



Companies Act 2006

2006 CHAPTER 46

PART 28

TAKEOVERS ETC

CHAPTER 3

“SQUEEZE-OUT” AND “SELL-OUT”

Modifications etc. (not altering text)

- C1** Pt. 28 Ch. 3 applied (6.4.2007) by [The Companies Acts \(Unregistered Companies\) Regulations 2007 \(S.I. 2007/318\)](#), reg. 3, [Sch.](#) (with reg. 6)

Takeover offers

974 Meaning of “takeover offer”

- (1) For the purposes of this Chapter an offer to acquire shares in a company is a “takeover offer” if the following two conditions are satisfied in relation to the offer.
- (2) The first condition is that it is an offer to acquire—
 - (a) all the shares in a company, or
 - (b) where there is more than one class of shares in a company, all the shares of one or more classes,

other than shares that at the date of the offer are already held by the offeror.

Section 975 contains provision supplementing this subsection.

- (3) The second condition is that the terms of the offer are the same—
 - (a) in relation to all the shares to which the offer relates, or

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- (b) where the shares to which the offer relates include shares of different classes, in relation to all the shares of each class.

Section 976 contains provision treating this condition as satisfied in certain circumstances.

- (4) In subsections (1) to (3) “shares” means shares, other than relevant treasury shares, that have been allotted on the date of the offer (but see subsection (5)).
- (5) A takeover offer may include among the shares to which it relates—
- (a) all or any shares that are allotted after the date of the offer but before a specified date;
 - (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date;
 - (c) all or any other relevant treasury shares.
- (6) In this section—
- “relevant treasury shares” means shares that—
- (a) are held by the company as treasury shares on the date of the offer, or
 - (b) become shares held by the company as treasury shares after that date but before a specified date;
- “specified date” means a date specified in or determined in accordance with the terms of the offer.
- (7) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, then, if the terms of the offer are revised in accordance with that provision—
- (a) the revision is not to be regarded for the purposes of this Chapter as the making of a fresh offer, and
 - (b) references in this Chapter to the date of the offer are accordingly to be read as references to the date of the original offer.

Modifications etc. (not altering text)

- C2** Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

975 Shares already held by the offeror etc

- (1) The reference in section 974(2) to shares already held by the offeror includes a reference to shares that he has contracted to acquire, whether unconditionally or subject to conditions being met.

This is subject to subsection (2).

- (2) The reference in section 974(2) to shares already held by the offeror does not include a reference to shares that are the subject of a contract—
- (a) intended to secure that the holder of the shares will accept the offer when it is made, and
 - (b) entered into—
 - (i) by deed and for no consideration,

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- (ii) for consideration of negligible value, or
 - (iii) for consideration consisting of a promise by the offeror to make the offer.
- (3) In relation to Scotland, this section applies as if the words “by deed and” in subsection (2)(b)(i) were omitted.
- (4) The condition in section 974(2) is treated as satisfied where—
- (a) the offer does not extend to shares that associates of the offeror hold or have contracted to acquire (whether unconditionally or subject to conditions being met), and
 - (b) the condition would be satisfied if the offer did extend to those shares.
- (For further provision about such shares, see section 977(2)).

Modifications etc. (not altering text)

- C3** Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, [Sch. 1 para. 14\(2\)](#) (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

976 Cases where offer treated as being on same terms

- (1) The condition in section 974(3) (terms of offer to be the same for all shares or all shares of particular classes) is treated as satisfied where subsection (2) or (3) below applies.
- (2) This subsection applies where—
- (a) shares carry an entitlement to a particular dividend which other shares of the same class, by reason of being allotted later, do not carry,
 - (b) there is a difference in the value of consideration offered for the shares allotted earlier as against that offered for those allotted later,
 - (c) that difference merely reflects the difference in entitlement to the dividend, and
 - (d) the condition in section 974(3) would be satisfied but for that difference.
- (3) This subsection applies where—
- (a) the law of a country or territory outside the United Kingdom—
 - (i) precludes an offer of consideration in the form, or any of the forms, specified in the terms of the offer (“the specified form”), or
 - (ii) precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous,
 - (b) the persons to whom an offer of consideration in the specified form is precluded are able to receive consideration in another form that is of substantially equivalent value, and
 - (c) the condition in section 974(3) would be satisfied but for the fact that an offer of consideration in the specified form to those persons is precluded.

