



Companies Act 2006

2006 CHAPTER 46

PART 28

TAKEOVERS ETC

Modifications etc. (not altering text)

- C1** Pts. 1-39 (except for Pt. 7 and ss. 662-669), 45-47 extended (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 2**

CHAPTER 1

THE TAKEOVER PANEL

Modifications etc. (not altering text)

- C2** Pt. 28 Ch. 21 extended (Isle of Man) (with modifications) (1.3.2009) by [The Companies Act 2006 \(Extension of Takeover Panel Provisions\) \(Isle of Man\) Order 2008 \(S.I. 2008/3122\)](#), **art. 2**, Sch.

The Panel and its rules

942 The Panel

- (1) The body known as the Panel on Takeovers and Mergers (“the Panel”) is to have the functions conferred on it by or under this Chapter.
- (2) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions.
- (3) The Panel may make arrangements for any of its functions to be discharged by—

Status: Point in time view as at 13/06/2014.

Changes to legislation: Companies Act 2006, Part 28 is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) a committee or sub-committee of the Panel, or
- (b) an officer or member of staff of the Panel, or a person acting as such.

This is subject to section 943(4) and (5).

943 Rules

- (1) The Panel must make rules giving effect to Articles 3.1, 4.2, 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers Directive.
- (2) Rules made by the Panel may also make other provision—
 - (a) for or in connection with the regulation of—
 - (i) takeover bids,
 - (ii) merger transactions, and
 - (iii) transactions (not falling within sub-paragraph (i) or (ii)) that have or may have, directly or indirectly, an effect on the ownership or control of companies;
 - (b) for or in connection with the regulation of things done in consequence of, or otherwise in relation to, any such bid or transaction;
 - (c) about cases where—
 - (i) any such bid or transaction is, or has been, contemplated or apprehended, or
 - (ii) an announcement is made denying that any such bid or transaction is intended.
- (3) The provision that may be made under subsection (2) includes, in particular, provision for a matter that is, or is similar to, a matter provided for by the Panel in the City Code on Takeovers and Mergers as it had effect immediately before the passing of this Act.
- (4) In relation to rules made by virtue of section 957 (fees and charges), functions under this section may be discharged either by the Panel itself or by a committee of the Panel (but not otherwise).
- (5) In relation to rules of any other description, the Panel must discharge its functions under this section by a committee of the Panel.
- (6) Section 1 (meaning of “company”) does not apply for the purposes of this section.
- (7) In this section “takeover bid” includes a takeover bid within the meaning of the Takeovers Directive.
- (8) In this Chapter “the Takeovers Directive” means Directive [2004/25/EC](#) of the European Parliament and of the Council.
- (9) A reference to rules in the following provisions of this Chapter is to rules under this section.

Commencement Information

- II** S. 943 wholly in force at 6.4.2007; s. 943 not in force at Royal Assent, see s. 1300; s. 943 wholly in force at 6.4.2007 by [S.I. 2007/1093](#) {art. 2(1)(b)} (subject to transitional adaptations in Sch. 1 para. 2(2) (which Sch. 1 was revoked by S.I. 2008/2860, art. 6))

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944 Further provisions about rules

- (1) Rules may—
- (a) make different provision for different purposes;
 - (b) make provision subject to exceptions or exemptions;
 - (c) contain incidental, supplemental, consequential or transitional provision;
 - (d) authorise the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances.

Rules made by virtue of paragraph (d) must require the Panel to give reasons for acting as mentioned in that paragraph.

- (2) Rules must be made by an instrument in writing.
- (3) Immediately after an instrument containing rules is made, the text must be made available to the public, with or without payment, in whatever way the Panel thinks appropriate.
- (4) A person is not to be taken to have contravened a rule if he shows that at the time of the alleged contravention the text of the rule had not been made available as required by subsection (3).
- (5) The production of a printed copy of an instrument purporting to be made by the Panel on which is endorsed a certificate signed by an officer of the Panel authorised by it for that purpose and stating—
- (a) that the instrument was made by the Panel,
 - (b) that the copy is a true copy of the instrument, and
 - (c) that on a specified date the text of the instrument was made available to the public as required by subsection (3),
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (6) A certificate purporting to be signed as mentioned in subsection (5) is to be treated as having been properly signed unless the contrary is shown.
- (7) A person who wishes in any legal proceedings to rely on an instrument by which rules are made may require the Panel to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (5).

945 Rulings

- (1) The Panel may give rulings on the interpretation, application or effect of rules.
- (2) To the extent and in the circumstances specified in rules, and subject to any review or appeal, a ruling has binding effect.

946 Directions

Rules may contain provision conferring power on the Panel to give any direction that appears to the Panel to be necessary in order—

- (a) to restrain a person from acting (or continuing to act) in breach of rules;
- (b) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules;
- (c) otherwise to secure compliance with rules.

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Information

947 Power to require documents and information

- (1) The Panel may by notice in writing require a person—
 - (a) to produce any documents that are specified or described in the notice;
 - (b) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice.
- (2) A requirement under subsection (1) must be complied with—
 - (a) at a place specified in the notice, and
 - (b) before the end of such reasonable period as may be so specified.
- (3) This section applies only to documents and information reasonably required in connection with the exercise by the Panel of its functions.
- (4) The Panel may require—
 - (a) any document produced to be authenticated, or
 - (b) any information provided (whether in a document or otherwise) to be verified, in such manner as it may reasonably require.
- (5) The Panel may authorise a person to exercise any of its powers under this section.
- (6) A person exercising a power by virtue of subsection (5) must, if required to do so, produce evidence of his authority to exercise the power.
- (7) The production of a document in pursuance of this section does not affect any lien that a person has on the document.
- (8) The Panel may take copies of or extracts from a document produced in pursuance of this section.
- (9) A reference in this section to the production of a document includes a reference to the production of—
 - (a) a hard copy of information recorded otherwise than in hard copy form, or
 - (b) information in a form from which a hard copy can be readily obtained.
- (10) A person is not required by this section to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

948 Restrictions on disclosure

- (1) This section applies to information (in whatever form)—
 - (a) relating to the private affairs of an individual, or
 - (b) relating to any particular business,that is provided to the Panel in connection with the exercise of its functions.
- (2) No such information may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or (as the case may be) the person for the time being carrying on that business.
- (3) Subsection (2) does not apply to any disclosure of information that—

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- (a) is made for the purpose of facilitating the carrying out by the Panel of any of its functions,
 - (b) is made to a person specified in Part 1 of Schedule 2,
 - (c) is of a description specified in Part 2 of that Schedule, or
 - (d) is made in accordance with Part 3 of that Schedule.
- (4) The Secretary of State may amend Schedule 2 by order subject to negative resolution procedure.
- (5) An order under subsection (4) must not—
- (a) amend Part 1 of Schedule 2 by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
 - (b) amend Part 2 of Schedule 2 by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
 - (c) amend Part 3 of Schedule 2 so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.
- (6) Subsection (2) does not apply to—
- (a) the disclosure by an authority within subsection (7) of information disclosed to it by the Panel in reliance on subsection (3);
 - (b) the disclosure of such information by anyone who has obtained it directly or indirectly from an authority within subsection (7).
- (7) The authorities within this subsection are—
- [^{F1}(a) the Financial Conduct Authority;
 - (aa) the Prudential Regulation Authority;
 - (ab) the Bank of England;]
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in an EEA State other than the United Kingdom, that are similar to the Panel's functions or those of the [^{F2}Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England].
- (8) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (9) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).

