
STATUTORY INSTRUMENTS

2006 No. 1183

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

PART 3

Impediments to Takeovers

CHAPTER 2

Opting in and opting out

Opting in and opting out

20.—(1) A company may by special resolution (an “opting-in resolution”) opt in for the purposes of this Part 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—

(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 paragraph (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 in the Code giving effect to the relevant Article.

(7) In paragraph (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⁽¹⁾, and for the purposes of that paragraph “minister” also includes the Treasury, the Board of Trade, the Defence Council and the National Assembly for Wales.

Further provisions about opting-in and opting-out resolutions

21.—(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 regulation 20 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 paragraph (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.

(5) 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.

(6) Where a company has passed an opting-in resolution, any alteration of its articles of association that would prevent the second condition in regulation 20 from being met is of no effect until the effective date of an opting-out resolution passed by the company.

(1) 1998 c. 47.