

## บรรณานุกรม

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ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ก.

บทบัญญัติใน INTERNAL REVENUE CODE (IRC) ที่เกี่ยวข้องกับ ESOP



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## PART II—EMPLOYEE STOCK OWNERSHIP PLANS

## SEC. 141. ESOPS.

(a) **IN GENERAL.**—Subpart A of part I of subchapter D of chapter 1 (relating to general rule for pension, profit-sharing, stock bonus plans, etc.) is amended by adding at the end thereof the following new section:

## "SEC. 409A. QUALIFICATIONS FOR ESOPS.

"(a) **ESOP DEFINED.**—Except as otherwise provided in this title, for purposes of this title, the term 'ESOP' means a defined contribution plan which—

"(1) meets the requirements of section 401(a),

"(2) is designed to invest primarily in employer securities, and

"(3) meets the requirements of subsections (b), (c), (d), (e), (f), (g), and (h) of this section.

"(b) **REQUIRED ALLOCATION OF EMPLOYER SECURITIES.**—

"(1) **IN GENERAL.**—A plan meets the requirements of this subsection if—

"(A) the plan provides for the allocation for the plan year of all employer securities transferred to it or purchased by it (because of the requirements of section 48(n)(1)(A)) to the accounts of all participants who are entitled to share in such allocation, and

"(B) for the plan year the allocation to each participant so entitled is an amount which bears substantially the same proportion to the amount of all such securities allocated to all such participants in the plan for that year as the amount of compensation paid to such participant during that year bears to the compensation paid to all such participants during that year.

"(2) **COMPENSATION IN EXCESS OF \$100,000 DISREGARDED.**—For purposes of paragraph (1), compensation of any participant in excess of the first \$100,000 per year shall be disregarded.

"(3) **DETERMINATION OF COMPENSATION.**—For purposes of this subsection, the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period.

"(4) **SUSPENSION OF ALLOCATION IN CERTAIN CASES.**—Notwithstanding paragraph (1), the allocation to the account of any participant which is attributable to the basic ESOP credit may be extended over whatever period may be necessary to comply with the requirements of section 415.

"(c) **PARTICIPANTS MUST HAVE NONFORFEITABLE RIGHTS.**—A plan meets the requirements of this subsection only if it provides that each participant has a nonforfeitable right to any employer security allocated to his account.



"(d) EMPLOYER SECURITIES MUST STAY IN THE PLAN.—A plan meets the requirements of this subsection only if it provides that no employer security allocated to a participant's account under subsection (b) may be distributed from that account before the end of the 84th month beginning after the month in which the security is allocated to the account. To the extent provided in the plan, the preceding sentence shall not apply in the case of separation from service, death, or disability.

"(e) VOTING RIGHTS.—

"(1) IN GENERAL.—A plan meets the requirements of this subsection if it meets the requirements of paragraph (2) or (3), whichever is applicable.

"(2) REQUIREMENTS WHERE EMPLOYER HAS A REGISTRATION-TYPE CLASS OF SECURITIES.—If the employer has a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant in the plan is entitled to direct the plan as to the manner in which employer securities which are entitled to vote and are allocated to the account of such participant are to be voted.

"(3) REQUIREMENT FOR OTHER EMPLOYERS.—If the employer does not have a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant in the plan is entitled to direct the plan as to the manner in which voting rights under employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by more than a majority vote of outstanding common shares voted.

"(4) REGISTRATION-TYPE CLASS OF SECURITIES DEFINED.—For purposes of this subsection, the term, 'registration-type class of securities' means—

"(A) a class of securities required to be registered under section 12 of the Securities Exchange Act of 1934, and

"(B) a class of securities which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(H) of such section 12.

"(f) PLAN MUST BE ESTABLISHED BEFORE EMPLOYER'S DUE DATE.—

"(1) IN GENERAL.—A plan meets the requirements of this subsection for a plan year only if it is established on or before the due date for the filing of the employer's tax return for the taxable year (including any extensions of such date) in which or with which the plan year ends.

"(2) SPECIAL RULE FOR FIRST YEAR.—A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because it was not established by the close of the first taxable year of the employer for which an ESOP credit is claimed by the employer.

"(g) TRANSFERRED AMOUNTS MUST STAY IN PLAN EVEN THOUGH INVESTMENT CREDIT IS REDETERMINED OR RECAPTURED.—A plan meets the requirement of this subsection only if it provides that amounts which are transferred to the plan (because of the requirements of section 48(n)(1)) shall remain in the plan (and, if allocated under the plan, shall remain so allocated) even though part or all of the ESOP credit is recaptured or redetermined.

"(h) RIGHT TO DEMAND EMPLOYER SECURITIES; PUT OPTION.—

"(1) IN GENERAL.—A plan meets the requirements of this subsection if a participant who is entitled to a distribution from the plan—

"(A) has a right to demand that his benefits be distributed in the form of employer securities, and

"(B) if the employer securities are not readily tradable on an established market, has a right to require that the employer repurchase employer securities under a fair valuation formula.

"(2) PLAN MAY DISTRIBUTE CASH IN CERTAIN CASES.—A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities.

"(i) REIMBURSEMENT FOR EXPENSES OF ESTABLISHING AND ADMINISTERING PLAN.—A plan which otherwise meets the requirements of this section shall not be treated as failing to meet such requirements merely because it provides that—

"(1) EXPENSES OF ESTABLISHING PLAN.—As reimbursement for the expenses of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established (or the plan may pay) so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of—

"(A) 10 percent of the first \$100,000 which the employer is required to transfer to the plan for that taxable year under section 48(n)(1), and

"(B) 5 percent of any amount so required to be transferred in excess of the first \$100,000; and

"(2) ADMINISTRATIVE EXPENSES.—As reimbursement for the expenses of administering the plan, the employer may withhold from amounts due the plan (or the plan may pay) so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the lesser of—

"(A) the sum of—

"(i) 10 percent of the first \$100,000 of the dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, and

"(ii) 5 percent of the amount of such dividends in

excess of \$100,000 or  
 "(B) \$100,000.

"(j) **CONDITIONAL CONTRIBUTIONS TO THE PLAN.**—A plan which otherwise meets the requirements of this section shall not be treated as failing to satisfy such requirements (or as failing to satisfy the requirements of section 401(a) of this title or of section 403(c)(1) of the Employee Retirement Income Security Act of 1974) merely because of the return of a contribution (or a provision permitting such a return) if—

"(1) the contribution to the plan is conditioned on a determination by the Secretary that such plan meets the requirements of this section,

"(2) the application for a determination described in paragraph (1) is filed with the Secretary not later than 90 days after the date on which an ESOP credit is claimed, and

"(3) the contribution is returned within 1 year after the date on which the Secretary issues notice to the employer that such plan does not satisfy the requirements of this section.

"(k) **REQUIREMENTS RELATING TO CERTAIN WITHDRAWALS.**—Notwithstanding any other law or rule of law—

"(1) the withdrawal from a plan which otherwise meets the requirements of this section by the employer of an amount contributed for purposes of the matching ESOP credit shall not be considered to make the benefits forfeitable, and

"(2) the plan shall not, by reason of such withdrawal, fail to be for the exclusive benefit of participants or their beneficiaries, if the withdrawn amounts were not matched by employee contributions or were in excess of the limitations of section 415. Any withdrawal described in the preceding sentence shall not be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974.

"(l) **EMPLOYER SECURITIES DEFINED.**—For purposes of this section—  
 "(1) **IN GENERAL.**—The term 'employer securities' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

"(2) **SPECIAL RULE WHERE THERE IS NO READILY TRADABLE COMMON STOCK.**—If there is no common stock which meets the requirements of paragraph (1), the term 'employer securities' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

"(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

"(B) that class of stock of the employer (or of any other such corporation) having the greatest dividend rights.

"(3) **PREFERRED STOCK MAY BE ISSUED IN CERTAIN CASES.**—Noncallable preferred stock shall be treated as meeting the requirements of paragraph (1) if such stock is convertible at any time into stock which meets the requirements of paragraph (1) and if such conversion is at a conversion price which (as of the date of the acquisition by the ESOP) is reasonable.

"(4) **CONTROLLED GROUP OF CORPORATIONS DEFINED.**—

"(A) **IN GENERAL.**—For purposes of this subsection, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

"(B) **COMMON PARENT MAY OWN ONLY 50 PERCENT OF FIRST TIER SUBSIDIARY.**—For purposes of subparagraph (A), if the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock and at least 50 percent of each class of nonvoting stock in a first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the first tier subsidiary were the common parent) shall be treated as includible corporations.

"(m) **CONTRIBUTIONS OF STOCK OF CONTROLLING CORPORATION.**—If the stock of a corporation which controls another corporation or which controls a corporation controlled by such other corporation is contributed to an ESOP of the controlled corporation, then no gain or loss shall be recognized, because of that contribution, to the controlled corporation. For purposes of this subsection, the term 'control' has the same meaning as that term has in section 368(c).

"(n) **CROSS REFERENCES.**—

"(1) For requirements for allowance of ESOP credit, see section 48(n).

"(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an ESOP credit, see section 6699."

(b) **AMENDMENT OF INVESTMENT CREDIT RULES.**—Section 48 (relating to definitions and special rules) is amended by redesignating subsection (n) as subsection (p) and by inserting after subsection (m) the following new subsections:

"(n) **REQUIREMENTS FOR ALLOWANCE OF ESOP PERCENTAGE.**—

"(1) **IN GENERAL.**—

"(A) **BASIC ESOP PERCENTAGE.**—The basic ESOP percentage shall not apply to any taxpayer for any taxable year unless the taxpayer on his return for such taxable year agrees, as a condition for the allowance of such percentage—

"(i) to make transfers of employer securities to an ESOP maintained by the taxpayer having an aggregate value equal to 1 percent of the amount of the qualified investment (as determined under subsections (c) and (d) of section 46) for the taxable year, and

"(ii) to make such transfers at the times prescribed in subparagraph (C).

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"(B) MATCHING ESOP PERCENTAGE.—The matching ESOP percentage shall not apply to any taxpayer for any taxable year unless the basic ESOP percentage applies to such taxpayer for such taxable year, and the taxpayer on his return for such taxable year agrees, as a condition for the allowance of the matching ESOP percentage—

- "(i) to make transfers of employer securities to an ESOP maintained by the taxpayer having an aggregate value equal to the sum of the qualified matching employee contributions made to such ESOP for the taxable year, and
- "(ii) to make such transfers at the times prescribed in subparagraph (C).

"(C) TIMES FOR MAKING TRANSFERS.—The aggregate of the transfers required under subparagraphs (A) and (B) shall be made—

- "(i) to the extent allocable to that portion of the ESOP credit allowed for the taxable year or allowed as a carryback to a preceding taxable year, not later than 30 days after the due date (including extensions) for filing the return for the taxable year, or
- "(ii) to the extent allocable to that portion of the ESOP credit which is allowed as a carryover in a succeeding taxable year, not later than 30 days after the due date (including extensions) for filing the return for such succeeding taxable year.

