

SCHEDULE 1

AMENDMENTS TO THE ACT

5. For sections 84 to 87 (and the cross-heading immediately preceding those sections), substitute—

“Transferable securities: public offers and admission to trading

Matters which may be dealt with by prospectus rules

- 84.**—(1) Prospectus rules may make provision as to—
- (a) the required form and content of a prospectus (including a summary);
 - (b) the cases in which a summary need not be included in a prospectus;
 - (c) the languages which may be used in a prospectus (including a summary);
 - (d) the determination of the persons responsible for a prospectus;
 - (e) the manner in which applications to the competent authority for the approval of a prospectus are to be made.
- (2) Prospectus rules may also make provision as to—
- (a) the period of validity of a prospectus;
 - (b) the disclosure of the maximum price or of the criteria or conditions according to which the final offer price is to be determined, if that information is not contained in a prospectus;
 - (c) the disclosure of the amount of the transferable securities which are to be offered to the public or of the criteria or conditions according to which that amount is to be determined, if that information is not contained in a prospectus;
 - (d) the required form and content of other summary documents (including the languages which may be used in such a document);
 - (e) the ways in which a prospectus that has been approved by the competent authority may be made available to the public;
 - (f) the disclosure, publication or other communication of such information as the competent authority may reasonably stipulate;
 - (g) the principles to be observed in relation to advertisements in connection with an offer of transferable securities to the public or admission of transferable securities to trading on a regulated market and the enforcement of those principles;
 - (h) the suspension of trading in transferable securities where continued trading would be detrimental to the interests of investors;
 - (i) elections under section 87 or under Article 2.1(m)(iii) of the prospectus directive as applied for the purposes of this Part by section 102C.
- (3) Prospectus rules may also make provision as to—
- (a) access to the register of investors maintained under section 87R; and
 - (b) the supply of information from that register.
- (4) Prospectus rules may make provision for the purpose of dealing with matters arising out of or related to any provision of the prospectus directive.
- (5) In relation to cases where the home State in relation to an issuer of transferable securities is an EEA State other than the United Kingdom, prospectus rules may make

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provision for the recognition of elections made in relation to such securities under the law of that State in accordance with Article 1.3 or 2.1(m)(iii) of the prospectus directive.

(6) In relation to a document relating to transferable securities issued by an issuer incorporated in a non-EEA State and drawn up in accordance with the law of that State, prospectus rules may make provision as to the approval of that document as a prospectus.

(7) Nothing in this section affects the competent authority's general power to make prospectus rules.

Prohibition of dealing etc. in transferable securities without approved prospectus

85.—(1) It is unlawful for transferable securities to which this subsection applies to be offered to the public in the United Kingdom unless an approved prospectus has been made available to the public before the offer is made.

(2) It is unlawful to request the admission of transferable securities to which this subsection applies to trading on a regulated market situated or operating in the United Kingdom unless an approved prospectus has been made available to the public before the request is made.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(4) A contravention of subsection (1) or (2) is actionable, at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(5) Subsection (1) applies to all transferable securities other than—

- (a) those listed in Schedule 11A;
- (b) such other transferable securities as may be specified in prospectus rules.

(6) Subsection (2) applies to all transferable securities other than—

- (a) those listed in Part 1 of Schedule 11A;
- (b) such other transferable securities as may be specified in prospectus rules.

(7) "Approved prospectus" means, in relation to transferable securities to which this section applies, a prospectus approved by the competent authority of the home State in relation to the issuer of the securities.

Exempt offers to the public

86.—(1) A person does not contravene section 85(1) if—

- (a) the offer is made to or directed at qualified investors only;
- (b) the offer is made to or directed at fewer than 100 persons, other than qualified investors, per EEA State;
- (c) the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least 50,000 euros (or an equivalent amount);
- (d) the transferable securities being offered are denominated in amounts of at least 50,000 euros (or equivalent amounts); or

- (e) the total consideration for the transferable securities being offered cannot exceed 100,000 euros (or an equivalent amount).

(2) Where—

- (a) a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within Article 2.1(e)(i) of the prospectus directive to act as his agent, and
- (b) the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable securities on the client’s behalf without reference to the client,

an offer made to or directed at the qualified investor is not to be regarded for the purposes of subsection (1) as also having been made to or directed at the client.

(3) For the purposes of subsection (1)(b), the making of an offer of transferable securities to—

- (a) trustees of a trust,
- (b) members of a partnership in their capacity as such, or
- (c) two or more persons jointly,

is to be treated as the making of an offer to a single person.

