 (b) of Part II of the Third Schedule, the value of such shares as determined by the most recent of any such appraisal shall be applied as the value of those shares for the purposes of any provision of this Act contemplating or requiring that the value of such shares be determined;

(c) the appraisal required by sub-paragraph (a) shall state the value per share and the aggregate value of the ESOP shares and, as the case may be, the shares which are the subject-matter of the share options granted under a share option plan; and

(d) the appraisal shall be communicated by the independent auditor to the trustees, who shall give to each participant (including individuals referred to in paragraphs 1 (2) and 3 of Part II of the Third Schedule) notice of the value of the shares allocated to or, as the case may be, held by such participant.

(2) Sub-paragraph (1) (b) shall not apply to the determination of initial market value.

Annual report by independent auditor.

15.—(1) The plan shall provide—

(a) for an annual report by an independent auditor, within four months after the end of each year of assessment, on the assets and liabilities of the plan, and stating the value of the ESOP shares and share options;

(b) for an independent auditor to furnish a certificate in relation to that plan's compliance with the provisions of this Act during that year of assessment.

(2) The report and certificate referred to in sub-paragraph (1) shall be submitted by the independent auditor to the trustees who shall forthwith deliver them to the Commissioner.

PART III.—*Share Option Plans*

Application of Parts I and II.

1.—(1) Except as provided in this Part, the provisions of Parts I and II shall apply to a share option plan, that is to say, a plan which provides for the acquisition of shares in a grantor through the grant of share options to participants by the grantor.

(2) The plan shall provide for the options to be granted directly to the participants and that any shares issued to the participants

pursuant to the exercise of the options shall be issued directly to them without the interposition of a trust.

(3) Paragraphs 3 and 5 of Part I shall not apply to share option plans and paragraph 6 of Part I shall apply as if the reference to "ESOP shares" were a reference to "shares the subject matter of a share option under a share option plan".

(4) Paragraph 6 of Part II shall apply to share option plans as if for the words "allocation of assets" in sub-paragraph (1) there were substituted the words "grant of share options".

(5) Paragraph 7 of Part II shall apply to share option plans as if for the word "trustees" there were substituted the word "grantor".

(6) Paragraphs 8. 9, 10, 11, 12 and 13 of Part II shall not apply to share option plans.

Funding of share option plan.

2. The share option plans may provide for the price of the option and the purchase price of shares on exercise of an option to be funded by—

(a) participants' own funds; or

(b) grants or loans given to the participant by a participating company; or

(c) any combination of participants' own funds and a grant or loan, as the case may be, by the participating company.

Time of exercise of option.

3.—(1) Subject to sub-paragraph (2), the share option shall be exercisable not earlier than the second anniversary of the date of the option.

(2) Where a participant's employment with a participating company is terminated in specified circumstances the share option may be exercised prior to the second anniversary of the date of grant.

(3) The price at which a participant may subscribe for shares on exercise of the option (including any money paid by the participant in acquiring the option) shall be no greater than the value of the shares at the date of exercise of the option, determined in the prescribed manner.

Supplemental controls.

4.—(1) The share option plan may provide that a person may exercise rights under it after he has ceased to be an employee of a participating company or may provide that an option shall expire upon the participant ceasing to be an employee of a participating company other than in specified circumstances.

(2) The share option plan shall not permit any person obtaining rights under it to transfer such rights, but may provide that, if a person who has obtained rights under it dies before exercising those rights, they may be exercised by his personal representatives after the date of his death, but not more than one year after that date.

SECOND SCHEDULE (Section 13)

The provisions of each of the following Parts in relation to income tax, transfer tax and stamp duty shall apply to any plan conforming with the requirements set out in each such Part. Introductory.

PART I.—*General Benefits*

1. Any dividends or other income paid to trustees in respect of ESOP shares shall be exempt from income tax whether such dividends or income are paid over to participants or are retained by the trustees to be applied in a manner authorized by the plan. Dividends exempt from income tax.

2. The following instruments shall be exempt from stamp duty— Instruments exempt from stamp duty.

(a) any document effecting an increase in the share capital of a grantor exclusively to facilitate an issue of shares to a plan, insofar as such additional shares are so issued within thirty days of the said increase;

(b) any transfer of shares pursuant to a sale or gift of shares to a plan, and any agreement providing for such a transfer and any transfer of shares by trustees of a plan to participants beneficially entitled to such shares;

(c) any transfer of the beneficial interest in ESOP shares between participants and other eligible employees effected through an internal market established under and operated in accordance with the terms of a plan, and any agreement providing for such transfer;

(d) any instrument establishing an employee share ownership plan through the creation of a trust; and

(e) any mortgage, debenture, hypothecation or other security instrument granted as collateral to secure repayment of a loan applied in the acquisition by trustees of a plan of shares in a grantor.

3. No transfer tax shall be payable in respect of any transfer described in sub-paragraph (b), (c) or (d) of paragraph 2, or in respect of any capital distributions paid over by trustees to a participant in respect of ESOP shares allocated to him. Transfers exempt from transfer tax.

PART II.—*Tax Relief where acquisition of ESOP shares is financed by Participants—General Requirements*

1. The plan shall conform with the provisions of the First and Third Schedules and otherwise comply with the provisions of this Act. Application of First and Third Schedules.

Acquisition of shares financed by bonus payments

2.—(1) A plan providing for the acquisition of shares out of bonus payments to participants may provide that not less than a specified Funding from bonus.

percentage of any bonus payment made by a participating company to participants in the plan shall be applied to the plan.

(2) The amount to be so applied shall be paid by the participating company forthwith to the trustees who shall use it (less any amount which pursuant to the terms of the plan may be applied to other trust purposes specified in the plan) to acquire shares in the grantor on behalf of participants.

(3) In this paragraph "bonus" means any lump sum paid annually or at other stated intervals over and above regular emoluments (whether by virtue of a contract between the participating company and the participants or by virtue of some collective agreement or other general understanding between them, or between them and a trade union).

Back pay.

3. For the purposes of this Part, lump sum amounts of retroactive emoluments may, from time to time and to the extent that the plan so provides, be regarded as equivalent to a bonus.

Time constraints.

4. The plan shall provide for the acquisition of ESOP shares by the trustees within thirty days after receipt by them of the amount paid pursuant to paragraph 2.

Acquisition of shares financed by salary deductions

Funding from salary deductions.

5.—(1) A plan providing for the acquisition of shares financed by salary deductions shall require that participants make an agreed contribution towards the purchase of shares under the plan by means of deductions from their emoluments, over an agreed period.

(2) The amount so deducted shall be paid by the grantor forthwith to the trustees and not less than 85% thereof or such other percentage as may be prescribed shall be used by the trustees to acquire ESOP shares on behalf of the participants.

Time constraints.

