

## SCHEDULE

Article 4

### PART I

1. In this Schedule—

“date of the offer” means the date specified in an investment advertisement to which article 4(3) of this Order applies as the date on which the advertisement was issued to recipients of the offer;

“equity share capital”, “holding company”, “subsidiary”, and “wholly owned subsidiary” have the same meanings as in the 1985 Act when used in relation to a body corporate which is a company within the meaning of that Act and have the same meanings as in the 1986 Order when used in relation to a body corporate which is a company within the meaning of that Order;

“offer document” means an investment advertisement to which article 4(3) of this Order applies;

“offeree company” means a body corporate of the kind specified in paragraph 3 of this Schedule shares in or debentures of which are the subject of an offer; and

“offeror” means a person by or on behalf of whom an offer is made;

and for the purposes of this Schedule shares or debentures are to be regarded as being held by or on behalf of an offeror if the person who holds them, or on whose behalf they are held, has agreed that an offer should not be made in respect of them.

### PART II

2. An offer is an offer of the kind referred to in article 4(1)(b) of the Order if it is an offer for all the shares in, or all the shares comprised in the equity or non-equity share capital of an offeree company or is an offer for all the debentures of an offeree company other than, in each case, shares or debentures held by or on behalf of the offeror, and—

- (a) its terms have been recommended by all the directors of the offeree company other than any director who is the offeror or a director of the offeror;
- (b) in the case of an offer for debentures or for non-equity share capital where, at the date of the offer, shares carrying 50% or less of the voting rights attributable to the equity share capital are held by or on behalf of the offeror, the offer includes or is accompanied by an offer made by the offeror for the rest of the shares comprised in the equity share capital;
- (c) in the case of an offer for shares comprised in the equity share capital where, at the date of the offer—
  - (i) shares carrying 50% or less of the voting rights then exercisable in general meetings of the offeree company; and
  - (ii) shares carrying 50% or less of the voting rights attributable to the equity share capital;

are held by or on behalf of the offeror, it is a condition of the offer that sufficient shares he acquired or be agreed to be acquired by the offeror pursuant to or during the offer to result in shares carrying more than the said percentages of voting rights being held by him or on his behalf;

- (d) except insofar as it may be totally withdrawn and all persons released from any obligation incurred under it, the offer is open for acceptance by every recipient for the period of at least 21 days beginning with the day after the day on which the document was issued to recipients of the offer;

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- (e) the acquisition of the shares or debentures to which the offer relates is not conditional upon the recipients approving, or consenting to, any payment or other benefit being made or given to any director or former director of the offeree company in connection with, or as compensation or consideration for, his ceasing to be a director or to hold any office held in conjunction with any directorship or, in the case of a former director, to hold any office which he held in conjunction with his former directorship and continued to hold after ceasing to be a director;
- (f) the consideration for the shares or debentures is cash or, in the case of an offeror which is a body corporate other than an open-ended investment company, is either cash or shares in or debentures of the offeror or any combination of cash, such shares and such debentures; and
- (g) copies of the following documents are available during normal office hours and free of charge at the place specified in the offer document by virtue of paragraph 10 of this Schedule—
  - (i) the memorandum and articles of association of the offeree company and, if the offeror is a body corporate, the memorandum and articles of association of the offeror or, if it has no memorandum and articles of association, any instrument constituting or defining the constitution of the offeror, and, if such document is not written in English, a certified English translation of the instrument;
  - (ii) in the case of an offeree company which does not fall within sub-paragraph (iv) below, the audited accounts of the offeree company in respect of the last two accounting reference periods for which the laying and delivering of account under the 1985 Act or the 1986 Order has passed and, if accounts have been delivered to the relevant registrar of companies in respect of a later accounting reference period, copies of those accounts;
  - (iii) in the case of an offeror which is required to deliver accounts to the registrar of companies and which does not fall within sub-paragraph (iv) below, the audited accounts of the offeror in respect of the last two accounting reference periods for which the laying and delivering of accounts under the 1985 Act or the 1986 Order has passed and, if accounts have been delivered to the relevant registrar of companies in respect of a later accounting reference period, copies of those accounts;
  - (iv) in the case of an offeree company or an offeror which was incorporated during the period of three years immediately preceding the date of the offer or which has, at any time during that period, passed a resolution in accordance with section 252 of the 1985 Act or Article 260 of the 1986 Order, the information described in whichever is relevant of sub-paragraph (ii) or (iii) with respect to that body corporate need be included only in relation to the period since its incorporation or since it last ceased to be exempt from the obligation to appoint auditors as the case may be;
- (v) all existing contracts of service entered into for a period of more than a year between the offeree company and any of its directors and, if the offeror is a body corporate, between the offeror and any of its directors;
  - (vi) any report, letter, valuation or other document any part of which is exhibited or referred to in the offer document;
  - (vii) if the offer document contains any statement purporting to have been made by an expert, that expert's written consent to the inclusion of that statement; and
  - (viii) all material contracts (if any) of the offeree company and of the offeror (not, in either case, being contracts which were entered into in the ordinary course of business) entered into during the period of two years immediately preceding the date of the offer.

### PART III

3. A body corporate is a body corporate of the kind referred to in article 4(1)(b) of this Order if—
- (a) it is a private company; and
  - (b) no shares comprised in the equity share capital of the company are or have, at any time within the period of ten years immediately preceding the date of the offer, been—
    - (i) listed or quoted on an investment exchange whether in the United Kingdom or elsewhere; or
    - (ii) shares in respect of which information has, with the agreement or approval of any officer of the company, been published for the purpose of facilitating deals in them, indicating prices at which persons have dealt or were willing to deal in them other than persons who were, at the time the information was published, existing members of a relevant class; or
    - (iii) subject to a marketing arrangement which accorded to the company the facilities referred to in section 163(2)(b) of the 1985 Act or article 173(2)(b) of the 1986 Order; or
    - (iv) the subject of an offer (whether in the United Kingdom or elsewhere) in relation to which a copy of a prospectus was delivered to the relevant registrar of companies in accordance with section 41 of the Companies Act 1948<sup>(1)</sup>, section 41 of the Companies Act (Northern Ireland) 1960<sup>(2)</sup>, section 64 of the 1985 Act or article 74 of the 1986 Order or section 159 or 160 of the Act.

4. For the purposes of paragraph 3(b)(ii) of this Schedule a person shall be regarded as being a member of a relevant class if he was, at the relevant time, an existing member or debenture holder of the offeree company, or an existing employee of that company, or a member of the family of such a member or employee and for these purposes “family” in relation to a person means that person’s husband or wife, widow or widower and children (including step-children and, in Northern Ireland, adopted children) and their descendants and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is that person or any of those relatives.

### PART IV

5. An advertisement fulfils the conditions specified in article 4(3)(b) of this Order if it takes the form of a document which complies with the requirements of paragraphs 6 to 11 of this Schedule and is accompanied by the material specified in paragraph 12.

6. The document must state on its face the identity of the offeror and, if the offer is being made on behalf of another person, the identity of that person.

7. The document must state on its face the fact that the terms of the offer are recommended by all the directors of the offeree company other than (if that is the case) any director who is the offeror or a director of the offeror.

8. The document must contain prominently the following words: “If you are in any doubt about this offer you should consult a person authorised under the Financial Services Act 1986 who specialises in advising on the sale of shares and debentures” or other words to like effect.

9. The document must state clearly the matters referred to in paragraph 2(d) and (e) of this Schedule and the date on which it was issued to recipients of the offer.

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(1) 1948 c. 38  
(2) 1960 c. 22 (NI).

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10. The document must name a place in the United Kingdom at which copies of the documents specified in paragraph 2(g) of this Schedule may be inspected and state that those documents may be inspected at that place free of charge.

11. The document must contain the following information—

- (a) particulars of all shares in or debentures of the offeree company and of all investments falling within paragraph 4,5 or 7 of Schedule 1 to the Act which relate to shares in or debentures of the offeree company held by or on behalf of the offeror or each offeror if there is more than one or, if none are so held, an appropriate negative statement;
- (b) a statement as to whether or not the offer is conditional upon acceptances in respect of a minimum number of shares or debentures being received and, if the offer is so conditional, what the minimum number is;
- (c) where the offer is conditional upon acceptances, the date which is the latest date on which it can become unconditional;
- (d) if the offer is, or has become, unconditional the fact that it will remain open until further notice and that at least 14 days' notice will be given before it is closed;
- (e) if applicable, a statement as to whether or not, if circumstances arise in which an offeror is able compulsorily to acquire shares of any dissenting minority under Part XIII A of the 1985 Act<sup>(3)</sup> or articles 421 to 423 of the 1986 Order, that offeror intends so to acquire those shares;
- (f) if shares or debentures are to be acquired for cash, the period within which payment will be made and the method of payment;
- (g) if the consideration or any part of the consideration for the shares or debentures to be acquired is shares in or debentures of an offeror—
  - (i) the nature and particulars of the offeror's business, its financial and trading prospects and its place of incorporation;
  - (ii) in respect of any offeror which is a body corporate, and in respect of the offeree company, its turnover, profit on ordinary activities before and after tax, extraordinary items, tax on extraordinary items and its profit and loss and the rate per cent of any dividends paid adjusted as appropriate to take account of relevant changes over the period and the total amount absorbed thereby for, in each case, the period of five years immediately preceding the date of the offer; provided that in the case of a body corporate which was incorporated during the period of five years immediately preceding the date of the offer or which has, at any time during that period, passed a resolution in accordance with section 252 of the 1985 Act or article 260 of the 1986 Order, the information described in this sub-paragraph with respect to that body corporate need be included only in relation to the period since its incorporation or since it last ceased to be exempt from the obligation to appoint auditors, as the case may be;
  - (iii) particulars of the first dividend in which any such shares or debentures will participate and of the rights attaching to them (including, in the case of debentures, rights as to interest) and of any restrictions of their transfer;
  - (iv) an indication of the effect of acceptance on the capital and income position of the holder of shares in or debentures of the offeree company; and
- (v) particulars of all material contracts (not being contracts which were entered into in the normal course of business) which were entered into by each of the offeree company and the offeror during the period of two years immediately preceding the date of the offer;

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(3) Part XIII A of the Companies Act 1985 (c. 6) was inserted into that Act by section 172 of and Schedule 12 to the Financial Services Act 1986 (c. 60).

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- (h) particulars of the terms on which shares in or debentures of the offeree company acquired in pursuance of the offer will be transferred and of any restrictions on their transfer;
- (i) whether or not it is proposed, in connection with the offer, that any payment or other benefit be made or given to any director or former director of the offeree company in connection with or as compensation or consideration for his ceasing to be a director or to hold any office held in conjunction with a directorship or, in the case of a former director, to hold any office which he held in conjunction with his former directorship and which he continued to hold after ceasing to be a director and, if it is so proposed, details of each such payment or benefit;
- (j) whether or not there exists any agreement or arrangement between the offeror or any person with whom the offeror has an agreement of the kind described in section 204 of the 1985 Act or article 212 of the 1986 Order and any director or shareholder of the offeree company or any person who has been such a director or shareholder at any time during the period of twelve months immediately preceding the date of the offer, being an agreement or arrangement which is connected with or dependent on the offer, and if there is any such agreement or arrangement particulars of it;
- (k) whether or not the offeror has reason to believe that there has been any material change in the financial position or prospects of the offeree company since the end of the accounting reference period to which the accounts referred to in paragraph 12 of this Schedule relate, and if the offeror has reason to believe that there has been any such change particulars of it;
- (l) whether or not there is any agreement or arrangement whereby any shares or debentures acquired by the offeror in pursuance of the offer will or may be transferred to any other person together with the names of the parties to any such agreement or arrangement and particulars of all shares and debentures in the offeree company held by such persons;
- (m) particulars of any dealings in the shares in or debentures of the offeree company, and, if the offeror is a body corporate, the offeror during the period of twelve months immediately preceding the date of the offer by every person who was a director of either of them at any time during that period, or, if there have been no such dealings, an appropriate negative statement;
- (n) in a case where the offeror is a body corporate which is required to deliver accounts under the 1985 Act or the 1986 Order, particulars of the assets and liabilities as shown in its audited accounts in respect of the latest accounting reference period for which the period for laying and delivering accounts under the relevant legislation has passed or, if accounts in respect of a later accounting reference period have been delivered under the relevant legislation, as shown in those accounts and not the earlier accounts;
- (o) where valuations of assets are given in connection with the offer, the basis on which the valuation was made and the names and addresses of the persons who valued them and particulars of any relevant qualifications; and
- (p) if any profit forecast is given in connection with the offer, a statement of the assumptions on which the forecast is based.

**12.** The document must be accompanied by the following—

- (a) the audited accounts of the offeree company in respect of the latest accounting reference period for which the period for laying and delivering accounts under the 1985 Act or the 1986 Order has passed, or, if accounts in respect of a later accounting reference period have been delivered under the relevant legislation, those accounts and not the earlier ones;
- (b) a letter advising the directors of the offeree company on the financial implications of the offer from a competent person who is independent of and has no substantial financial interest in the offeree company or the offeror, being a letter which sets out the advice that person has given in relation to the offer;

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- (c) a statement by the directors of the offeree company, acting as a board, stating—
  - (i) whether or not there has been any material change in the financial position or prospects of the offeree company since the end of the accounting reference period to which the accounts accompanying the offer document relate and, if there has been any such change, particulars of it;
  - (ii) any interests, in percentage terms, which any of the directors have in the shares in or debentures of the offeree company or any offeror which is a body corporate being interests which, in the case of the offeree company, are required to be entered in the register kept by the company under section 325 of the 1985 Act or article 333 of the 1986 Order or, in the case of an offeror, would be required to be so entered if the director were a director of the offeror and in the case of an offeror which is not a company within the meaning of the 1985 Act or the 1986 Order if the offeror were such a company;
  - (iii) any material interest which any director has in any contract entered into by the offeror and in any contract entered into by any member of any group of which the offeror is a member;
- (d) a statement as to whether or not each director intends to accept the offer in respect of his own beneficial holdings in the offeree company;
- (e) a statement by the directors of any offeror which is a body corporate shares in or debentures of which are the consideration or any part of the consideration for the offer that the information concerning the offeror and those shares or debentures contained in the document is correct;
- (f) if the offeror is making the offer on behalf of another person, a statement by the offeror as to whether or not he has taken any steps to ascertain whether that person will be in a position to implement the offer and, if he has taken any such steps, what those steps are and his opinion as to whether that person will be in a position to implement the offer; and
- (g) a statement that each of the directors of the offeree company, the offeror or, if the offeror is a body corporate, each of the directors of the offeror, are responsible for the information contained in the document insofar as it relates to themselves or their respective bodies corporate and that, to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information is in accordance with the facts and that no material fact has been omitted.