

**DATED 1 NOVEMBER 2017**

**DIAGEO PLC**

**AGS EMPLOYEE SHARES NOMINEES (IRELAND) DESIGNATED ACTIVITY  
COMPANY**

**DIAGEO IRELAND**

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**TRUST DEED AND RULES**

**OF THE**

**DIAGEO PLC 2017 IRISH SHARE OWNERSHIP PLAN**

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[Approved by the shareholders of the Company on \[ \] 2022](#)

**ARTHUR COX**

**THIS TRUST DEED** is made the 1<sup>st</sup> day of November 2017

**BETWEEN:**

1. **DIAGEO PLC**, a public limited company incorporated in England and Wales with registered number 23307 and having its registered office at Lakeside Drive, Park Royal, London NW10 7HQ (the “**Company**”);
2. **AGS EMPLOYEE SHARES NOMINEES (IRELAND) DESIGNATED ACTIVITY COMPANY**, a designated activity company limited by shares incorporated in Ireland with registered number 105788 and having its registered office at St. James’ Gate, Dublin 8 (the “**Trustee**”, which expression shall where the context so admits include the trustee for the time being hereof); and
3. **DIAGEO IRELAND**, a private unlimited company incorporated in Ireland with registered number 22876 and having its registered office at St. James’ Gate, Dublin 8 (“**Diageo Ireland**”).

**WHEREAS:**

- (A) By resolution of the routine business sub-committee of the board of directors of the Company passed on the 18th day of October 2017 it was determined to establish a profit sharing scheme under Chapter 1 of Part 17 of the Taxes Consolidation Act 1997 (as amended) for the benefit of employees of the Company or of its subsidiaries in Ireland entitled “Diageo plc 2017 Irish Share Ownership Plan” which it is intended will be approved by the Revenue Commissioners.
- (B) Diageo Ireland is a subsidiary of the Company within the meaning of Section 7 of the Companies Act 2014 and is controlled (within the meaning of that expression in Section 432 of the Taxes Consolidation Act 1997 (as amended)) by the Company.
- (C) Diageo Ireland, with the consent of the Company and of the Trustee, agrees to be bound in all respects by this Trust Deed and the Rules.

**NOW THIS DEED WITNESSETH** as follows:

1. **Definitions and interpretation**

- 1.1 In this Trust Deed unless the context otherwise requires the following expressions shall have the following meanings:

“**Plan**” means the “Diageo plc 2017 Irish Share Ownership Plan” established by this Trust Deed and the Rules from time to time in force;

“**Rules**” means the rules set out in the schedule hereto with and subject to any modification, alteration, amendment or extension thereto for the time being in force which Rules shall be deemed to constitute an integral part of this Trust Deed;

“**Trust Fund**” means all money paid to the Trustee by the Company pursuant to Rule 3.1 and any Plan Shares or other investments or money from time to time representing such money or part thereof; and

other words and expressions defined in the Rules shall bear the same meanings herein.

2. **Establishment**

2.1 The Plan is hereby established.

2.2 The Plan shall be operated and administered in accordance with Chapter 1 of Part 17 of the Act.

3. **Trustee**

3.1 **Appointment of Trustee**

(a) The Company hereby appoints the Trustee to be the trustee of the Plan and the Trustee hereby agrees to such appointment.

(b) There shall at all times be but one Trustee for the administration of the trusts hereby created and such Trustee shall be a body corporate, other than a body corporate which is controlled by the Company, control being construed within the meaning of that expression in Section 432 of the Act.

(c) The Trustee shall at all times be resident in Ireland.

3.2 **Trustee's funds**

(a) The Company and/or the Participating Companies shall pay to the Trustee such funds as the Trustee shall require from time to time:

(i) to enable the Trustee to acquire Shares for the purposes of the Plan;  
and

(ii) to enable the Trustee to meet taxation and other costs incurred in the operation of the Plan.

(b) Any unappropriated assets remaining in the hands of the Trustee on the Termination Date (as defined by Clause 6 of this Trust Deed) shall be returned in cash to the Company and/or the Participating Companies in such proportions as shall be deemed to be just and equitable by the Trustee having regard to the respective contributions of the Company and/or the Participating Companies.

(c) The Trustee shall prepare and keep all such accounts and records as may be required for the purpose of the Plan and shall once at least in every year submit accounts to the Company and the Company may cause such accounts to be made up and audited by qualified accountants. In particular, the Trustee shall:

(i) maintain such records as may be necessary to enable it to carry out its obligations under Chapter 1 of Part 17 of the Act; and

(ii) inform a Participant who becomes liable to income tax under Schedule E of the Act in relation to the operation of the Plan of any facts of which it is aware relevant to the determination of that liability.