6.—(1) Subject to paragraph 4 of Part II of the First Schedule, the plan shall provide that—

(a) with respect to any deduction under paragraph 5, the trustees shall acquire ESOP shares with the funds so deducted within six months of the date on which the deduction was made;

(b) the shares so acquired shall be allocated in proportion to the amount received by the trustees in respect of such deduction during each six month period;

(c) where a participant's aggregate salary deductions exceed the aggregate subscription price of the shares paid for therefrom, the excess shall be held by the trustees and appropriated to the participant's cash account in the books of account of the plan;

(d) where shares are acquired by way of a credit purchase the amounts deducted by the participating company from participants' salaries shall be paid over to the trustees within fourteen days of the date of such deduction and shall be used by the trustees to pay off any amounts outstanding in accordance with the terms of the credit purchase.

(2) The amounts in the cash accounts referred to in subparagraph (1) (c) may, in accordance with the participant's wishes, either—

(a) be used by the trustees at a later date to acquire shares in the grantor for allocation to that participant; or

(b) be distributed to the participant.

(3) The amount in the cash accounts referred to in subparagraph (1) (c) shall in the hands of the trustees or on conversion into ESOP shares be exempt from income tax but shall become liable to tax if distributed to or at the direction of the participant; and the trustees shall withhold tax accordingly and pay it over to the Commissioner of Inland Revenue within thirty days of the date of distribution.

Benefits to Participants.

Tax free allocation.

7. No income tax shall be payable by the participants upon the acquisition of ESOP shares on their behalf by the trustees.

Exemption from income tax on emoluments, etc. used to shares.

8.—(1) Any salary deductions or any bonus or lump sum amounts of retroactive emoluments which are applied in the acquisition of shares under the plan shall be exempt from income tax.

(2) Where ESOP shares are subscribed for at less than their initial market value, a participant allocated such shares shall not be liable to income tax on the difference.

Sliding scale relief on disposal.

9.—(1) Subject to paragraph 10, upon a transfer of ESOP shares in any year of assessment by the trustees at the request of a participant, the value thereof as determined pursuant to paragraph 11, shall be brought into account as income for the purpose of determining the statutory income or chargeable income of the participant in that year of assessment for the purposes of income tax as follows—

(a) 100% of the value where such transfer occurs in the first 3 years after the date of allocation of such shares;

(b) 75% of the value where such transfer occurs in the fourth year after that date;

(c) 50% of the value where such transfer occurs in the fifth year after that date;

(d) 25% of the value where such transfer occurs in the sixth year after that date.

(2) A transfer of ESOP shares by the trustees at the request of a participant more than 6 years after the date of first allocation of such shares shall not render the participant liable to income tax in respect of such transfer.

(3) A transfer of ESOP shares for the purpose of facilitating the diversification of plan assets prescribed by Part III of the Third Schedule shall, while the diversified plan assets remain vested in the trustees, be disregarded for the purpose of sub-paragraph (1) of this paragraph.

(4) Where ESOP shares allocated to a participant have been converted into other plan assets pursuant to any right of diversification, then for the purpose of sub-paragraph (1), such other plan assets shall be treated as if they were ESOP shares with the same date of allocation as the ESOP shares from which they were converted.

(5) For the purpose of sub-paragraph (1), where the beneficial interest in ESOP shares has been transferred on an internal market operated pursuant to a plan, the date of allocation of such shares shall be the date on which such shares were first allocated to a participant under the plan.

Disposal on retirement, death etc.

10. Where, prior to the release date, the shares are transferred by the trustees at the request of the participant or his personal representative consequent on termination of the participant's employment in specified circumstances there shall, in lieu of the provisions of paragraph 9, be brought into account as income for the purpose of determining the statutory income or chargeable income of the participant, an amount equivalent to 25% of the value of the shares as determined pursuant to paragraph 11.

Value of shares.

11. For the purposes of paragraphs 9 and 10, the value of shares shall be the initial market value thereof or the value upon the transfer by the trustees at the direction of the participant or his personal representative, determined in the prescribed manner, whichever is less.

PART III.—*Tax relief where acquisition of ESOP shares is internally funded*

Requirements

Application of First and Third Schedules.

1. The plan must conform with the provisions of the First and Third Schedules and otherwise comply with the provisions of this Act.

Obligation purchase ESOP shares.

2. Where a participating company, whether by loan or grant, provides funds for the acquisition of shares under a plan such funds shall be disbursed by the participating company directly to the trustees and not less than eighty-five per cent or such other percentage as may

be prescribed of such funds shall be utilized by the trustees to acquire ESOP shares on behalf of participants and any amount not so utilized shall be applied to other trust purposes specified in the plan.

Time constraints.

3. Plans funded by loans or grants from participating companies shall provide for the conversion of loan or grant proceeds into an acquisition of shares in the grantor within sixty days of the making of the loan or grant.

Benefits to Participating Companies—Income Tax

Annual deductions and exemptions.

4. Where in any year of assessment—

(a) a participating company makes loans of its funds to participants for the purpose of purchasing or subscribing for shares of a grantor to be acquired and held on behalf of such participants by trustees of a plan;

(b) the terms of the loans comply with such requirement as may be prescribed; and

(c) the loans are in fact used for the purpose aforesaid,

then, subject to paragraph 5—

(d) in ascertaining the chargeable income or statutory income of the participating company for that year of assessment, and each of the next two succeeding years of assessment there shall be allowed a deduction equivalent to one-third of the sum so lent; and

(e) the interest paid to the participating company by the participant in respect of such loans shall in the hands of the company be exempt from income tax.

Annual deduction where at least one director is elected by participants.

5. Where in the year in which a loan is made by a participating company to finance the acquisition of ESOP shares, the board of directors of the grantor includes at least one director elected by the participants, then in ascertaining the chargeable income or statutory income of that participating company there shall, in lieu of the deduction specified in paragraph 4, be allowed, in the year of assessment in which the loan is made and the next succeeding year of assessment, a deduction equivalent to 50% of the sum lent.

100% deduction re grant.

6.—(1) Where a participating company provides a grant of funds to trustees of a plan to subscribe for or purchase ESOP shares, then in ascertaining the chargeable income or statutory income of that company there shall, in respect of the shares allocated to participants in any year of assessment, be allowed a deduction in that year of assessment equivalent to the portion of such funds as was used by the trustees to acquire the shares.

(2) For the purposes of this paragraph and where shares are issued to the trustees on terms whereby the amount payable by way of subscription for such shares is less than the initial market value thereof the amount of the difference shall be treated as a grant within the meaning of sub-paragraph (1), and in respect of shares allocated to participants in any year of assessment the aggregate difference in respect of such shares shall be allowed as a deduction in ascertaining the chargeable income or statutory income of the grantor in that year of assessment.

Concession re dividends paid prior to date of filing returns.