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Modifications etc. (not altering text)

- C4** Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

977 Shares to which an offer relates

- (1) Where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror—
- (a) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
 - (b) does not do so by virtue of acceptances of the offer,
- those shares are treated for the purposes of this Chapter as excluded from those to which the offer relates.

- (2) For the purposes of this Chapter shares that an associate of the offeror holds or has contracted to acquire, whether at the date of the offer or subsequently, are not treated as shares to which the offer relates, even if the offer extends to such shares.

In this subsection “contracted” means contracted unconditionally or subject to conditions being met.

- (3) This section is subject to section 979(8) and (9).

Modifications etc. (not altering text)

- C5** Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

978 Effect of impossibility etc of communicating or accepting offer

- (1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for the purposes of this Chapter if—
- (a) those shareholders have no registered address in the United Kingdom,
 - (b) the offer was not communicated to those shareholders in order not to contravene the law of a country or territory outside the United Kingdom, and
 - (c) either—
 - (i) the offer is published in the Gazette, or
 - (ii) the offer can be inspected, or a copy of it obtained, at a place in an EEA State or on a website, and a notice is published in the Gazette specifying the address of that place or website.
- (2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside the United Kingdom, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer for the purposes of this Chapter.

- (3) It is not to be inferred—

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- (a) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Chapter unless the requirements of paragraphs (a) to (c) of subsection (1) are met, or
- (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those purposes unless the reason for the impossibility or difficulty is the one mentioned in subsection (2).

Modifications etc. (not altering text)

C6 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

“Squeeze-out”

979 Right of offeror to buy out minority shareholder

- (1) Subsection (2) applies in a case where a takeover offer does not relate to shares of different classes.
- (2) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—
 - (a) not less than 90% in value of the shares to which the offer relates, and
 - (b) in a case where the shares to which the offer relates are voting shares, not less than 90% of the voting rights carried by those shares,he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.
- (3) Subsection (4) applies in a case where a takeover offer relates to shares of different classes.
- (4) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—
 - (a) not less than 90% in value of the shares of any class to which the offer relates, and
 - (b) in a case where the shares of that class are voting shares, not less than 90% of the voting rights carried by those shares,he may give notice to the holder of any shares of that class to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.
- (5) In the case of a takeover offer which includes among the shares to which it relates—
 - (a) shares that are allotted after the date of the offer, or
 - (b) relevant treasury shares (within the meaning of section 974) that cease to be held as treasury shares after the date of the offer,the offeror's entitlement to give a notice under subsection (2) or (4) on any particular date shall be determined as if the shares to which the offer relates did not include any allotted, or ceasing to be held as treasury shares, on or after that date.
- (6) Subsection (7) applies where—

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- (a) the requirements for the giving of a notice under subsection (2) or (4) are satisfied, and
 - (b) there are shares in the company which the offeror, or an associate of his, has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.
- (7) The offeror's entitlement to give a notice under subsection (2) or (4) shall be determined as if—
- (a) the shares to which the offer relates included shares falling within paragraph (b) of subsection (6), and
 - (b) in relation to shares falling within that paragraph, the words “by virtue of acceptances of the offer” in subsection (2) or (4) were omitted.
- (8) Where—
- (a) a takeover offer is made,
 - (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror—
 - (i) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
 - (ii) does not do so by virtue of acceptances of the offer, and
 - (c) subsection (10) applies,
- then for the purposes of this section those shares are not excluded by section 977(1) from those to which the offer relates, and the offeror is treated as having acquired or contracted to acquire them by virtue of acceptances of the offer.
- (9) Where—
- (a) a takeover offer is made,
 - (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, an associate of the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates, and
 - (c) subsection (10) applies,
- then for the purposes of this section those shares are not excluded by section 977(2) from those to which the offer relates.
- (10) This subsection applies if—
- (a) at the time the shares are acquired or contracted to be acquired as mentioned in subsection (8) or (9) (as the case may be), the value of the consideration for which they are acquired or contracted to be acquired (“the acquisition consideration”) does not exceed the value of the consideration specified in the terms of the offer, or
 - (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in paragraph (a), no longer exceeds the value of the consideration specified in those terms.