Textual Amendments

- F1** S. 948(7)(a)-(ab) substituted for s. 948(7)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 118\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F2** Words in s. 948(7)(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 118\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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Commencement Information

- I2** S. 948 wholly in force at 6.4.2007; s. 948 not in force at Royal Assent, see s. 1300; s. 948 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); s. 948 wholly in force at 6.4.2007 by [S.I. 2007/1093](#) {[art. 2\(1\)\(b\)](#)}}

949 Offence of disclosure in contravention of section 948

- (1) A person who discloses information in contravention of section 948 is guilty of an offence, unless—
 - (a) he did not know, and had no reason to suspect, that the information had been provided as mentioned in section 948(1), or
 - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (2) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) Where a company or other body corporate commits an offence under this section, an offence is also committed by every officer of the company or other body corporate who is in default.

Co-operation

950 Panel's duty of co-operation

- (1) The Panel must take such steps as it considers appropriate to co-operate with—
 - ^{F3}(a) the Financial Conduct Authority;
 - (aa) the Prudential Regulation Authority;
 - (ab) the Bank of England;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the ^{F4}Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England].
- (2) Co-operation may include the sharing of information that the Panel is not prevented from disclosing.

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Textual Amendments

- F3** S. 950(1)(a)-(ab) substituted for s. 950(1)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 119\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F4** Words in s. 950(1)(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 119\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Hearings and appeals

951 Hearings and appeals

- (1) Rules must provide for a decision of the Panel to be subject to review by a committee of the Panel (the “Hearings Committee”) at the instance of such persons affected by the decision as are specified in the rules.
- (2) Rules may also confer other functions on the Hearings Committee.
- (3) Rules must provide for there to be a right of appeal against a decision of the Hearings Committee to an independent tribunal (the “Takeover Appeal Board”) in such circumstances and subject to such conditions as are specified in the rules.
- (4) Rules may contain—
 - (a) provision as to matters of procedure in relation to proceedings before the Hearings Committee (including provision imposing time limits);
 - (b) provision about evidence in such proceedings;
 - (c) provision as to the powers of the Hearings Committee dealing with a matter referred to it;
 - (d) provision about enforcement of decisions of the Hearings Committee and the Takeover Appeal Board.
- (5) Rules must contain provision—
 - (a) requiring the Panel, when acting in relation to any proceedings before the Hearings Committee or the Takeover Appeal Board, to do so by an officer or member of staff of the Panel (or a person acting as such);
 - (b) preventing a person who is or has been a member of the committee mentioned in section 943(5) from being a member of the Hearings Committee or the Takeover Appeal Board;
 - (c) preventing a person who is a member of the committee mentioned in section 943(5), of the Hearings Committee or of the Takeover Appeal Board from acting as mentioned in paragraph (a).

Contravention of rules etc

952 Sanctions

- (1) Rules may contain provision conferring power on the Panel to impose sanctions on a person who has—
 - (a) acted in breach of rules, or
 - (b) failed to comply with a direction given by virtue of section 946.

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- (2) Subsection (3) applies where rules made by virtue of subsection (1) confer power on the Panel to impose a sanction of a kind not provided for by the City Code on Takeovers and Mergers as it had effect immediately before the passing of this Act.
- (3) The Panel must prepare a statement (a “policy statement”) of its policy with respect to—
- (a) the imposition of the sanction in question, and
 - (b) where the sanction is in the nature of a financial penalty, the amount of the penalty that may be imposed.
- An element of the policy must be that, in making a decision about any such matter, the Panel has regard to the factors mentioned in subsection (4).
- (4) The factors are—
- (a) the seriousness of the breach or failure in question in relation to the nature of the rule or direction contravened;
 - (b) the extent to which the breach or failure was deliberate or reckless;
 - (c) whether the person on whom the sanction is to be imposed is an individual.
- (5) The Panel may at any time revise a policy statement.
- (6) The Panel must prepare a draft of any proposed policy statement (or revised policy statement) and consult such persons about the draft as the Panel considers appropriate.
- (7) The Panel must publish, in whatever way it considers appropriate, any policy statement (or revised policy statement) that it prepares.
- (8) In exercising, or deciding whether to exercise, its power to impose a sanction within subsection (2) in the case of any particular breach or failure, the Panel must have regard to any relevant policy statement published and in force at the time when the breach or failure occurred.

953 Failure to comply with rules about bid documentation

- (1) This section applies where a takeover bid is made for a company that has securities carrying voting rights admitted to trading on a regulated market in the United Kingdom.
- (2) Where an offer document published in respect of the bid does not comply with offer document rules, an offence is committed by—
- (a) the person making the bid, and
 - (b) where the person making the bid is a body of persons, any director, officer or member of that body who caused the document to be published.
- (3) A person commits an offence under subsection (2) only if—
- (a) he knew that the offer document did not comply, or was reckless as to whether it complied, and
 - (b) he failed to take all reasonable steps to secure that it did comply.
- (4) Where a response document published in respect of the bid does not comply with response document rules, an offence is committed by any director or other officer of the company referred to in subsection (1) who—
- (a) knew that the response document did not comply, or was reckless as to whether it complied, and

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- (b) failed to take all reasonable steps to secure that it did comply.
- (5) Where an offence is committed under subsection (2)(b) or (4) by a company or other body corporate (“the relevant body”)—
- (a) subsection (2)(b) has effect as if the reference to a director, officer or member of the person making the bid included a reference to a director, officer or member of the relevant body;
- (b) subsection (4) has effect as if the reference to a director or other officer of the company referred to in subsection (1) included a reference to a director, officer or member of the relevant body.
- (6) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) Nothing in this section affects any power of the Panel in relation to the enforcement of its rules.
- (8) Section 1 (meaning of “company”) does not apply for the purposes of this section.
- (9) In this section—
- “designated” means designated in rules;
- “offer document” means a document required to be published by rules giving effect to Article 6.2 of the Takeovers Directive;
- “offer document rules” means rules designated as rules that give effect to Article 6.3 of that Directive;
- “response document” means a document required to be published by rules giving effect to Article 9.5 of that Directive;
- “response document rules” means rules designated as rules that give effect to the first sentence of Article 9.5 of that Directive;
- “securities” means shares or debentures;
- “takeover bid” has the same meaning as in that Directive;
- “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances.

Commencement Information

- I3** S. 953 wholly in force at 6.4.2007; s. 953 not in force at Royal Assent, see s. 1300; s. 953 wholly in force at 6.4.2007 by S.I. 2007/1093 {art. 2(1)(b)} (subject to transitional adaptations in Sch. 1 para. 3(2))

954 Compensation

- (1) Rules may confer power on the Panel to order a person to pay such compensation as it thinks just and reasonable if he is in breach of a rule the effect of which is to require the payment of money.
- (2) Rules made by virtue of this section may include provision for the payment of interest (including compound interest).

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955 Enforcement by the court

- (1) If, on the application of the Panel, the court is satisfied—
 - (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement, or
 - (b) that a person has contravened a rule-based requirement or a disclosure requirement,
 the court may make any order it thinks fit to secure compliance with the requirement.
- (2) In subsection (1) “the court” means the High Court or, in Scotland, the Court of Session.
- (3) Except as provided by subsection (1), no person—
 - (a) has a right to seek an injunction, or
 - (b) in Scotland, has title or interest to seek an interdict or an order for specific performance,
 to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.
- (4) In this section—
 - “contravene” includes fail to comply;
 - “disclosure requirement” means a requirement imposed under section 947;
 - “rule-based requirement” means a requirement imposed by or under rules.

956 No action for breach of statutory duty etc

- (1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty.
- (2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or (subject to any provision made by rules) affect the validity of any other thing.
- (3) In this section—
 - (a) “contravention” includes failure to comply;
 - (b) “disclosure requirement” and “rule-based requirement” have the same meaning as in section 955.