- (d) Subject to any liability to tax properly incurred by the Trustee in the course of the operation of the Plan, the Trustee shall not be liable to satisfy any monetary obligations under the Plan (including, but without prejudice to the generality of the foregoing, any monetary obligations to Participants) beyond the sums of money (including income) from time to time in its hands or under its control as Trustee of the Plan and properly applicable for that purpose. The Trustee shall be liable for any tax properly incurred by the Trustee, in the course of the operation of the Plan.

### **3.3 Costs and expenses**

- (a) The costs, charges and expenses of the establishment of the Plan and of the preparation and execution of this Trust Deed shall be borne by the Company and/or the Participating Companies in such proportions as shall be agreed between them.
- (b) All costs, charges and expenses of and incidental to the administration, operation and determination of the Plan (including any remuneration of the Trustee and any tax or duty for which the Trustee may be accountable to the Revenue Commissioners arising from or in connection with the Plan) shall be borne by the Company and/or the Participating Companies (in such proportions as shall be agreed between them) if and to the extent that the same cannot properly be paid by the Trustee out of funds in its hands available for the purpose.
- (c) The Company and/or the Participating Companies (in such proportions as shall be agreed between them) shall pay or reimburse to the Trustee upon demand all charges and expenses reasonably incurred by the Trustee in the course of the administration of the trusts of this Trust Deed.
- (d) The Trustee may charge and be paid such reasonable remuneration or charges as shall from time to time be agreed in writing between the Company and the Trustee.

### **3.4 Indemnity**

- (a) The Company and the Participating Companies (in such proportions as shall be agreed between them) shall keep the Trustee indemnified against any actions, claims and demands arising out of anything lawfully done or caused to be done by it in the exercise of the powers and discretions vested in it by this Trust Deed or otherwise arising howsoever out of or in connection with this Trust Deed and, in addition, the Trustee shall have the benefit of all indemnities conferred upon trustees generally by law and by the Trustee Act 1893 or any statutory modification or re-enactment thereof for the time being in force.
- (b) The Trustee shall be answerable only for losses arising from its own wilful default and shall not be liable for any neglect or any default of any solicitor, accountant, banker, valuer or other agent employed by it.

### **3.5 Powers and administration**

- (a) The Trustee shall be entitled to rely, without further enquiry, on all information supplied to it by the Company and the Participating Companies.

- (b) The Trustee shall have the following powers and discretions in addition to those conferred upon it by the general law:
- (i) full powers and discretion to agree with the Company and the Participating Companies all matters relating to the operation and administration of the trusts of this Trust Deed and so that no person claiming any interest under such trusts shall be entitled to question the legality and correctness of any arrangement or agreement made between the Company, the Participating Companies and the Trustee in relation to such operation and administration;
  - (ii) power to arrange for the Participating Companies to account to the Revenue Commissioners or other authority concerned for any amount deducted from payments made pursuant to this Trust Deed in respect of income tax or any other deductions required by statute;
  - (iii) power to authorise the manner in which cheques and other documents shall be signed on its behalf; and
  - (iv) power to delegate the signing of such cheques and documents to such person or persons as it shall think fit.
- (c) The Trustee may at any time obtain and act on the advice or opinion of any lawyer, broker, actuary, accountant or other expert acting as an expert and shall not be responsible for any loss occasioned by its so acting.
- (d) The Trustee may employ any agent or agents to transact all or any business of whatsoever nature required to be done in the administration of the trusts, powers and provisions hereof (including the receipt and payment of money and the subscription for and appropriation of Shares).
- (e) The Trustee may employ and pay for the services of such registrars, solicitors or other professional or business advisors as it considers desirable to advise on any business to be done in connection with the Plan or for the proper administration and management of the Plan or otherwise in connection therewith.
- (f) The Trustee may at any time cause any part of the trust property to be deposited for safe keeping with any other person (including any company or corporation) on behalf of the Trustee and may pay any expenses in connection therewith.
- (g) In the course of the operation of the Plan, the Trustee will become aware of and have access to certain information about Participants which is confidential in nature. The Trustee shall keep such information confidential and shall not save for the purposes of administering the Plan and in accordance with the Data Protection Acts 1988 and 2003<sup>1</sup> and the contract of participation without the prior written consent of the Participant concerned disclose such information in whole or in part and shall not use such information for any purpose other than the operation of the Plan.
- (h) The Trustee shall not be liable or responsible for any loss to the trust property which may be occasioned as a result of the exercise of the foregoing powers

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<sup>1</sup> With effect from 25 May 2018, references to the Data Protection Acts 1988 and 2003 should be read as the General Data Protection Regulation (EU) 2016/679.

except to the extent that such loss arises as a result of any fraud, wilful default or negligence on the part of the Trustee.