The Secretary may by regulations provide that transfers may be made later than the times prescribed in the preceding sentence where the amount of any credit or carryover or carryback for any taxable year exceeds the amount shown on the return for the taxable year.

"(D) ORDERING RULES.—For purposes of subparagraph (C), the portion of the ESOP credit allowed for the current year or as a carryover or carryback shall be determined—

- "(i) first by treating the credit or carryover or carryback as attributable to the regular percentage,
- "(ii) second by treating the portion (not allocated under clause (i)) of such credit or carryover or carryback as attributable to the basic ESOP percentage, and
- "(iii) finally by treating the portion (not allocated under clause (i) or (ii) as attributable to the matching ESOP percentage.

"(2) QUALIFIED MATCHING EMPLOYEE CONTRIBUTION DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified matching employee contribution' means, with respect to any taxable year, any contribution made by an employee to an ESOP maintained by the taxpayer if—

- "(i) each employee who is entitled to an allocation of

employer securities transferred to the ESOP under paragraph (1)(A) is entitled to make such a contribution,

"(ii) the contribution is designated by the employee as a contribution intended to be taken into account under this subparagraph for the taxable year,

"(iii) the contribution is paid in cash to the employer or plan administrator not later than 24 months after the close of the taxable year, and is invested forthwith in employer securities, and

"(iv) the ESOP meets the requirements of subparagraph (B).

"(B) PLAN REQUIREMENTS.—For purposes of subparagraph (A), an ESOP meets the requirements of this subparagraph if—

"(i) participation in the ESOP is not required as a condition of employment and the ESOP does not require matching employee contributions as a condition of participation in the ESOP,

"(ii) employee contributions under the ESOP meet the requirements of section 401(a)(4), and

"(iii) the ESOP provides for allocation of all employer securities transferred to it or purchased by it (because of the requirements of paragraph (1)(B)) to the account of each participant in an amount equal to such participant's matching employee contributions for the year.

"(3) CERTAIN CONTRIBUTIONS OF CASH TREATED AS CONTRIBUTIONS OF EMPLOYER SECURITIES.—For purposes of this subsection, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the ESOP, used within 30 days to purchase employer securities.

"(4) ADJUSTMENTS IF ESOP CREDIT RECAPTURED.—If any portion of the ESOP credit is recaptured under section 47 or the ESOP credit is reduced by a final determination—

"(A) the employer may reduce the amount required to be transferred to the ESOP under paragraph (1) for the current taxable year or any succeeding taxable year by an amount equal to such portion (or reduction), or

"(B) notwithstanding the provisions of paragraph (5) and to the extent not taken into account under subparagraph (A), the employer may deduct an amount equal to such portion (or reduction), subject to the limitations of section 404.

"(5) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed under section 162, 212, or 404 for amounts required to be transferred to an ESOP under this subsection.

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given to such term by section 409A(l).

"(b) NO PENALTY WHERE THERE IS TIMELY CORRECTION OF FAILURE.—Subsection (a) shall not apply with respect to any failure if the employer corrects such failure (as determined by the Secretary) within 90 days after the Secretary notifies him of such failure.

"(c) AMOUNT INVOLVED DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'amount involved' means an amount determined by the Secretary.

"(2) MAXIMUM AND MINIMUM AMOUNT.—The amount determined under paragraph (1)—

"(A) shall not exceed the amount determined by multiplying the qualified investment of the employer for the taxable year to which the failure relates by the ESOP percentage claimed by the employer for such year, and

"(B) shall not be less than the product of one-half of 1 percent of the amount referred to in subparagraph (A), multiplied by the number of months (or parts thereof) during which such failure continues."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"Sec. 6699. Assessable penalties relating to ESOP."

(d) REGULAR TAX DEDUCTION FOR PURPOSES OF THE MINIMUM TAX DETERMINED WITHOUT REGARD TO ESOP PERCENTAGE.—Subsection (c) of section 56 (defining regular tax deduction) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the amount of the credit allowable under section 38 shall be determined without regard to the ESOP percentage set forth in section 46(a)(2)(E)."

(e) ESOP CREDIT EXTENDED FOR 3 YEARS.—Subparagraph (E) of section 46(a)(2) (relating to amount of business investment credit for current taxable year) is amended by striking out "and ending on December 31, 1980," each place it appears and inserting in lieu thereof "December 31, 1983".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsections (d), (e), and (f) of section 301 of the Tax Reduction Act of 1975 are hereby repealed.

(2) Subparagraph (E) of section 46(a)(2) is amended—

(A) by striking out "section 301(e) of the Tax Reduction Act of 1975," and inserting in lieu thereof "section 48(n)(1)(B)", and

(B) by striking out "section 301(d) of the Tax Reduction Act of 1975," and inserting in lieu thereof "section 409A".

(3) Paragraph (21) of section 401(a) is amended to read as follows:

"(21) A trust forming part of an ESOP shall not fail to be considered a permanent program merely because employer contributions under the plan are determined solely by reference to

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"(B) VALUE.—The term 'value' means—

"(i) in the case of securities listed on a national exchange, the average of closing prices of such securities for the 20 consecutive trading days immediately preceding the due date for filing the return for the taxable year (determined with regard to extensions), or

"(ii) in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations prescribed by the Secretary.

"(o) CERTAIN CREDITS DEFINED.—For purposes of this title—

"(1) REGULAR INVESTMENT CREDIT.—The term 'regular investment credit' means that portion of the credit allowable by section 38 which is attributable to the regular percentage.

"(2) ENERGY INVESTMENT CREDIT.—The term 'energy investment credit' means that portion of the credit allowable by section 38 which is attributable to the energy percentage.

"(3) ESOP CREDIT.—The term 'ESOP credit' means the sum of—

"(A) the basic ESOP credit, and

"(B) the matching ESOP credit.

"(4) BASIC ESOP CREDIT.—The term 'basic ESOP credit' means that portion of the credit allowable by section 38 which is attributable to the basic ESOP percentage.

"(5) MATCHING ESOP CREDIT.—The term 'matching ESOP credit' means that portion of the credit allowable by section 38 which is attributable to the matching ESOP.

"(6) BASIC ESOP PERCENTAGE.—The term 'basic ESOP percentage' means the 1-percent ESOP percentage set forth in section 46(a)(2)(E)(i).

"(7) MATCHING ESOP PERCENTAGE.—The term 'matching ESOP percentage' means the additional ESOP percentage (not to exceed 1/2 of 1 percent) set forth in section 46(a)(2)(E)(ii).

(c) ASSESSABLE PENALTIES.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6699. ASSESSABLE PENALTIES RELATING TO ESOP.

"(a) IN GENERAL.—If a taxpayer who has claimed an ESOP credit for any taxable year—

"(1) fails to satisfy any requirement provided by section 409A, or

"(2) fails to make any contribution which is required under section 48(n) within the period required for making such contribution,

the taxpayer shall pay a penalty in an amount equal to the amount involved in such failure.

beginning before January 1, 1979, the amount of the credit allowable under section 38 shall be determined without regard to section 46(a)(2)(B) of such Code (as in effect before the enactment of the Energy Tax Act of 1978).

**SEC. 142. CERTAIN LUMP SUM DISTRIBUTIONS EXCLUDED FROM GROSS ESTATE WHERE RECIPIENT ELECTS NOT TO APPLY 10-YEAR AVERAGING.**

(a) **IN GENERAL.**—Subsection (c) of section 2039 (relating to exemption of annuities under certain trusts and plans) is amended by striking out “(other than a lump sum distribution described in section 402(e)(4), determined without regard to the next to the last sentence of section 402(e)(4)(A))” and inserting in lieu thereof “(other than an amount described in subsection (f)).”

(b) **DEFINITIONS.**—Section 2039 is amended by adding at the end thereof the following new subsection:

“(f) **LUMP SUM DISTRIBUTIONS.**—

“(1) **IN GENERAL.**—An amount is described in this subsection if it is a lump sum distribution described in section 402(e)(4) (determined without regard to the next to the last sentence of section 402(e)(4)(A)).”

“(2) **EXCEPTION WHERE RECIPIENT ELECTS NOT TO TAKE 10-YEAR AVERAGING.**—A lump sum distribution described in paragraph (1) shall be treated as not described in this subsection if the recipient elects irrevocably (at such time and in such manner as the Secretary may by regulations prescribe) to treat the distribution as taxable under section 402(a) without the application of paragraph (2) thereof.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to the estates of decedents dying after December 31, 1978.

**SEC. 143. QUALIFIED PLANS REQUIRED TO PASS THROUGH VOTING RIGHTS ON EMPLOYER SECURITIES.**

(a) **IN GENERAL.**—Subsection (a) of section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by inserting after paragraph (21) the following new paragraph:

“(22) If a defined contributions plan—

“(A) is established by an employer whose stock is not publicly traded, and

“(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan as securities of the employer,

any trust forming part of said plan shall not constitute a qualified trust under this section unless the plan meets the

the amount of credit which would be allowable under section 46(a) if the employer made the transfer described in section 48(n)(1).”

(4) The last sentence of section 1504(a) (defining affiliated group) is amended to read as follows:

“As used in this subsection, the term ‘stock’ does not include nonvoting stock which is limited and preferred as to dividends, employer securities (within the meaning for section 409A(d)) while such securities are held under an ESOP, or qualifying employer securities (within the meaning of section 4975(e)(8)) while such securities are held under a leveraged employee stock ownership plan which meets the requirements of section 4975(e)(7).”

(5) Paragraph (7) of section 4975(e) (defining employee stock ownership plan) is amended—

(A) by striking out “EMPLOYEE” in the paragraph heading and inserting in lieu thereof “LEVERAGED EMPLOYEE”, and

(B) by striking out “employee” in the text and inserting in lieu thereof “leveraged employee”, and

(C) by adding at the end thereof the following new sentence:

“A plan shall not be treated as a leveraged employee stock ownership plan unless it meets the requirements of subsections (e) and (h) of section 409A.”

(6) Paragraph (3) of section 4975(d) is amended by striking out “employee” and inserting in lieu thereof “leveraged employee”.

(7) Subparagraph (B) of section 415(c)(6) is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

“(i) the term ‘employee stock ownership plan’ means a leveraged employee stock ownership plan (within the meaning of section 4975(e)(7)) or an ESOP,

“(ii) the term ‘employer securities’ has the meaning given to such term by section 409A.”

(8) The table of sections for part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 409 the following new item:

“Sec. 409A. Qualification for ESOPs.”

