

SCHEDULES

^{F1}SCHEDULE 3

Article 67, et passium in Part IV

MANDATORY CONTENTS OF PROSPECTUS

F1 prosp. in part rep. by 1986 c. 60

F1 Order repealed (prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16 and the repeal being partly in force, as to which see individual Articles (with savings (with adaptations) by Companies Act 2006 (Commencement No. 6, Saving and Commencement Nos. 3 and 5 (Amendment)) Order 2008 (S.I. 2008/674), arts. 2(3), {4}, Sch. 2) and subject to amendments (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b)(2), Sch. 1 paras. 135, 147, 148 {Sch. 2 Note 1} (with arts. 6, 11, 12) and subject to amendments (6.4.2008) by S.R. 2008/133, {regs. 2, 3}

PART I

MATTERS TO BE STATED

The company's proprietorship, management and its capital requirement

1.—(1) The prospectus must state—

- (a) the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company;
- (b) the number of shares (if any) fixed by the company's articles as the qualification of a director, and any provision in its articles as to the remuneration of directors; and
- (c) the names, descriptions and addresses of the directors or proposed directors.

(2) As this paragraph applies for the purposes of Article 82(3), sub-paragraph (1)(b) is to be read with the substitution for the reference to the company's articles of a reference to its constitution.

(3) Sub-paragraphs (1)(b) and (1)(c) do not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

2. Where shares are offered to the public for subscription, the prospectus must give particulars as to—

- (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following—
 - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,

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- (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company,
 - (iii) the repayment of any money borrowed by the company in respect of any of the foregoing matters,
 - (iv) working capital, and
- (b) the amounts to be provided in respect of the matters mentioned in sub-paragraph (a) otherwise than out of the proceeds of the issue and the sources of which those amounts are to be provided.

Details relating to the offer

3.—(1) The prospectus must state—

- (a) the time of the opening of the subscription lists; and
- (b) the amount payable on application and allotment on each share (including the amount, if any, payable by way of premium).

(2) In the case of a second or subsequent offer of shares, there must also be stated the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted and the amount (if any) paid on the shares so allotted, including the amount (if any) paid by way of premium.

4.—(1) There must be stated the number, description and amount of any shares in or debentures of the company for which any person has, or is entitled to be given, an option to subscribe.

(2) The following particulars of the option must be given—

- (a) the period during which it is exercisable;
- (b) the price to be paid for shares or debentures subscribed for under it;
- (c) the consideration (if any) given or to be given for it or the right to it;
- (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

(3) References in this paragraph to subscribing for shares or debentures include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

5. The prospectus must state the number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash; and—

- (a) in the latter case the extent to which they are so paid up; and
- (b) in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

Property acquired or to be acquired by the company

6.—(1) For the purposes of paragraphs 7 and 8, “relevant property” is property purchased or acquired by the company, or proposed so to be purchased or acquired,

- (a) which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus; or
- (b) the purchase or acquisition of which has not been completed at the date of the issue of the prospectus.

(2) But those two paragraphs do not apply to property—

- (a) the contract for whose purchase or acquisition was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
- (b) as respects which the amount of the purchase money is not material.

7. As respects any relevant property, the prospectus must state—

- (a) the names and addresses of the vendors;
- (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
- (c) short particulars of any transaction relating to the property completed within the 2 preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.

8. There must be stated the amount (if any) paid or payable as purchase money in cash, shares or debentures for any relevant property, specifying the amount (if any) payable for goodwill.

9.—(1) This paragraph applies for the interpretation of paragraphs 6, 7 and 8.

(2) Every person is deemed a vendor who has entered into any contract (absolute or conditional) for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any property to be acquired by the company is to be taken on lease, paragraphs 6, 7 and 8 apply as if “vendor” included the lessor, “purchase money” included the consideration for the lease, and “sub-purchaser” included a sub-lessee.

(4) For the purposes of paragraph 7, where the vendors or any of them are a firm, the members of the firm are not to be treated as separate vendors.

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Commissions, preliminary expenses, etc.

10.—(1) The prospectus must state—

- (a) the amount (if any) paid within the 2 preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission;
- (b) the amount or estimated amount of any preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable;
- (c) any amount or benefit paid or given within the 2 preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

(2) Sub-paragraph (1)(b), so far as it relates to preliminary expenses, does not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

Contracts

11.—(1) The prospectus must give the dates of, parties to and general nature of every material contract.

(2) This does not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or a contract entered into more than 2 years before the date of issue of the prospectus.

Auditors

12. The prospectus must state the names and addresses of the company's auditors (if any).

Interests of directors

13.—(1) The prospectus must give full particulars of—

- (a) the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company; or
- (b) where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm.

