

SCHEDULE 4

Articles 63 and 64

TAKEOVERS OF RELEVANT UNLISTED COMPANIES

PART I

Requirements Relating to the Offer

1. The terms of the offer must be recommended by all the directors of the company other than any director who is—

- (a) the person by whom, or on whose behalf, an offer is made (“offeror”); or
- (b) a director of the offeror.

2.—(1) This paragraph applies to an offer for debentures or for non-equity share capital.

(2) Where, at the date of the offer, shares carrying 50 per cent or less of the voting rights attributable to the equity share capital are held by or on behalf of the offeror, the offer must include or be accompanied by an offer made by the offeror for the rest of the shares comprised in the equity share capital.

3.—(1) This paragraph applies to an offer for shares comprised in the equity share capital.

(2) Where, at the date of the offer, shares which carry 50 per cent or less of the categories of voting rights described in sub-paragraph (3) are held by or on behalf of the offeror, it must be a condition of the offer that sufficient shares will be acquired or agreed to be acquired by the offeror pursuant to or during the offer so as to result in shares carrying more than 50 per cent of one or both categories of relevant voting rights being held by him or on his behalf.

(3) The categories of voting rights mentioned in sub-paragraph (2) are—

- (a) voting rights exercisable in general meetings of the company;
- (b) voting rights attributable to the equity share capital.

4.—(1) Subject to sub-paragraph (2), the offer must be open for acceptance by every recipient for the period of at least 21 days beginning with the day after the day on which the invitation or inducement in question was first communicated to recipients of the offer.

(2) Sub-paragraph (1) does not apply if the offer is totally withdrawn and all persons released from any obligation incurred under it.

5. The acquisition of the shares or debentures to which the offer relates must not be 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 company in connection with, or as compensation or consideration for,—

- (a) his ceasing to be a director;
- (b) his ceasing to hold any office held in conjunction with any directorship; or
- (c) in the case of a former director, his ceasing 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.

6. The consideration for the shares or debentures must be—

- (a) cash; or
- (b) in the case of an offeror which is a body corporate other than an open-ended investment company, either cash or shares in, or debentures of, the body corporate or any combination of such cash, shares or debentures.

PART II

Accompanying Material

7. An indication of the identity of the offeror and, if the offer is being made on behalf of another person, the identity of that person.

8. An indication of the fact that the terms of the offer are recommended by all directors of the company other than (if that is the case) any director who is the offeror or a director of the offeror.

9. An indication to the effect that any person who is in any doubt about the invitation or inducement should consult a person authorised under the Act.

10. An indication that, except insofar as the offer 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 invitation or inducement in question was first communicated to recipients of the offer.

11. An indication of the date on which the invitation or inducement was first communicated to the recipients of the offer.

12. An indication that 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 company in connection with, or as compensation or consideration for,—

- (a) his ceasing to be a director;
- (b) his ceasing to hold any office held in conjunction with any directorship; or
- (c) in the case of a former director, his ceasing 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.

13. An indication of the place where additional material listed in Part III may be inspected.

14. The audited accounts of the 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, as shown in those accounts and not the earlier accounts.

15. Advice to the directors of the company on the financial implications of the offer which is given by a competent person who is independent of and who has no substantial financial interest in the company or the offeror, being advice which gives the opinion of that person in relation to the offer.

16. An indication by the directors of the company, acting as a board, of the following matters—

- (a) whether or not there has been any material change in the financial position or prospects of the company since the end of the latest accounting reference period in respect of which audited accounts have been delivered to the relevant registrar of companies under the relevant legislation;
- (b) if there has been any such change, the particulars of it;
- (c) any interests, in percentage terms, which any of them have in the shares in or debentures of the company and which 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;
- (d) any interests, in percentage terms, which any of them have in the shares in or debentures of any offeror which is a body corporate and which, if the director were a director of the offeror, would—

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- (i) in the case of a company within the meaning of the 1985 Act or the 1986 Order, be required to be entered in the register kept by the offeror under section 325 of the 1985 Act or article 333 of the 1986 Order; and
- (ii) in any other case, be required to be so entered if the offeror were such a company.

17. An indication of 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.

18. An indication as to whether or not each director intends to accept the offer in respect of his own beneficial holdings in the company.

19. In the case of an offeror which is a body corporate and the shares in or debentures of which are to be the consideration or any part of the consideration for the offer, an indication by the directors of the offeror that the information concerning the offeror and those shares or debentures contained in the document is correct.

20. If the offeror is making the offer on behalf of another person—

- (a) an indication 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;
- (b) if he has taken any such steps, an indication by him as to what those steps are; and
- (c) the offeror's opinion as to whether that person will be in a position to implement the offer.

21. An indication that each of the following—

- (a) each of the directors of the company;
- (b) the offeror; and
- (c) if the offeror is a body corporate, each of the directors of the offeror;

is responsible for the information required by Part I and this Part of this Schedule 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.