(9) Section 404(a)(2) and section 805(d) are each amended by striking out “and (20)” and inserting in lieu thereof “(20), and (22)”.

(g) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—The amendments made by this section (other than by subsection (9)(3)) shall apply with respect to qualified investment for taxable years beginning after December 31, 1978. The amendment made by subsection (9)(7) shall apply to years beginning after December 31, 1978.

(2) **RETROACTIVE APPLICATION OF AMENDMENT MADE BY SUBSECTION (d).**—In determining the regular tax deduction under section 6 of the Internal Revenue Code of 1954 for any taxable year

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requirements of subsection (e) of section 409A.”  
(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to acquisitions of securities after December 31, 1979.



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### § 4975. Tax on prohibited transactions

(a) **Initial taxes on disqualified person.**—There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 5 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

(b) **Additional taxes on disqualified person.**—In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

#### (c) Prohibited transaction.—

(1) **General rule.**—For purposes of this section, the term “prohibited transaction” means any direct or indirect—

(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(B) lending of money or other extension of credit between a plan and a disqualified person;

(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or

(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

(2) **Special exemption.**—The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after

consultation and coordination with the Secretary of Labor. The Secretary may not grant an exemption under this paragraph unless he finds that such exemption is—

- (A) administratively feasible,
- (B) in the interests of the plan and of its participants and beneficiaries, and
- (C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph, the Secretary shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except that in lieu of such hearing the Secretary may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

(3) **Special rule for individual retirement accounts.**—An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt for the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e) (2) (A) or if section 408(e) (4) applies to such account.

(d) **Exemptions.**—The prohibitions provided in subsection (c) shall not apply to—

- (1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—
  - (A) is available to all such participants or beneficiaries on a reasonably equivalent basis,
  - (B) is not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees,
  - (C) is made in accordance with specific provisions regarding such loans set forth in the plan,

- (D) bears a reasonable rate of interest, and
- (E) is adequately secured;

(2) any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

(3) any loan to an leveraged employee stock ownership plan (as defined in subsection (e) (7)), if—

- (A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and
- (B) such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e) (8));
- (4) the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;

(5) any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

- (A) the employer maintaining the plan, or
- (B) a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written



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for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

(6) the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—

(i) in an excessive or unreasonable manner, and

(ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion;

(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

(9) receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(10) receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets); or

(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction).

The exemptions provided by this subsection (other than paragraphs (9) and (12)) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section 1379), a participant or beneficiary of an individual retirement account, individual retirement annuity, on an individual retirement bond (as defined in section 408 or 409), and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee.

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or

(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G). The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

(3) **Fiduciary.**—For purposes of this section, the term “fiduciary” means any person who—

(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

such term includes any person designated under section 405(c) (1) (B) of The Employee Retirement Income Security Act of 1974.

(4) **Stockholdings.**—For purposes of paragraphs (2) (E) (i) and (G) (i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c) (4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

(5) **Partnerships; trusts.**—For purposes of paragraphs (2) (E) (ii) and (iii), (G) (ii) and (iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c) (4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

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#### (e) Definitions.—

(1) **Plan.**—For purposes of this section, the term “plan” means a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a) or 405(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) or a retirement bond described in section 409 (or a trust, plan, account, annuity, or bond which, at any time, has been determined by the Secretary to be such a trust, plan, account, or bond).

(2) **Disqualified person.**—For purposes of this section, the term “disqualified person” means a person who is—

(A) a fiduciary;

(B) a person providing services to the plan;

(C) an employer any of whose employees are covered by the plan;

(D) an employee organization any of whose members are covered by the plan;

(E) an owner, direct or indirect, of 50 percent or more of—  
(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

(6) **Member of family.**—For purposes of paragraph (2) (F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

(7) **Leveraged employee stock ownership plan.**—The term “leveraged employee stock ownership plan” means a defined contribution plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and

(B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as a leveraged employee stock ownership plan unless it meets the requirements of subsections (c) and (h) of section 409A.

(8) **Qualifying employer security.**—The term “qualifying employer security” means an employer security which is—

(A) stock or otherwise an equity security, or

(B) a bond, debenture, note, or certificate or other evidence of indebtedness which is described in paragraphs (1), (2), and (3) of section 503(c).

If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company’s investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

(f) **Other definitions and special rules.**—For purposes of this section—

(1) **Joint and several liability.**—If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

(2) **Taxable period.**—The term “taxable period” means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earlier of—

(A) the date of mailing of a notice of deficiency pursuant to section 6212, with respect to the tax imposed by subsection (a), or

(B) the date on which correction of the prohibited transaction is completed.

(3) **Sale or exchange; encumbered property.**—A transfer of real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.

(4) **Amount involved.**—The term “amount involved” means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2) and (10) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and

(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the correction period.

(5) **Correction.**—The terms “correction” and “correct” mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

(6) **Correction period.**—The term “correction period” means, with respect to a prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (b) under section 6212, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about the correction of the prohibited transaction.

(g) **Application of section.**—This section shall not apply—

(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b) (2) (B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy,

*Employee Stock Ownership Plans*

- (2) to a governmental plan (within the meaning of section 414(d)); or  
 (3) to a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

**(h) Notification of Secretary of Labor.**—Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

**(i) Cross reference.**—

For provisions concerning coordination procedures between Secretary of Labor and Secretary of Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3003 of the Employee Retirement Income Security Act of 1974.

ภาคผนวก ข.

บทบัญญัติใน EMPLOYEE RETIREMENT INCOME SECURITY ACT 1974

ที่เกี่ยวข้องกับ ESOP



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

PROHIBITED TRANSACTIONS

Sec. 406. (a) Except as provided in section 408:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

- (A) sale or exchange, or leasing, of any property between the plan and a party in interest;
- (B) lending of money or other extension of credit between the plan and a party in interest;
- (C) furnishing of goods, services, or facilities between the plan and a party in interest;
- (D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan; or
- (E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 407(a).

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a).

(b) A fiduciary with respect to a plan shall not—

- (1) deal with the assets of the plan in his own interest or for his own account,
- (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or
- (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer.

10 PERCENT LIMITATION WITH RESPECT TO ACQUISITION AND HOLDING OF EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CERTAIN PLANS

Sec. 407. (a) Except as otherwise provided in this section and section 414:

(b)(1) Subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.

(2) Cross References.—

(A) For exemption from diversification requirements for holding of qualifying employer securities and qualifying employer real property by eligible individual account plans, see section 404(a)(2).

(B) For exemption from prohibited transactions for certain acquisitions of qualifying employer securities and qualifying employer real property which are not in violation of 10 percent limitation, see section 408(c).

(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 414(c).

(c)(1) A plan which makes the election, under paragraph (3) shall be treated as satisfying the requirement of subsection (a)(3) if and only if employer securities held on any date after December 31, 1974 and before January 1, 1985 have a fair market value, determined as of December 31, 1974, not in excess of 10 percent of the lesser of—

(A) the fair market value of the assets of the plan determined on such date (disregarding any portion of the fair market value of employer securities which is attributable to appreciation of such securities after December 31, 1974) but not less than the fair market value of plan assets on January 1, 1975, or

(B) an amount equal to the sum of (i) the total amount of the contributions to the plan received after December 31, 1974, and prior to such date, plus (ii) the fair market value of the assets of the plan, determined on January 1, 1975.

(2) For purposes of this subsection, in the case of an employer security held by a plan after January 1, 1975, the ownership of which is derived from ownership of employer securities held by the plan on January 1, 1975, or from the exercise of rights derived from such ownership, the value of such security held after January 1, 1975, shall be based on the value as of January 1, 1975, of the security from which ownership was derived. The Secretary shall prescribe regulations to carry out this paragraph.

(3) An election under this paragraph may not be made after December 31, 1975. Such an election shall be made in accordance with regulations prescribed by the Secretary, and shall be irrevocable. A plan may make an election under this paragraph only if on January 1, 1975, the plan holds no employer real property. After such election and before January 1, 1985 the plan may not acquire any employer real property.

*Employee Stock Ownership Plans*

(1) A plan may not acquire or hold—

(A) any employer security which is not a qualifying employer security, or

(B) any employer real property which is not qualifying employer real property.

(2) A plan may not acquire any qualifying employer security or qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

(3)(A) After December 31, 1984, a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984, exceeds 10 percent of the greater of—

(i) the fair market value of the assets of the plan, determined on December 31, 1984, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(B) Subparagraph (A) of this paragraph shall not apply to any plan which on any date after December 31, 1974; and before January 1, 1985, did not hold employer securities or employer real property (or both) the aggregate fair market value of which determined on such date exceeded 10 percent of the greater of

(i) the fair market value of the assets of the plan, determined on such date, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(4)(A) After December 31, 1979, a plan may not hold any employer securities or employer real property in excess of the amount specified in regulations under subparagraph (B). This subparagraph shall not apply to a plan after the earliest date after December 31, 1974, on which it complies with such regulations.

(B) Not later than December 31, 1976, the Secretary shall prescribe regulations which shall have the effect of requiring that a plan divest itself of 50 percent of the holdings of employer securities and employer real property which the plan would be required to divest before January 1, 1985, under paragraph (2) or subsection (c) (whichever is applicable).

(d) For purposes of this section—

(1) The term "employer security" means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. A contract to which section 408(b)(5) applies shall not be treated as a security for purposes of this section.

(2) The term "employer real property" means real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this section, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

(3)(A) The term "eligible individual account plan" means an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on the date of enactment of this Act and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954.

(B) Notwithstanding subparagraph (A), a plan shall be treated as an eligible individual account plan with respect to the acquisition or holding of qualifying employer real property or qualifying employer securities only if such plan explicitly provides for acquisition and holding of qualifying employer securities or qualifying employer real property (as the case may be). In the case of a plan in existence on the date of enactment of this Act, this subparagraph shall not take effect until January 1, 1976.

(4) The term "qualifying employer real property" means parcels of employer real property—

(A) if a substantial number of the parcels are dispersed geographically;

(B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use;

(C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer); and

(D) if the acquisition and retention of such property comply with the provisions of this part (other than section 404(a)(1)(B) to the extent it requires diversification, and sections 404(a)(1)(C), 406, and subsection (a) of this section).

(5) The term "qualifying employer security" means an employer security which is stock or a marketable obligation (as defined in subsection (e)).

(6) The term "employee stock ownership plan" means an individual account plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase both of which are qualified, under section 401 of the Internal Revenue Code of 1954, and which is designed to invest primarily in qualifying employer securities, and

(B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(7) A corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1954, except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided in regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary. Regulations under this paragraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

(8) The Secretary may prescribe regulations specifying the extent to which conversions, splits, the exercise of rights, and similar transactions are not treated as acquisitions.



