

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 28: Takeovers Etc

Information

Section 947: Power to require documents and information

1189. The Panel has historically had no formal power to require those involved in takeover activity to provide it with the information the Panel requires to carry out its functions. Persons authorised under the Financial Services and Markets Act 2000 are required by the rules of the Financial Services Authority to provide information and assistance to the Panel. In relation to others, the Panel has relied on the voluntary co-operation of market participants to provide explanations and documents which are not publicly available.
1190. This section enables the Panel to require the production of such documents and information as it may reasonably require in the exercise of its functions. The Panel may also authorise a person to exercise the powers under the section on its behalf, for example, if the Panel were to appoint a law or accountancy firm to help it collect and analyse documents.
1191. *Subsection (7)* provides that a lien on a document is not affected by the production of that document in compliance with a requirement imposed by the Panel or someone authorised on its behalf. A lien is a legal right to keep possession of a document belonging to someone else until a claim is satisfied – for example, a claim for payment of professional fees. This subsection does not entitle a professional to refuse to hand over a document to the Panel but preserves his rights over those documents.
1192. The section provides that the Panel may require the production of information in hard copy where it is held in some other form (for instance, electronically on a floppy disk).
1193. The Panel may not compel the production of documents which would be protected from disclosure in legal proceedings on the grounds of legal professional privilege or confidentiality of communications.

Sections 948 and 949: Restrictions on disclosure; Offence of disclosure in contravention of section 948

1194. These sections provide that information obtained by the Panel in the course of exercising its functions will be subject to restrictions on onward disclosure. Aside from the desirability of such provisions, so that those providing information to the Panel can do so knowing that it will not be subject to improper further disclosure, these provisions also meet a requirement under Article 4.3 of the Directive that Member States shall ensure that information provided to those employed, or formerly employed, by takeover supervisory authorities shall not be further divulged: “*to any person or authority except under provisions laid down by law.*” Section 948, accordingly, prescribes the conditions under which such information can be released.

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

1195. Information concerning the private affairs of an individual or a business provided to the Panel in connection with its functions may not be disclosed during the individual's lifetime or while the business is carried on without the consent of the individual or business in question except for the purposes of carrying out the Panel's functions or unless it is disclosed to a person or for a purpose set out in Schedule 2.
1196. [Schedule 2](#) sets out the "gateways" for disclosure of information obtained by the Panel in the exercise of its functions which are permitted under section 948, including the circumstances in which a disclosure to an overseas regulatory authority is permitted. Under section 948(4) and (5), the Secretary of State has the power to amend the Schedule, but only to specify persons exercising functions of a public nature or descriptions of disclosure where the purpose for which the disclosure is permitted is likely to assist in the exercise of a function of a public nature.
1197. [Section 948\(6\)\(a\)](#) provides that certain authorities mentioned in *subsection (7)* are not bound by the restrictions on disclosure imposed by *subsection (2)*. These bodies are those other takeover supervisory authorities and financial services regulators with which the Panel has a duty to co-operate. *Subsection (6)(b)* provides that persons or bodies obtaining information from those authorities (whether directly or indirectly) are also not bound by the restrictions on disclosure imposed by subsection (2). These provisions are necessary to implement fully Article 4.4 of the Directive. Those bodies mentioned in subsection (7), and persons and bodies receiving information from them, will themselves be subject to restrictions on disclosure that will mirror those imposed by section 948, and so information originating from the Panel will still be protected from improper further disclosure.
1198. [Section 949](#) makes it an offence to disclose information in contravention of section 948. A person guilty of such an offence is liable on conviction on indictment to two years' imprisonment or a fine or both; and on summary conviction to twelve months' imprisonment (six months in Scotland and Northern Ireland) or a fine or both. Section 949(1) provides a person with a defence if he can prove that he did not know, and had no reason to suspect, that the information in question had been provided to the Panel in the exercise of its functions; or that he took reasonable steps to prevent wrongful disclosure.