- (i) The Company and the Participating Companies each hereby declare and confirm the independence of the Trustee in the exercise of all its functions and obligations under the Plan. The Trustee shall accordingly administer the Plan impartially and in strict accordance with this Trust Deed and the Rules appended hereto.

### **3.6 Duties and Obligations**

The Trustee shall operate and administer the Plan in compliance with the duties and obligations imposed on a trustee pursuant to Chapter 1 of Part 17 of the Act and in accordance with the Rules (including, without prejudice to the generality of the foregoing, Rules 5 and 7 of the Rules).

### **3.7 Investment**

Any monies at any time held by the Trustee and not immediately required for the purpose of this Trust Deed shall be placed by the Trustee in a deposit or current account in the State designed in the name of the Trustee with any bank, building society or other institution authorised to accept deposits at whatever rate of interest (if any) and on whatever terms the Trustee thinks fit.

### **3.8 Discharge**

- (a) The Trustee may retire from the trusts hereby constituted at any time by giving to the Company not less than one month's written notice without being responsible for any costs occasioned by such retirement.
- (b) The Company may at any time by an instrument in writing in its absolute discretion and without assigning any reason therefor remove the Trustee from office.
- (c) The power of appointing a new Trustee shall be vested in the Board.
- (d) The powers conferred by Clauses 3.8(b) and 3.8(c) above are exercisable only with the prior written approval of the Revenue Commissioners.

## **4. Participating Subsidiaries**

- 4.1 The Company and the Trustee hereby agree that Diageo Ireland shall be admitted to participate in the Plan.
- 4.2 In consideration of its admission to the Plan, Diageo Ireland hereby covenants with the Trustee and with the Company that it will until the date of determination of the trusts of the Plan or the date on which it ceases to participate in the Plan or the date on which it ceases to be a Subsidiary of the Company (whichever shall first occur) be bound in all respects by the provisions of this Trust Deed and of the Rules.
- 4.3 Any company which is for the time being a Subsidiary of the Company may, with the consent of the Company and the Trustee be and become a party to these presents and the Plan by entering into a deed agreeing to be bound in all respects by this Trust Deed and the Rules for so long as such company is a Subsidiary of the Company.

- 4.4 A company which ceases to be a Subsidiary shall cease forthwith to participate in the Plan. The Board may also determine that any Subsidiary which is a Participating Company shall cease to participate and such cessation shall not affect those rights of any Participants employed by such Subsidiary to Shares appropriated before such cessation.

5. **Amendments**

The Company and the Trustee may at any time and from time to time by a deed supplemental hereto modify, alter, amend or extend the provisions, of this Trust Deed provided that no such purported amendment or addition shall be effective insofar as it alters the provisions of this Clause or is not permitted by the Rules. No variation or amendment shall take effect unless it is approved in writing by the Revenue Commissioners.

6. **Termination**

The Company may at any time serve notice on the Trustee of its intention to terminate the Plan on such date as is specified in such notice (the “**Termination Date**”), which it shall be entitled to do only on a date on which there are no Plan Shares held pursuant to this Trust Deed, whereupon the Participating Companies shall be liable for no further contributions to the Plan save those falling due under the Rules within three months after the date of the said notice and any other expenses incurred by the Trustees in the further administration and winding-up of the Plan.

7. **General**

Subject to the prior written approval of the Revenue Commissioners, if any matter arises on or in connection with this Trust Deed or its operation for which specific provision is not made herein or in any deed supplemental hereto or in the Rules, such matter shall be resolved, dealt with or provided for in such manner as the Company and the Trustee may agree taking into account the respective interests of the Company and of the Participants and, in default of agreement, in such manner as an independent arbitrator appointed for such purpose shall decide.

8. **Governing law**

This Trust Deed shall be governed by and construed in accordance with the laws of the Ireland. The courts of Ireland are to have jurisdiction in relation to any claim or proceedings arising under or in relation to this Trust Deed or its interpretation and to settle any dispute arising out of or in connection with this Trust Deed.