(e) For purposes of subsection (d)(5), the term "marketable obligation" means a bond, debenture, note, or certificate, or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") if—

- (1) such obligation is acquired—
  - (A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or
  - (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;
- (B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or
- (C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

- (A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and
- (B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and
- (3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

EXEMPTIONS FROM PROHIBITED TRANSACTIONS

Sec. 408. (a) The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a). Action under this subsection may be taken only after consultation and coordination with the Secretary of the Treasury. An exemption

granted under this section shall not relieve a fiduciary from any other applicable provision of this Act. The Secretary may not grant an exemption under this subsection unless he finds that such exemption is—

- (1) administratively feasible,
- (2) in the interests of the plan and of its participants and beneficiaries, and
- (3) protective of the rights of participants and beneficiaries of such plan.

Before granting an exemption under this subsection from section 406(a) or 407(a), the Secretary shall publish notice in the Federal Register of the pendency of the exemption, shall require that adequate notice be given to interested persons, and shall afford interested persons opportunity to present views. The Secretary may not grant an exemption under this subsection from section 406(b) unless he affords an opportunity for a hearing and makes a determination on the record with respect to the findings required by paragraphs (1), (2), and (3) of this subsection.

(b) The prohibitions provided in section 406 shall not apply to any of the following transactions:

(1) Any loans made by the plan to parties in interest who are participants or beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis, (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees, (C) are made in accordance with specific provisions regarding such loans set forth in the plan, (D) bear a reasonable rate of interest, and (E) are adequately secured.

(2) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

(3) A loan to an employee stock ownership plan (as defined in section 407(d)(6)), if—

- (A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and
- (B) such loan is at an interest rate which is not in excess of a reasonable rate.

If the plan gives collateral to a party in interest for such loan, such collateral may consist only of qualifying employer securities (as defined in section 407(d)(5)).

(4) The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment.

(5) Any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State, if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a party in interest which is wholly owned (directly or indirectly) by the employer maintaining the plan, or by any person which is a party in interest with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are parties in interest (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan).

(6) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or sim-

ilar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans.

Such ancillary services shall not be provided at more than reasonable compensation.

(7) The exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion.

(8) Any transaction between a plan and (i) a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency or (ii) a pooled investment fund of an insurance company qualified to do business in a State, if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan.

(9) The making by a fiduciary of a distribution of the assets of the plan in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of this Act (relating to allocation of assets).

(c) Nothing in section 406 shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan; except that no person so serving who already receives full-time pay

## ERISA Title I

## Employee Stock Ownership Plans

from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such plan, except for reimbursement of expenses properly and actually incurred; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest. (d) Section 407(b) and subsections (a), (b), (c), and (e) of this section shall not apply to any transaction in which a plan, directly or indirectly---

- (1) lends any part of the corpus or income of the plan to;
- (2) pays any compensation for personal services rendered to the plan to; or
- (3) acquires for the plan any property from or sells any property to;

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1954), a member of the family (as defined in section 267(c)(4) of such Code) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of this subsection a shareholder employee (as defined in section 1379 of the Internal Revenue Code of 1954) and a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of the Internal Revenue Code of 1954) and an employer or association of employers which establishes such an account or annuity under section 408(c) of such code shall be deemed to be an owner-employee.

(e) Sections 406 and 407 shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5)) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 407(d)(4))---

- (1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under Section 407(e)(1)),

- (2) if no commission is charged with respect thereto, and
- (3) if---

(A) the plan is an eligible individual account plan (as defined in section 407(d)(3)), or

(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 407(a).

ภาคผนวก ค.

ตัวอย่างสัญญาจัดตั้งและแต่งตั้งทรัสต์สำหรับ ESOP



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## EMPLOYEES' STOCK OWNERSHIP TRUST

Employer Corporation  
Employees' Stock Ownership Trust

### 1. Name.

The Trust hereby established shall be known as "THE EMPLOYER CORPORATION EMPLOYEES' STOCK OWNERSHIP TRUST," (the "Trust").

### 2. Definitions.

When used in this Trust Agreement, unless otherwise specified when used:

- (a) The term "Company" means Employer Corporation, a New York corporation.
- (b) The term "Subsidiary" means any domestic corporation, at least eighty percent (80%) of the stock of which is owned by the Company or another corporation, at least eighty percent (80%) of the stock of which other corporation is owned by the Company.
- (c) The term "Employer" means the Company or any Subsidiary which adopts this Trust for its employees.
- (d) The term "Employee" means every full-time employee (as herein defined) of an Employer who is not covered by a collective bargaining agreement.
- (e) The term "Compensation" means monies paid to an Employee by an Employer for services in regularly stated hourly, weekly, bi-weekly, semi-monthly or monthly amounts, including payments for commissions, bonuses and overtime.
- (f) The term "Fiscal Year" means the period beginning with April 1st of one calendar year and expiring on March 31st of the following year.
- (g) The terms "he," "him," or "his" shall include "she" and "her;" and the singular number shall include the plural and the plural the singular.
- (h) The term "Participant" shall mean any Employee participating in the benefits provided by this Trust.
- (i) The term "Disability" shall include the term "sickness" and shall mean a permanent physical or mental condition of a Participant resulting from a bodily injury or disease or mental disorder which renders him incapable of continuing in the employment of an Employer and is permanent and continuous in nature.
- (j) The term "Full-Time Employee" means an employee continuously employed by the Company or its Subsidiaries for One Thousand (1000) hours or more during any Fiscal Year.
- (k) The term "Trustee" means Bank, or such Trustee as from time to time may be acting as such hereunder.
- (l) The term "Advisory Committee" means the committee appointed by the Company's Board of Directors to administer this Trust as hereinafter provided.

(m) The term "Trust Fund" means the assets of the Trust established pursuant to this Trust Agreement.

3. *Purposes of the Trust.*  
This Trust is created for the sole purpose of enabling Employees of the Company and its Subsidiaries to share in the ownership of the Company. In no event shall any part of its principal or income of the Trust Fund be paid to or revert to the Company or any of its Subsidiaries or be used for any purpose whatsoever other than the exclusive benefit of their Employees and their beneficiaries.

4. *Contributions under the Trust.*  
The Employer shall contribute to the Trustee as of March 31st of each year, commencing March 31, 19 , such amount as the Board of Directors of such Employer shall determine by resolution properly presented and duly passed prior to March 31st of such year and communicated to the Participants. Each Employer's contribution shall be paid either in cash or in common shares of the Company valued at the fair market value thereof at the time of the contribution and shall be made within the period permitted for the filing of the Employer's Federal Income Tax return for such period.

5. *Participating Employees.*  
All Employees of the Company on March 31, 19 , who are at least eighteen (18) years of age and have completed one (1) or more years of continuous service to the Company or any of its Subsidiaries are eligible to participate in the Plan. All new Employees whose continuous service to the Company or any of its Subsidiaries shall have amounted to one (1) year, to and including March 31st of any subsequent year, shall become eligible to participate in the Plan on March 31st of such year.

No Employee shall be excluded from participation in this Trust by being classed as a temporary employee if his customary employment is for One Thousand (1000) hours or more in any Fiscal Year.

Any Employee whose employment is less than Five Hundred (500) hours during any Fiscal Year shall be determined a new Employee after the first Fiscal Year in which he works at least One Thousand (1000) hours.  
Employment shall not be deemed to have been severed nor shall its permanency be affected by the fact that an Employee has been on a leave of absence for service in the armed forces, sickness or disability with the consent of the Board of Directors of an Employer, provided such leave of absence is uniformly granted to all Participants.

Officers and directors of the Company who are Employees shall participate in this Trust on the same basis as the other Employees.

All doubtful cases of eligibility to participate in this Trust shall be resolved by the Advisory Committee, whose determination shall be final in such cases.

#### 6. *Allocation of Benefits.*

(a) *Participants' Accounts.*  
A separate bookkeeping account (the "Account") shall be opened by the Advisory Committee in the name of each Participant. Annually, as of March 31 of each year, the Committee shall adjust the Account of each Participant in order to reflect increases or decreases in reason of the following: (i) the contribution of the Company to the Trust Fund for the Fiscal Year; (ii) the earnings or losses of the Trust Fund for the Fiscal Year; (iii) any increase or decrease in value of the investments of the Trust Fund; and (iv) forfeitures, if any.

Committee among the Participants employed by said Employer who are Employees on March 31 of each year and will be credited to them as of that date on the following basis: Each Participant shall be credited with two (2) units for each year of service as a Full-Time Employee and one (1) unit for each \$100.00 of his Compensation or major fraction thereof for the Fiscal Year for which the contribution is to be made. The amount to be credited to the Participant shall be determined by dividing the amount of the Employer's contribution for the year for which the contribution is made by the total number of such units of all Participants employed by said Employer calculated on the same basis and multiplying the quotient by the number of such units of the individual Participant. The contribution made by each Employer will be allocated only to the Participants employed by that Employer.

#### (c) *Income of Trust Fund.*

Within ninety (90) days after the close of each Fiscal Year that the Trust Fund shall have been in existence, the Advisory Committee shall apportion among all Participants (as of the last day of the prior Fiscal Year) the net income earned by said Fund that has not theretofore been apportioned. The calculation of this pro rata of net income and the apportionment of the same shall be made on the basis of the Participants' Accounts as they stood on the last day of such Fiscal Year and without regard to new Employees who may have become eligible to participate during that prior Fiscal Year.

#### (d) *Revaluation of Investments.*

The Advisory Committee shall determine the fair market of the Trust Fund as of March 31 of each Fiscal Year that this Trust shall have been in existence; the date of the occurrence of any of the events described in Paragraph 7; and such other time or times that the Advisory Committee shall deem proper. Any increase or decrease in fair market value of the investments of the Trust Fund since the preceding March 31 shall be reflected in the Participants' Accounts annually as provided in Paragraph 6(a), except for those Participants' Accounts that are subject to distribution as provided in Paragraph 7, as to which said increase or decrease shall be reflected in said accounts as of the date of the occurrence of the events described in Paragraph 7. The apportionment of the increase or decrease in the fair market value of the investments of the Trust Fund shall be made on the basis of the Participants' Accounts as they stood as of March 31 of the preceding Fiscal Year, without regard to Employees who may have become eligible to participate during the current Fiscal Year.

#### (e) *Forfeitures.*

All credits and interests of Participants in the Trust Fund which are forfeited as hereinafter provided will be reallocated by the Advisory Committee among the Participants who are in the employ of an Employer on April 1st of the year following the year in which such forfeiture occurs. Such reallocation shall be made upon the basis of the units described in paragraph 6(b). No Participant who is not in the employ of an Employer at the time of reallocation of forfeited interests and credits shall be entitled to share in the reallocation thereof.

