
STATUTORY INSTRUMENTS

2006 No. 1183

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

PART 3

Impediments to Takeovers

CHAPTER 1

Interpretation

Interpretation of Part

19.—(1) In this Part—

“company” means—

- (a) a company within the meaning of section 735 of the Companies Act 1985⁽¹⁾;
- (b) an unregistered company within the meaning of section 718 of that Act⁽²⁾;
- (c) a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986⁽³⁾; or
- (d) an unregistered company within the meaning of Article 667 of that Order⁽⁴⁾;

“daily default fine” has the meaning in section 730(4) of the Companies Act 1985 (or in the case of Northern Ireland, Article 678(4) of the Companies (Northern Ireland) Order 1986;

“offeror” has the same meaning as in the Takeovers Directive;

“offer period”, in relation to a takeover bid, means the time allowed for acceptance of the bid by—

- (a) rules in the Code giving effect to Article 7(1) of the Takeovers Directive; or
- (b) where the rules giving effect to that Article which apply to the bid are those of an EEA State other than the United Kingdom, those rules;

“opted-in company” means a company in relation to which—

- (a) an opting-in resolution has effect; and
- (b) the conditions in regulation 20(2) and (4) continue to be met;

“opting-in resolution” has the meaning given by regulation 20(1);

“opting-out resolution” has the meaning given by regulation 20(5);

“registrar” has the meaning in section 744 of the Companies Act 1985 (or in the case of Northern Ireland in Article 653(2) of the Companies (Northern Ireland) Order 1986).

(1) 1985 c. 6.

(2) Section 718 was amended by regulation 75 of, and by paragraph 9 of Schedule 8 to, [S.I. 1996/2827](#).

(3) [S.I. 1986/1032 \(N.I. 6\)](#).

(4) Article 667 was amended by regulation 75 of, and by paragraph 8 of Schedule 8 to, [S.R. 1997/251](#).

- (2) For the purposes of this Part—
- (a) securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares;
 - (b) debentures issued by a company are treated as shares in the company if they carry voting rights.

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⁽⁵⁾, 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.

(5) 1998 c. 47.

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.

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(6) (extraordinary general meeting on members' requisition) and section 378 of that Act(7) (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(8) and 386(9) of the Companies (Northern Ireland) Order 1986.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

CHAPTER 4

Supplementary

Communication of decisions

24.—(1) A company that has passed an opting-in resolution or an opting-out resolution must notify—

- (a) the Panel; and
- (b) where the company—
 - (i) has voting shares admitted to trading on a regulated market in an EEA State other than the United Kingdom, or
 - (ii) has requested such admission,
 - the authority designated by that State as the supervisory authority for the purposes of Article 4.1 of the Takeovers Directive.

(2) Notification must be given within 15 days after the resolution is passed and, if any admission or request such as is mentioned in paragraph (1)(b) occurs at a later time, within 15 days after that time.

(3) If a company fails to comply with this regulation, an offence is committed by—

- (a) the company; and
- (b) every officer of it who is in default.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, to a daily default fine not exceeding £100.