(4) In determining whether subsection (1)(e) is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which—

- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and
- (b) had previously satisfied subsection (1)(e).

(5) For the purposes of this section, an amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another currency or unit of account.

(6) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.

(7) “Qualified investor” means—

- (a) an entity falling within Article 2.1(e)(i), (ii) or (iii) of the prospectus directive;
- (b) an investor registered on the register maintained by the competent authority under section 87R;
- (c) an investor authorised by an EEA State other than the United Kingdom to be considered as a qualified investor for the purposes of the prospectus directive.

Election to have prospectus

87.—(1) A person who proposes—

- (a) to issue transferable securities to which this section applies,
- (b) to offer to the public transferable securities to which this section applies, or
- (c) to request the admission to a regulated market of transferable securities to which this section applies,

may elect, in accordance with prospectus rules, to have a prospectus in relation to the securities.

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(2) If a person makes such an election, the provisions of this Part and of prospectus rules apply in relation to those transferable securities as if, in relation to an offer of the securities to the public or the admission of the securities to trading on a regulated market, they were transferable securities for which an approved prospectus would be required as a result of section 85.

(3) Listing rules made under section 79 do not apply to securities which are the subject of an election.

(4) The transferable securities to which this section applies are those which fall within any of the following paragraphs of Schedule 11A—

- (a) paragraph 2,
- (b) paragraph 4,
- (c) paragraph 8, or
- (d) paragraph 9,

where the United Kingdom is the home State in relation to the issuer of the securities.

Approval of prospectus

Criteria for approval of prospectus by competent authority

87A.—(1) The competent authority may not approve a prospectus unless it is satisfied that—

- (a) the United Kingdom is the home State in relation to the issuer of the transferable securities to which it relates,
- (b) the prospectus contains the necessary information, and
- (c) all of the other requirements imposed by or in accordance with this Part or the prospectus directive have been complied with (so far as those requirements apply to a prospectus for the transferable securities in question).

(2) The necessary information is the information necessary to enable investors to make an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the transferable securities and of any guarantor; and
- (b) the rights attaching to the transferable securities.

(3) The necessary information must be presented in a form which is comprehensible and easy to analyse.

(4) The necessary information must be prepared having regard to the particular nature of the transferable securities and their issuer.

(5) The prospectus must include a summary (unless the transferable securities in question are ones in relation to which prospectus rules provide that a summary is not required).

(6) The summary must, briefly and in non-technical language, convey the essential characteristics of, and risks associated with, the issuer, any guarantor and the transferable securities to which the prospectus relates.

(7) Where the prospectus for which approval is sought does not include the final offer price or the amount of transferable securities to be offered to the public, the applicant must inform the competent authority in writing of that information as soon as that element is finalised.

(8) “Prospectus” (except in subsection (5)) includes a supplementary prospectus.

Exemptions from disclosure

87B.—(1) The competent authority may authorise the omission from a prospectus of any information, the inclusion of which would otherwise be required, on the ground—

- (a) that its disclosure would be contrary to the public interest;
- (b) that its disclosure would be seriously detrimental to the issuer, provided that the omission would be unlikely to mislead the public with regard to any facts or circumstances which are essential for an informed assessment of the kind mentioned in section 87A(2); or
- (c) that the information is only of minor importance for a specific offer to the public or admission to trading on a regulated market and unlikely to influence an informed assessment of the kind mentioned in section 87A(2).

(2) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information would be contrary to the public interest.

(3) The competent authority is entitled to act on any such certificate in exercising its powers under subsection (1)(a).

(4) This section does not affect any powers of the competent authority under prospectus rules.

(5) “Prospectus” includes a supplementary prospectus.

Consideration of application for approval

87C.—(1) The competent authority must notify the applicant of its decision on an application for approval of a prospectus before the end of the period for consideration.

(2) The period for consideration—

- (a) begins with the first working day after the date on which the application is received; but
- (b) if the competent authority gives a notice under subsection (4), is to be treated as beginning with the first working day after the date on which the notice is complied with.

(3) The period for consideration is—

- (a) except in the case of a new issuer, 10 working days; or
- (b) in that case, 20 working days.

(4) The competent authority may by notice in writing require a person who has applied for approval of a prospectus to provide—

- (a) specified documents or documents of a specified description, or
- (b) specified information or information of a specified description.

(5) No notice under subsection (4) may be given after the end of the period, beginning with the first working day after the date on which the application is received, of—

- (a) except in the case of a new issuer, 10 working days; or
- (b) in that case, 20 working days.

