



# Companies Act 2006

## 2006 CHAPTER 46

### PART 28

#### TAKEOVERS ETC

### CHAPTER 2

#### IMPEDIMENTS TO TAKEOVERS

##### *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—

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- (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”).
- (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);
- and for the purposes of that subsection “minister” also includes the Treasury, the Board of Trade, the Defence Council and the National Assembly for Wales.
- (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.

## **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 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.

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- (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.