Funding

957 Fees and charges

- (1) Rules may provide for fees or charges to be payable to the Panel for the purpose of meeting any part of its expenses.
- (2) A reference in this section or section 958 to expenses of the Panel is to any expenses that have been or are to be incurred by the Panel in, or in connection with, the discharge of its functions, including in particular—
 - (a) payments in respect of the expenses of the Takeover Appeal Board;
 - (b) the cost of repaying the principal of, and of paying any interest on, any money borrowed by the Panel;
 - (c) the cost of maintaining adequate reserves.

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958 Levy

- (1) For the purpose of meeting any part of the expenses of the Panel, the Secretary of State may by regulations provide for a levy to be payable to the Panel—
- (a) by specified persons or bodies, or persons or bodies of a specified description, or
 - (b) on transactions, of a specified description, in securities on specified markets.

In this subsection “specified” means specified in the regulations.

- (2) The power to specify (or to specify descriptions of) persons or bodies must be exercised in such a way that the levy is payable only by persons or bodies that appear to the Secretary of State—
- (a) to be capable of being directly affected by the exercise of any of the functions of the Panel, or
 - (b) otherwise to have a substantial interest in the exercise of any of those functions.
- (3) Regulations under this section may in particular—
- (a) specify the rate of the levy and the period in respect of which it is payable at that rate;
 - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.
- (4) In determining the rate of the levy payable in respect of a particular period, the Secretary of State—
- (a) must take into account any other income received or expected by the Panel in respect of that period;
 - (b) may take into account estimated as well as actual expenses of the Panel in respect of that period.
- (5) The Panel must—
- (a) keep proper accounts in respect of any amounts of levy received by virtue of this section;
 - (b) prepare, in relation to each period in respect of which any such amounts are received, a statement of account relating to those amounts in such form and manner as is specified in the regulations.

Those accounts must be audited, and the statement certified, by persons appointed by the Secretary of State.

- (6) Regulations under this section—
- (a) are subject to affirmative resolution procedure if subsection (7) applies to them;
 - (b) otherwise, are subject to negative resolution procedure.
- (7) This subsection applies to—
- (a) the first regulations under this section;
 - (b) any other regulations under this section that would result in a change in the persons or bodies by whom, or the transactions on which, the levy is payable.
- (8) If a draft of an instrument containing regulations under this section would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of

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Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

Commencement Information

- I4** S. 958 wholly in force at 6.4.2007; s. 958 not in force at Royal Assent, see s. 1300; s. 958 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, art. 3(3) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); s. 958 wholly in force at 6.4.2007 by S.I. 2007/1093 {art. 2(1)(b)}

959 Recovery of fees, charges or levy

An amount payable by any person or body by virtue of section 957 or 958 is a debt due from that person or body to the Panel, and is recoverable accordingly.

Miscellaneous and supplementary

960 Panel as party to proceedings

The Panel is capable (despite being an unincorporated body) of—

- (a) bringing proceedings under this Chapter in its own name;
- (b) bringing or defending any other proceedings in its own name.

961 Exemption from liability in damages

- (1) Neither the Panel, nor any person within subsection (2), is to be liable in damages for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Panel's functions.
- (2) A person is within this subsection if—
 - (a) he is (or is acting as) a member, officer or member of staff of the Panel, or
 - (b) he is a person authorised under section 947(5).
- (3) Subsection (1) does not apply—
 - (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights).

962 Privilege against self-incrimination

- (1) A statement made by a person in response to—
 - (a) a requirement under section 947(1), or
 - (b) an order made by the court under section 955 to secure compliance with such a requirement,
 may not be used against him in criminal proceedings in which he is charged with an offence to which this subsection applies.
- (2) Subsection (1) applies to any offence other than an offence under one of the following provisions (which concern false statements made otherwise than on oath)—
 - (a) section 5 of the Perjury Act 1911 (c. 6);

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- (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39);
- (c) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

963 Annual reports

- (1) After the end of each financial year the Panel must publish a report.
- (2) The report must—
 - (a) set out how the Panel's functions were discharged in the year in question;
 - (b) include the Panel's accounts for that year;
 - (c) mention any matters the Panel considers to be of relevance to the discharge of its functions.

964 Amendments to Financial Services and Markets Act 2000

- (1) The Financial Services and Markets Act 2000 (c. 8) is amended as follows.
- (2) Section 143 (power to make rules endorsing the City Code on Takeovers and Mergers etc) is repealed.

^{F5}(3)

- (4) In section 349 (exceptions from restrictions on disclosure of confidential information), after subsection (3) insert—

“(3A) Section 348 does not apply to—

- (a) the disclosure by a recipient to which subsection (3B) applies of confidential information disclosed to it by the Authority in reliance on subsection (1);
- (b) the disclosure of such information by a person obtaining it directly or indirectly from a recipient to which subsection (3B) applies.

(3B) This subsection applies to—

- (a) the Panel on Takeovers and Mergers;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises public functions, under legislation in an EEA State other than the United Kingdom, that are similar to the Authority's functions or those of the Panel on Takeovers and Mergers.”.

^{F6}(5)

- (6) In section 417(1) (definitions), insert at the appropriate place—

““Takeovers Directive” means Directive [2004/25/EC](#) of the European Parliament and of the Council;”.

Textual Amendments

F5 S. 964(3) repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 19](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Status: Point in time view as at 13/06/2014.

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- F6** S. 964(5) repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 19](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

965 Power to extend to Isle of Man and Channel Islands

Her Majesty may by Order in Council direct that any of the provisions of this Chapter extend, with such modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands.

Commencement Information

- I5** S. 965 wholly in force at 6.4.2007; s. 965 not in force at Royal Assent, see s. 1300; s. 965 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6](#), [8](#), [Sch. 5](#)); s. 965 wholly in force at 6.4.2007 by [S.I. 2007/1093](#) {[art. 2\(1\)\(b\)](#)}

CHAPTER 2

IMPEDIMENTS TO TAKEOVERS

Modifications etc. (not altering text)

- C3** [Pt. 28 Ch. 2](#) applied (6.4.2007) by [The Companies Acts \(Unregistered Companies\) Regulations 2007 \(S.I. 2007/318\)](#), [reg. 3](#), [Sch.](#) (with [reg. 6](#))

Opting in and opting out

966 Opting in and opting out

- (1) A company may by special resolution (an “opting-in resolution”) opt in for the purposes of this Chapter if the following three conditions are met in relation to the company.
- (2) The first condition is that the company has voting shares admitted to trading on a regulated market.
- (3) The second condition is that—
 - (a) the company's articles of association—
 - (i) do not contain any such restrictions as are mentioned in Article 11 of the Takeovers Directive, or
 - (ii) if they do contain any such restrictions, provide for the restrictions not to apply at a time when, or in circumstances in which, they would be disapplied by that Article,
 and
 - (b) those articles do not contain any other provision which would be incompatible with that Article.
- (4) The third condition is that—
 - (a) no shares conferring special rights in the company are held by—

Status: Point in time view as at 13/06/2014.

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- (i) a minister,
 - (ii) a nominee of, or any other person acting on behalf of, a minister, or
 - (iii) a company directly or indirectly controlled by a minister,
- and
- (b) no such rights are exercisable by or on behalf of a minister under any enactment.
- (5) A company may revoke an opting-in resolution by a further special resolution (an “opting-out resolution”).
- (6) For the purposes of subsection (3), a reference in Article 11 of the Takeovers Directive to Article 7.1 or 9 of that Directive is to be read as referring to rules under section 943(1) giving effect to the relevant Article.
- (7) In subsection (4) “minister” means—
- (a) the holder of an office in Her Majesty's Government in the United Kingdom;
 - (b) the Scottish Ministers;
 - (c) a Minister within the meaning given by section 7(3) of the Northern Ireland Act 1998 (c. 47);
 - [^{F7}(d) the Welsh Ministers;]
- and for the purposes of that subsection “minister” also includes the Treasury, the Board of Trade [^{F8}and] , the Defence Council ^{F9}
- (8) The Secretary of State may by order subject to negative resolution procedure provide that subsection (4) applies in relation to a specified person or body that exercises functions of a public nature as it applies in relation to a minister.

