

THE EMPLOYEES SHARE OWNERSHIP PLAN ACT

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SCHEDULES.

THE EMPLOYEES SHARE OWNERSHIP PLAN ACT

Acts
7 of 1994,
1 of 2003.

[1st April, 1995]

1.—(1) This Act may be cited as the Employees Share Ownership Plan Act.

Short title
and appli-
cation.

(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 Taxpayer Audit and Assessment, 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 to in paragraph (a) shall be fully applicable to contraventions involving any provision in this Act relating to income tax.

L.N.
165/1999.

(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.

Interpreta-
tion.

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 Taxpayer Audit and Assessment;

“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;

L.N.
165/1999.

“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 any or all companies in the group, so, however, that a plan which is expressed to extend to employees of only one company shall not be regarded as a group plan unless the grantor is another company in the group;

1/2003
S. 2(a).

1/2003
S. 2(b).

“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;

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- (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;

“participants” 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;