(2) With the particulars under sub-paragraph (1)(b) must be provided a statement of all sums paid or agreed to be paid to the director or the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or the firm in connection with the promotion or formation of the company.

(3) This paragraph does not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

Other matters

14. If the prospectus invites the public to subscribe for shares in the company and the company's share capital is divided into different classes of shares, the prospectus must state the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

15. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the prospectus must state the length of time during which the business of the company (or the business to be acquired, as the case may be) has been carried on.

PART II

AUDITORS' AND ACCOUNTANTS' REPORTS TO BE SET OUT IN PROSPECTUS

Auditors' report

- 16.—**(1) The prospectus shall set out a report by the company's auditors with respect to—
- (a) profits and losses and assets and liabilities, in accordance with sub-paragraphs (2) and (3), as the case requires, and
 - (b) the rates of the dividends (if any) paid by the company in respect of each class of shares in respect of each of the 5 financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years.

If no accounts have been made up in respect of any part of the 5 years ending on a date 3 months before the issue of the prospectus, the report shall contain a statement of that fact.

- 16.—**(2) If the company has no^[F2] subsidiary undertakings], the report shall—
- (a) deal with profits and losses of the company in respect of each of the 5 financial years immediately preceding the issue of the prospectus; and
 - (b) deal with the assets and liabilities of the company at the last date to which the company's accounts were made up.

- ^[F2](3) If the company has subsidiary undertakings, the report shall—
- (a) deal separately with the company's profits and losses as provided by sub#paragraph (2), and in addition deal either—
 - (i) as a whole with the combined profits or losses of its subsidiary undertakings, so far as they concern members of the company, or
 - (ii) individually with the profits or losses of each of its subsidiary undertakings, so far as they concern members of the company,or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and (so far as they concern members of the company) with the combined profits and losses of its subsidiary undertakings; and
 - (b) deal separately with the company's assets and liabilities as provided by sub#paragraph (2), and in addition deal either—

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- (i) as a whole with the combined assets and liabilities of its subsidiary undertakings, with or without the company's assets and liabilities, or
- (ii) individually with the assets and liabilities of each of its subsidiary undertakings, indicating, as respects the assets and liabilities of its subsidiary undertakings, the allowance to be made for persons other than members of the company.]

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Accountants' reports

17. If the proceeds of the issue of the shares or debentures are to be applied directly or indirectly in the purchase of any business, or any part of the proceeds of the issue is to be so applied, there shall be set out in the prospectus a report made by accountants upon—

- (a) the profits or losses of the business in respect of each of the 5 financial years immediately preceding the issue of the prospectus, and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

18.—(1) The following provisions apply if—

- (a) the proceeds of the issue are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other undertaking, or any part of the proceeds is to be so applied, and
- (b) by reason of that acquisition or anything to be done in consequence of or in connection with it, that undertaking will become a subsidiary undertaking of the company.

(2) There shall be set out in the prospectus a report made by accountants upon—

- (a) the profits or losses of the other undertaking in respect of each of the 5 financial years immediately preceding the issue of the prospectus, and
- (b) the assets and liabilities of the other undertaking at the last date to which its accounts were made up.

(3) The report shall—

- (a) indicate how the profits or losses of the other undertaking would in respect of the shares to be acquired have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired, and
- (b) where the other undertaking is a parent undertaking, deal with the profits or losses and the assets and liabilities of the undertaking and its subsidiary undertakings in the manner provided by paragraph 16(3) in relation to the company and its subsidiary undertakings.

(4) In this paragraph “undertaking” and “shares”, in relation to an undertaking, have the same meaning as in Part VIII of this Order.

Provisions interpreting preceding paragraphs, and modifying them in certain cases

19. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 5 years, the accounts of the company or business have only been made

up in respect of 4 years, 3 years, 2 years or one year, the preceding paragraphs of this Part have effect as if references to 4 years, 3 years, 2 years or one year (as the case may be) were substituted for references to 5 years.

20. “Financial year” in this Part means the year in respect of which the accounts of the company or of the business (as the case may be) are made up; and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts have been made up for a period greater or less than one year, that greater or less period is for the purposes of this Part deemed to be a financial year.

21. Any report required by this Part shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary, or shall make those adjustments and indicate that adjustments have been made.

22.—(1) A report required by paragraph 17 or 18 shall be made by accountants qualified under this Order for appointment as auditors of a company.

[^{F3}(2) Such a report shall not be made by an accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of—

- (a) the company or any of its subsidiary undertakings,
- (b) a parent undertaking of the company or any subsidiary undertaking of such an undertaking.]

In this paragraph, “officer” includes a proposed director, but not an auditor.

(3) The accountants making any report required for the purposes of paragraph 17 or 18 shall be named in the prospectus.

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