7. The amount paid by way of dividends to trustees on ESOP shares which are—

(a) acquired by trustees—

(i) by means of loans which qualify for income tax benefits pursuant to paragraph 4; or

(ii) by means of a credit purchase; and

(b) held in a suspense account,

shall, if paid prior to the statutory date for filing income tax returns in respect of the preceding year of assessment, be allowed as a deduction in ascertaining the chargeable income or statutory income of the grantor for that year of assessment.

Benefits to Participants—Income Tax

Application of paragraphs 7, 9, 10 and 11 of Part II to shares financed by grant of participating company.

8.—(1) A grant of funds by a participating company to trustees of a plan to be applied in the acquisition of shares in the grantor by such trustees shall, as regards participants and to the extent that such funds are so utilized, be exempt from income tax and the provisions of paragraphs 7, 9, 10 and 11 of Part II shall apply.

(2) Any difference between the initial market value of shares in the grantor allocated to a participant and the subscription moneys paid in respect of the acquisition of such shares by the plan shall be treated as a grant within the meaning of sub-paragraph (1).

Relief from income tax on interest differential.

9.—(1) Save as provided in sub-paragraph (2), no income tax is payable by a participant in respect of the interest differential enjoyed by a participant on a loan to him from a participating company to be applied in the acquisition of shares in the grantor by the trustees of a plan.

(2) Where shares in a grantor acquired by trustees of a plan and allocated to a participant have been financed by a loan to the participant by a participating company in accordance with paragraph 4, then upon a transfer of any ESOP shares in any year of assessment by the trustees at the request of a participant the interest differential enjoyed by the participant shall be brought into account as income for the purpose of determining the statutory income or chargeable

income of the participant in that year of assessment for the purposes of income tax as follows—

(a) where the transfer occurs in the first three years after the date of allocation of such shares, 100% of the interest differential enjoyed by the participant;

(b) where the transfer occurs in the fourth year after the date of allocation of such shares, 75% of the interest differential enjoyed by the participant;

(c) where the transfer occurs in the fifth year after the date of allocation of such shares, 50% of the interest differential enjoyed by the participant; and

(d) where the transfer occurs in the sixth year after the date of allocation of such shares, 25% of the interest differential enjoyed by the participant.

(3) A transfer of ESOP shares more than six years after the date of allocation shall not render the participant liable to income tax in respect of any interest differential enjoyed by him.

(4) Where prior to the release date ESOP shares are transferred by the trustees consequent on termination of the participant's employment in specified circumstances there shall be brought into account as income for the purpose of determining the statutory income or chargeable income of the participant, in lieu of the provisions of sub-paragraph (2), an amount equivalent to 25% of the interest differential enjoyed by the participant.

(5) For the purposes of this paragraph the interest differential enjoyed by the participant means any difference, as at the date of the relevant transfer, between—

(a) the total interest paid by the participant in respect of the loan (or such part thereof as is ascribable proportionately to the shares transferred) while the ESOP shares remained unallocated; and

(b) the total interest which the Commissioner is satisfied would have been payable by the participant in respect thereof had the loan been made at market rates prevailing while such shares remained unallocated.

(6) For the purposes of sub-paragraphs (2), (3) and (4), the term "ESOP shares" shall be deemed to include any assets into which ESOP shares are diversified, and such diversified assets shall be deemed to have been allocated on the date that the ESOP shares from which they were converted were allocated.

(7) The provisions of paragraph 9 (5) of Part II shall apply upon any transfer referred to in sub-paragraph (2) of this paragraph as if the references to "sub-paragraph (1)" in paragraph 9 (5) were references to sub-paragraph (2) of this paragraph.

Tax deduction allowed.

10. Where a participant has a liability in respect of a loan applied in the acquisition of ESOP shares, in ascertaining the chargeable income or statutory income of the participant for any year of assessment there shall be allowed a deduction equivalent to—

(a) 25% of any payments made by the participant during that year of assessment in repayment of principal; and

(b) 100% of any payments made by the participant during that year of assessment in respect of interest accrued pursuant to that liability.

PART IV.—*Tax relief where acquisition of ESOP shares is externally funded—Requirements*

Application of First and Third Schedules.

1. The plan shall conform with the provisions of the First and Third Schedules and otherwise comply with the provisions of this Act.

Obligation to purchase ESOP shares.

2. Where a participating company borrows funds from a lender and provides such funds, whether by way of loan or grant, for the acquisition by the trustees of shares in the grantor, such funds shall be disbursed directly to the trustees and not less than 85% of such funds or such other percentage as may be prescribed shall be utilized by the trustees to acquire ESOP shares on behalf of participants; and any amount not so utilized shall be applied to other trust purposes specified in the plan.

Time constraints.

3. Loan proceeds received from a lender shall be converted by the trustees into an acquisition of shares in the grantor within sixty days of the receipt of the funds from the lender.

Benefits to Participating Companies—Income Tax

Income tax deductions where borrowed funds made available by way of loan.

4. Where a participating company borrows funds from a lender and makes such funds available by way of loan to participants for the purpose of acquiring ESOP shares to be vested in the trustees of a plan, and as a result the shares are so vested, then in ascertaining the chargeable income or statutory income of the participating company in any year of assessment, there shall be allowed a deduction equivalent to—

(a) 100% of interest payments made by the participating company in that year of assessment in respect of such loans; and

(b) 25% of repayments of principal made by the participating company in that year of assessment in respect of such loans.

Exemption from tax of interest payments to participating company.

5. In assessing the chargeable income of a participating company, there shall be exempt from income tax any payments of interest in any year of assessment made to that company by participants in respect of a loan referred to in paragraph 4.

6. The tax benefits provided at paragraphs 4 and 5 shall only apply where the loans to participants comply with such requirements as may be prescribed.

Loans to comply with prescribed requirements.

7. Where a participating company borrows funds from a lender and makes such funds available by way of a grant to the trustees of a plan for the purpose of acquiring shares in the grantor to be vested in the trustees of a plan, and as a result the shares are so vested, then in ascertaining the chargeable income or statutory income of the participating company in any year of assessment there shall be allowed a deduction equivalent to—

Income tax deductions where borrowed funds made available by way of grant.

(a) 100% of repayments of principal and payments of interest made by the participating company in respect of such borrowed funds in the year of assessment in which the grant is made;

(b) 25% of repayments of principal and 100% of payments of interest so made by the participating company in any subsequent year of assessment,

and, to the extent that this deduction is not fully used in any year of assessment, the participating company may carry forward the balance of such deduction in subsequent years until it is fully used.

8. Where in a year of assessment in which the loan is made, the board of directors of the grantor includes at least one director elected by the participants, then in ascertaining the chargeable income or statutory income of the participating company there shall, in lieu of the deduction specified in paragraph 4 (b) or 7 (b) with respect to repayment of principal, be allowed a deduction equivalent to 50% of the repayment of principal.

