



# Companies Act 2006

## 2006 CHAPTER 46

### PART 28

#### TAKEOVERS ETC

### CHAPTER 2

#### IMPEDIMENTS TO TAKEOVERS

**Modifications etc. (not altering text)**

- C1** 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 [<sup>F1</sup>five] conditions are met in relation to the company.
- (2) The first condition is that the company has voting shares admitted to trading on a [<sup>F2</sup>UK] regulated market.
- [<sup>F3</sup>(3) The second condition is that the company’s articles of association do not contain any restrictions on the transfer of shares or, if they do contain any such restrictions, provide that they are not to apply to—
  - (a) transfers to the offeror, or at the offeror’s direction to another person, during the offer period, or

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- (b) transfers to any person 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.
- (3A) The third condition is that the company's articles of association—
- (a) do not contain any restrictions on rights to vote at a general meeting of the company, or
  - (b) if they do contain any such restrictions, provide that they are not to have effect on rights to vote at a general meeting of the company that—
    - (i) decides whether to take any action which might result in the frustration of the takeover bid, or
    - (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,unless the restrictions are compensated for by specific pecuniary advantages.
- (3B) The fourth condition is that the company's articles of association do not contain any other provision which would be incompatible with the requirements of subsection (3C).
- (3C) Those requirements are—
- (a) multiple-vote shares are to carry only one vote each at a general meeting of the company that decides whether to take any action which might result in the frustration of the takeover bid,
  - (b) multiple-vote shares are to carry only one vote each at a general meeting of the company which—
    - (i) is the first such meeting to be held after the end of the offer period,
    - (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, and
    - (iii) is called at the offeror's request under section 969 in order to amend the company's articles of association or to appoint or remove members of the board of directors, and
  - (c) 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, shareholders are not to have any extraordinary rights to appoint or remove members of the board of directors.
- (3D) The references in subsections (3A)(b) and (3C)(a) to voting at a general meeting of the company that decides whether to take any action which might result in the frustration of the takeover bid includes a reference to voting on a written resolution concerned with that question.
- (3E) For the purposes of subsections (3A)(b)(i) and (3C)(a), action which might result in the frustration of the takeover bid is any action of that kind specified in rules under section 943(1) made in accordance with paragraphs 17 or 18 of Schedule 1C.
- (3F) The references in subsections (3), (3A) and (3C) to voting shares in the company do 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).

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(3G) In subsection (3C), “multiple-vote shares” means shares included in a distinct and separate class and carrying more than one vote each.]

(4) The [<sup>F4</sup> fifth] condition is that—

(a) no shares conferring special rights in the company are held by—

(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”).

<sup>F5</sup>(6) .....

(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);

[<sup>F6</sup>(d) the Welsh Ministers;]

and for the purposes of that subsection “minister” also includes the Treasury, the Board of Trade [<sup>F7</sup>and], the Defence Council <sup>F8</sup> . . . .

(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

- F1** Word in s. 966(1) substituted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **7(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Word in s. 966(2) inserted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **7(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** S. 966(3)-(3G) substituted for s. 966(3) (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **7(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** Word in s. 966(4) substituted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **7(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** S. 966(6) omitted (31.12.2020) by virtue of [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **7(6)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** 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)**
- F7** 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)**
- F8** 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)**

*Status: Point in time view as at 31/12/2020.*

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#### **Modifications etc. (not altering text)**

- C2** 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**

- II** 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”).
- (2) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.
- (3) The [<sup>F9</sup>second, third, fourth and fifth] 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 [<sup>F10</sup>UK] 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 [<sup>F11</sup>second, third or fourth condition] in section 966 from being met is of no effect until the effective date of an opting-out resolution passed by the company.

#### **Textual Amendments**

- F9** Words in s. 967(3) substituted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **8(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Word in s. 967(4) inserted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **8(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in s. 967(7) substituted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **8(c)**; 2020 c. 1, Sch. 5 para. 1(1)

#### **Modifications etc. (not altering text)**

- C3** 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)

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### *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—
  - (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) [<sup>F12</sup>made in accordance with paragraph 17 or 18 of Schedule 1C].
- (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).

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#### Textual Amendments

**F12** Words in s. 968(5) substituted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, 9; 2020 c. 1, Sch. 5 para. 1(1)

#### 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

**I2** 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
  - (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)

**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)

### *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, <sup>F13</sup>...
  - <sup>F13</sup>(b) .....
- (2) Notification must be given within 15 days after the resolution is passed <sup>F14</sup>....

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- (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.

#### Textual Amendments

- F13** S. 970(1)(b) and word omitted (31.12.2020) by virtue of [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **10(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in s. 970(2) omitted (31.12.2020) by virtue of [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **10(b)**; 2020 c. 1, Sch. 5 para. 1(1)

#### 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)

## 971 Interpretation of this Chapter

- (1) In this Chapter—

<sup>F15</sup>  
...

[<sup>F16</sup>“offeror”, in relation to a takeover bid, means the person making the bid;]

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

- (a) rules under section 943(1) [<sup>F17</sup>made in accordance with paragraph 13 of Schedule 1C;]

“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);

[<sup>F18</sup>“takeover bid” has the meaning given by paragraph 20(1) of Schedule 1C;]

<sup>F19</sup>  
...

“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.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Chapter 2. (See end of Document for details)*

### Textual Amendments

- F15** Words in s. 971(1) omitted (31.12.2020) by virtue of [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **11(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in s. 971(1) inserted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **11(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F17** Words in s. 971(1) substituted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **11(d)**; 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in s. 971(1) inserted (31.12.2020) by [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **11(e)**; 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in s. 971(1) omitted (31.12.2020) by virtue of [The Takeovers \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/217\)](#), regs. 1, **11(e)**; 2020 c. 1, Sch. 5 para. 1(1)

### 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)

## 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”.
- (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)

- 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)



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## **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.

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### **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)

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### **Commencement Information**

- I3** 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\(1\)](#))

**Status:**

Point in time view as at 31/12/2020.

**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 2006, Chapter 2.