**IN WITNESS** whereof this **DEED** was executed on the date first written above.

The common seal of  
**DIAGEO PLC**  
was affixed in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**GIVEN** under the common seal of  
**AGS EMPLOYEE SHARES NOMINEES (IRELAND)**  
**DESIGNATED ACTIVITY COMPANY**  
and **DELIVERED** as a **DEED**:

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Director

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Director/Secretary

**GIVEN** under the common seal of  
**DIAGEO IRELAND**  
and **DELIVERED** as a **DEED**:

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Director

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Director/Secretary



## SCHEDULE

### Rules of the Diageo plc 2017 Irish Share Ownership Plan

#### 1. Definitions and interpretation

- 1.1 In these Rules and in the Trust Deed, the following words and expressions shall have the following meanings:

“**Act**” means the Taxes Consolidation Act 1997;

“**Announcement Date**” means the date on which the Company makes the preliminary announcement of its results for a Year;

“**Appropriate Percentage**” means the percentage of the Locked-in Value of a Participant’s Plan Shares chargeable to income tax under Schedule E of the Act computed in accordance with Section 511(3) of the Act;

“**Appropriation Date**” means the date in relation to any Year on which Shares are appropriated to a Participant pursuant to the Plan, such date being not later than the earlier of (i) the expiry of three months from the Announcement Date and (ii) the last day of the then current Year of Assessment;

“**Approved Scheme**” means a profit sharing scheme approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 17 of the Act and Schedule 11 thereof;

“**Auditors**” means the Auditors for the time being of the Company or in the event of there being joint Auditors such one of them as the Company shall select;

“**Basic Salary**” means the remuneration of an Eligible Employee for a Year of Assessment including shift differentials, paid holidays and sick leave but excluding overtime and any other fluctuating emoluments;

“**Board**” means the Board of Directors of the Company or a duly constituted committee thereof;

“**Capital Receipt**” has the meaning given to that expression by Section 513 of the Act;

“**Company**” means Diageo plc;

“**Director**” means a director for the time being of the Company;

“**Eligible Employee**” means at any Invitation Date any person who:

- (a) (i) is an employee of a Participating Company, including a full-time director;
- (ii) is chargeable to tax under Schedule E of the Act in respect of that employment; and
- (iii) at any Appropriation Date will have been such an employee of the Participating Company continuously for a period of not less than either:

- (A) one month during the year ending on the immediately preceding 30 June provided such employee has been in continuous employment with the Participating Company from such 30 June up to and including the Appropriation Date; or
- (B) with the prior written consent of the Revenue Commissioners, such other period not greater than three years as may be determined by the Board in respect of that Year,

and for this purpose service with a Subsidiary which is a Participating Company shall be treated as service with the Participating Company;  
or

- (b) is any other employee of a Participating Company, including a full-time director, who has a contract of employment and has been nominated by the Directors for participation in the Plan provided that any other employee, including a full-time director, meeting the criteria for such nomination set by the Directors is also so nominated,

provided that such person is not ineligible to become a Participant by virtue of the provisions of Part 4 of Schedule 11 of the Act;

**“Entitlement”** means the amount of each Eligible Employee’s entitlement as may be determined in accordance with Rule 3;

**“Exchange”** means the Main Market operated by London Stock Exchange plc;

**“Initial Market Value”** means the market value of a Share determined:

- (a) subject to the prior written approval of the Revenue Commissioners, as an average of the middle market prices as ascertained from the daily official list of the Exchange over a period of three consecutive dealing days, the first of such dealing days to be no more than 30 days prior to the Appropriation Date calculated in accordance with Section 548 of the Act and, where not traded in euro, subject to the relevant currency exchange rate published by the European Central Bank in respect of the day before the Appropriation Date; or
- (b) on such other basis as is agreed in writing with the Revenue Commissioners pursuant to Section 510(2)(b) of the Act;

**“Invitation Date”** means the date on which the Company advises each Eligible Employee of his Entitlement under the Plan and asks whether he wishes to be a Participant (or, in the case an Eligible Employee who is already a Participant, alternatively, to notify the Company if he does not want to participate in the relevant appropriation or wants to elect to participate at a different percentage of his Entitlement (selected in accordance with Rule 2.4) to that previously notified to the Company);

**“Locked-in Value”** has the meaning given to that expression by Section 512(1) of the Act;

**“New Shares”** has the meaning given to that expression by Section 514(1) of the Act;

**“Participant”** means an Eligible Employee who has elected to participate and is appropriated Shares in the Plan;

**“Participating Company”** means any company being the Company or a Subsidiary which is for the time being bound by the provisions of the Trust Deed other than in its capacity as Trustee hereof;

**“Period of Retention”** means the meaning given to that expression by Section 511(1)(a) of the Act;

**“Plan”** means the Diageo plc 2017 Irish Share Ownership Plan constituted by this Trust Deed and Rules;

**“Plan Shares”** means any Share or other security in the Company which has been appropriated under the Plan and is for the time being held by the Trustee on behalf of a Participant;