Tax deduction where director is elected by participants.

9. Where ESOP shares are acquired by trustees by means of loans which qualify for income tax benefits pursuant to paragraph 4, and are then held in a suspense account, the amount paid by way of dividends to trustees on those shares shall, if paid prior to the statutory date for filing income tax returns in respect of the preceding year of assessment, be allowed as a deduction in ascertaining the chargeable income or statutory income of the grantor for that year of assessment.

Concession re dividends paid prior to date of filing returns.

10.—(1) Where—

External loans made directly to trustees and amortized by participating companies.

(a) a loan is made by lender directly to trustees of a plan for the purpose of the trustees acquiring shares in the grantor;

(b) one or more participating companies guarantee the performance of the trustees' loan obligations on terms whereby such company or companies is or are also obliged to make grants

to the trustees at such times and in such amounts as are required to repay the loan in accordance with its terms and conditions; and

(c) such grants are made by any such company,

then in ascertaining the chargeable income or statutory income of that company in any year of assessment there shall be allowed a deduction equivalent to 100% of the grants made in that year of assessment and, to the extent that this deduction is not fully used in that year, the company may carry forward the balance of such deduction in subsequent years until it is fully used.

(2) Where the trustees of a plan acquire ESOP shares by way of credit purchase and a grant is made to the trustees by a participating company which is applied by the trustees towards paying for the shares, then in ascertaining the statutory income or chargeable income of that company such grant shall be treated as a grant referred to in sub-paragraph (1).

Benefits to Participants—Income Tax

Application of paragraphs 7, 9, 10 and 11 of Part II and paragraphs 9 and 10 of Part III.

11.—(1) Where shares in a grantor are acquired by the trustees of a plan consequent on a participating company borrowing funds from lender and making those funds available to the trustees—

(a) by way of grant, the provisions of paragraphs 7, 9, 10 and 11 of Part II shall apply; and

(b) by way of a loan, the provisions of paragraphs 9 and 10 of Part III shall apply.

(2) Where a participating company borrows funds from a lender and makes such funds available by way of a grant to the trustees of a plan to be applied in the acquisition of shares in the grantor, the funds so granted (if so applied) shall not be subject to income tax as emoluments of any of the participants.

Benefits to Lenders

Income tax relief.

12.—(1) Where a lender, or two or more lenders acting as a syndicate, makes a loan to a participating company or the trustees of a plan for the purpose of funding the acquisition by the trustees of shares in the grantor and such shares are so acquired, then, subject to sub-paragraph (2), 50% of the amount of interest payments received by any such lender in any year of assessment in respect of that loan shall, in the hands of the lender, be exempt from income tax.

(2) Where ESOP shares acquired by virtue of a loan referred to in sub-paragraph (1) amount to 15% or more of the total value of shares in the grantor, then the total amount of interest payments received by the lender in respect of that loan shall, in his hands, be exempt from income tax.

(3) Where at the end of any year of assessment loans referred to in sub-paragraph (1) comprise not less than 3% of the total amount of loans outstanding on the books of an authorized lender then in assessing the income tax payable by that lender the applicable rate of income tax shall be reduced by one percentage point for each 3% of the total loans aforesaid outstanding at that date, so, however, that the reduction under this provision shall not exceed five percentage points.

(4) For the purposes of this paragraph and paragraph 13 "authorized lender" means—

(a) any bank operating under the Banking Act;

(b) any financial institution operating under the Financial Institutions Act;

(c) any building society;

(d) any society registered under the Co-operative Societies Act; and

(e) such other person as the Minister may specify by order.

Income tax relief to loan assignees.

13. Where a lender assigns any loan referred to in paragraph 12 (1) to another person, the assignee, and any further assignee, shall, while the loan remains vested in him, enjoy the like income tax reliefs as the lender pursuant to paragraph 12 in relation to that loan, so however that—

(a) the relief provided in paragraph 12 (3) shall not apply to any assignee who is not an authorized lender; and

(b) this paragraph shall not apply if the assignee is the grantor or a member of the same group as the grantor.

PART V.—*Tax relief relating to Share Option Plans—Requirements*

Application of First and Third Schedules.

1.—(1) The plan shall conform with the provisions of Part III of the First Schedule and paragraph 7 of Part II of the Third Schedule.

(2) In this Part, "option" means an option under a share option plan.

Benefits to Participants

Income tax relief.

2. No income tax shall be payable by the participant after the expiration of six years from the date of the grant in respect of the amount (hereinafter in this Part referred to as the "surplus value") by which the value of the shares at the date of exercise of the option, determined in the prescribed manner, exceeds the aggregate of the money or money's worth paid for the option and for the acquisition of shares pursuant to the exercise thereof.

Six year control.

3. If an option is exercised within the period of six years mentioned in paragraph 2 the surplus value shall be brought into account as income for the purpose of determining the statutory income or chargeable income of the participant for the purposes of income tax as follows—

(a) 100% of the amount of such surplus value in the first three years after the date of the grant of the option;

(b) 75% of the amount of such surplus value in the fourth year after that date;

(c) 50% of the amount of such surplus value in the fifth year after that date; and

(d) 25% of the amount of such surplus value in the sixth year after that date.

Concessions re-death, disability etc.

4. Where prior to the sixth anniversary of the date of the grant of the option, the option is exercised consequent on termination of the participant's employment in specified circumstances the amount of the surplus value shall be brought into account as income for the purpose of determining the statutory income or chargeable income of the participant at the rate of 25% of that amount.

Concessions re interest.

5. Where a participant borrows money from a participating company to acquire an option or to exercise the right to acquire shares pursuant to the exercise thereof, then in ascertaining his statutory income the participant shall be allowed in a year of assessment a deduction—

(a) of 100% of the amount of interest paid on the loan during that year of assessment; and

(b) of 25% of the amount of principal repaid in respect of the loan in that year of assessment.

Liability to income tax re interest differential.

6.—(1) Where the acquisition of an option or of shares pursuant to the exercise thereof has been financed by a loan to the participant by a participating company, then upon an issue of shares by the grantor at the instance of the participant, the interest differential enjoyed by the participant shall be brought into account as income for the purpose of determining the statutory income or chargeable income of the participant for the purposes of this Act as follows—

(a) where the issue of shares occurs in the first three years after the date of grant of the option, 100% of the interest differential;

(b) where the issue of shares occurs in the fourth year after the grant of the option, 75% of the interest differential;

(c) where the issue of shares occurs in the fifth year after the date of grant of the option, 50% of the interest differential; and

(d) where the issue of shares occurs in the sixth year after the date of grant of the option, 25% of the interest differential.

(2) An exercise of the option more than six years after the date of grant of the option shall not render the participant liable to income tax in respect of any interest differential enjoyed by him.