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Modifications etc. (not altering text)

- C7 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

980 Further provision about notices given under section 979

- (1) A notice under section 979 must be given in the prescribed manner.
- (2) No notice may be given under section 979(2) or (4) after the end of—
 - (a) the period of three months beginning with the day after the last day on which the offer can be accepted, or
 - (b) the period of six months beginning with the date of the offer, where that period ends earlier and the offer is one to which subsection (3) below applies.
- (3) This subsection applies to an offer if the time allowed for acceptance of the offer is not governed by rules under section 943(1) that give effect to Article 7 of the Takeovers Directive.

In this subsection “the Takeovers Directive” has the same meaning as in section 943.

- (4) At the time when the offeror first gives a notice under section 979 in relation to an offer, he must send to the company—
 - (a) a copy of the notice, and
 - (b) a statutory declaration by him in the prescribed form, stating that the conditions for the giving of the notice are satisfied.
- (5) Where the offeror is a company (whether or not a company within the meaning of this Act) the statutory declaration must be signed by a director.
- (6) A person commits an offence if—
 - (a) he fails to send a copy of a notice or a statutory declaration as required by subsection (4), or
 - (b) he makes such a declaration for the purposes of that subsection knowing it to be false or without having reasonable grounds for believing it to be true.
- (7) It is a defence for a person charged with an offence for failing to send a copy of a notice as required by subsection (4) to prove that he took reasonable steps for securing compliance with that subsection.
- (8) 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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum;
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory

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maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

Modifications etc. (not altering text)

- C8** Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

Commencement Information

- II** S. 980 wholly in force at 6.4.2007; s. 980 not in force at Royal Assent, see s. 1300; s. 980 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6](#), [8](#), [Sch. 5](#)); s. 980 in force at 6.4.2007 by [S.I. 2007/1093](#), **art. 2(1)(b)** (with [art. 11\(1\)](#))

981 Effect of notice under section 979

- (1) Subject to section 986 (applications to the court), this section applies where the offeror gives a shareholder a notice under section 979.
- (2) The offeror is entitled and bound to acquire the shares to which the notice relates on the terms of the offer.
- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration, the notice must give particulars of the choice and state—
 - (a) that the shareholder may, within six weeks from the date of the notice, indicate his choice by a written communication sent to the offeror at an address specified in the notice, and
 - (b) which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder—
 - (a) is not cash and the offeror is no longer able to provide it, or
 - (b) was to have been provided by a third party who is no longer bound or able to provide it,
 the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date of the notice is equivalent to the consideration offered or (as the case may be) chosen.
- (6) At the end of six weeks from the date of the notice the offeror must immediately—
 - (a) send a copy of the notice to the company, and
 - (b) pay or transfer to the company the consideration for the shares to which the notice relates.

Where the consideration consists of shares or securities to be allotted by the offeror, the reference in paragraph (b) to the transfer of the consideration is to be read as a reference to the allotment of the shares or securities to the company.

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- (7) If the shares to which the notice relates are registered, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by an instrument of transfer executed on behalf of the holder of the shares by a person appointed by the offeror.

On receipt of that instrument the company must register the offeror as the holder of those shares.

- (8) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by a statement to that effect.

On receipt of that statement the company must issue the offeror with warrants or other instruments in respect of the shares, and those already in issue in respect of the shares become void.

- (9) The company must hold any money or other consideration received by it under subsection (6)(b) on trust for the person who, before the offeror acquired them, was entitled to the shares in respect of which the money or other consideration was received.

Section 982 contains further provision about how the company should deal with such money or other consideration.

Modifications etc. (not altering text)

- C9** Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

982 Further provision about consideration held on trust under section 981(9)

- (1) This section applies where an offeror pays or transfers consideration to the company under section 981(6).
- (2) The company must pay into a separate bank account that complies with subsection (3)
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- (a) any money it receives under paragraph (b) of section 981(6), and
- (b) any dividend or other sum accruing from any other consideration it receives under that paragraph.
- (3) A bank account complies with this subsection if the balance on the account—
- (a) bears interest at an appropriate rate, and
- (b) can be withdrawn by such notice (if any) as is appropriate.
- (4) If—
- (a) the person entitled to the consideration held on trust by virtue of section 981(9) cannot be found, and
- (b) subsection (5) applies,
- the consideration (together with any interest, dividend or other benefit that has accrued from it) must be paid into court.
- (5) This subsection applies where—