#### (f) *Limit on Allocations.*

In no event shall the amount allocated to the Account of any Participant for any Fiscal Year, including such Participant's share of forfeitures, exceed Twenty-Five Thousand and 00/100 dollars (\$25,000.00) or Twenty-Five Percent (25%) of such Participant's Compensation, whichever is less. Any amounts not allocated to Participants because of this limitation shall be reallocated to the other Participants on the basis of their units described in Paragraph 6(b).

#### 7. *Distribution of Benefits.*

Distributions under this Trust shall be made to the Participants, their beneficiaries, executors or administrators, as the case may be, upon instruction from the Advisory Committee to the Trustee, only upon the following events and in the manner provided hereunder:

Participant voluntarily resigns or is discharged, the forfeitable interest, if any, of such Participant in the Trust Fund as provided in Section 6 hereof.

The nonforfeitable interest of such a resigned or discharged Participant shall be distributed to him as provided in the following paragraph.

(e) The distribution provided in subsections (a), (b), (c) and (d) above shall be made solely in Company stock, except for cash paid to compensate for a fraction of a share, in one or more of the following methods as the Advisory Committee, in its sole discretion, may determine:

- (i) One lump sum payment
- (ii) Payments in semi-annual or annual installments commencing ninety (90) days from the date of such Employer's death, disability, retirement, discharge or resignation over any period not exceeding fifteen (15) years from such Participant's 65th birthday, which installments shall be in approximately equal numbers of shares of Company stock, any income earned on the undistributed portion of the Participant's account being used to continue such installments until the entire account of the Participant is exhausted.

8. *Inalienability of Benefits.*

(a) *Spendthrift Clause.*

No Participant shall have any right to pledge, hypothecate, anticipate, or in any way create a lien upon any part of the Trust Fund. Except as respecting any indebtedness owing to an Employer (which will be deducted), distributions to Participants, their beneficiaries, heirs or legal representatives, excepting minors and persons under legal Disability, shall be made only to them and upon their personal receipt or endorsements, and no interest in the Trust Fund, or any part thereof, shall be assignable in anticipation of payment, either by voluntary or involuntary act, or by operation of law, or be liable in any way for the debts or defaults of such Participants, their beneficiaries, or heirs. If by reason of any judgment, bankruptcy, or other cause, any Participant, or his beneficiary, cannot receive and enjoy his share in the Trust Fund, the distributions or payments accruing during the existence of such judgment or the pendency of such proceeding may, in the discretion and at the election of the Advisory Committee, (1) be held by the Trustee temporarily, (2) be used by the Trustee in purchasing necessities for the Participant or his beneficiary, or in such other manner as the Advisory Committee shall deem best for the Participant, or (3) be distributed or paid by the Trustee to the Participant's beneficiary or to the person or persons who at the time of distribution or payment would receive the same were the Participant to die intestate. Any payment made in accordance with the provisions of this subsection shall be final and conclusive upon all persons.

(b) *Distributions to Persons Under Disability.*

Distributions to minors or persons under legal Disability may be made by the Trustee either, (1) directly to said persons, (2) to the legal guardians or conservators of said persons, or (3) by itself expending the same for the education and maintenance of said persons. Except as to (3) immediately above, the Trustee shall not be required to see to the application of such distributions so made to any of said persons, but his or their receipt therefor shall be a full discharge for the Trustee.

9. *Appointment and Membership of Advisory Committee.*

The Board of Directors of the Company shall appoint not less than two (2) nor more than eight (8) Employees to a committee to be known as the Advisory Committee. Each member shall continue to serve until his successor is appointed. Upon a vacancy occurring by reason of death or resignation of a member of the Committee, a successor shall be appointed by the Board. At least one member of the Advisory Committee shall be a director and/or officer of the Com-

(a) On the death of a Participant prior to complete distribution to him of his Account, his death benefits shall be One Hundred percent (100%) of the value of his Account at the time of his death, as of the most recent valuation date. Such benefit shall be paid to his designated beneficiary or beneficiaries.

At any time and from time to time each Participant shall have the unrestricted right to designate the beneficiary or beneficiaries to receive his death benefit, if any, (the "Beneficiary"), and to revoke any such designation. Each such designation (or revocation) shall be evidenced by a written instrument filed with the Advisory Committee, signed by the Participant and, if the primary Beneficiary is other than his spouse, then his spouse, if any. If no such designation is on file with the Advisory Committee at the time of the death of the Participant, or if such designation is not effective for any reason as determined by the Advisory Committee, then to such Participant's spouse, if any, or if no spouse is then surviving, to the executor of the will or administrator of the estate of such Participant.

(b) On retirement of a Participant from the employ of an Employer, his retirement benefit shall be One Hundred percent (100%) of the value of his Account at the date of his retirement. Any Participant who attains the normal retirement age of sixty-five (65) years shall retire from the employment of an Employer unless permitted by such Employer's Board of Directors to remain in the Employer's employ beyond such date.

(c) If a Participant shall become totally and permanently disabled in the judgment of the Advisory Committee, his disability benefit shall be One Hundred percent (100%) of the value of his Account as of the date the Advisory Committee recognizes such Disability. The Advisory Committee may require such evidence as it deems necessary in judging the permanency of such Disability. If a Participant is discharged without cause, then he shall be entitled to One Hundred percent (100%) of the value of his Account as of the date of his discharge.

(d) A Participant who is discharged by an Employer for cause or who voluntarily resigns from the employ of the Employer shall be entitled to a severance benefit equal to the balance of his Account shall thereupon be forfeited.

For the purpose of this subsection (d) and subsection (e) below, a Participant's vested portion of his Account shall be an amount equal to the percentage of the value of his Account in the Trust Fund determined on the basis of the number of years that such Participant has been a Full-Time Employee, according to the following schedule.

	Percent
Less than one year	0
One year but less than two years	10
Two years but less than three years	20
Three years but less than four years	30
Four years but less than five years	40
Five years but less than six years	50
Six years but less than seven years	60
Seven years but less than eight years	70
Eight years but less than nine years	80
Nine years but less than ten years	90
Ten years or more	100

Within ninety (90) days after the close of a Fiscal Year in which any Participant voluntarily resigns or is discharged for cause, the Advisory Committee shall apportion among the separate Accounts of all other Participants, as of the last day of such Fiscal Year in which such

may be held uninvested at any time, and from time to time, and in such amount as may be deemed advisable.

(b) The Trustee may also purchase, at the direction of the Advisory Committee, insurance for the benefit of the Trust on the lives of the shareholders of the Employers, and on the lives of those Employees of the Employers whose death would result in a reduction of an Employer's profits.

#### 15. Administration of the Trust Fund.

##### (a) Accounting.

The Advisory Committee shall keep the books and records of the Trust Fund and shall do all clerical, bookkeeping and accounting work in connection with the management and administration of the Trust Fund. Within 90 days after the close of each Fiscal Year, the Advisory Committee shall prepare financial statements of the Trust Fund and an annual statement showing the Account of each Participant in the Trust Fund. After the close of each Fiscal Year, and at such other times as the Company may require, the Trustee shall render to the Company a report of the Trust Fund, including a statement of transactions for the period and a statement of assets as of the end of the period.

##### (b) Trustee to Hold Trust Assets.

Title to all the assets of the Trust Fund shall be and remain in the Trustee. The Trustee shall have the custody and care of the assets of the Trust Fund.

##### (c) Powers of Trustee.

The Trustee is authorized and empowered:

- (i) To purchase bonds, notes, debentures, stocks, including stock of the Company, mortgages, vendor's interest in contracts for sale, life insurance policies for investment purposes and not for the Account of any individual Participant, or property of the kind described in Section 14.
- (ii) To pledge or mortgage, assign, lease, contract to lease, sell for cash or on credit, convert, redeem, exchange for other securities or other property in which the Trust may be invested under this Agreement, or otherwise dispose of any securities or other property at any time held by it.

(iii) To settle, compromise, or submit to arbitration any claims, debts or damages due or owing from the Trust, and to commence or defend suits or legal proceedings, and to represent the Trust in all suits or legal proceedings.

(iv) To exercise any conversion privilege or subscription right available in connection with any securities or property at any time held by it, and subject to the provisions of subparagraph 15(c), (vi), to consent to the reorganization, consolidation, merger or readjustment of the finances of any corporation, company, or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association, any of the securities of which may at any time be held by it, and to do any act with reference thereto, including the exercise of options, making of agreements or subscriptions, and the payment of expenses, assessments, or subscriptions, which may be deemed to be necessary or advisable in connection therewith and to hold and to retain any securities or other property which it may so acquire.

(v) To borrow money in such amounts and upon such terms and conditions as may be directed by the Advisory Committee.

(vi) To vote any corporate stock belonging to the Trust Fund and to give proxies for the purpose of such voting to other persons, with or without power of substitution; provided however, that any stock of the Company from time to time comprising a

pany and at least one member shall be a Participant other than a director or officer of the Company.

#### 10. Organization of Advisory Committee.

The Advisory Committee shall select a Chairman and a Secretary from among its members. The Advisory Committee may appoint such other agents, who need not be members of such Committee, as it may deem necessary for the effective performance of its duties, whether ministerial or discretionary, as the said Committee may deem expedient or appropriate. The compensation of such agents shall be fixed by the said Committee within limitations set by the Board of Directors of the Employers. The Advisory Committee shall act by majority vote. Its members shall serve as such without compensation. The proper expenses of the Committee, including the compensation of its agents, if any, shall be paid equally by the Employers.

#### 11. Powers of the Advisory Committee.

The Advisory Committee shall have complete control of the administration of the Trust herein embodied, with all powers necessary to enable it properly to carry out its duties in that respect. Without limiting the generality of the foregoing, the Committee shall have the power to construe this instrument and to determine all questions that shall arise hereunder, and shall also have all the powers elsewhere in this instrument conferred upon it. It shall decide all questions relating to the eligibility of Employees to participate in the benefits of this Trust, and all questions relative to the length of continuous service of an Employee. The Advisory Committee shall establish investment policy and may retain investment advisors. All investment transactions and disbursements by the Trustee, except for the ordinary expenses of the administration of this Trust, shall be made upon the written direction of the Advisory Committee. The decisions of the Advisory Committee upon all matters within the scope of its authority shall be final.

#### 12. Records of Advisory Committee.

All acts and determinations of the Advisory Committee shall be duly recorded by the Secretary thereof, or under his supervision, and all such records, together with such other documents as may be necessary for the administration of the Trust herein embodied shall be preserved in the custody of said Secretary or his successor.

#### 13. Trust Fund.

The Trust Fund shall consist of all payments made by the Employers to the Trustee, as provided for hereinabove, together with the net income which shall be produced by the investments of the Trust Fund, which shall be added to the principal annually by the Trustee. The said Trust Fund shall be held, administered and invested in the manner hereinafter provided, as a single fund.