(3) Where prior to the sixth anniversary of the date of grant of the option, the option is exercised consequent on termination of the participant's employment in specified circumstances, there shall be brought into account as income for the purpose of determining the statutory income or chargeable income of the participant, in lieu of the provisions of sub-paragraph (1), an amount equivalent to 25% of the interest differential enjoyed by the participant.

(4) For the purposes of this paragraph the interest differential enjoyed by the participant means the difference as at the date of the exercise of the option between—

(a) the total interest paid by the participant in respect of the loan; and

(b) the total interest which the Commissioner is satisfied would have been payable by the participant in respect thereof had the loan been made at market rates prevailing over the period of the loan.

Income tax relief on acquisition of share option.

7. No income tax shall be payable by a participant in respect of the acquisition by him of an option by reason of the fact that he pays a consideration less than the market value thereof.

Benefits to Participating Companies

Income tax relief.

8. Where in any year a participating company makes a loan to participants to finance the acquisition by the participants of an option or the exercise thereof then in ascertaining the chargeable income or statutory income of the participating company for the year in which the loan is made, there shall be allowed in that year and in each of the next two succeeding years, a deduction equivalent to one-third of the sum lent.

Tax exemption re concessionary loans.

9. The interest paid to the participating company by the participant in respect of such loans shall, in its hands, be exempt from income tax.

Loans must comply with prescribed requirements.

10. The income tax relief mentioned in paragraphs 8 and 9 shall only apply where the loan mentioned in those paragraphs comply with such requirements as may be prescribed.

General Benefits—Stamp Duty and Transfer Tax

Relief from stamp duty on share options.

11.—(1) Any instrument creating an option shall be exempt from stamp duty.

(2) If the option is exercised after the end of the period of six years mentioned in paragraph 2 or consequent on termination of the participant's employment with a participating company in specified circumstances, then any instrument effecting an allotment of shares pursuant to such exercise as aforesaid, shall be exempt from stamp duty.

Relief from transfer tax on share options.

12. No transfer tax shall be payable in respect of the grant of an option or the acquisition of shares pursuant to the exercise thereof if—

(a) such acquisition takes place no earlier than six years after the grant of the option; and

(b) upon the exercise of the option the shares are issued to the participant to whom the option was granted or to his personal representative.

Relief from stamp duty on instrument re increase of share capital.

13. The grantor shall be exempt from stamp duty in respect of any instrument effecting an increase in authorized share capital applied for the purpose of granting options.

PART VI.—*Tax relief relating to related enterprise participants*
Requirements

Application and modification of First and Third Schedules.

1. A plan extending to related enterprise participants shall conform with the provisions of the First and Third Schedules, and otherwise comply with the provisions of this Act subject to the following modifications—

(a) for the purposes of the First and Third Schedules "retention period"—

(i) in relation to ESOP shares allocated to a related enterprise participant referred to in section 11 (1) (a), means the period commencing with the date of allocation of those shares to him and ending on the earliest of the second anniversary of that date or the date of termination of that participant's employment with the related enterprise in specified circumstances or the cessation of the significant economic relationship between the related enterprise and a participating company;

(ii) in relation to ESOP shares allocated to a related enterprise participant referred to in section 11 (1) (b), means a period commencing with the date of allocation of those shares to him and ending on the earlier of the second anniversary of that date or the cessation of the significant economic relationship between the related enterprise participant and a participating company;

(b) in paragraph 4 (1) of Part III of the First Schedule and in the Third Schedule references to termination or cessation of employment with a participating company shall be construed—

(i) in the case of a participant referred to in section 11 (1) (a), as a reference to termination or cessation of employment with a related enterprise or, as the case may be, cessation of a significant economic relationship between the related enterprise and a participating company;

(ii) in the case of a participant referred to in section 11 (1) (b), as a reference to cessation of a significant economic relationship between that participant and a participating company;

(c) in the Third Schedule references to a term of employment with a participating company shall be construed—

(i) in the case of a participant referred to in section 11 (1) (a), as a reference to the period of employment of that participant with a related enterprise ending with the earlier of the termination of such employment or the cessation of a significant economic relationship between the related enterprise and a participating company; and

(ii) in the case of a participant referred to in section 11 (1) (b), as a reference to the duration of a significant economic relationship between that participant and a participating company.

Benefits to Participants—Income Tax

Application of paragraph 10 of Part II and paragraphs 2 to 7 of Part V.

2. Paragraph 10 of Part II and paragraphs 2 to 7 of Part V shall apply save that references to termination of a participant's employment with a participating company shall be construed—

(a) in the case of a participant referred to in section 11 (1) (a), as a reference to the earlier of the termination of his employment with a related enterprise or the cessation of a significant economic relationship between the related enterprise and a participating company; and

(b) in the case of a participant referred to in section 11 (1) (b), as a reference to the cessation of a significant economic relationship between that participant and a participating company.

Application of Parts I to V of Second Schedule.

3. Parts I to V of this Schedule shall apply to related enterprise participants in like manner as they apply to other participants.

THIRD SCHEDULE

(Section 9)

Supplemental rights and obligations

PART I.—*Distributions*

Distribution of assets on cessation of participation.

1.—(1) Distribution to a participant of the assets allocated to him under a plan shall occur not later than ninety days after the date on which the participant's employment with a participating company is terminated unless he is re-employed before the end of such period by a participating company.

(2) Nothing in sub-paragraph (1) shall preclude a plan from allowing a retired person to remain as a participant in the plan and in any such case the participant may elect to defer the distribution to him; and if any such election is made, distribution shall occur either within ninety days after the participant calls for distribution or within ninety days after his death, whichever is earlier.

Distribution in specie.

2. A participant (or his personal representatives) shall have the right to demand that the assets comprising his account balance be distributed to him in specie.

Contributing participants right to request distribution after retention period.

3. Except in respect of ESOP shares the acquisition of which has been financed entirely by way of a grant from a participating company, the plan shall include a right in participants to call for a distribution of all or a portion of their allocated plan assets within ninety days following the end of the retention period applicable to such plan assets.

Non-contributing participants.

4. Where the acquisition of ESOP shares is financed entirely by way of grant from a participating company, the provisions of paragraph 3 shall not apply to those shares, but the plan shall include a right in participants to call for a distribution of at least 25% of those shares (or of any assets into which those shares have been diversified) within ninety days following the end of the retention period applicable to those shares.

PART II.—*Put Options*

Put option.

1.—(1) Where ESOP shares are not listed on a recognized stock exchange, the plan shall provide each participant with an option (a "put option"), enforceable in contract against the grantor in relation to the ESOP shares which are distributed to him by the trustees of a plan being an option giving the participant the right to require the grantor to purchase those shares at their market value, as determined by an independent auditor in the prescribed manner.

(2) In this Part references to a participant shall be deemed to include references to an individual who, having been distributed all the assets allocated to him under a plan, continues to hold some or all of those assets while remaining in the employment of a participating company.