“Specified” means specified in the order.

Textual Amendments

- F7** S. 966(7)(d) inserted (2.5.2007) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 142(2)**
- F8** Word in s. 966(7) inserted (2.5.2007) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 142(3)**
- F9** Words in s. 966(7) omitted (2.5.2007) by virtue of [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 142(2)**

Modifications etc. (not altering text)

- C4** Ss. 966-973 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(1)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

Commencement Information

- I6** S. 966 wholly in force at 6.4.2007; s. 966 not in force at Royal Assent, see s. 1300; s. 966 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5, Sch. 1](#) and with [arts. 6, 8, Sch. 5](#)); s. 966 in force at 6.4.2007 by [S.I. 2007/1093](#), **art. 2(1)(b)** (with [art. 11\(1\)](#))

967 Further provision about opting-in and opting-out resolutions

- (1) An opting-in resolution or an opting-out resolution must specify the date from which it is to have effect (the “effective date”).

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- (2) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.
- (3) The second and third conditions in section 966 must be met at the time when an opting-in resolution is passed, but the first one does not need to be met until the effective date.
- (4) An opting-in resolution passed before the time when voting shares of the company are admitted to trading on a regulated market complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.
- (5) An opting-in resolution passed before the commencement of this section complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that commencement.
- (6) The effective date of an opting-out resolution may not be earlier than the first anniversary of the date on which a copy of the opting-in resolution was forwarded to the registrar.
- (7) Where a company has passed an opting-in resolution, any alteration of its articles of association that would prevent the second condition in section 966 from being met is of no effect until the effective date of an opting-out resolution passed by the company.

Modifications etc. (not altering text)

- C5** Ss. 966-973 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(1)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

Consequences of opting in

968 Effect on contractual restrictions

- (1) The following provisions have effect where a takeover bid is made for an opted-in company.
- (2) An agreement to which this section applies is invalid in so far as it places any restriction—
 - (a) on the transfer to the offeror, or at his direction to another person, of shares in the company during the offer period;
 - (b) on the transfer to any person of shares in the company at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company;
 - (c) on rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid;
 - (d) on rights to vote at a general meeting of the company that—
 - (i) is the first such meeting to be held after the end of the offer period, and
 - (ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.
- (3) This section applies to an agreement—

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- (a) entered into between a person holding shares in the company and another such person on or after 21st April 2004, or
 - (b) entered into at any time between such a person and the company,
- and it applies to such an agreement even if the law applicable to the agreement (apart from this section) is not the law of a part of the United Kingdom.
- (4) The reference in subsection (2)(c) to rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid includes a reference to rights to vote on a written resolution concerned with that question.
 - (5) For the purposes of subsection (2)(c), action which might result in the frustration of a bid is any action of that kind specified in rules under section 943(1) giving effect to Article 9 of the Takeovers Directive.
 - (6) If a person suffers loss as a result of any act or omission that would (but for this section) be a breach of an agreement to which this section applies, he is entitled to compensation, of such amount as the court considers just and equitable, from any person who would (but for this section) be liable to him for committing or inducing the breach.
 - (7) In subsection (6) “the court” means the High Court or, in Scotland, the Court of Session.
 - (8) A reference in this section to voting shares in the company does not include—
 - (a) debentures, or
 - (b) shares that, under the company's articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).

Modifications etc. (not altering text)

- C6** Ss. 966-973 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(1)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

Commencement Information

- I7** S. 968 wholly in force at 6.4.2007; s. 968 not in force at Royal Assent see [s. 1300](#); s. 968 in force at 6.4.2007 by [S.I. 2007/1093](#), **art. 2(1)(b)** (with [art. 11\(1\)](#)) and subject to transitional adaptations in [Sch. 1 para. 4](#))

969 Power of offeror to require general meeting to be called

- (1) Where a takeover bid is made for an opted-in company, the offeror may by making a request to the directors of the company require them to call a general meeting of the company if, at the date at which the request is made, he holds shares amounting to not less than 75% in value of all the voting shares in the company.
- (2) The reference in subsection (1) to voting shares in the company does not include—
 - (a) debentures, or

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- (b) shares that, under the company's articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).
- (3) Sections 303 to 305 (members' power to require general meetings to be called) apply as they would do if subsection (1) above were substituted for subsections (1) to (3) of section 303, and with any other necessary modifications.

Modifications etc. (not altering text)

- C7 Ss. 966-973 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(1)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

Supplementary

970 Communication of decisions

- (1) A company that has passed an opting-in resolution or an opting-out resolution must notify—
- (a) the Panel, and
 - (b) where the company—
 - (i) has voting shares admitted to trading on a regulated market in an EEA State other than the United Kingdom, or
 - (ii) has requested such admission,
 the authority designated by that state as the supervisory authority for the purposes of Article 4.1 of the Takeovers Directive.
- (2) Notification must be given within 15 days after the resolution is passed and, if any admission or request such as is mentioned in subsection (1)(b) occurs at a later time, within 15 days after that time.
- (3) If a company fails to comply with this section, an offence is committed by—
- (a) the company, and
 - (b) every officer of it who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Modifications etc. (not altering text)

- C8 Ss. 966-973 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(1)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

971 Interpretation of this Chapter

- (1) In this Chapter—

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“offeror” and “takeover bid” have the same meaning as in the Takeovers Directive;

“offer period”, in relation to a takeover bid, means the time allowed for acceptance of the bid by—

(a) rules under section 943(1) giving effect to Article 7.1 of the Takeovers Directive, or

(b) where the rules giving effect to that Article which apply to the bid are those of an EEA State other than the United Kingdom, those rules;

“opted-in company” means a company in relation to which—

(a) an opting-in resolution has effect, and

(b) the conditions in section 966(2) and (4) continue to be met;

“opting-in resolution” has the meaning given by section 966(1);

“opting-out resolution” has the meaning given by section 966(5);

“the Takeovers Directive” means Directive [2004/25/EC](#) of the European Parliament and of the Council;

“voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances;

“voting shares” means shares carrying voting rights.

(2) For the purposes of this Chapter—

(a) securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares;

(b) debentures issued by a company are treated as shares in the company if they carry voting rights.

Modifications etc. (not altering text)

C9 Ss. 966-973 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(1)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

972 Transitory provision

(1) Where a takeover bid is made for an opted-in company, section 368 of the Companies Act 1985 (c. 6) (extraordinary general meeting on members' requisition) and section 378 of that Act (extraordinary and special resolutions) have effect as follows until their repeal by this Act.

(2) Section 368 has effect as if a members' requisition included a requisition of a person who—

(a) is the offeror in relation to the takeover bid, and

(b) holds at the date of the deposit of the requisition shares amounting to not less than 75% in value of all the voting shares in the company.

(3) In relation to a general meeting of the company that—

(a) is the first such meeting to be held after the end of the offer period, and

(b) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company,

section 378(2) (meaning of “special resolution”) has effect as if “14 days' notice” were substituted for “21 days' notice”.

Status: Point in time view as at 13/06/2014.

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- (4) A reference in this section to voting shares in the company does not include—
- (a) debentures, or
 - (b) shares that, under the company's articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).

Modifications etc. (not altering text)

- C10** Ss. 966-973 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(1)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

973 Power to extend to Isle of Man and Channel Islands

Her Majesty may by Order in Council direct that any of the provisions of this Chapter extend, with such modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands.