**“Release Date”** has the meaning given to that expression by Section 511(2) of the Act;

**“Rules”** means these rules with, and subject to, any modifications, alterations, amendments or extensions hereto for the time being in force;

**“Shares”** means fully paid ordinary shares of the Company which comply with the provisions of Part 3 of Schedule 11 of the Act and where the context requires shall refer to a single share;

**“Subsidiary”** means any subsidiary of the Company which is controlled by the Company, control being construed in accordance with Section 432 of the Act;

**“Trust Deed”** means the trust deed constituting the Plan with any modifications and variations thereto for the time being in force;

**“Trustee”** means the trustee or trustees for the time being of the Plan;

**“Year”** means an accounting reference period of the Company used for the purposes of calculating the benefits (if any) payable under the Plan; and

**“Year of Assessment”** has the meaning given to that expression by Section 2(1) of the Act.

1.2 In these Rules and the Trust Deed, unless the context otherwise appears:

- (a) words importing the singular shall include the plural and vice versa;
- (b) words importing the masculine shall include the feminine and vice versa;
- (c) any reference to any statute (or a particular Part, Chapter or Section thereof) shall mean and include any statutory modification or re-enactment thereof for the time being in force and any regulations made thereunder; and
- (d) headings are for convenience or reference only and are not to be construed as part of these Rules and the Trust Deed.

## 2. **Conditions of participation**

2.1 Subject to the Board determining that an appropriation under the Plan is to be made in respect of a Year, as soon as practicable after the end of such Year, the Company shall identify all Eligible Employees who are not then participating in the Plan and all employees who at the next Appropriation Date are expected to be Eligible Employees and shall communicate in writing with each person:

- (a) advising him of his Entitlement; and
  - (b) asking:
    - (i) whether he wishes to be a Participant; and/or
    - (ii) should the Company so decide, in the case an Eligible Employee who is already a Participant, alternatively, that he notify the Company if he does not wish to participate in the relevant appropriation or, where applicable, wants to elect to participate at a different percentage of his Entitlement (selected in accordance with Rule 2.4) to that previously notified to the Company.
- 2.2 Those Eligible Employees who wish to participate in the Plan in respect of a Year shall within a period of fourteen days after receipt of the notification referred to above, or such other period as the Company shall allow, return to the Company a contract of participation duly signed agreeing the terms and conditions set out therein and give the confirmation required pursuant to Rule 2.4.
- 2.3 Where the Company shall have availed of Rule 2.1(b)(ii), an Eligible Employee who is already a Participant and has previously completed a contract of participation under Rule 2.2 shall be deemed to have complied with the provisions of Rule 2.2 in respect of such further appropriation.
- 2.4 Subject to the Board determining in respect of a Year that such optionality is to apply, those Eligible Employees who wish to participate in the Plan shall be required to confirm the percentage of his or her Entitlement in respect of which he or she wishes to participate, being:
- (a) either 25%, 50%, 75% or 100%; or
  - (b) such other percentage rates as may be permitted by the Company in respect of a Year and notified to Eligible Employees,
- provided that, in default of providing such confirmation, he or she shall participate at 25% of his or her Entitlement.
- 2.5 The contract of participation shall be addressed to the Directors and the Trustee and shall be signed by the Eligible Employee and returned to the Directors. An Eligible Employee shall not be entitled to an appropriation of Plan Shares unless he has completed a contract on/before the Appropriation Date which is binding in respect of the relevant Appropriation Date.
- 2.6 A signed contract shall bind the Eligible Employee in contract with the Company and the Trustee:
- (a) to permit his Plan Shares to remain in the hands of the Trustee throughout the Period of Retention;
  - (b) not to assign, charge or otherwise dispose of the beneficial interest in his Plan Shares during that period;
  - (c) if he directs the Trustee to transfer the ownership of his Plan Shares to him at any time before the Release Date, to pay to the Trustee before the transfer takes place a sum equal to income tax at the standard rate on the Appropriate

Percentage of the Locked-in Value of the Plan Shares at the time of direction;  
and

- (d) not to direct the Trustee to dispose of his Shares at any time before the Release Date in any other way except by sale for the best consideration in money that can reasonably be obtained at the time of sale.