Put option during continued employment.

2.—(1) During the term of a participant's employment with a participating company a put option shall—

(a) be exercisable by the participant in relation to 10% of his aggregate allocation of ESOP shares within ninety days of the expiry date of each successive three years commencing with the date of the first allocation of ESOP shares to the participant; and

(b) cease to be exercisable during the term of his employment with a participating company when he has exercised his put option in relation to 50% of the aggregate allocation of ESOP shares.

(2) For the purposes of this paragraph "aggregate allocation of ESOP shares" as respects any participant—

(a) means the aggregate amount of ESOP shares which at any relevant date have been allocated to him regardless of whether, prior to that date, any of those shares have been distributed to him or whether he has exercised a put option in respect of any of those shares;

(b) excludes ESOP shares which have been acquired through trading on an internal market or which have been diversified into other investments pursuant to the exercise of a diversification option.

Put option on termination of employment.

3. Where a participant ceases to be an employee of a participating company the put option shall, in relation to the ESOP shares which have been distributed to him, be exercisable by him or his personal representatives—

(a) within one year of the date of a distribution consequent on death or, in any other case within six months of the date of distribution; or

(b) if the put option is not exercised pursuant to sub-paragraph (a), then within sixty days of the receipt by him of notice given by the trustees of the appraisal of the value of those shares next following the appraisal which applied at the date of distribution.

Payment terms re put options.

4. For the purpose of facilitating the purchase of shares under this Part the grantor in respect of the exercise of a put option—

(a) during the term of a participant's employment with a participating company, may pay the purchase price in equal instalments at intervals not more than 180 days apart, over a period not exceeding three years; and

(b) after the termination of a participant's employment with a participating company may pay the purchase price in equal instalments at intervals not more than 180 days apart, over a period not exceeding five years.

Interest on amounts due.

5. A plan shall provide that the grantor shall be contractually obliged to pay interest at the rate prescribed by the Minister by order on any amounts outstanding to a participant or a former participant, as the case may be, in respect of the purchase of ESOP shares by the grantor pursuant to the exercise of a put option.

Deferral of exercise of put option.

6. In the case of ESOP shares the acquisition of which by the trustees is financed by an external loan which is amortized by a participating company without financial contributions from the participants, the right to exercise any put option shall be deferred until—

(a) such loan is fully amortized; or

(b) the expiration of six years after the date on which the loan is made,

whichever is earlier.

Put option in relation to share option plans.

7.—(1) Where shares which are acquired under a share option plan are not listed on a recognized stock exchange the plan shall provide each participant with an option enforceable in contract against the grantor and exercisable when the participant ceases to be an employee of a participating company, being an option giving the participant the right to require the grantor to purchase such shares at a value determined by an independent auditor in the prescribed manner.

(2) The option referred to in sub-paragraph (1) shall be exercised by a participant or his personal representative within one year of his ceasing to be employed by a participating company.

(3) The provision of paragraph 4 (b) shall apply on exercise of an option provided for in this paragraph.

PART III.—*Diversification*

10% diversification every three years and internal market.

1.—(1) Subject to the provisions of this paragraph, the plan shall provide each participant with an option ("diversification option") enforceable in contract against the grantor and exercisable during the term of his employment with a participating company.

(2) The diversification option shall give the participant the right to require the grantor to purchase the ESOP shares allocated but undistributed to the participant at their market value as determined by an independent auditor in the prescribed manner, so that the purchase price may be applied by the trustees towards diversifying, in accordance with this Part, the assets allocated under the plan to that participant.

(3) The diversification option shall—

(a) be exercisable in relation to such number of the participant's allocated but undistributed ESOP shares as the participant may require, not exceeding 10% of such shares, within ninety days of the end of each successive three year period commencing with the date of the first allocation of ESOP shares to the participant under the plan; and

(b) be applicable to the extent only that the exercise of the diversification option would not reduce the ESOP shares in the participant's account with the plan below fifty per cent in value of the participant's allocated but undistributed plan assets.

(4) Where the plan provides for an internal market or where the ESOP shares are listed on a recognized stock exchange, on the exercise of a diversification option under this paragraph, the trustees shall, prior to requiring the grantor to purchase the ESOP shares, seek a buyer for those shares on the internal market or where applicable, on the recognized stock exchange, or both, so however that, if no such buyer is found within sixty days after the date on which the option is exercised the grantor shall forthwith purchase the shares in accordance with this paragraph.

(5) The provisions of paragraph 4 (a) of Part II shall apply in respect of shares purchased by the grantor pursuant to this paragraph, and paragraph 5 of Part II shall also apply as if the reference therein to "put option" were a reference to "diversification option".

Choice of investments.

2. For the purposes of diversification the trustees shall offer the participant a choice of cash and not less than three prescribed categories of investments into which his ESOP shares may be diversified.

Loan repayment before diversification.

3. Where the acquisition of shares under a plan is financed by an external loan to a participating company, which funds are then made available to the trustees by way of grant, so that the participants make no financial contribution to such acquisition, the commencement of the diversification option shall be deferred until—

(a) the loan is fully amortized; or

(b) the expiration of six years after the date on which the loan is made,

whichever is the earlier.

Exclusion of small balances.

4. The diversification option shall not apply where a participant's allocated ESOP shares are less than $1,000 in value or such other amount as may be prescribed from time to time.

Time constraint.

5. On the exercise of a diversification option the grantor shall pay the amount payable in respect of such option, being the whole of the purchase price or the first instalment thereof, to the trustees within thirty days, or such other period as may be prescribed, of the date of the exercise of such option and the trustees shall forthwith—

(a) invest the amounts in the acquisition of assets within the prescribed categories of investments or retain such amounts in cash in accordance with the directions of the participant; and

(b) allocate the investments or cash to the participant's account.

PART IV.—*General*

Assignment of shares to trustees for further allocation.

1. Where the exercise of a put option or a diversification option or a call option or a right of first refusal requiries or permits the grantor to purchase ESOP shares, the grantor may purchase such shares either for the purpose of cancellation or for transfer to the trustees of the plan who may then allocate the shares to new participants or to existing participants or leave them unallocated until an appropriate time for allocation in accordance with the terms of the plan.

Plan assets on termination of plan.

2.—(1) In the event of the termination of a plan the assets of the plan shall, after the liabilities in relation to the plan have been met, be distributed to participants as soon as practicable.

(2) Alternatively, such assets may be retained by the trustees for distribution to participants in accordance with the terms of the plan and the tax reliefs applicable to the plan under this Act shall apply until such time as all assets of the plan are distributed or disposed of in accordance with the terms of the plan.

Cancellation of unallocated shares on default.

