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STATUTORY INSTRUMENTS

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**2006 No. 1183**

**The Takeovers Directive (Interim  
Implementation) Regulations 2006**

**PART 3**

**Impediments to Takeovers**

**CHAPTER 3**

**Consequences of opting in**

**Effect on contractual restrictions**

**22.**—(1) The following provisions have effect where a takeover bid is made for an opted-in company.

- (2) An agreement to which this regulation 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 regulation 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 paragraph) is not the law of a part of the United Kingdom.

(4) The reference in paragraph (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 paragraph (2)(c), action which might result in the frustration of a bid is any action of that kind specified by rules in the Code 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 regulation) be a breach of an agreement to which this regulation applies, he is entitled to compensation, of such

amount as the court considers just and equitable, from any person who would (but for this paragraph) be liable to him for committing or inducing the breach.

- (7) A reference in this regulation to voting shares in the company does not include—
- (a) debentures; or
  - (b) shares carrying rights to vote that, under the company’s articles of association, arise only where specified pecuniary advantages are not provided.

In sub-paragraph (b) “rights to vote” means rights to vote at general meetings of the company.

### **Power of offeror to require general meeting to be called**

**23.**—(1) Where a takeover bid is made for an opted-in company, section 368 of the Companies Act 1985(1) (extraordinary general meeting on members' requisition) and section 378 of that Act(2) (extraordinary and special resolutions) have effect as follows.

- (2) Section 368 has effect as if a member’s 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 regulation to voting shares in the company does not include—
- (a) debentures; or
  - (b) shares carrying rights to vote that, under the company’s articles of association, arise only where specified pecuniary advantages are not provided.

In sub-paragraph (b) “rights to vote” means rights to vote at general meetings of the company.

(5) In its application to Northern Ireland, references in this regulation to sections 368 and 378 of the Companies Act 1985 are to be read, respectively, as references to Articles 376(3) and 386(4) of the Companies (Northern Ireland) Order 1986.

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(1) Section 368 was amended by section 145 of, and by paragraph 9 of Schedule 19 to, the Companies Act 1989 (c. 40), and by regulation 4 of, and by paragraph 19 of the Schedule to, [S.I. 2003/1116](#).

(2) Section 378 was amended by section 115(3) of the Companies Act 1989 (c. 40) and by regulation 4 of, and by paragraph 24 of the Schedule to, [S.I. 2003/1116](#).

(3) Article 376 was amended by Article 78 of, and by paragraph 9 of Schedule 5 to, [S.I. 1990/1504 \(N.I. 10\)](#) and by paragraph 20 of the Schedule to [S.R. 2004/275](#).

(4) Article 386 was amended by Article 50 of, and by paragraph 25 of Schedule 5 to, [S.I. 1990/1504 \(N.I. 10\)](#) and by paragraph 20 of the Schedule to [S.R. 2004/275](#).