3. **Allocation of funds, acquisition and appropriation of Shares**

- 3.1 Each Participating Company shall on or before each Appropriation Date pay to the Trustee the aggregate of the amounts due following the completion and return of contracts in accordance with Rule 2 by such Eligible Employees employed by it.
- 3.2 As soon as reasonably practicable after the receipt from the Participating Companies of the amounts referred to in Rule 3.1 above the Trustee will apply the aggregate of such amounts in the acquisition of Shares for appropriation to such Eligible Employees. The Shares so acquired for appropriation shall be appropriated to each such Eligible Employee on the basis that the aggregate Initial Market Value of the Shares appropriated to him is as nearly as possible equal to, but not more than, the amount of his Entitlement that has been paid to the Trustee. The aggregate Initial Market Value of Shares that may be appropriated to any one Participant in any one Year of Assessment shall not exceed the amount, for the time being, specified in Paragraph 3(4) of Part 2 of Schedule 11 of the Act.
- 3.3 The Entitlement of each Eligible Employee under the Plan shall be such amount as the Board shall determine expressed as:
  - (a) a proportion of Basic Salary; and/or
  - (b) a proportion of Basic Salary for each period of service; and/or
  - (c) a fixed amount determined by the Board; and/or
  - (d) a fixed amount determined by the Board for each period of service; and/or
  - (e) such other basis as may, from time to time, be agreed in writing with the Revenue Commissioners,

provided that in any Year of Assessment the basis of calculation of Entitlement of each Eligible Employee shall comply with the requirements of paragraph 4(1) of Part 2 of Schedule 11 of the Act.

(In the context of this Rule “**period of service**” shall mean a complete year or such other complete period as may from time to time be specified, of continuous service as an employee of the Company and/or any Subsidiary.)

- 3.4 In any year in which there is an Entitlement under Rule 3.3 and that Entitlement is taken in Shares, a Participant may forgo salary up to the amount of his Entitlement under Rule 3.3 taken in Shares provided that the amount forgone does not exceed 7.5% of Basic Salary and provided further that the aggregate of the Initial Market Values of the Shares acquired under Rules 3.3 and 3.4 does not exceed the amount, for the time being, specified in Paragraph 3(4) of Part 2 of Schedule 11 of the Act.
- 3.5 Where the Trustee is unable to purchase sufficient Shares to satisfy in full appropriations pursuant to Rule 3.2 the Trustee shall reduce the appropriation pro-rata.

- 3.6 In the event that a portion of the Shares acquired by the Trustee carries any right not attaching to all such Shares, the Trustee shall appropriate those Shares among Eligible Employees as nearly as possible in the same proportions as provided in Rule 3.2 above.
- 3.7 As soon as practicable after any Plan Shares have been appropriated by the Trustee to a Participant in accordance with the Rules, the Trustee shall give the Participant notice in writing of the appropriation specifying the number and description of Plan Shares appropriated, their Initial Market Value and the date on which such Plan Shares were appropriated.
- 3.8 The Trustee shall sell any Shares which they do not appropriate on an Appropriation Date under this Rule within eighteen months of the date of acquisition for the best consideration in money reasonably obtainable at the time and retain the net proceeds of sale for use as part of the Trust Fund.
- ~~3.8~~3.9 The Trustee may source Shares for the Plan by purchasing existing Shares, by subscribing for newly issued Shares or by having Shares transferred to it from treasury.

#### 4. **Limitations upon numbers of Shares available for appropriation**

- 4.1 No issue of Shares (including the transfer of Shares from treasury) shall be made which would result in more than 10% of Shares in total being issued (or transferred from treasury) under this Plan and any other scheme for the acquisition of Shares by employees in any 10-year period.
- 4.2 The limit specified in Rule 4.1 and, if appropriate, the Market Value of the Shares shall, subject to the prior written approval of the Revenue Commissioners, be adjusted in such manner as the Auditors shall consider fair and reasonable to take account of any issue by way of capitalisation of reserves, any rights issue or any sub-division, consolidation or reduction of share capital.

#### 5. **Conditions of retention and disposal**

- 5.1 Plan Shares shall subject as hereinafter provided in this Rule be held by the Trustee until the date on which the Participant concerned directs the Trustee:
- (a) to sell his Plan Shares; or
  - (b) to transfer the legal ownership of Plan Shares to him.
- 5.2 A Participant shall not be entitled to give any direction under Rule 5.1 above or to assign or charge or otherwise dispose of his beneficial interest in any Plan Shares before the end of the Period of Retention applicable to such Plan Shares except in the circumstances mentioned in Section 511(6)(a), (b) or (c) of the Act.
- 5.3 Subject to Rule 5.2 above, the Trustee shall disregard any direction given in respect of the disposal or transfer of a Participant's Plan Shares before the end of the Period of Retention and shall not be required or bound to act in accordance therewith if to their knowledge such Participant is or would following implementation of such direction be in breach of his obligations in respect of such Plan Shares under Rule 5.2 above.