(6) Subsection (4) applies only to information and documents reasonably required in connection with the exercise by the competent authority of its functions in relation to the application.

(7) The competent authority may require any information provided under this section to be provided in such form as it may reasonably require.

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- (8) The competent authority may require—
- (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
 - (b) any document produced to be authenticated in such manner,
- as it may reasonably require.
- (9) The competent authority must notify the applicant of its decision on an application for approval of a supplementary prospectus before the end of the period of 7 working days beginning with the date on which the application is received; and subsections (4) and (6) to (8) apply to such an application as they apply to an application for approval of a prospectus.
- (10) The competent authority’s failure to comply with subsection (1) or (9) does not constitute approval of the application in question.
- (11) “New issuer” means an issuer of transferable securities which—
- (a) does not have transferable securities admitted to trading on any regulated market; and
 - (b) has not previously offered transferable securities to the public.

Procedure for decision on application for approval

- 87D.**—(1) If the competent authority approves a prospectus, it must give the applicant written notice.
- (2) If the competent authority proposes to refuse to approve a prospectus, it must give the applicant written notice.
- (3) The notice must state the competent authority’s reasons for the proposed refusal.
- (4) If the competent authority decides to refuse to approve a prospectus, it must give the applicant written notice.
- (5) The notice must—
- (a) give the competent authority’s reasons for refusing the application; and
 - (b) inform the applicant of his right to refer the matter to the Tribunal.
- (6) If the competent authority refuses to approve a prospectus, the applicant may refer the matter to the Tribunal.
- (7) In this section “prospectus” includes a supplementary prospectus.

Transfer of application for approval of a prospectus

Transfer by competent authority of application for approval

- 87E.**—(1) The competent authority may transfer an application for the approval of a prospectus or a supplementary prospectus to the competent authority of another EEA State (“the transferee authority”).
- (2) Before doing so, the competent authority must obtain the agreement of the transferee authority.
- (3) The competent authority must inform the applicant of the transfer within 3 working days beginning with the first working day after the date of the transfer.
- (4) On making a transfer under subsection (1), the competent authority ceases to have functions under this Part in relation to the application transferred.

Transfer to competent authority of application for approval

87F.—(1) Where the competent authority agrees to the transfer to it of an application for the approval of a prospectus made to the competent authority of another EEA State—

- (a) the United Kingdom is to be treated for the purposes of this Part as the home State in relation to the issuer of the transferable securities to which the prospectus relates, and
- (b) this Part applies to the application as if it had been made to the competent authority but with the modification in subsection (2).

(2) Section 87C applies as if the date of the transfer were the date on which the application was received by the competent authority.

Supplementary prospectus

Supplementary prospectus

87G.—(1) Subsection (2) applies if, during the relevant period, there arises or is noted a significant new factor, material mistake or inaccuracy relating to the information included in a prospectus approved by the competent authority.

(2) The person on whose application the prospectus was approved must, in accordance with prospectus rules, submit a supplementary prospectus containing details of the new factor, mistake or inaccuracy to the competent authority for its approval.

(3) The relevant period begins when the prospectus is approved and ends—

- (a) with the closure of the offer of the transferable securities to which the prospectus relates; or
- (b) when trading in those securities on a regulated market begins.

(4) “Significant” means significant for the purposes of making an informed assessment of the kind mentioned in section 87A(2).

(5) Any person responsible for the prospectus who is aware of any new factor, mistake or inaccuracy which may require the submission of a supplementary prospectus in accordance with subsection (2) must give notice of it to—

- (a) the issuer of the transferable securities to which the prospectus relates, and
- (b) the person on whose application the prospectus was approved.

(6) A supplementary prospectus must provide sufficient information to correct any mistake or inaccuracy which gave rise to the need for it.

(7) Subsection (1) applies also to information contained in any supplementary prospectus published under this section.

Passporting

Prospectus approved in another EEA State

87H.—(1) A prospectus approved by the competent authority of an EEA State other than the United Kingdom is not an approved prospectus for the purposes of section 85 unless that authority has provided the competent authority with—

- (a) a certificate of approval;
- (b) a copy of the prospectus as approved; and

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- (c) if requested by the competent authority, a translation of the summary of the prospectus.
- (2) A document is not a certificate of approval unless it states that the prospectus—
 - (a) has been drawn up in accordance with the prospectus directive; and
 - (b) has been approved, in accordance with that directive, by the competent authority providing the certificate.
- (3) A document is not a certificate of approval unless it states whether (and, if so, why) the competent authority providing it authorised, in accordance with the prospectus directive, the omission from the prospectus of information which would otherwise have been required to be included.
- (4) “Prospectus” includes a supplementary prospectus.