#### 14. Investment of the Trust Fund.

(a) The Trust Fund shall be invested and reinvested in common and/or preferred stock of the Company to the extent necessary to enable the Trustee to make the distributions required under the provisions of this Agreement, up to the whole thereof, and to the extent not so invested, may be invested and reinvested in bonds, notes, debentures and stocks, common and preferred, of other Companies; co-mingled trust funds managed by the Trustee; life insurance policies for investment purposes and not for the Account of any individual Participant; mortgages; vendor's interest in contracts for sale of real property having no lien other than taxes and assessments prior to the interest of such Trustee; or other property, real, personal or mixed, in such manner and to such extent as prudent men would do under like circumstances. All investments shall be approved and directed in writing by a majority of the Advisory Committee. Cash



distributions. The Trustee is hereby authorized to act solely upon the basis of such notifications and facts received from the Advisory Committee.

(g) *Actions Conclusivae.*

Exercise by the Trustee of any discretion, vested either expressly or by implication in it pursuant to this Trust, shall be conclusive and binding upon all persons directly or indirectly affected, without restriction, however, on its right to reconsider and redetermine such actions.

(h) *Bond Not Required.*

No Trustee acting hereunder shall be required to give bond for the faithful performance of its duties hereunder.

(i) *Trustee Relieved from Uniform Accounting Act.*

The Trustee is relieved of all the duties which would otherwise be placed upon it by the Uniform Trustees' Accounting Act and amendments thereto, if any there be, and any similar act.

(j) *Removed.*

The Company may remove the Trustee at any time, and in case of such removal the Company shall appoint a successor Trustee, which must be a bank or trust company organized and existing under the laws of the United States or of the State of New York. Any successor Trustee shall have the same powers and duties as those conferred upon the Trustee named in this Trust Agreement.

(k) *Resignation of Trustee.*

The Trustee may resign this Trust at any time by giving sixty (60) days' notice, in writing, to the Advisory Committee. Upon such resignation becoming effective, the Trustee shall render to the Advisory Committee an account of its administration of this Trust during the period following that covered by its last approved annual accounting, and shall perform all acts necessary to transfer the assets of the Trust to its successor.

16. *Amendment of the Trust.*

The Company, by action of its Board of Directors, shall have the right at any time, by an instrument in writing, duly executed and acknowledged and delivered to the Trustee, to modify, alter, or amend this instrument in whole or in part; provided, however, that the duties, powers and liabilities of the Trustee hereunder shall not be substantially increased without its written consent; and provided further, that the amount which at the time of any such modification, alteration or amendment shall appear as a credit to the account of any Participant or any former Participant, shall not be affected (hereby); and provided further that no such amendment shall have the effect of revesting in an Employer any part of the principal or income of the Trust.

17. *Termination of Trust.*

An Employer shall not be deemed hereby to have bound itself to make any contributions whatever hereunder in any year, except to the extent provided for in Section 4 hereof, as said section now stands or as the same may hereafter be amended. The continuance of this Trust is not a contractual obligation of the Company, and the right is reserved to the Company by action of its Board of Directors at any time to discontinue the Trust. The discontinuance of this Trust by the Company shall not have the effect of revesting in the Company any part of the Trust Fund.

If this Trust should be terminated, or if contributions should be discontinued, then any amount that shall appear as a credit to the Account of any Participant, or former Participant, shall not be affected thereby; the said amount, including any interest in unallocated funds, shall be fully vested and shall be paid to the said Participant in the manner as is provided for hereinafter. In the event of the termination of this Trust, said funds may be paid upon the authority of

portion of the Trust Fund shall be voted in such manner as the Advisory Committee may direct in writing.

(vii) To improve, manage, protect, subdivide, and partition any real estate forming a part of the Trust Fund; to dedicate to the public use and vacate all or any part thereof; to grant options to lease and to lease for any term (including leases for ninety-nine (99) years or for a longer or shorter period of time) although such term extends beyond the period of this Trust, upon such terms and conditions as may be deemed to be proper; to renew, cancel, and amend or extend leases, and consent to the assignment and modification of any lease on any terms which may be deemed to be necessary, proper or advisable.

(viii) To collect the income, rents, issues, profits and increase of the Trust Fund.

(ix) To grant Puts or acquire Calls for stock of the Company.

(x) To employ agents and attorneys and pay their reasonable compensation and expenses. The Trustee shall incur no liability for the acts or defaults of such agents and attorneys selected by it with due care. The Trustee shall be fully protected in acting upon advice of counsel on questions of law, arising in connection with the administration of this Trust.

(xi) To register any securities held by it hereunder in its own name, or in the name of a nominee, and to hold any securities in bearer form.

(xii) To make, execute and deliver as Trustee any and all instruments in writing necessary or proper for the accomplishment of any of the foregoing powers.

(xiii) Subject to the provisions and limitations herein expressly set forth, the Trustee shall have in general the power to do and perform any and all acts and things in relation to the Trust Fund in the same manner and to the extent as an individual might or could do with respect to his own property. No enumeration of specific powers herein shall be construed as a limitation upon the foregoing general powers, nor shall any of the powers conferred upon the Trustee be exhausted by the use thereof, but each shall be continuing. None of the powers granted the Trustee under this Section shall be exercised except upon, and in accordance with, the written directions of the Advisory Committee; and the Advisory Committee is authorized and empowered, in its sole discretion, to give any such directions to the Trustee.

(d) *Expenses of Trust.*

The Trustee shall pay out of the Trust Fund, to the extent not paid by the Employers or the Company, which shall have the privilege of doing so, all reasonable and necessary expenses, taxes, charges, Trustee's fees, administration costs and fees for attorneys and agents incurred in connection with the administration or operation of the Trust.

(e) *Distribution.*

The Trustee, if and as directed by the Advisory Committee, shall make distributions and payments out of the Trust Fund to Participants in such manner, and in such amounts and for such purposes as may be proper under this Trust Agreement.

(f) *Liability for Distributions.*

The Trustee shall be under no obligation whatsoever to determine whether contributions delivered to it hereunder comply with the provisions of this Trust Agreement, and is obligated only to receive and administer the same pursuant to the terms hereof. It shall be the obligation of the Advisory Committee to determine all facts which may be necessary for the proper allocation of Employers' Contributions, and to determine the basis upon which distributions of any kind are to be made, and to notify the Trustee in writing with respect to such

Advisory Committee and to the Trustee, which notification shall include therein a statement that the adopting Subsidiary agrees to be bound by all the rules and regulations of the Trust. Upon such notification, the adopting Subsidiary shall become a part hereof as if an original signator hereto.

(c) *Copies.*

A synopsis of this instrument shall be delivered forthwith to every Participant. A similar copy hereof shall be delivered to each new Employee upon his attaining the status of a Participant. An executed copy of this instrument is available for inspection at the office of the Company.

(f) *Acceptance.*

The Trustee, by joining in the execution of this instrument, hereby accepts the foregoing Trust and agrees to carry out the provisions hereof on its part to be performed.

(g) *Effective Date.*

The effective date of this Trust is April 1, 19 , and the first Fiscal Year of the Trust is the year ended March 31, 19

(h) For purposes of determining eligibility (Paragraph 5), allocation of Employer contributions (Paragraph 6(b)), and the vested portion of an Account (Paragraph 7(d)), years of service shall be the aggregate number of years of service with all Employers.

IN WITNESS WHEREOF, the parties hereto have caused this Trust to be executed by their proper officers thereunto duly authorized as of the day of , 19

(SEAL)

EMPLOYER CORPORATION

By President

By Secretary

BANK

By President

the Advisory Committee, in five (5) equal annual installments or in a lump sum. Said payments shall be made within a reasonable time thereafter with allowances for the Trustee to liquidate that part of the Trust assets that is necessary to accomplish the said payments, and for the Employers to file required information with Internal Revenue Service and receive its determination letter relative to the termination of the Trust; in all events the said lump sum payments and said annual installments shall be made to commence within sixty (60) days after the allowances for the Trustee and the Employers herein have been complied with. It is understood, however, that mere suspension of contributions by the Employer shall not be construed as a discontinuance of such contributions.

Unless sooner terminated as herein provided, this Trust shall continue in full force and effect until the expiration of twenty-one (21) years after the death of the last surviving Employee, whether active or retired, of the Employer, who shall be a Participant in the Trust Fund on the date of this Trust.

18. *Miscellaneous.*

(a) *Successors, etc.*

This Trust Agreement shall be binding upon all Participants, their beneficiaries, heirs, executors and administrators, upon each of the Employers and the Company and upon the Trustee and its successors. In the event of the dissolution, consolidation or merger of the Company, or the sale by the Company of its assets, the resulting successor person or persons, firm or corporation, may continue this Trust by direction from such person or persons or firm, if not a corporation, and if a corporation, by adopting the same by resolution of its Board of Directors and appointing a new Advisory Committee as though all members thereof had resigned, and by executing a proper Supplemental Agreement to the Trust Agreement. If, within ninety (90) days from the effective date of such dissolution, consolidation, merger or sale of assets, such successor does not adopt this Trust, as provided herein, this Trust shall automatically be terminated and the Trust Fund disposed of as provided in Section 17 hereof.

(b) *Construction.* The share of each of the Participants in the Trust Fund as represented by the Account of such Participant, shall constitute a separate Trust. If any provision of this Trust Agreement violates any existing or future law against perpetuities or suspension of the power of alienation of title to property, that part of the Trust Fund subject to such provision shall be administered as herein directed for the period permitted by law, and forthwith thereafter such part of the Trust Fund so affected shall be distributed to the Participant or his beneficiary. The validity and effect of this Trust Agreement and the rights and obligations of all parties hereto and of all other persons affected hereby shall be construed and determined in accordance with the laws of the State of New York.

(c) *Right of Employer to Dismiss Employees.*

Neither the action of the Company in establishing this Trust nor any action taken by it or by the Advisory Committee under the provisions hereof, nor any provisions of this Trust shall be construed as giving to any Employee the right to continued employment by an Employer or any right to any payment whatsoever except to the extent of the benefits provided for by this Trust to be paid from the Trust Fund. The Employers expressly reserve their right at any time to dismiss any Employee without any liability for any claim either against the Trust Fund, for any payment whatsoever except to the extent provided for in this Trust, or against any Employer.

(d) *Trust May Be Adopted by a Subsidiary.*

This Trust may at any time during its existence be adopted by a Subsidiary, by

ภาคผนวก ง.

ตัวอย่างแบบฟอร์ม 5301 และ 5302 (คำขอจัดตั้ง ESOP)



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

Form 5301

Application for Determination for Defined Contribution Plan

This Form is Open to Public Inspection File in Duplicate

For Profit-sharing, Stock Bonus and Money Purchase Plans

Under sections 401(a), 405(a), 414(f) and 501(a) of the Internal Revenue Code

1 (a) Name, address and ZIP code of employer
2 Employer's identification number
3 Business code number
4 Date incorporated or business commenced
5 Employer's taxable year ends

6 (a) Determination requested for:
(b) Initial qualification—date plan adopted
(c) Amendment—date adopted
7 Type of entity:
8 (a) Name of Plan
(b) Plan number
(c) Plan year ends
9 (a) If this is an adoption of a master or prototype plan...