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- (a) reasonable enquiries have been made at reasonable intervals to find the person, and
 - (b) twelve years have elapsed since the consideration was received, or the company is wound up.
- (6) In relation to a company registered in Scotland, subsections (7) and (8) apply instead of subsection (4).
- (7) If the person entitled to the consideration held on trust by virtue of section 981(9) cannot be found and subsection (5) applies—
- (a) the trust terminates,
 - (b) the company or (if the company is wound up) the liquidator must sell any consideration other than cash and any benefit other than cash that has accrued from the consideration, and
 - (c) a sum representing—
 - (i) the consideration so far as it is cash,
 - (ii) the proceeds of any sale under paragraph (b), and
 - (iii) any interest, dividend or other benefit that has accrued from the consideration,
 must be deposited in the name of the Accountant of Court in a separate bank account complying with subsection (3) and the receipt for the deposit must be transmitted to the Accountant of Court.
- (8) Section 58 of the Bankruptcy (Scotland) Act 1985 (c. 66) (so far as consistent with this Act) applies (with any necessary modifications) to sums deposited under subsection (7) as it applies to sums deposited under section 57(1)(a) of that Act.
- (9) The expenses of any such enquiries as are mentioned in subsection (5) may be paid out of the money or other property held on trust for the person to whom the enquiry relates.

Modifications etc. (not altering text)

C10 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

“Sell-out”

983 Right of minority shareholder to be bought out by offeror

- (1) Subsections (2) and (3) apply in a case where a takeover offer relates to all the shares in a company.
- For this purpose a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of section 974.
- (2) The holder of any voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—
- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and

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- (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)—
 - (i) amount to not less than 90% in value of all the voting shares in the company (or would do so but for section 990(1)), and
 - (ii) carry not less than 90% of the voting rights in the company (or would do so but for section 990(1)).
- (3) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—
 - (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and
 - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met), amount to not less than 90% in value of all the shares in the company (or would do so but for section 990(1)).
- (4) If a takeover offer relates to shares of one or more classes and at any time before the end of the period within which the offer can be accepted—
 - (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares of any class to which the offer relates, and
 - (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)—
 - (i) amount to not less than 90% in value of all the shares of that class, and
 - (ii) in a case where the shares of that class are voting shares, carry not less than 90% of the voting rights carried by the shares of that class,

the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.
- (5) For the purposes of subsections (2) to (4), in calculating 90% of the value of any shares, shares held by the company as treasury shares are to be treated as having been acquired by the offeror.
- (6) Subsection (7) applies where—
 - (a) a shareholder exercises rights conferred on him by subsection (2), (3) or (4),
 - (b) at the time when he does so, there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional, and
 - (c) the requirement imposed by subsection (2)(b), (3)(b) or (4)(b) (as the case may be) would not be satisfied if those shares were not taken into account.
- (7) The shareholder is treated for the purposes of section 985 as not having exercised his rights under this section unless the requirement imposed by paragraph (b) of subsection (2), (3) or (4) (as the case may be) would be satisfied if—
 - (a) the reference in that paragraph to other shares in the company which the offeror has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire, and

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- (b) the reference in that subsection to the period within which the offer can be accepted were a reference to the period referred to in section 984(2).
- (8) A reference in subsection (2)(b), (3)(b), (4)(b), (6) or (7) to shares which the offeror has acquired or contracted to acquire includes a reference to shares which an associate of his has acquired or contracted to acquire.

Modifications etc. (not altering text)

C11 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

984 Further provision about rights conferred by section 983

- (1) Rights conferred on a shareholder by subsection (2), (3) or (4) of section 983 are exercisable by a written communication addressed to the offeror.
- (2) Rights conferred on a shareholder by subsection (2), (3) or (4) of that section are not exercisable after the end of the period of three months from—
- (a) the end of the period within which the offer can be accepted, or
 - (b) if later, the date of the notice that must be given under subsection (3) below.
- (3) Within one month of the time specified in subsection (2), (3) or (4) (as the case may be) of that section, the offeror must give any shareholder who has not accepted the offer notice in the prescribed manner of—
- (a) the rights that are exercisable by the shareholder under that subsection, and
 - (b) the period within which the rights are exercisable.

If the notice is given before the end of the period within which the offer can be accepted, it must state that the offer is still open for acceptance.