#### 6. **Issue or reorganisation**

- 6.1 A Participant shall not be prevented by Rule 5 above from:
- (a) directing the Trustee to accept an offer for any of his Shares (hereinafter referred to as the "**Original Shares**") if the acceptance or agreement will result

in a new holding, within the meaning of Section 584 of the Act, being equated with the Original Shares for the purposes of Capital Gains Tax, or

- (b) directing the Trustee to agree to a transaction affecting his Shares or such of them as are of a particular class if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting:
  - (i) all the ordinary share capital of the company or, as the case may be, all the shares of the class in question; or
  - (ii) all the shares, or shares of the class in question, held by a class of shareholders identified otherwise than by reference to their employment or their participation in an Approved Scheme; or
- (c) directing the Trustee to accept an offer of cash, with or without other assets, for his shares if the offer forms part of a general offer made to holders of shares of the same class as his or of shares in the Company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of the Company within the meaning of Section 11 of the Act; or
- (d) agreeing after the Period of Retention to sell the beneficial interest in his Shares to the Trustee for the same consideration as in accordance with Rule 2.6(d) above would be required to be obtained for the Shares themselves.

6.2 In the event of an offer being made or a transaction being proposed in any of the circumstances described in Rule 6.1(a), 6.1(b) or 6.1(c) the Trustee shall forthwith notify each Participant thereof and shall act in accordance with the instructions of the Participant in dealing with his Plan Shares and in the absence of any such instructions shall take no action.

6.3 In the event of the Company proposing to make a rights issue in respect of any class of its share capital which includes Shares held on behalf of Participants, the Trustee shall immediately upon receipt of the offer from the Company, notify each Participant of the following options in respect of the Shares held by the Trustee on his behalf:

- (a) to instruct the Trustee to exercise the rights in respect of all or any of his Shares provided that such instruction is accompanied by payment in cash of the amount necessary to exercise such rights; or
- (b) to instruct the Trustee to exercise the rights in respect of some only of his Shares and to dispose of the rights nil paid in respect of the remainder and either:
  - (i) to pay to the Trustee any amount in excess of the disposal proceeds necessary to exercise such rights; or
  - (ii) to instruct the Trustee to pay to him any amount of the disposal proceeds in excess of the amount necessary to exercise such rights; or
- (c) to instruct the Trustee to dispose of the rights nil paid in respect of all or any of his Shares and pay the proceeds to him.

6.4 The Participant shall instruct the Trustee accordingly within any period of time specified by the Trustee and shall, if appropriate, pay to the Trustees in cash any amounts necessary to carry out such instructions. The Trustee shall, subject to receipt

of the cash as aforesaid, carry out the instructions of the Participants within the time allowed by the Company for the exercise of the rights. If a Participant shall fail to give any direction to and shall not otherwise have authorised the Trustee, they shall take no action in respect of the rights associated with the Shares held on behalf of that particular Participant.

- 6.5 Any New Shares allocated to the Trustee pursuant to Rule 6.2 and Rule 6.3 or on a capitalisation issue shall be deemed to have been appropriated to a Participant on the Appropriation Date of the Shares in respect of which they were allocated.

## **7. Payments and transfers to Participants**

- 7.1 If any amount falls to be paid to a Participant prior to the Release Date in respect of his Plan Shares being:

- (a) the proceeds of a sale of Plan Shares pursuant to a direction given by the Participant under Rule 5.1(a); or
- (b) a Capital Receipt,

the Trustee shall pay such amount to the Participant.

- 7.2 If a Participant directs the Trustee to transfer the ownership of any Plan Shares to himself pursuant to Rule 5.1(b) before their Release Date, he shall pay to the Trustee, before the transfer takes place, a sum equal to income tax at the standard rate on the Appropriate Percentage of the Locked-in Value of the Plan Shares at the time of the direction.

- 7.3 If, following a company reconstruction as defined in Section 514 of the Act, the Trustee is allotted any shares or other securities which are not New Shares, they shall forthwith transfer the same to the Participant.

## **8. Repurchase by Trustee**

- 8.1 The Trustee may at the time a Participant directs the Trustee to dispose of any Plan Shares offer to purchase the beneficial interest in such Plan Shares from the Participant at the best consideration in money that can reasonably be obtained at the time of the sale.

- 8.2 If, at the time of the proposed purchase of Plan Shares under Rule 8.1, the Trustee does not have sufficient funds to purchase such Plan Shares, they may apply to the Company for such funds. If any funds are so provided by the Company they shall reduce the liability of the Company in respect of the payment to be made pursuant to Rule 3 in respect of the next Appropriation Date.