10 Type of plan:
11 Effective date of plan
12 Effective date of amendment
13 Date plan was communicated to employees

14 (a) Indicate the general eligibility requirements for participation under the plan and indicate the section and page number of plan or trust where each provision is contained:
(b) Are the eligibility requirements the same for future employees?
(c) Does the plan recognize service with other employers?

Table with 2 columns: Description and Number. Rows include Total employed, Exclusions under plan, Employees on whose behalf retirement benefits were the subject of collective bargaining, Total exclusions, Balance, Ineligible under plan on account of, Total ineligible, Number eligible to participate, Number of employees participating in plan, Enter percent eligible, Enter percent of eligible employees participating.

Under penalty of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct and complete.
Signature Title Date

Section and page number	GOVERNMENT USE ONLY	
	Yes	No
15 Coverage (continued): (K) If percent in (I) is less than 80, see specific instructions. (l) Total number of participants, include certain retired and terminated employees, see specific instructions ▶		
16 Employee contributions: (a) Are they mandatory? . . . . . If "Yes," specify rate or rates ▶ . . . . . (b) Are voluntary contributions limited to 10% of compensation for all qualified plans? . . . . . (c) Are employee contributions nonforfeitable?		
17 Employer contributions: (a) Under a profit-sharing or stock bonus plan, are they determined under— (i) A definite formula (ii) An indefinite formula (iii) Both (b) Under profit-sharing or stock bonus plans are contributions limited to— (i) Current earnings (ii) Accumulated earnings (iii) Combination (c) Money purchase—Enter rate of contribution ▶		
18 Integration: Is this plan integrated with Social Security or Railroad Retirement? . . . . . If "Yes," see specific instructions.		
19 Vesting: (a) Vesting Schedule—Check the appropriate box to indicate the vesting provisions of the plan: (i) Full and immediate (ii) Full vesting after 10 years of service (iii) 5- to 15-year vesting, i.e., 25% after 5 years of service, 5% additional for each of the next 5 years, then 10% additional for each of the next 5 years (iv) Rule of 45 (see section 411(a)(2)(C)) (v) For each year of service, commencing with the 4th such year, vesting not less than 40% after 4 years and 5% additional for each of the next 2 years, and 10% additional for each of the next 5 years (vi) 100% vesting within 5 years after contributions are made (class year plans only) (vii) Other (specify) ▶ . . . . . (b) If box (a)(v) was checked, check whether you include the following years of service under the vesting provisions of the plan: (i) Years of service before age 22 . . . . . (ii) Years of service for a period during which the employee declined to contribute to plan requiring employee contributions . . . . . (iii) Years of service during which the employer did not maintain the plan or a predecessor plan . . . . . (iv) Years of service excluded under section 411(b)(6) . . . . . (v) Years of service described in section 411(b)(4)(E) . . . . . (vi) Years of service described in 411(b)(4)(F) . . . . .	Yes	No
20 Administration: (a) Fund type of entity: (i) Trust (ii) Custodial account (iii) Non-trustee If you checked (i) or (ii), enter date executed ▶ . . . . . (b) Enter name and identifying number of fiduciary (trustee or custodian), if any: ▶ . . . . . (c) Enter name and identifying number of fund (trust or custodial account), if any: ▶ . . . . .		
(d) Does trust agreement prohibit reversion of funds to the employer? . . . . . (e) Specify the limits placed on the purchase of insurance contracts, if any: (i) Ordinary life ▶ . . . . . (ii) Term insurance ▶ . . . . . (iii) Other (specify) ▶ . . . . . (f) If the trustees may earmark specific investments, including insurance contracts, are such investments subject to the employee's consent, or purchased ratably where employee consent is not required? . . . . . (g) If Puerto Rican trust, does it qualify for tax exemption under the laws of Puerto Rico?		

Section and page number	GOVERNMENT USE ONLY	
	Yes	No
21 Allocations and distributions: (a) Are contributions allocated on the basis of total compensation? . . . . . If "No," see specific instructions. (b) Enter the maximum amount of employer contribution (or rate of compensation) that may be allocated to a participant ▶ . . . . . (c) Are trust assets valued at current fair market value? . . . . . (d) Trust assets are valued: (i) Annually (ii) Semi-annually (iii) Quarterly (iv) Other (specify) ▶ . . . . . (e) Trust earnings and losses are allocated on the basis of: (i) Account balances (ii) Other (specify) ▶ . . . . . (f) Forfeitures are allocated, in case of profit-sharing or stock bonus plan: (i) On basis of total compensation (ii) Other (specify) ▶ . . . . . and, in case of money purchase plan: (iii) Reduce employer contributions (iv) Other (specify) ▶ . . . . . (g) May vested benefits be forfeited because of withdrawal of a participant's contributions or earnings thereon? . . . . . (h) Normal retirement age is ▶ . . . . . State years of service required ▶ . . . . . (i) Early retirement age is ▶ . . . . . State years of service required ▶ . . . . . (j) Is the amount distributable at early retirement limited to vested interest? . . . . . (k) Is employer's consent required for early retirement? . . . . . (l) Other event permitting distribution (specify) ▶ . . . . . (m) Are distributions permitted prior to termination of employment? . . . . . (n) Distribution of account balances may be made in: (i) Lump sum (ii) Annuity contracts (iii) Substantially equal annual installments—not exceeding ▶ . . . . . years (iv) Other (specify) ▶ . . . . . (o) If distributions are made in installments, are they credited with: (i) Fund earnings (ii) Interest at a rate of ▶ . . . . . % per year (iii) Other (specify) ▶ . . . . . (p) If insurance contracts are distributed, are the modes of settlement contained in the contracts limited to those provided under the plan? . . . . . (q) Does the plan provide that the payment of benefits, unless the employee elects otherwise, will commence not later than the 60th day after the latest of (1) the close of the plan year in which the participant attains the earlier of age 65 or the normal retirement age specified under the plan, (2) the close of the plan year in which occurs the 10th anniversary of the year in which participant commenced participation or (3) the close of the plan year in which the participant terminates his service with the employer? . . . . . (r) If this is a stock bonus plan, are distributions made in employer stock? . . . . . (s) In the case of a merger or consolidation with another plan or transfer to another plan, will each participant be entitled to the same or greater benefit as if plan had terminated? . . . . . (t) Are loans to participants in excess of their vested interest permitted? . . . . . If "Yes," explain ▶ . . . . . (u) Does plan prohibit the assignment or alienation of benefits? . . . . . (v) Does plan permit divestment for cause? . . . . .		
22 Termination: (a) Is there a provision in the plan for terminating the plan and/or trust? . . . . . (b) Are the amounts credited to employee accounts nonforfeitable upon termination or partial termination of the plan? . . . . . (c) Upon complete discontinuance of contributions under a profit-sharing or stock bonus plan are the employees' rights under the plan nonforfeitable? . . . . .		
23 Miscellaneous: (a) Has power of attorney been submitted with the application (or previously submitted)? . . . . . (b) Have you completed and attached Schedule A (Form 5301)? . . . . .		

# Instructions for Form 5301 (March 19\_\_)

## Application for Determination for Profit-Sharing, Stock Bonus and Money Purchase Plans

(Section References are to the Internal Revenue Code Unless Otherwise Specified)

Section and page number	GOVERNMENT USE ONLY	
	Yes	No
23 Miscellaneous (continued):		
(c) Have you completed and attached Form 5302?		
(d) Is the adopting employer a member of a controlled group of corporations or under common control in the case of partnerships and proprietorships? If "Yes," see instructions.		
(e) Is any issue relating to the qualification of this plan or exemption of the trust currently pending before the Internal Revenue Service, the Department of Labor or any court? If "Yes," attach explanation.		
(f) Other qualified plans—Enter for each other qualified plan you maintain (do not include plans that were established under union-negotiated agreements that involved other employers):		
(i) Name of plan		
(ii) Type of plan		
(iii) Rate of employer contribution, if fixed		
(iv) Monthly benefit, if defined benefit plan		
(v) Number of participants		
24 This section pertains to Keogh (H.R. 10) plans only:	Yes	No
(a) Do owner-employees have the option to participate?		
(b) May benefits be paid to owner-employees before age 59½, except for disability?		
(c) May access contributions be made for self-employed individuals?		
(d) Is a definition of earned income provided?		
(e) Are distributions of benefits to owner-employees required to commence not later than age 70½?		
(f) Is any self-employed individual covered under this plan also covered under any other plan as a self-employed individual?		
(g) Does plan prohibit the allocation of forfeitures to self-employed individuals?		
25 In the case of a request on an initial qualification, have the following documents been included with the application as required by instructions:		
(a) Certified copies of all instruments constituting the plan or joinder agreement?		
(b) Copy of trust indenture?		
(c) Specimen copy of each type of individual insurance contract?		
(d) Balance sheet of the trust or custodial account?		
(e) Statement of receipts and disbursements of the trust or custodial account?		
(f) Evidence that retirement benefits were the subject of good faith bargaining between employee representatives and employer(s)—where that has occurred and is the basis for excluding certain employees, see section 410(b)(2)(A)?		
(g) Specimen copy of formal announcement containing detailed description to employees?		
26 In the case of a request involving an amendment, after initial qualification, have the following documents been included:		
(a) A certified copy of the amendment(s)?		
(b) Balance sheet and statement of receipts and disbursements of trust or custodial account?		
(c) A description of the amendment covering the items changed and an explanation of the provisions before and after the amendment?		
(d) A completely restated plan?		
(e) A working copy of the plan in which there has been incorporated all of the previous amendments representing the provisions of the plan as currently in effect?		
(f) Certified copies of all amendments adopted since the date of the last determination letter for which no determination letter has been issued by the Internal Revenue Service?		
(g) Specimen copy of formal announcement containing detailed description to employees?		

\*If plan is being amended for the first time to conform to the participation and vesting standards of the Employee Retirement Income Security Act of 1974, or if the plan has been amended at least three times since the last restated plan was submitted, one of the documents specified under (d) or (e) must be attached.

If more space is needed for any item, attach additional sheets of the same size.

### A. Who May File.

1. Any employer (including a sole proprietor or a partnership which has adopted an individually designed Keogh (H.R. 10) plan) or plan administrator desiring a determination letter as to initial qualification or amendment of a plan that does not result from collective bargaining. File Form 5303 for collectively-bargained plans.

2. Any plan administrator desiring a determination letter as to initial qualification or amendment of a plan that involves more than one employer (including controlled groups of corporations and employers under common control) but does not result from collective bargaining. In such case, submit a single application.