3.—(1) Where any of the shares acquired by the trustees of a plan are funded by a loan to a participant and any of those shares are, pursuant to the terms of the plan, held in a suspense account, then, if there is a default by the participant in the repayment of the loan, the grantor may—

(a) subject to sub-paragraph (2), cancel some or all of those unallocated shares; or

(b) leave some or all of the shares in the plan and treat them as free from debt; or

(c) allow any other participant or participants to assume all or part of the outstanding liability in respect of the debt and thereupon each such participant shall be allocated the shares in respect of the amount of the debt discharged by him, as and when such debt is discharged.

(2) If the source of the funds of the loan referred to in sub-paragraph (1) is a loan made by lender to a participating company and the lender has a security interest in the unallocated shares, the grantor may not cancel the shares without the lender's prior consent.

PART V.—*Other Rights and Restrictions*

Right of first refusal.

1.—(1) The grantor may subject ESOP shares or shares acquired by a participant under a share option plan to a right of first refusal—

(a) in the case of ESOP shares, in favour of the grantor or the trustees when the shares are distributed to participants or their personal representatives, that is to say, a right requiring the shares to be offered to the grantor or the trustees for purchase by either of them; or

(b) in the case of shares acquired under a share option plan, in favour of the grantor, that is to say a right requiring the shares to be offered to the grantor for purchase by the grantor,

before the shares are offered for sale to any other person or before an offer to purchase the shares by any other person is accepted.

(2) The price and terms offered to the grantor or, as the case may be, the trustees pursuant to their right of first refusal shall be not less favourable than the price and terms offered by a *bona fide* purchaser making an offer in writing in good faith to purchase the shares.

(3) The maximum duration of the right of first refusal shall be thirty days after the proposed vendor gives written notice to the grantor that an offer has been received.

(4) Sub-paragraph (1) shall not apply in the case of a sale by a participant or his personal representative to another eligible employee.

PART VI.—*Call Options*

Grantor's power to impose call options.

1.—(1) Where ESOP shares or shares acquired by a participant under a share option plan are not listed on a recognized stock exchange, the grantor may subject such shares to an option (a "call option") whereby if the shares are distributed to a person who at the time of such distribution or at any time thereafter ceases to be employed with a participating company—

(a) in the case of ESOP shares, the grantor or the trustees may require such person to sell his shares to the grantor or the trustees; or

(b) in the case of shares acquired under a share option plan, the grantor may require such person to sell his shares to the grantor,

at their market value as determined by an independent auditor in the prescribed manner.

(2) The duration of the call option shall be no longer than one year from the date of termination of the person's employment and the purchase price shall be paid within one year of the date of its exercise.

(3) The grantor may purchase such shares either for the purpose of cancellation or for transfer to the trustees of the plan who may then allocate the shares to new participants or to existing participants or leave them unallocated until an appropriate time for allocation in accordance with the terms of the plan.

PART VII.—*Internal Market*

Plan may provide for market.

1. The plan may provide for the creation of a market in the beneficial interest in allocated ESOP shares, to be administered by or on behalf of the trustees.

FOURTH SCHEDULE (Section 12)

Tax reliefs in relation to matters provided in the Third Schedule

Income tax relief to grantor re call option.

1. In the ascertaining of its chargeable income or statutory income the grantor shall be allowed a deduction for the amount paid to a person by the grantor in a year of assessment pursuant to the exercise of rights under a call option or a right of first refusal if the shares purchased by the grantor are not cancelled but are transferred to the trustees of the plan during the same year of assessment.

Income tax re relief re payments by grantor re exercise of put option or diversification option.

2. In the ascertaining of its chargeable income or statutory income a grantor shall be allowed a deduction for amounts paid to a person by the grantor in a year of assessment pursuant to the exercise by that person of rights under a put option or a diversification option, provided that if the plan is not a share option plan this deduction shall only apply if the shares so purchased are not cancelled but are transferred to the trustees of the plan during the same year of assessment.

Provisions supplementary to paragraphs 1 and 2.

3. The deductions referred to in paragraphs 1 and 2 shall be allowed in addition to other income tax relief provided under this Act.

Income tax deduction allowed where loan forgiven.

4. Where in any year of assessment a grantor forgives repayment of any loan in respect of ESOP shares pursuant to paragraph 3 (1) (b) of Part IV of the Third Schedule, the amount so forgiven shall be treated as a grant within the meaning of paragraph 6 of Part III of the Second Schedule in the ascertaining of the chargeable income or statutory income of the grantor in that year of assessment.

Exemption from transfer tax and stamp duty.

5. Transfers of ESOP shares effected in an internal market organized and operated pursuant to the terms of a plan and instruments giving effect to such transfers shall be exempt from transfer tax and stamp duty, respectively.

FIFTH SCHEDULE (Section 16)

Limit on Income Tax Relief

The following provisions shall apply with regard to the excess referred to in section 16.

1. As regards a participant—

(a) where the excess results from the allocation of shares the acquisition of which is funded in whole or in part by the participant's contributions, such of the contributions as is attributable to that excess, determined in the prescribed manner, shall not be exempt from income tax;

(b) where the excess results from the allocation of shares the acquisition of which is funded in whole or in part by a grant from a participating company (whether out of the company's own resources or from an external source), such amount of the grant as is attributable to that excess, determined in the prescribed manner, shall not be exempt from income tax;

(c) where the excess results from the allocation of shares the acquisition of which is funded in whole or in part by a loan to the participant by a participating company (whether out of the company's own resources or through the on-lending of funds borrowed externally) then—

(i) such portion of the participant's repayments of principal and payments of interest in respect of the loan as is attributable to the excess, determined in the prescribed manner, shall not be deducted for the purpose of ascertaining his chargeable income or statutory income; and

(ii) if the Commissioner is satisfied that the rate of interest charged to the participant on such loan is either nil or is below the market rate of interest, the saving in interest payments thereby enjoyed by the participant and which is attributable to the portion of the loan which funded the excess, as determined in the prescribed manner, shall not be exempt from income tax; and

(d) such portion as may be prescribed of the dividends paid on every share allocated to that participant in the year of assessment shall not be exempt from income tax while those shares remain in the plan.