Provision of information to host Member State

- 87I.**—(1) The competent authority must, if requested to do so, supply the competent authority of a specified EEA State with—
- (a) a certificate of approval;
 - (b) a copy of the specified prospectus (as approved by the competent authority); and
 - (c) a translation of the summary of the specified prospectus (if the request states that one has been requested by the other competent authority).
- (2) Only the following may make a request under this section—
- (a) the issuer of the transferable securities to which the specified prospectus relates;
 - (b) a person who wishes to offer the transferable securities to which the specified prospectus relates to the public in an EEA State other than (or as well as) the United Kingdom;
 - (c) a person requesting the admission of the transferable securities to which the specified prospectus relates to a regulated market situated or operating in an EEA State other than (or as well as) the United Kingdom.
- (3) A certificate of approval must state that the prospectus—
- (a) has been drawn up in accordance with this Part and the prospectus directive; and
 - (b) has been approved, in accordance with those provisions, by the competent authority.
- (4) A certificate of approval must state whether (and, if so, why) the competent authority authorised, in accordance with section 87B, the omission from the prospectus of information which would otherwise have been required to be included.
- (5) The competent authority must comply with a request under this section—
- (a) if the prospectus has been approved before the request is made, within 3 working days beginning with the date of the request; or
 - (b) if the request is submitted with an application for the approval of the prospectus, on the first working day after the date on which it approves the prospectus.
- (6) “Prospectus” includes a supplementary prospectus.
- (7) “Specified” means specified in a request made for the purposes of this section.

Transferable securities: powers of competent authority

Requirements imposed as condition of approval

87J.—(1) As a condition of approving a prospectus, the competent authority may by notice in writing—

- (a) require the inclusion in the prospectus of such supplementary information necessary for investor protection as the competent authority may specify;
 - (b) require a person controlling, or controlled by, the applicant to provide specified information or documents;
 - (c) require an auditor or manager of the applicant to provide specified information or documents;
 - (d) require a financial intermediary commissioned to assist either in carrying out the offer to the public of the transferable securities to which the prospectus relates or in requesting their admission to trading on a regulated market, to provide specified information or documents.
- (2) “Specified” means specified in the notice.
- (3) “Prospectus” includes a supplementary prospectus.

Power to suspend or prohibit offer to the public

87K.—(1) This section applies where a person (“the offeror”) has made an offer of transferable securities to the public in the United Kingdom (“the offer”).

(2) If the competent authority has reasonable grounds for suspecting that an applicable provision has been infringed, it may—

- (a) require the offeror to suspend the offer for a period not exceeding 10 working days;
 - (b) require a person not to advertise the offer, or to take such steps as the authority may specify to suspend any existing advertisement of the offer, for a period not exceeding 10 working days.
- (3) If the competent authority has reasonable grounds for suspecting that it is likely that an applicable provision will be infringed, it may require the offeror to withdraw the offer.
- (4) If the competent authority finds that an applicable provision has been infringed, it may require the offeror to withdraw the offer.
- (5) “An applicable provision” means—
- (a) a provision of this Part,
 - (b) a provision contained in prospectus rules,
 - (c) any other provision made in accordance with the prospectus directive,
- applicable in relation to the offer.

Power to suspend or prohibit admission to trading on a regulated market

87L.—(1) This section applies where a person has requested the admission of transferable securities to trading on a regulated market situated or operating in the United Kingdom.

(2) If the competent authority has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have not yet been admitted to trading on the regulated market in question, it may—

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- (a) require the person requesting admission to suspend the request for a period not exceeding 10 working days;
 - (b) require a person not to advertise the securities to which it relates, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.
- (3) If the competent authority has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have been admitted to trading on the regulated market in question, it may—
- (a) require the market operator to suspend trading in the securities for a period not exceeding 10 working days;
 - (b) require a person not to advertise the securities, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.
- (4) If the competent authority finds that an applicable provision has been infringed, it may require the market operator to prohibit trading in the securities on the regulated market in question.
- (5) “An applicable provision” means—
- (a) a provision of this Part,
 - (b) a provision contained in prospectus rules,
 - (c) any other provision made in accordance with the prospectus directive,
- applicable in relation to the admission of the transferable securities to trading on the regulated market in question.