- 8.3 The Trustee shall hold any Shares purchased pursuant to Rule 8.1 above upon trust for appropriation to Eligible Employees employed by the Company that provided the funds used in the purchase of such Shares subject to Rule 3.8.

## **9. Payment of dividends**

Any dividends paid by the Company to the Trustee in respect of Plan Shares shall be forwarded to the Participants on whose behalf the Trustee holds such Plan Shares together with particulars of the related tax credit before the end of the Year of Assessment in which the dividends were paid.



10. **Voting rights**

Participants have no right to attend or vote at a General Meeting of the Company. The voting rights in respect of the Plan Shares shall, on a poll, be exercised only in accordance with any directions in writing by the Participants concerned to the Trustee. In the absence of any such direction, the Trustee shall abstain from voting.

11. **Rights of employees**

Participation in the Plan by a Participant is a matter entirely separate from any pension right or entitlement he may have and from his terms and conditions of employment and participation in this Plan shall in no respect whatever affect in any way a Participant's pension rights and entitlements or terms or conditions of employment and in particular (but without limiting the generality of the foregoing words) any Participant who leaves the employment of a Participating Company shall not be entitled to any compensation for any loss of any right or benefit or prospective right or benefit under this Plan which he might otherwise have enjoyed whether such compensation is claimed by way of damages for wrongful dismissal or other breach of contract or by way of compensation for loss of office or otherwise howsoever.

12. **Duty to account for tax**

12.1 When the Trustee receives from a Participant who has directed them to transfer the ownership of his Shares to him at any time before the Release Date the sum calculated in accordance with Rule 7.2 above, that sum shall be accounted for to the Revenue Commissioners in accordance with Section 516 of the Act.

12.2 The Trustee shall keep records of all sums received from Participants under Rule 12.1.

12.3 The Trustee shall inform each Participant in writing of any facts known to them which are relevant to determining the liability (if any) of that Participant to Irish income tax under Schedule E of the Act.

12.4 The Trustee shall make such returns of information to the Revenue Commissioners as are required under Section 510(7) and (8) of the Act.

13. **Administration**

13.1 If as a result of an error or omission any Shares to which a Participant is entitled pursuant to these Rules are not appropriated to him in accordance with Rule 3.2, the Company, and the Trustee shall do all such acts and things as may be agreed in writing with the Revenue Commissioners to enable the Trustee to appropriate to the Participant the Shares necessary to put him in a position he would have been in but for such want of appropriation provided always that such Eligible Employee shall be treated within the terms of the Plan as if he had received an appropriation of Shares on the Appropriation Date.

13.2 Any communication, notification or other notice in writing to be given to any Participant in pursuance of this Plan shall be sufficiently given if sent through the post in a prepaid envelope addressed to the Participant at his address as shown on the records of the Trustee or, where the Participant has so agreed, given in electronic form to an email address notified by the Participant to the Trustee or through an online portal or such other electronic means as may be provided by or on behalf of the Company or the Trustee.

13.3 Any certificate, notification or other notice in writing required to be given to the Company or to the Trustee shall be properly given if sent to or delivered to the

Company concerned or to the Trustee at their respective registered or principal offices or, where the Company or the Trustee has so agreed or requested, is given in electronic form to an email address notified by the Company or by the Trustee to the Participant or through an online portal or such other electronic form as may be provided by the Company or by the Trustee.

#### **14. Amendments**

14.1 The Company may, with the Trustee's written consent, at any time alter the Plan in any respect.

14.2 Subject to Rule 14.1, no alteration to the advantage of the persons who participate or may participate in the Plan shall be made under Rule 14.1 to the provisions concerning eligibility, the individual limits on participation, the overall limits on the issue of shares under the Plan, the basis for determining how many shares employees receive and the adjustments that may be made following a rights issue or any other variation of capital without the prior approval by ordinary resolution of the members of the Company in general meeting.

14.3 Rule 14.2 shall not apply to any minor alteration to benefit the administration of the Plan, to take account of a change in legislation or to obtain or maintain favourable tax, exchange control or regulatory treatment for Participants, the Company, the Trustee or any Subsidiary.

#### **14.15. Miscellaneous**

If any matter arises on or in connection with this Plan or its operation for which specific provision is not made in these Rules such matter shall be resolved, dealt with or provided for in such manner as the Board shall in its absolute discretion consider appropriate having taken into account the respective interests of the Company and of the Participants and the requirements of the Revenue Commissioners.

#### **15.16. Governing law**

These Rules shall be governed by and construed in accordance with the laws of the Ireland. The courts of Ireland are to have jurisdiction in relation to any claim or proceedings arising under or in relation to these Rules or their interpretation and to settle any dispute arising out of or in connection with these Rules.