



# Companies Act 2006

## 2006 CHAPTER 46

### PART 28

#### TAKEOVERS ETC

### CHAPTER 3

#### “SQUEEZE-OUT” AND “SELL-OUT”

#### *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
  - (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.

*Status: Point in time view as at 27/03/2019.*

*Changes to legislation: Companies Act 2006, Cross Heading: Takeover offers is up to date with all changes known to be in force on or before 03 September 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)*

- (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)**

- C1** 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.

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.

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- (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)**

- C2** 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,
  - (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)**

- C3** 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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## 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)

- C4** 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.
- (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).

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

- C5** 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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