Public censure of issuer

- 87M.**—(1) If the competent authority finds that—
- (a) an issuer of transferable securities,
 - (b) a person offering transferable securities to the public, or
 - (c) a person requesting the admission of transferable securities to trading on a regulated market,
- is failing or has failed to comply with his obligations under an applicable provision, it may publish a statement to that effect.
- (2) If the competent authority proposes to publish a statement, it must give the person a warning notice setting out the terms of the proposed statement.
- (3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the person a decision notice setting out the terms of the statement.
- (4) “An applicable provision” means—
- (a) a provision of this Part,
 - (b) a provision contained in prospectus rules,
 - (c) any other provision made in accordance with the prospectus directive,
- applicable to a prospectus in relation to the transferable securities in question.
- (5) “Prospectus” includes a supplementary prospectus.

Right to refer matters to the Tribunal

87N.—(1) A person to whom a decision notice is given under section 87M may refer the matter to the Tribunal.

(2) A person to whom a notice is given under section 87O may refer the matter to the Tribunal.

Procedure under sections 87K and 87L

87O.—(1) A requirement under section 87K or 87L takes effect—

- (a) immediately, if the notice under subsection (2) states that that is the case;
- (b) in any other case, on such date as may be specified in that notice.

(2) If the competent authority—

- (a) proposes to exercise the powers in section 87K or 87L in relation to a person, or
- (b) exercises any of those powers in relation to a person with immediate effect,

it must give that person written notice.

(3) The notice must—

- (a) give details of the competent authority's action or proposed action;
- (b) state the competent authority's reasons for taking the action in question and choosing the date on which it took effect or takes effect;
- (c) inform the recipient that he may make representations to the competent authority within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);
- (d) inform him of the date on which the action took effect or takes effect; and
- (e) inform him of his right to refer the matter to the Tribunal.

(4) The competent authority may extend the period within which representations may be made to it.

(5) If, having considered any representations made to it, the competent authority decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

(6) A notice given under subsection (5) must inform that person, where relevant, of his right to refer the matter to the Tribunal.

(7) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(8) If a notice under this section relates to the exercise of the power conferred by section 87L(3), the notice must also be given to the person at whose request the transferable securities were admitted to trading on the regulated market.

Exercise of powers at request of competent authority of another EEA State

87P.—(1) This section applies if—

- (a) the competent authority of an EEA State other than the United Kingdom has approved a prospectus,
- (b) the transferable securities to which the prospectus relates have been offered to the public in the United Kingdom or their admission to trading on a regulated market has been requested, and

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- (c) that competent authority makes a request that the competent authority assist it in the performance of its functions under the law of that State in connection with the prospectus directive.
- (2) For the purpose of complying with the request mentioned in subsection (1)(c), the powers conferred by sections 87K and 87L may be exercised as if the prospectus were one which had been approved by the competent authority.
- (3) Section 87N does not apply to an exercise of those powers as a result of this section.
- (4) Section 87O does apply to such an exercise of those powers but with the omission of subsections (3)(e), (6) and (7).

Rights of investors

Right of investor to withdraw

- 87Q.**—(1) Where a person agrees to buy or subscribe for transferable securities in circumstances where the final offer price or the amount of transferable securities to be offered to the public is not included in the prospectus, he may withdraw his acceptance before the end of the withdrawal period.
- (2) The withdrawal period—
 - (a) begins with the investor’s acceptance; and
 - (b) ends at the end of the second working day after the date on which the competent authority is informed of the information in accordance with section 87A(7).
 - (3) Subsection (1) does not apply if the prospectus contains—
 - (a) in the case of the amount of transferable securities to be offered to the public, the criteria or conditions (or both) according to which that element will be determined, or
 - (b) in the case of price, the criteria or conditions (or both) according to which that element will be determined or the maximum price.
 - (4) Where a supplementary prospectus has been published and, prior to the publication, a person agreed to buy or subscribe for transferable securities to which it relates, he may withdraw his acceptance before the end of the period of 2 working days beginning with the first working day after the date on which the supplementary prospectus was published.

Registered investors

Register of investors

- 87R.**—(1) The competent authority must establish and maintain, in accordance with this section and prospectus rules, a register of investors for the purposes of section 86.
- (2) An individual may not be entered in the register unless—
 - (a) he is resident in the United Kingdom; and
 - (b) he meets at least two of the criteria mentioned in Article 2.2 of the prospectus directive.
 - (3) A company may not be entered in the register unless—
 - (a) it falls within the meaning of “small and medium-sized enterprises” in Article 2.1 of the prospectus directive; and
 - (b) its registered office is in the United Kingdom.

(4) A person who does not fall within subsection (2) or (3) may not be entered in the register.”