

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 Article 418 of the 1986 Order⁽¹⁾ (power of company to compromise with creditors and members) for an order sanctioning a scheme falling within any of heads (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.

3. A public company may apply to the court under Article 418 of the 1986 Order for an order sanctioning a scheme falling within head (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.

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

- (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.

(1) Article 418 was amended by Article 381 of, and paragraph 16 of Schedule 9 to, the Insolvency (Northern Ireland) Order 1989

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(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.

5. For the purposes of this Schedule, Articles 418 to 420 of the 1986 Order are, subject to paragraph 6, to have effect in respect of any application made by virtue of paragraph 2 or 3 as they have effect in respect of applications falling within Article 420A(1) of that Order (that is to say, subject to the provisions of Article 420A of, and Schedule 15B to, that Order (mergers and divisions of public companies))(2).

6.—(1) All the provisions of the 1986 Order 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 a Case 1 Scheme, a Case 2 Scheme or a Case 3 Scheme is to be taken to be a reference to a scheme falling within head (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 heads (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 Article 113(3) of the 1986 Order (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;
- (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;
- (h) any reference to a directors' report, in relation to a company's annual accounts, is to be taken to be a reference to any report of the directors of an open-ended investment company that is contained in the company's annual report;
- (i) any reference to the requirements of the 1986 Order 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 reference to the share capital of an open-ended investment company.

(2) Article 420A of, and Schedule 15A to, the 1986 Order were inserted by the Companies (Mergers and Divisions) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 442) and amended by Article 49(2) of the Companies (No. 2) (Northern Ireland) Order 1990

(3) Article 113 was amended by Article 381 of, and paragraph 5 of Part I of Schedule 9 to, the Insolvency (Northern Ireland) Order 1989

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