- (4) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 979.
- (5) An offeror who fails to comply with subsection (3) commits an offence.
- If the offeror is a company, every officer of that company who is in default or to whose neglect the failure is attributable also commits an offence.
- (6) If an offeror other than a company is charged with an offence for failing to comply with subsection (3), it is a defence for him to prove that he took all reasonable steps for securing compliance with that subsection.
- (7) 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 and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

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Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Chapter 3. (See end of Document for details)

Modifications etc. (not altering text)

C12 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

Commencement Information

I2 S. 984 wholly in force at 6.4.2007; s. 1043 not in force at Royal Assent, see s. 1300; s. 984 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6](#), [8](#), [Sch. 5](#)); s. 984 wholly in force at 6.4.2007 by [S.I. 2007/1093](#) {art. 2(1)(b)}

985 Effect of requirement under section 983

- (1) Subject to section 986, this section applies where a shareholder exercises his rights under section 983 in respect of any shares held by him.
- (2) The offeror is entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.
- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration—
 - (a) the shareholder may indicate his choice when requiring the offeror to acquire the shares, and
 - (b) the notice given to the shareholder under section 984(3)—
 - (i) must give particulars of the choice and of the rights conferred by this subsection, and
 - (ii) may state which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder—
 - (a) is not cash and the offeror is no longer able to provide it, or
 - (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date when the shareholder requires the offeror to acquire the shares is equivalent to the consideration offered or (as the case may be) chosen.

Modifications etc. (not altering text)

C13 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

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Supplementary

986 Applications to the court

- (1) Where a notice is given under section 979 to a shareholder the court may, on an application made by him, order—
 - (a) that the offeror is not entitled and bound to acquire the shares to which the notice relates, or
 - (b) that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.
- (2) An application under subsection (1) must be made within six weeks from the date on which the notice referred to in that subsection was given.

If an application to the court under subsection (1) is pending at the end of that period, section 981(6) does not have effect until the application has been disposed of.
- (3) Where a shareholder exercises his rights under section 983 in respect of any shares held by him, the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.
- (4) On an application under subsection (1) or (3)—
 - (a) the court may not require consideration of a higher value than that specified in the terms of the offer (“the offer value”) to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair;
 - (b) the court may not require consideration of a lower value than the offer value to be given for the shares.
- (5) No order for costs or expenses may be made against a shareholder making an application under subsection (1) or (3) unless the court considers that—
 - (a) the application was unnecessary, improper or vexatious,
 - (b) there has been unreasonable delay in making the application, or
 - (c) there has been unreasonable conduct on the shareholder’s part in conducting the proceedings on the application.
- (6) A shareholder who has made an application under subsection (1) or (3) must give notice of the application to the offeror.
- (7) An offeror who is given notice of an application under subsection (1) or (3) must give a copy of the notice to—
 - (a) any person (other than the applicant) to whom a notice has been given under section 979;
 - (b) any person who has exercised his rights under section 983.
- (8) An offeror who makes an application under subsection (3) must give notice of the application to—
 - (a) any person to whom a notice has been given under section 979;
 - (b) any person who has exercised his rights under section 983.
- (9) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (2) or (4) of section 979 the court may, on an

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application made by him, make an order authorising him to give notices under that subsection if it is satisfied that—

- (a) the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates,
- (b) the requirements of that subsection would have been met if the person, or all the persons, mentioned in paragraph (a) above had accepted the offer, and
- (c) the consideration offered is fair and reasonable.

This is subject to subsection (10).

- (10) The court may not make an order under subsection (9) unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

Modifications etc. (not altering text)

C14 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

987 Joint offers

- (1) In the case of a takeover offer made by two or more persons jointly, this Chapter has effect as follows.
- (2) The conditions for the exercise of the rights conferred by section 979 are satisfied—
 - (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
 - (b) in other cases, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.
- (3) The conditions for the exercise of the rights conferred by section 983 are satisfied—
 - (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
 - (b) in other cases, by the joint offerors acquiring or contracting (whether unconditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.
- (4) Subject to the following provisions, the rights and obligations of the offeror under sections 979 to 985 are respectively joint rights and joint and several obligations of the joint offerors.
- (5) A provision of sections 979 to 986 that requires or authorises a notice or other document to be given or sent by or to the joint offerors is complied with if the notice or document is given or sent by or to any of them (but see subsection (6)).
- (6) The statutory declaration required by section 980(4) must be made by all of the joint offerors and, where one or more of them is a company, signed by a director of that company.