Modifications etc. (not altering text)

- C11** Ss. 966-973 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(1)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

Commencement Information

- I8** [S. 973](#) wholly in force at 6.4.2007; [s. 973](#) not in force at Royal Assent, see [s. 1300](#); [s. 973](#) in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5, Sch. 1](#) and with [arts. 6, 8, Sch. 5](#)); [s. 973](#) in force at 6.4.2007 by [S.I. 2007/1093](#), **art. 2(1)(b)** (with [art. 11\(1\)](#))

CHAPTER 3

“SQUEEZE-OUT” AND “SELL-OUT”

Modifications etc. (not altering text)

- C12** [Pt. 28 Ch. 3](#) applied (6.4.2007) by [The Companies Acts \(Unregistered Companies\) Regulations 2007 \(S.I. 2007/318\)](#), [reg. 3, Sch.](#) (with [reg. 6](#))

Takeover offers

974 Meaning of “takeover offer”

- (1) For the purposes of this Chapter an offer to acquire shares in a company is a “takeover offer” if the following two conditions are satisfied in relation to the offer.
- (2) The first condition is that it is an offer to acquire—
 - (a) all the shares in a company, or

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(b) where there is more than one class of shares in a company, all the shares of one or more classes, other than shares that at the date of the offer are already held by the offeror.

Section 975 contains provision supplementing this subsection.

- (3) The second condition is that the terms of the offer are the same—
- (a) in relation to all the shares to which the offer relates, or
 - (b) where the shares to which the offer relates include shares of different classes, in relation to all the shares of each class.

Section 976 contains provision treating this condition as satisfied in certain circumstances.

- (4) In subsections (1) to (3) “shares” means shares, other than relevant treasury shares, that have been allotted on the date of the offer (but see subsection (5)).

- (5) A takeover offer may include among the shares to which it relates—
- (a) all or any shares that are allotted after the date of the offer but before a specified date;
 - (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date;
 - (c) all or any other relevant treasury shares.

- (6) In this section—
- “relevant treasury shares” means shares that—
 - (a) are held by the company as treasury shares on the date of the offer, or
 - (b) become shares held by the company as treasury shares after that date but before a specified date;
 - “specified date” means a date specified in or determined in accordance with the terms of the offer.

- (7) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, then, if the terms of the offer are revised in accordance with that provision—
- (a) the revision is not to be regarded for the purposes of this Chapter as the making of a fresh offer, and
 - (b) references in this Chapter to the date of the offer are accordingly to be read as references to the date of the original offer.

Modifications etc. (not altering text)

C13 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, [Sch. 1 para. 14\(2\)](#) (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

975 Shares already held by the offeror etc

- (1) The reference in section 974(2) to shares already held by the offeror includes a reference to shares that he has contracted to acquire, whether unconditionally or subject to conditions being met.

Status: Point in time view as at 13/06/2014.

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This is subject to subsection (2).

- (2) The reference in section 974(2) to shares already held by the offeror does not include a reference to shares that are the subject of a contract—
- (a) intended to secure that the holder of the shares will accept the offer when it is made, and
 - (b) entered into—
 - (i) by deed and for no consideration,
 - (ii) for consideration of negligible value, or
 - (iii) for consideration consisting of a promise by the offeror to make the offer.
- (3) In relation to Scotland, this section applies as if the words “by deed and” in subsection (2)(b)(i) were omitted.
- (4) The condition in section 974(2) is treated as satisfied where—
- (a) the offer does not extend to shares that associates of the offeror hold or have contracted to acquire (whether unconditionally or subject to conditions being met), and
 - (b) the condition would be satisfied if the offer did extend to those shares.

(For further provision about such shares, see section 977(2)).

Modifications etc. (not altering text)

C14 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

976 Cases where offer treated as being on same terms

- (1) The condition in section 974(3) (terms of offer to be the same for all shares or all shares of particular classes) is treated as satisfied where subsection (2) or (3) below applies.
- (2) This subsection applies where—
- (a) shares carry an entitlement to a particular dividend which other shares of the same class, by reason of being allotted later, do not carry,
 - (b) there is a difference in the value of consideration offered for the shares allotted earlier as against that offered for those allotted later,
 - (c) that difference merely reflects the difference in entitlement to the dividend, and
 - (d) the condition in section 974(3) would be satisfied but for that difference.
- (3) This subsection applies where—
- (a) the law of a country or territory outside the United Kingdom—
 - (i) precludes an offer of consideration in the form, or any of the forms, specified in the terms of the offer (“the specified form”), or
 - (ii) precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous,

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- (b) the persons to whom an offer of consideration in the specified form is precluded are able to receive consideration in another form that is of substantially equivalent value, and
- (c) the condition in section 974(3) would be satisfied but for the fact that an offer of consideration in the specified form to those persons is precluded.

Modifications etc. (not altering text)

C15 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

977 Shares to which an offer relates

- (1) Where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror—
 - (a) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
 - (b) does not do so by virtue of acceptances of the offer,those shares are treated for the purposes of this Chapter as excluded from those to which the offer relates.
- (2) For the purposes of this Chapter shares that an associate of the offeror holds or has contracted to acquire, whether at the date of the offer or subsequently, are not treated as shares to which the offer relates, even if the offer extends to such shares.

In this subsection “contracted” means contracted unconditionally or subject to conditions being met.
- (3) This section is subject to section 979(8) and (9).

Modifications etc. (not altering text)

C16 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

978 Effect of impossibility etc of communicating or accepting offer

- (1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for the purposes of this Chapter if—
 - (a) those shareholders have no registered address in the United Kingdom,
 - (b) the offer was not communicated to those shareholders in order not to contravene the law of a country or territory outside the United Kingdom, and
 - (c) either—
 - (i) the offer is published in the Gazette, or
 - (ii) the offer can be inspected, or a copy of it obtained, at a place in an EEA State or on a website, and a notice is published in the Gazette specifying the address of that place or website.

Status: Point in time view as at 13/06/2014.

Changes to legislation: Companies Act 2006, Part 28 is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside the United Kingdom, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer for the purposes of this Chapter.
- (3) It is not to be inferred—
- (a) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Chapter unless the requirements of paragraphs (a) to (c) of subsection (1) are met, or
 - (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those purposes unless the reason for the impossibility or difficulty is the one mentioned in subsection (2).

Modifications etc. (not altering text)

C17 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

“Squeeze-out”

979 Right of offeror to buy out minority shareholder

- (1) Subsection (2) applies in a case where a takeover offer does not relate to shares of different classes.
- (2) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—
- (a) not less than 90% in value of the shares to which the offer relates, and
 - (b) in a case where the shares to which the offer relates are voting shares, not less than 90% of the voting rights carried by those shares,
- he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.
- (3) Subsection (4) applies in a case where a takeover offer relates to shares of different classes.
- (4) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—
- (a) not less than 90% in value of the shares of any class to which the offer relates, and
 - (b) in a case where the shares of that class are voting shares, not less than 90% of the voting rights carried by those shares,
- he may give notice to the holder of any shares of that class to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.
- (5) In the case of a takeover offer which includes among the shares to which it relates—
- (a) shares that are allotted after the date of the offer, or