3. Any employer or plan administrator desiring a determination letter as to compliance with the applicable requirements of a foreign situs trust as relating to the taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(b)(4)).

Note: Governmental and church plans, etc., to which the participation, vesting and funding standards in Title II of the Employee Retirement Income Security Act do not apply should not use Form 5301. They should use Form 4573.

This form may not be filed by a sole proprietor or by a partnership which has adopted a Keogh master or prototype plan previously approved by the Internal Revenue Service.

### B. What to File.

1. For initial qualification: The application form in duplicate and a copy of the documents and statements listed in item 25.

2. For Amendments: The application form in duplicate and a copy of the documents and statements listed in item 26.

These forms apply to both individually designed plans and joinders to approved master or prototype (other than Keogh) plans.

A separate application must be filed for each defined contribution plan. The term "defined contribution plan" means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures or accounts of other participants which may be allocated to such participant's account.

Whether the application is for an initial qualification or for an amendment, attach a completed Form 5302.

3. For plans of controlled groups of corporations or common control employers, submit the documents and statements listed

### General Information Regarding Application for and the Issuance of Determination Letters with Respect to Defined Contribution Plans under the Employee Retirement Income Security Act of 1974

An advance determination may be sought from the Internal Revenue Service with respect to the qualification of a defined contribution plan and the exempt status of any related trust.

If you intend to request an advance determination, your request should be submitted as early as possible so that if necessary, the plan may be amended, so as to qualify for its first year of operation. Except as provided in section 401(b), an amendment cannot retroactively qualify a plan for a taxable year prior to the year in which the amendment is adopted. Section 401(b) permits certain retroactive amendments provided such amendments are made within the time prescribed by law for filing the return (including extensions) for the taxable year of the employer in which such plan or amendment was adopted or such later time as the Commissioner of Internal Revenue may designate.

Please follow the instructions carefully in completing the application form and check it over before submitting it to make sure the information provided is accurate and complete in all respects. Incomplete applications will be returned without action. In addition, the Internal Revenue Service may rely on the statements attested to in the application as interpretive of the intent expressed in the language of the plan. Incorrect or misleading information on the application may void any favorable determination letter issued in response to your application.

### General Conditions Affecting All Applications and Filing Information

This application must be filed in duplicate; but attach only one copy of each document and statement listed in items 25 and 26. Please complete each item on the application. If an item does not apply, so indicate with "NA."

If more than one employer maintains a plan, file one application and attach thereto a separate page one of Form 5301 and a separate Form 5302 for each employer who adopted the plan.







## General Instructions

(References are to the Internal Revenue Code.)

Every employer or plan administrator who files an application for determination with respect to a defined benefit or a defined contribution plan is required to attach thereto this schedule, which must be completed in all details.

Section 6104(a)(1)(B) provides generally that applications, filed with respect to the qualification of a pension, profit-sharing or stock bonus plan, shall be open to public inspection. However, section 6104(a)(1)(C) provides that information concerning the compensation of any participant shall not be opened to public inspection. Consequently, the information contained in this schedule shall not be made available to the public, including plan participants and other employees of the employer who established the plan.

This schedule is to be used by the Internal Revenue Service in its analysis of an application for determination as to whether a plan of deferred compensation qualifies under section 401(a) or 405(a).

If an employer has fewer than 25 employees who are participants in his plan, he should list all the participants. Otherwise, only the 25 highest-paid participants need be listed.

## Specific Instructions

In column (a), list the participants in the order of compensation, starting with the highest-paid participant, followed by the next highest-paid participant, and so on.

In column (b), enter a check mark or an "X" to indicate that a participant is

either an officer or a shareholder. If a participant is neither an officer nor a shareholder, make no entry in this column for such participant.

In column (c), enter only the percentage of voting stock owned by a participant. For example, participant "A" owns 200 shares of voting stock of the employer's 5,000 shares outstanding. His percentage is 4% (200 ÷ 5,000). If a participant owns only nonvoting stock of the employer, make no entry in this column.

In column (d), enter the attained age of each participant as of the end of the year for which this schedule applies. For example, if a participant reached his 47th birthday on January 7, 1975, and the schedule covers the calendar year 1975, enter 47 for that participant.

In column (e), enter the number of full years of service of each participant with respect to employment with the employer, and any prior employer if such employment is recognized for plan purposes.

In column (f), enter the amount of each participant's compensation that is recognized for plan purposes in computing the benefit (in case of a defined benefit plan) or in computing the amount of employer contribution that is allocated to the account of each participant (in the case of a defined contribution plan). Do not include any portion of the employer contributions to this or any other qualified plan as compensation for any participant.

In column (g), enter the amount of compensation that is not recognized for purposes of column (f). For example, if a participant received \$12,500 compensation for the year, \$1,000 of which was a bonus and the plan does not recognize bonuses for plan pur-

poses, enter \$11,500 in column (f) and \$1,000 in column (g).

In column (h), enter the total amount of compensation for the year for each participant. The amount entered in this column will be the sum of the amounts entered in columns (f) and (g) with respect to each participant. Again, do not enter any amount of employer contributions made to this or any other qualified plan.

In column (i), enter the total amount of mandatory and voluntary contributions made by each participant. If the plan does not provide for employee contributions of any kind, leave blank or enter "NA".

In column (j), enter the portion of the employer's contribution (1) that is attributable to the cost for providing each participant's benefit under all plans other than this plan or (2) that is allocated to each participant's account under all plans other than this plan.

In column (k), enter the amount of benefit each participant may expect to receive at normal retirement age based on current information, assuming no future compensation increases. For example, under a 30% benefit plan, a participant whose benefit is based on annual compensation of \$10,000 may expect an annual benefit of \$3,000 (\$10,000 x 30%) at retirement. In such case enter \$3,000.

In column (l), enter the amount of the employer's contribution that is allocated to the account of each participant.

In column (m), enter the number of units, if any, used to determine the amount of the employer contribution that is allocated to each participant.

In column (n), enter the amount of the forfeitures that is allocated to each participant, unless forfeitures are allocated to reduce employer contributions.

ภาคผนวก จ.

รายงานแสดงความเคลื่อนไหวของกองทุนสำรองเลี้ยงชีพเปรียบเทียบ

ณ วันที่ 31 ธันวาคม 2535 และ 31 ธันวาคม 3534

และ

รายงานแสดงการจัดการกองทุนสำรองเลี้ยงชีพ ณ วันที่ 31 ธันวาคม 2535



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

รายงานแสดงความเคลื่อนไหวของทุนสำรองเลี้ยงชีพ

รายการ	ณ วันที่ 31/12/2533		ณ วันที่ 31/12/2534		เปลี่ยนแปลง	
	จำนวน	ร้อยละ	จำนวน	ร้อยละ	จำนวน	ร้อยละ
	ปริมาณกองทุน	623		591		-32
จำนวนสมาชิกทุกระบบ	219,637		257,642		+38,005	+17.30
จำนวนเงินกองทุนทุกระบบ (บาท)	7,109,767,825.63		9,685,174,254.23		+2,575,406,428.60	+36.22
การกระจายการลงทุน (บาท)						
4.1 เงินสด/เงินฝากธนาคาร	105,009,947.15	1.10	130,691,410.87	1.39	+25,681,463.72	+24.46
4.2 ตั๋วแลกเงิน/เงินฝากประจำ	1,614,078,022.16	23.46	4,417,132,252.09	47.14	+2,803,054,229.93	+173.66
4.3 ตั๋วสัญญาใช้เงิน	1,994,870,314.96	29.00	2,747,608,417.64	29.32	+752,738,102.68	+37.73
4.4 พันธบัตร	2,620,203,504.31	38.09	953,880,321.73	10.18	-1,666,323,182.58	-63.60
4.5 หลักทรัพย์จดทะเบียน	391,788,427.58	5.69	716,266,236.40	7.64	+324,477,808.82	+82.82
4.6 หน่วยลงทุน	15,768,623.14	0.22	42,557,329.51	0.45	+26,788,706.37	+169.89
4.7 หลักทรัพย์อื่น	136,676,570.08	1.98	360,204,349.65	3.84	+223,527,779.57	+163.55
รวม (บาท)	6,878,395,409.38	100	9,368,340,317.89	100	+2,489,944,908.51	+36.20

ที่มา : ฝ่ายเงินออมและกองทุนสวัสดิการ  
กองนโยบายการเงินและสถาบันการเงิน

ณ วันที่ 31 ธันวาคม 2535

หน่วย : ล้านบาท

รายการ	จำนวน	ร้อยละ
1. ปริมาณกองทุน	649	
2. จำนวนสมาชิกทั้งระบบ (คน)	344,461	
3. จำนวนเงินกองทุนทั้งระบบ	16,719.60	
4. การกระจายการลงทุน		
4.1 เงินสดและเงินฝากธนาคาร	8,128.24	49.95
4.2 พันธบัตรรัฐบาล	69.94	0.43
4.3 พันธบัตรรัฐวิสาหกิจ	434.25	2.67
4.4 ตั๋วเงินที่ธนาคารรับรอง	569.71	3.50
4.5 ตราสารฯ ที่ธนาคารเป็นผู้ออก	1,334.27	8.20
4.6 ตราสารฯ อื่น	4,377.63	26.90
4.7 หน่วยลงทุน	120.72	0.74
4.8 หุ้น	1,238.42	7.61
รวมการกระจายการลงทุน	16,273.18	100.00

ที่มา : ฝ่ายนโยบายเงินออมและกองทุนสวัสดิการ

กองนโยบายการเงินและสถาบันการเงิน

จุฬาลงกรณ์มหาวิทยาลัย

## ประวัติผู้เขียน

นายศุภชัย อรุณธรรมสกุล เกิดวันที่ 10 มกราคม พ.ศ. 2507 ที่เขตธนบุรี กรุงเทพมหานคร สำเร็จการศึกษานิติศาสตร์บัณฑิต จากมหาวิทยาลัยธรรมศาสตร์ ในปีการศึกษา 2528 และสำเร็จการศึกษาระดับประกาศนียบัตรบัณฑิตทางกฎหมายธุรกิจจากมหาวิทยาลัยเดียวกันในปีการศึกษา 2530 เข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต สาขาวิชากฎหมายธุรกิจ ที่จุฬาลงกรณ์มหาวิทยาลัยเมื่อ พ.ศ. 2531 เคยได้รับพระราชทานรางวัลทุนภูมิพล เนื่องจากสอบคัดเลือกเข้ามหาวิทยาลัยธรรมศาสตร์ได้คะแนนสูงของสายศิลป์-ฝรั่งเศส เมื่อปีการศึกษา 2525 ปัจจุบันเป็นทนายความและที่ปรึกษากฎหมาย



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย