

SCHEDULE 6

Regulation 70

MERGERS AND DIVISIONS

1. This Schedule applies to any reconstruction or amalgamation involving an open-ended investment company which takes the form of a scheme described in paragraph 4.

2. An open-ended investment company may apply to the court under [^{F1}section 896 or 899 of the Companies Act 2006] (power of company to compromise with creditors and members) [^{F2}in respect of] a scheme falling within any of sub-paragraphs (a) to (c) of paragraph 4(1) where—

- (a) the scheme in question involves a compromise or arrangement with its shareholders or creditors or any class of its shareholders or creditors; and
 - (b) the consideration for the transfer or each of the transfers envisaged by the scheme is to be—
 - (i) shares in the transferee company receivable by shareholders of the transferor company; or
 - (ii) where there is more than one transferor company and any one or more of them is a public company, shares in the transferee company receivable by shareholders or members of the transferor companies (as the case may be);
- in each case with or without any cash payment to shareholders.

Textual Amendments

- F1** Words in Sch. 6 para. 2 substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 223(2)(a)** (with arts. 6, 11, 12)
- F2** Words in Sch. 6 para. 2 substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 223(2)(b)** (with arts. 6, 11, 12)

3. A public company may apply to the court under [^{F3}section 896 or 899 of the Companies Act 2006][^{F4}in respect of] a scheme falling within sub-paragraph (b) or (c) of paragraph 4(1) where—

- (a) the scheme in question involves a compromise or arrangement with its members or creditors or any class of its members or creditors; and
 - (b) the consideration for the transfer or each of the transfers envisaged by the scheme is to be—
 - (i) shares in the transferee company receivable by members of the transferor company; or
 - (ii) where there is more than one transferor company and any one or more of them is an open-ended investment company, shares in the transferee company receivable by shareholders or members of the transferor companies (as the case may be);
- in each case with or without any cash payment to shareholders.

Textual Amendments

- F3** Words in Sch. 6 para. 3 substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 223(3)(a)(i)** (with arts. 6, 11, 12)
- F4** Words in Sch. 6 para. 3 substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 223(3)(a)(ii)** (with arts. 6, 11, 12)

4.—(1) The schemes falling within this paragraph are—

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Changes to legislation: There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, SCHEDULE 6. (See end of Document for details)

- (a) any scheme under which the undertaking, property and liabilities of an open-ended investment company are to be transferred to another such company, other than one formed for the purpose of, or in connection with the scheme;
- (b) any scheme under which the undertaking, property and liabilities of two or more bodies corporate, each of which is either—
 - (i) an open-ended investment company; or
 - (ii) a public company,
 are to be transferred to an open-ended investment company formed for the purpose of, or in connection with, the scheme;
- (c) any scheme under which the undertaking, property and liabilities of an open-ended investment company or a public company are to be divided among and transferred to two or more open-ended investment companies whether or not formed for the purpose of, or in connection with, the scheme.

(2) Nothing in this Schedule is to be taken as enabling the court to sanction a scheme under which the whole or any part of the undertaking, property or liabilities of an open-ended investment company may be transferred to any person other than another such company.

[^{F5}5. An application made by virtue of paragraph 2 or 3 shall be treated as one to which Part 27 of the Companies Act 2006 applies (mergers and divisions of public companies), and the provisions of that Part and Part 26 of that Act have effect accordingly, subject to paragraph 6.]

Textual Amendments

F5 Sch. 6 para. 5 substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(4)** (with arts. 6, 11, 12)

6.—(1) [^{F6}The provisions of the Companies Act 2006] referred to in paragraph 5 have effect with such modifications as are necessary or appropriate for the purposes of this Schedule.

(2) In particular, any reference in those provisions to [^{F7}a merger by absorption, a merger by formation of a new company or a division] is to be taken to be a reference to a scheme falling within sub-paragraph (a), (b) or (c) of paragraph 4(1).

(3) Without prejudice to the generality of sub-paragraph (1), the following references in those provisions have effect as follows, unless the context otherwise requires—

- (a) any reference to a scheme is to be taken to be a reference to a scheme falling within any of sub-paragraphs (a) to (c) of paragraph 4(1);
- (b) any reference to a company is to be taken to be a reference to an open-ended investment company;
- (c) any reference to members is to be taken to be a reference to shareholders of an open-ended investment company;
- (d) any reference to the registered office of a company is to be taken to be a reference to the head office of an open-ended investment company;
- (e) any reference to the memorandum and articles of a company is to be taken to be a reference to the instrument of incorporation of an open-ended investment company;
- (f) any reference to a report under section 103 ^{M1} of the 1985 Act (non-cash consideration to be valued before allotment) is to be taken to be a reference to any report with respect to the valuation of any non-cash consideration given for shares in an open-ended investment company which may be required by FSA rules;

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(g) any reference to annual accounts is to be taken to be a reference to the accounts contained in the annual report of an open-ended investment company;

^{F8}(h)

(i) any reference to the requirements of [^{F9}the Companies Act 2006] as to balance sheets forming part of a company's annual accounts is to be taken to be a reference to any requirements arising by virtue of FSA rules as to balance sheets drawn up for the purposes of the accounts contained in the annual report of an open-ended investment company;

(j) any reference to paid up capital is to be taken to be a reference to the share capital of an open-ended investment company.

Textual Amendments

- F6** Words in Sch. 6 para. 6(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(5)(a)** (with arts. 6, 11, 12)
- F7** Words in Sch. 6 para. 6(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(5)(b)** (with arts. 6, 11, 12)
- F8** Sch. 6 para. 6(3)(h) omitted (6.4.2008) by virtue of The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(5)(c)(i)** (with arts. 6, 11, 12)
- F9** Words in Sch. 6 para. 6(3)(i) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(5)(c)(ii)** (with arts. 6, 11, 12)

Marginal Citations

- M1** Amended by the 1986 Act, section 439(1), Schedule 13, Part I.

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Changes to legislation:

There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, SCHEDULE 6.