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Changes to legislation: Companies Act 2006, Part 28 is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) relevant treasury shares (within the meaning of section 974) that cease to be held as treasury shares after the date of the offer,
the offeror's entitlement to give a notice under subsection (2) or (4) on any particular date shall be determined as if the shares to which the offer relates did not include any allotted, or ceasing to be held as treasury shares, on or after that date.
- (6) Subsection (7) applies where—
- (a) the requirements for the giving of a notice under subsection (2) or (4) are satisfied, and
- (b) there are shares in the company which the offeror, or an associate of his, has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.
- (7) The offeror's entitlement to give a notice under subsection (2) or (4) shall be determined as if—
- (a) the shares to which the offer relates included shares falling within paragraph (b) of subsection (6), and
- (b) in relation to shares falling within that paragraph, the words “by virtue of acceptances of the offer” in subsection (2) or (4) were omitted.
- (8) Where—
- (a) a takeover offer is made,
- (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror—
- (i) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
- (ii) does not do so by virtue of acceptances of the offer, and
- (c) subsection (10) applies,
- then for the purposes of this section those shares are not excluded by section 977(1) from those to which the offer relates, and the offeror is treated as having acquired or contracted to acquire them by virtue of acceptances of the offer.
- (9) Where—
- (a) a takeover offer is made,
- (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, an associate of the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates, and
- (c) subsection (10) applies,
- then for the purposes of this section those shares are not excluded by section 977(2) from those to which the offer relates.
- (10) This subsection applies if—
- (a) at the time the shares are acquired or contracted to be acquired as mentioned in subsection (8) or (9) (as the case may be), the value of the consideration for which they are acquired or contracted to be acquired (“the acquisition consideration”) does not exceed the value of the consideration specified in the terms of the offer, or
- (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in

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paragraph (a), no longer exceeds the value of the consideration specified in those terms.

Modifications etc. (not altering text)

C18 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

980 Further provision about notices given under section 979

- (1) A notice under section 979 must be given in the prescribed manner.
- (2) No notice may be given under section 979(2) or (4) after the end of—
 - (a) the period of three months beginning with the day after the last day on which the offer can be accepted, or
 - (b) the period of six months beginning with the date of the offer, where that period ends earlier and the offer is one to which subsection (3) below applies.
- (3) This subsection applies to an offer if the time allowed for acceptance of the offer is not governed by rules under section 943(1) that give effect to Article 7 of the Takeovers Directive.

In this subsection “the Takeovers Directive” has the same meaning as in section 943.

- (4) At the time when the offeror first gives a notice under section 979 in relation to an offer, he must send to the company—
 - (a) a copy of the notice, and
 - (b) a statutory declaration by him in the prescribed form, stating that the conditions for the giving of the notice are satisfied.
- (5) Where the offeror is a company (whether or not a company within the meaning of this Act) the statutory declaration must be signed by a director.
- (6) A person commits an offence if—
 - (a) he fails to send a copy of a notice or a statutory declaration as required by subsection (4), or
 - (b) he makes such a declaration for the purposes of that subsection knowing it to be false or without having reasonable grounds for believing it to be true.
- (7) It is a defence for a person charged with an offence for failing to send a copy of a notice as required by subsection (4) to prove that he took reasonable steps for securing compliance with that subsection.
- (8) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum;

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- (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

Modifications etc. (not altering text)

C19 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

Commencement Information

I9 [S. 980](#) wholly in force at 6.4.2007; [s. 980](#) not in force at Royal Assent, see [s. 1300](#); [s. 980](#) in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5, Sch. 1](#) and with [arts. 6, 8, Sch. 5](#)); [s. 980](#) in force at 6.4.2007 by [S.I. 2007/1093](#), **art. 2(1)(b)** (with [art. 11\(1\)](#))

981 Effect of notice under section 979

- (1) Subject to section 986 (applications to the court), this section applies where the offeror gives a shareholder a notice under section 979.
- (2) The offeror is entitled and bound to acquire the shares to which the notice relates on the terms of the offer.
- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration, the notice must give particulars of the choice and state—
 - (a) that the shareholder may, within six weeks from the date of the notice, indicate his choice by a written communication sent to the offeror at an address specified in the notice, and
 - (b) which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder—
 - (a) is not cash and the offeror is no longer able to provide it, or
 - (b) was to have been provided by a third party who is no longer bound or able to provide it,the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date of the notice is equivalent to the consideration offered or (as the case may be) chosen.
- (6) At the end of six weeks from the date of the notice the offeror must immediately—
 - (a) send a copy of the notice to the company, and
 - (b) pay or transfer to the company the consideration for the shares to which the notice relates.

Where the consideration consists of shares or securities to be allotted by the offeror, the reference in paragraph (b) to the transfer of the consideration is to be read as a reference to the allotment of the shares or securities to the company.

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- (7) If the shares to which the notice relates are registered, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by an instrument of transfer executed on behalf of the holder of the shares by a person appointed by the offeror.

On receipt of that instrument the company must register the offeror as the holder of those shares.

- (8) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by a statement to that effect.

On receipt of that statement the company must issue the offeror with warrants or other instruments in respect of the shares, and those already in issue in respect of the shares become void.

- (9) The company must hold any money or other consideration received by it under subsection (6)(b) on trust for the person who, before the offeror acquired them, was entitled to the shares in respect of which the money or other consideration was received.

Section 982 contains further provision about how the company should deal with such money or other consideration.

Modifications etc. (not altering text)

C20 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

982 Further provision about consideration held on trust under section 981(9)

- (1) This section applies where an offeror pays or transfers consideration to the company under section 981(6).
- (2) The company must pay into a separate bank account that complies with subsection (3)
- (a) any money it receives under paragraph (b) of section 981(6), and
- (b) any dividend or other sum accruing from any other consideration it receives under that paragraph.
- (3) A bank account complies with this subsection if the balance on the account—
- (a) bears interest at an appropriate rate, and
- (b) can be withdrawn by such notice (if any) as is appropriate.
- (4) If—
- (a) the person entitled to the consideration held on trust by virtue of section 981(9) cannot be found, and
- (b) subsection (5) applies,
- the consideration (together with any interest, dividend or other benefit that has accrued from it) must be paid into court.
- (5) This subsection applies where—

Status: Point in time view as at 13/06/2014.

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- (a) reasonable enquiries have been made at reasonable intervals to find the person, and
 - (b) twelve years have elapsed since the consideration was received, or the company is wound up.
- (6) In relation to a company registered in Scotland, subsections (7) and (8) apply instead of subsection (4).
- (7) If the person entitled to the consideration held on trust by virtue of section 981(9) cannot be found and subsection (5) applies—
- (a) the trust terminates,
 - (b) the company or (if the company is wound up) the liquidator must sell any consideration other than cash and any benefit other than cash that has accrued from the consideration, and
 - (c) a sum representing—
 - (i) the consideration so far as it is cash,
 - (ii) the proceeds of any sale under paragraph (b), and
 - (iii) any interest, dividend or other benefit that has accrued from the consideration,must be deposited in the name of the Accountant of Court in a separate bank account complying with subsection (3) and the receipt for the deposit must be transmitted to the Accountant of Court.
- (8) Section 58 of the Bankruptcy (Scotland) Act 1985 (c. 66) (so far as consistent with this Act) applies (with any necessary modifications) to sums deposited under subsection (7) as it applies to sums deposited under section 57(1)(a) of that Act.
- (9) The expenses of any such enquiries as are mentioned in subsection (5) may be paid out of the money or other property held on trust for the person to whom the enquiry relates.

Modifications etc. (not altering text)

C21 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

“Sell-out”

983 Right of minority shareholder to be bought out by offeror

- (1) Subsections (2) and (3) apply in a case where a takeover offer relates to all the shares in a company.

For this purpose a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of section 974.