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- (7) In sections 974 to 977, 979(9), 981(6), 983(8) and 988 references to the offeror are to be read as references to the joint offerors or any of them.
- (8) In section 981(7) and (8) references to the offeror are to be read as references to the joint offerors or such of them as they may determine.
- (9) In sections 981(5)(a) and 985(5)(a) references to the offeror being no longer able to provide the relevant consideration are to be read as references to none of the joint offerors being able to do so.
- (10) In section 986 references to the offeror are to be read as references to the joint offerors, except that—
 - (a) an application under subsection (3) or (9) may be made by any of them, and
 - (b) the reference in subsection (9)(a) to the offeror having been unable to trace one or more of the persons holding shares is to be read as a reference to none of the offerors having been able to do so.

Modifications etc. (not altering text)

C15 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

Interpretation

988 Associates

- (1) In this Chapter “associate”, in relation to an offeror, means—
 - (a) a nominee of the offeror,
 - (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary,
 - (c) a body corporate in which the offeror is substantially interested,
 - (d) a person who is, or is a nominee of, a party to a share acquisition agreement with the offeror, or
 - (e) (where the offeror is an individual) his spouse or civil partner and any minor child or step-child of his.
- (2) For the purposes of subsection (1)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.
- (3) For the purposes of subsection (1)(c) an offeror has a substantial interest in a body corporate if—
 - (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
 - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.

Subsections (2) and (3) of section 823 (which contain provision about when a person is treated as entitled to exercise or control the exercise of voting power) apply for the purposes of this subsection as they apply for the purposes of that section.

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- (4) For the purposes of subsection (1)(d) an agreement is a share acquisition agreement if—
- (a) it is an agreement for the acquisition of, or of an interest in, shares to which the offer relates,
 - (b) it includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of such shares, or their interests in such shares, acquired in pursuance of the agreement (whether or not together with any other shares to which the offer relates or any other interests of theirs in such shares), and
 - (c) it is not an excluded agreement (see subsection (5)).
- (5) An agreement is an “excluded agreement”—
- (a) if it is not legally binding, unless it involves mutuality in the undertakings, expectations or understandings of the parties to it, or
 - (b) if it is an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.
- (6) The reference in subsection (4)(b) to the use of interests in shares is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (7) In this section—
- (a) “agreement” includes any agreement or arrangement;
 - (b) references to provisions of an agreement include—
 - (i) undertakings, expectations or understandings operative under an arrangement, and
 - (ii) any provision whether express or implied and whether absolute or not.

Modifications etc. (not altering text)

C16 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, [Sch. 1 para. 14\(2\)](#) (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

989 Convertible securities

- (1) For the purposes of this Chapter 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.
- References to the holder of shares or a shareholder are to be read accordingly.
- (2) Subsection (1) is not to be read as requiring any securities to be treated—
- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe, or
 - (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

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Modifications etc. (not altering text)

C17 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

990 Debentures carrying voting rights

- (1) For the purposes of this Chapter debentures issued by a company to which subsection (2) applies are treated as shares in the company if they carry voting rights.
- (2) This subsection applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market.
- (3) In this Chapter, in relation to debentures treated as shares by virtue of subsection (1)—
 - (a) references to the holder of shares or a shareholder are to be read accordingly;
 - (b) references to shares being allotted are to be read as references to debentures being issued.

Modifications etc. (not altering text)

C18 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

991 Interpretation

- (1) In this Chapter—
 - “the company” means the company whose shares are the subject of a takeover offer;
 - “date of the offer” means—
 - (a) where the offer is published, the date of publication;
 - (b) where the offer is not published, or where any notices of the offer are given before the date of publication, the date when notices of the offer (or the first such notices) are given;

and references to the date of the offer are to be read in accordance with section 974(7) (revision of offer terms) where that applies;

 - “non-voting shares” means shares that are not voting shares;
 - “offeror” means (subject to section 987) the person making a takeover offer;
 - “voting rights” means rights to vote at general meetings of the company, including rights that arise only in certain circumstances;
 - “voting shares” means shares carrying voting rights.
- (2) For the purposes of this Chapter a person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not (or is no longer) subject to conditions or if all conditions to which it was subject have been met.

A reference to a contract becoming unconditional is to be read accordingly.

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Modifications etc. (not altering text)

C19 Ss. 974-991 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 14(2)** (with transitional provisions and savings in regs. 7, 9, Sch. 2)

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Companies Act 2006, Chapter 3.