22. The particulars of—

- (a) all shares in or debentures of the company; and
- (b) all investments falling within paragraph 17, 19 or 21 of Schedule 1 so far as relating to shares in or debentures of the company;

which are 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.

23. An indication as to whether or not the offer is conditional upon acceptance in respect of a minimum number of shares or debentures being received and, if the offer is so conditional, what the minimum number is.

24. Where the offer is conditional upon acceptances, an indication of the date which is the latest date on which it can become unconditional.

25. If the offer is, or has become, unconditional an indication of the fact that it will remain open until further notice and that at least 14 days notice will be given before it is closed.

26. An indication 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 or articles 421 or 423 of the 1986 Order, that offeror intends to so acquire those shares.

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27. If shares or debentures are to be acquired for cash, an indication of the period within which the payment will be made.

28.—(1) Subject to sub-paragraph (2), 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—

- (a) an indication of the nature and particulars of the offeror's business, its financial and trading prospects and its place of incorporation;
- (b) the following information, in respect of any offeror which is a body corporate and in respect of the company, for the period of five years immediately preceding the date on which the invitation or information in question was first communicated to recipients of the offer—
 - (i) turnover,
 - (ii) profit on ordinary activities before and after tax,
 - (iii) extraordinary items,
 - (iv) profits and loss, and
 - (v) 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.

(2) In the case of a body corporate—

- (a) which was incorporated during the period of five years immediately preceding the date on which the invitation or information in question was first communicated to recipients of the offer; or
- (b) 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 sub-paragraph (1) 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.

29. 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 on their transfer.

30. An indication of the effect of the acceptance on the capital and income position of the holder of the shares in or debentures of the company.

31. Particulars of all material contracts (not being contracts which were entered into in the ordinary course of business) which were entered into by each of the company and the offeror during the period of two years immediately preceding the date on which the invitation or information in question was first communicated to recipients of the offer.

32. Particulars of the terms on which shares in or debentures of the company acquired in pursuance of the offer will be transferred and any restrictions on their transfer.

33. An indication as to 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 company in connection with, or as compensation or consideration for—

- (a) his ceasing to be a director;
- (b) his ceasing to hold any office held in conjunction with any directorship; or
- (c) in the case of a former director, his ceasing 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 such payments or benefits are proposed, details of each one.

- 34.** An indication as to whether or not there exists any agreement or arrangement between—
- (a) 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 216 of the 1986 Order; and
 - (b) any director or shareholder of the 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 on which the invitation or inducement in question was first communicated to recipients 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.

35. An indication whether or not the offeror has reason to believe that there has been any material change in the financial position or prospects of the company since the end of the accounting reference period to which the accounts referred to in paragraph 14 relate, and if the offeror has reason to believe that there has been such a change, the particulars of it.

36. An indication as to 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 company held by such persons.

- 37.** Particulars of any dealings—
- (a) in the shares in or debentures of the company; and
 - (b) if the offeror is a body corporate, in the shares in or debentures of the offeror;

which took place during the period of twelve months immediately preceding the date on which the invitation or inducement in question was first communicated to recipients of the offer and which were entered into by every person who was a director of either the company or the offeror during that period; and, if there have been no such dealings, an indication to that effect.

38. In a case in which 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.

39. 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.

40. If any profit forecast is given in connection with the offer, an indication of the assumptions on which the forecast is based.

PART III

Additional Material Available for Inspection

- 41.** The memorandum and articles of association of the company.
- 42.** If the offeror is a body corporate, the memorandum and articles of association of the offeror or, if there is no such memorandum and articles, any instrument constituting or defining the constitution of the offeror and, in either case, if the relevant document is not written in English, a certified translation in English.
- 43.** In the case of a company that does not fall within paragraph 45—

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- (a) the audited accounts of the company 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
- (b) if accounts have been delivered to the relevant registrar of companies, in respect of a later accounting reference period, a copy of those accounts;

44. In the case of an offeror which is required to deliver accounts to the registrar of companies and which does not fall within paragraph 45—

- (a) 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
- (b) if accounts have been delivered to the relevant registrar of companies in respect of a later accounting reference period, a copy of those accounts.

45. In the case of a company or an offeror—

- (a) which was incorporated during the period of three years immediately preceding the date on which the invitation or inducement in question was first communicated to recipients of the offer; or
- (b) 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 paragraph 43 or 44 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.

46. All existing contracts of service entered into for a period of more than one year between the company and any of its directors and, if the offeror is a body corporate, between the offeror and any of its directors.

47. Any report, letter, valuation or other document any part of which is exhibited or referred to in the information required to be made available by Part I and this Part of this Schedule.

48. 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.

49. All material contracts (if any) of the company and of the offeror (not, in either case, being contracts which were entered into in the ordinary course of business) which were entered into during the period of two years immediately preceding the date on which the invitation or inducement in question was first communicated to recipients of the offer.