- (2) The holder of any voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—
- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and

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- (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)—
 - (i) amount to not less than 90% in value of all the voting shares in the company (or would do so but for section 990(1)), and
 - (ii) carry not less than 90% of the voting rights in the company (or would do so but for section 990(1)).
- (3) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—
 - (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and
 - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met), amount to not less than 90% in value of all the shares in the company (or would do so but for section 990(1)).
- (4) If a takeover offer relates to shares of one or more classes and at any time before the end of the period within which the offer can be accepted—
 - (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares of any class to which the offer relates, and
 - (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)—
 - (i) amount to not less than 90% in value of all the shares of that class, and
 - (ii) in a case where the shares of that class are voting shares, carry not less than 90% of the voting rights carried by the shares of that class,

the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.
- (5) For the purposes of subsections (2) to (4), in calculating 90% of the value of any shares, shares held by the company as treasury shares are to be treated as having been acquired by the offeror.
- (6) Subsection (7) applies where—
 - (a) a shareholder exercises rights conferred on him by subsection (2), (3) or (4),
 - (b) at the time when he does so, there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional, and
 - (c) the requirement imposed by subsection (2)(b), (3)(b) or (4)(b) (as the case may be) would not be satisfied if those shares were not taken into account.
- (7) The shareholder is treated for the purposes of section 985 as not having exercised his rights under this section unless the requirement imposed by paragraph (b) of subsection (2), (3) or (4) (as the case may be) would be satisfied if—
 - (a) the reference in that paragraph to other shares in the company which the offeror has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire, and

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- (b) the reference in that subsection to the period within which the offer can be accepted were a reference to the period referred to in section 984(2).
- (8) A reference in subsection (2)(b), (3)(b), (4)(b), (6) or (7) to shares which the offeror has acquired or contracted to acquire includes a reference to shares which an associate of his has acquired or contracted to acquire.

Modifications etc. (not altering text)

C22 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

984 Further provision about rights conferred by section 983

- (1) Rights conferred on a shareholder by subsection (2), (3) or (4) of section 983 are exercisable by a written communication addressed to the offeror.
- (2) Rights conferred on a shareholder by subsection (2), (3) or (4) of that section are not exercisable after the end of the period of three months from—
 - (a) the end of the period within which the offer can be accepted, or
 - (b) if later, the date of the notice that must be given under subsection (3) below.
- (3) Within one month of the time specified in subsection (2), (3) or (4) (as the case may be) of that section, the offeror must give any shareholder who has not accepted the offer notice in the prescribed manner of—
 - (a) the rights that are exercisable by the shareholder under that subsection, and
 - (b) the period within which the rights are exercisable.

If the notice is given before the end of the period within which the offer can be accepted, it must state that the offer is still open for acceptance.

- (4) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 979.
- (5) An offeror who fails to comply with subsection (3) commits an offence.

If the offeror is a company, every officer of that company who is in default or to whose neglect the failure is attributable also commits an offence.
- (6) If an offeror other than a company is charged with an offence for failing to comply with subsection (3), it is a defence for him to prove that he took all reasonable steps for securing compliance with that subsection.
- (7) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

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Modifications etc. (not altering text)

C23 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

Commencement Information

I10 S. 984 wholly in force at 6.4.2007; s. 1043 not in force at Royal Assent, see s. 1300; s. 984 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to **art. 5**, **Sch. 1** and with **arts. 6**, **8**, **Sch. 5**); s. 984 wholly in force at 6.4.2007 by [S.I. 2007/1093](#) {art. 2(1)(b)}

985 Effect of requirement under section 983

- (1) Subject to section 986, this section applies where a shareholder exercises his rights under section 983 in respect of any shares held by him.
- (2) The offeror is entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.
- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration—
 - (a) the shareholder may indicate his choice when requiring the offeror to acquire the shares, and
 - (b) the notice given to the shareholder under section 984(3)—
 - (i) must give particulars of the choice and of the rights conferred by this subsection, and
 - (ii) may state which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder—
 - (a) is not cash and the offeror is no longer able to provide it, or
 - (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date when the shareholder requires the offeror to acquire the shares is equivalent to the consideration offered or (as the case may be) chosen.

Modifications etc. (not altering text)

C24 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

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Supplementary

986 Applications to the court

- (1) Where a notice is given under section 979 to a shareholder the court may, on an application made by him, order—
 - (a) that the offeror is not entitled and bound to acquire the shares to which the notice relates, or
 - (b) that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.
- (2) An application under subsection (1) must be made within six weeks from the date on which the notice referred to in that subsection was given.

If an application to the court under subsection (1) is pending at the end of that period, section 981(6) does not have effect until the application has been disposed of.
- (3) Where a shareholder exercises his rights under section 983 in respect of any shares held by him, the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.
- (4) On an application under subsection (1) or (3)—
 - (a) the court may not require consideration of a higher value than that specified in the terms of the offer (“the offer value”) to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair;
 - (b) the court may not require consideration of a lower value than the offer value to be given for the shares.
- (5) No order for costs or expenses may be made against a shareholder making an application under subsection (1) or (3) unless the court considers that—
 - (a) the application was unnecessary, improper or vexatious,
 - (b) there has been unreasonable delay in making the application, or
 - (c) there has been unreasonable conduct on the shareholder’s part in conducting the proceedings on the application.
- (6) A shareholder who has made an application under subsection (1) or (3) must give notice of the application to the offeror.
- (7) An offeror who is given notice of an application under subsection (1) or (3) must give a copy of the notice to—
 - (a) any person (other than the applicant) to whom a notice has been given under section 979;
 - (b) any person who has exercised his rights under section 983.
- (8) An offeror who makes an application under subsection (3) must give notice of the application to—
 - (a) any person to whom a notice has been given under section 979;
 - (b) any person who has exercised his rights under section 983.
- (9) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (2) or (4) of section 979 the court may, on an

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application made by him, make an order authorising him to give notices under that subsection if it is satisfied that—

- (a) the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates,
- (b) the requirements of that subsection would have been met if the person, or all the persons, mentioned in paragraph (a) above had accepted the offer, and
- (c) the consideration offered is fair and reasonable.

This is subject to subsection (10).

- (10) The court may not make an order under subsection (9) unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

Modifications etc. (not altering text)

C25 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

987 Joint offers

- (1) In the case of a takeover offer made by two or more persons jointly, this Chapter has effect as follows.
- (2) The conditions for the exercise of the rights conferred by section 979 are satisfied—
 - (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
 - (b) in other cases, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.
- (3) The conditions for the exercise of the rights conferred by section 983 are satisfied—
 - (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
 - (b) in other cases, by the joint offerors acquiring or contracting (whether unconditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.
- (4) Subject to the following provisions, the rights and obligations of the offeror under sections 979 to 985 are respectively joint rights and joint and several obligations of the joint offerors.
- (5) A provision of sections 979 to 986 that requires or authorises a notice or other document to be given or sent by or to the joint offerors is complied with if the notice or document is given or sent by or to any of them (but see subsection (6)).
- (6) The statutory declaration required by section 980(4) must be made by all of the joint offerors and, where one or more of them is a company, signed by a director of that company.

Status: Point in time view as at 13/06/2014.

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- (7) In sections 974 to 977, 979(9), 981(6), 983(8) and 988 references to the offeror are to be read as references to the joint offerors or any of them.
- (8) In section 981(7) and (8) references to the offeror are to be read as references to the joint offerors or such of them as they may determine.
- (9) In sections 981(5)(a) and 985(5)(a) references to the offeror being no longer able to provide the relevant consideration are to be read as references to none of the joint offerors being able to do so.
- (10) In section 986 references to the offeror are to be read as references to the joint offerors, except that—
 - (a) an application under subsection (3) or (9) may be made by any of them, and
 - (b) the reference in subsection (9)(a) to the offeror having been unable to trace one or more of the persons holding shares is to be read as a reference to none of the offerors having been able to do so.

Modifications etc. (not altering text)

C26 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

Interpretation

988 Associates

- (1) In this Chapter “associate”, in relation to an offeror, means—
 - (a) a nominee of the offeror,
 - (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary,
 - (c) a body corporate in which the offeror is substantially interested,
 - (d) a person who is, or is a nominee of, a party to a share acquisition agreement with the offeror, or
 - (e) (where the offeror is an individual) his spouse or civil partner and any minor child or step-child of his.
- (2) For the purposes of subsection (1)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.
- (3) For the purposes of subsection (1)(c) an offeror has a substantial interest in a body corporate if—
 - (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
 - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.

