



Companies Act 2006

2006 CHAPTER 46

PART 28

TAKEOVERS ETC

CHAPTER 1

THE TAKEOVER PANEL

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—
 - (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,

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- (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.

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.

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.

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- (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—
 - (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);

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- (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—
- (a) the Financial Services Authority;
 - (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 Financial Services Authority.
- (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)

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.

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Co-operation

950 Panel’s duty of co-operation

- (1) The Panel must take such steps as it considers appropriate to co-operate with—
 - (a) the Financial Services Authority;
 - (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 Financial Services Authority.
- (2) Co-operation may include the sharing of information that the Panel is not prevented from disclosing.

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.
- (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—

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- (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
 - (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.

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).

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

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

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

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[S.I. 1979/1714 \(N.I. 19\)](#)
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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.
- (3) In section 144 (power to make price stabilising rules), for subsection (7) substitute—

“(7) “Consultation procedures” means procedures designed to provide an opportunity for persons likely to be affected by alterations to those provisions to make representations about proposed alterations to any of those provisions.”.
- (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.”.
 - (5) In section 354 (Financial Services Authority’s duty to co-operate with others), after subsection (1) insert—

“(1A) The Authority must take such steps as it considers appropriate to co-operate with—

 - (a) the Panel on Takeovers and Mergers;

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- (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 Authority to be similar to those of the Panel on Takeovers and Mergers.”.

(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;”.

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.