2. As regards a participating company—

(a) where a grant from the company has in whole or in part funded the acquisition of shares the allocation of which has resulted in an excess, that portion of the grant as is attributable to the excess, determined in the prescribed manner, shall not be deducted for the purpose of ascertaining the company's chargeable income or statutory income;

(b) where the company makes a grant to trustees of a plan to enable the trustees to repay principal and pay interest on a loan to the trustees by lender and the grant wholly or partly or partly funds the acquisition of shares the allocation of which has resulted in an excess then that portion of the grant as is attributable to the excess, determined in the prescribed manner, shall not be deducted for the purpose of ascertaining the company's chargeable income or statutory income;

(c) where the company borrows funds externally and makes the funds available by way of grant to the trustees of a plan the amount of the aggregate excess allocation to participants in any year of assessment as is attributable to the grant, determined in the prescribed manner, shall, subject to paragraph 5, be treated as income of the company chargeable to income tax in that year of assessment;

(d) where the company has made loans of its own funds to participants to be applied in the acquisition of shares under a plan then—

(i) the amount of the aggregate excess allocation to participants in any year of assessment as is attributable to the loans, determined in the prescribed manner, shall, subject to paragraph 5, be treated as income of the company chargeable to income tax in that year of assessment; and

(ii) the aggregate of interest payments made by the participants in the year of assessment which are determined under paragraph 1 not to be deductible in ascertaining the participants' chargeable income or statutory income shall, in the hands of the company, be treated as income chargeable to income tax; and

(e) where the company borrows funds externally and lends those funds to participants to be applied in the acquisition of shares under a plan then—

(i) the amount of the aggregate excess allocation to participants in any year of assessment as is attributable to the lending, determined in the prescribed manner, shall, subject to paragraph 5, be treated as income of the company chargeable to income tax in that year of assessment; and

(ii) the aggregate of interest payments made by the participants in the year of assessment which are determined under paragraph 1 not to be deductible in ascertaining the participants' chargeable income or statutory income shall in the hands of the company be treated as income chargeable to income tax.

3. Paragraphs 1 (b) and 2 (a) shall apply to any amount which is treated as a grant in the Second Schedule or the Fourth Schedule.

4. Where any excess occurs as a result of the grant of share options under a share option plan then—

(a) as regards a participant—

(i) paragraphs 2, 3 and 4 of Part V of the Second Schedule shall not apply to those shares which are the subject matter of the share options and which are attributable to the excess, as determined in the prescribed manner, and accordingly there shall be brought into account as income of the participant in the year of assessment in which the options are exercised the amount by which the value of those shares on exercise of the options, determined in the prescribed manner, exceeds the aggregate amount paid for the options and the shares acquired in the exercise of the options;

(ii) such part of the participant's repayment of principal and payments of interest in any year of assessment in respect of any loan for the acquisition of the options or for the exercise thereof as is attributable to the excess, determined in the prescribed manner, shall not be deductible in ascertaining the participant's chargeable income or statutory income; and

(iii) such part of any interest differential as is referred to in paragraph 6 of Part V of the Second Schedule as is attributable to the excess, determined in the prescribed manner, shall be subject to income tax in any year of assessment in which the option is exercised;

(b) as regards a participating company, so much of any loan referred to in paragraph 8 of Part V of the Second Schedule as is attributable to the excess, determined in the prescribed manner, shall not be deductible in ascertaining the company's chargeable income or statutory income and so much of any interest paid to the company on such portion of the loan shall not be exempt from income tax.

5.—(1) Subject to sub-paragraph (2), the amount of the excess treated as income of a company pursuant to paragraph 2 (c), (d) (i) or (e) (i) in any year of assessment shall not exceed—

(a) in the case of sub-paragraphs (c) and (e) (i), the aggregate amount of the company's repayment of principal and payments of interest in respect of the borrowed funds; or

(b) in the case of sub-paragraph (d) (i), the portion of the loans,

which up to and including that year of assessment have been deducted in ascertaining the chargeable income or statutory income of the company.

(2) Where in any case to which paragraph 2 (c), (d) (i) or (e) (i) applies there remains in any year of assessment any excess which has not been treated as income of the participating company, then in any subsequent year of assessment in respect of which the participating

company is allowed further deductions in respect of the grant or loan, any balance of the excess which has not prior thereto been treated as income of the participating company shall be so treated to the extent of such further deductions.

6. Regulations under this Act may provide for the manner in which this Schedule is to be applied and, without prejudice to the generality of the foregoing, may specify—

(a) how an excess should be treated as funded where in the relevant year of assessment shares are allocated under a plan as a result of two or more methods of funding;

(b) whether and to what extent an excess shall be treated as attributable to the allocation of shares under a plan or the grant of share options under a share option plan where in the relevant year of assessment a participant is both allocated shares under a plan and granted share options under a share option plan.

SIXTH SCHEDULE (Section 22)

First Column	Second Column
The Companies Act	1. In subsection (1) of section 54 substitute a semi-colon for the fullstop at the end of the subsection and add next after paragraph (c) the following as paragraph (d)— "(d) the provision by the company, in accordance with the Employees Share Ownership Plan Act, 1994, of any financial assistance with respect to the establishment or operation of an approved plan under that Act or with respect to the acquisition by the trustees of a plan under that Act of shares in the company in accordance with that Act.".
	2. Insert next after section 65 the following as section 65A—
"Redemption or cancellation of shares under Employees Share Ownership Plan Act.	65A.—(1) A company limited by shares may, if so authorized by its articles, purchase its own shares out of profits available for distribution or out of a fresh issue of shares for that purpose and in accordance with the provisions of this section. (2) Where a company, in the operation of an employee share ownership

SIXTH SCHEDULE, *contd.*

First Column	Second Column
	plan approved under the Employees Share Ownership Plan Act, 1994— (a) purchases its shares and such shares are thereupon either cancelled or transferred to the trustees of the plan; or (b) otherwise cancels its shares, in the exercise of the company's rights or obligations under that Act or any plan thereunder, such purchase or cancellation of its shares by the company shall not be deemed to be a reduction of the company's capital. (3) The purchase of shares in accordance with this section shall not be taken as reducing the amount of the company's authorized share capital.".
	3. Substitute a semi-colon and the word "or" for the fullstop at the end of subsection (1) of section 131 and add next thereafter the following— "(iv) by a member holding shares in the company as a trustee of an approved employee share ownership plan as defined in section 2 of the Employees Share Ownership Plan Act, 1994, being shares conferring a right to vote at the meeting.".
The Income Tax Act.	1. Amend the proviso to paragraph (c) of subsection (1) of section 5 by deleting the fullstop at the end of the subsection and substituting therefor a semi-colon and the following as paragraph (viii) of the proviso— "(viii) the said emoluments shall not include any sums used by employees

SIXTH SCHEDULE, *contd.*

First Column	Second Column
	to acquire shares or share options pursuant to a plan approved under the Employees Share Ownership Plan Act, 1994, to the extent that the sums so used are relieved of income tax under that Act.".

2. Amend subsection (1) of section 13 by substituting a semi-colon for the fullstop at the end of the subsection and inserting next after paragraph (u) the following as paragraph (v)—

"(v) the amount of any payment which qualifies for deduction under this Act by virtue of the provisions of the Employees Share Ownership Plan Act, 1994.".

Passed in the House of Representatives with eight (8) amendments this 18th day of January, 1994.

CARL MARSHALL,
Speaker.

Passed in the Senate with seven (7) amendments this 4th day of March, 1994.

W. V. JONES,
President.

On the 15th day of March, 1994, the House of Representatives agreed to the amendments made by the Senate.

CARL MARSHALL,
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to Houses of Parliament.