Subsections (2) and (3) of section 823 (which contain provision about when a person is treated as entitled to exercise or control the exercise of voting power) apply for the purposes of this subsection as they apply for the purposes of that section.

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- (4) For the purposes of subsection (1)(d) an agreement is a share acquisition agreement if—
- (a) it is an agreement for the acquisition of, or of an interest in, shares to which the offer relates,
 - (b) it includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of such shares, or their interests in such shares, acquired in pursuance of the agreement (whether or not together with any other shares to which the offer relates or any other interests of theirs in such shares), and
 - (c) it is not an excluded agreement (see subsection (5)).
- (5) An agreement is an “excluded agreement”—
- (a) if it is not legally binding, unless it involves mutuality in the undertakings, expectations or understandings of the parties to it, or
 - (b) if it is an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.
- (6) The reference in subsection (4)(b) to the use of interests in shares is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (7) In this section—
- (a) “agreement” includes any agreement or arrangement;
 - (b) references to provisions of an agreement include—
 - (i) undertakings, expectations or understandings operative under an arrangement, and
 - (ii) any provision whether express or implied and whether absolute or not.

Modifications etc. (not altering text)

C27 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, [Sch. 1 para. 14\(2\)](#) (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

989 Convertible securities

- (1) For the purposes of this Chapter securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares.
- References to the holder of shares or a shareholder are to be read accordingly.
- (2) Subsection (1) is not to be read as requiring any securities to be treated—
- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe, or
 - (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

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Modifications etc. (not altering text)

C28 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

990 Debentures carrying voting rights

- (1) For the purposes of this Chapter debentures issued by a company to which subsection (2) applies are treated as shares in the company if they carry voting rights.
- (2) This subsection applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market.
- (3) In this Chapter, in relation to debentures treated as shares by virtue of subsection (1)—
 - (a) references to the holder of shares or a shareholder are to be read accordingly;
 - (b) references to shares being allotted are to be read as references to debentures being issued.

Modifications etc. (not altering text)

C29 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

991 Interpretation

- (1) In this Chapter—
 - “the company” means the company whose shares are the subject of a takeover offer;
 - “date of the offer” means—
 - (a) where the offer is published, the date of publication;
 - (b) where the offer is not published, or where any notices of the offer are given before the date of publication, the date when notices of the offer (or the first such notices) are given;
 - and references to the date of the offer are to be read in accordance with section 974(7) (revision of offer terms) where that applies;
 - “non-voting shares” means shares that are not voting shares;
 - “offeror” means (subject to section 987) the person making a takeover offer;
 - “voting rights” means rights to vote at general meetings of the company, including rights that arise only in certain circumstances;
 - “voting shares” means shares carrying voting rights.
- (2) For the purposes of this Chapter a person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not (or is no longer) subject to conditions or if all conditions to which it was subject have been met.

A reference to a contract becoming unconditional is to be read accordingly.

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Modifications etc. (not altering text)

C30 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

CHAPTER 4

AMENDMENTS TO PART 7 OF THE COMPANIES ACT 1985

992 Matters to be dealt with in directors' report

- (1) Part 7 of the Companies Act 1985 (c. 6) (accounts and audit) is amended as follows.
- (2) In Schedule 7 (matters to be dealt with in directors' report), after Part 6 insert—

“PART 7

DISCLOSURE REQUIRED BY CERTAIN PUBLICLY-TRADED COMPANIES

- 13 (1) This Part of this Schedule applies to the directors' report for a financial year if the company had securities carrying voting rights admitted to trading on a regulated market at the end of that year.
- (2) The report shall contain detailed information, by reference to the end of that year, on the following matters—
 - (a) the structure of the company's capital, including in particular—
 - (i) the rights and obligations attaching to the shares or, as the case may be, to each class of shares in the company, and
 - (ii) where there are two or more such classes, the percentage of the total share capital represented by each class;
 - (b) any restrictions on the transfer of securities in the company, including in particular—
 - (i) limitations on the holding of securities, and
 - (ii) requirements to obtain the approval of the company, or of other holders of securities in the company, for a transfer of securities;
 - (c) in the case of each person with a significant direct or indirect holding of securities in the company, such details as are known to the company of—
 - (i) the identity of the person,
 - (ii) the size of the holding, and
 - (iii) the nature of the holding;
 - (d) in the case of each person who holds securities carrying special rights with regard to control of the company—
 - (i) the identity of the person, and
 - (ii) the nature of the rights;

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- (e) where—
 - (i) the company has an employees' share scheme, and
 - (ii) shares to which the scheme relates have rights with regard to control of the company that are not exercisable directly by the employees,
 how those rights are exercisable;
 - (f) any restrictions on voting rights, including in particular—
 - (i) limitations on voting rights of holders of a given percentage or number of votes,
 - (ii) deadlines for exercising voting rights, and
 - (iii) arrangements by which, with the company's co-operation, financial rights carried by securities are held by a person other than the holder of the securities;
 - (g) any agreements between holders of securities that are known to the company and may result in restrictions on the transfer of securities or on voting rights;
 - (h) any rules that the company has about—
 - (i) appointment and replacement of directors, or
 - (ii) amendment of the company's articles of association;
 - (i) the powers of the company's directors, including in particular any powers in relation to the issuing or buying back by the company of its shares;
 - (j) any significant agreements to which the company is a party that take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects of any such agreements;
 - (k) any agreements between the company and its directors or employees providing for compensation for loss of office or employment (whether through resignation, purported redundancy or otherwise) that occurs because of a takeover bid.
- (3) For the purposes of sub-paragraph (2)(a) a company's capital includes any securities in the company that are not admitted to trading on a regulated market.
- (4) For the purposes of sub-paragraph (2)(c) a person has an indirect holding of securities if—
- (a) they are held on his behalf, or
 - (b) he is able to secure that rights carried by the securities are exercised in accordance with his wishes.
- (5) Sub-paragraph (2)(j) does not apply to an agreement if—
- (a) disclosure of the agreement would be seriously prejudicial to the company, and
 - (b) the company is not under any other obligation to disclose it.
- (6) In this paragraph—
- “securities” means shares or debentures;
 - “takeover bid” has the same meaning as in the Takeovers Directive;

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“the Takeovers Directive” means Directive [2004/25/EC](#) of the European Parliament and of the Council;

“voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances.”.

(3) In section 234ZZA (requirements of directors' reports), at the end of subsection (4) (contents of Schedule 7) insert— “ Part 7 specifies information to be disclosed by certain publicly-traded companies. ”.

(4) After that subsection insert—

“(5) A directors' report shall also contain any necessary explanatory material with regard to information that is required to be included in the report by Part 7 of Schedule 7.”.

(5) In section 251 (summary financial statements), after subsection (2ZA) insert—

“(2ZB) A company that sends to an entitled person a summary financial statement instead of a copy of its directors' report shall—

- (a) include in the statement the explanatory material required to be included in the directors' report by section 234ZZA(5), or
- (b) send that material to the entitled person at the same time as it sends the statement.

For the purposes of paragraph (b), subsections (2A) to (2E) apply in relation to the material referred to in that paragraph as they apply in relation to a summary financial statement.”.

(6) The amendments made by this section apply in relation to directors' reports for financial years beginning on or after 20th May 2006.

Modifications etc. (not altering text)

C31 [S. 992](#) applied (with modifications) (6.4.2007) by [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), **art. 9** (with [art. 11\(1\)](#))

Status:

Point in time view as at 13/06/2014.

Changes to legislation:

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