

# COMPANY TAKE-OVERS ACT, 1979

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## COMPANY TAKE-OVERS.

No. 90 of 1979.

AN ACT relating to the acquisition of shares in companies incorporated in Western Australia and matters connected therewith, and to amend the Companies Act, 1961-1979.

[Assented to 7th December, 1979.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I—PRELIMINARY.

1. This Act may be cited as the *Company Take-overs Act, 1979*. Short title.

Commence-  
ment.

2. (1) This Act shall be deemed to have come into operation on 5th December, 1979, and, subject to subsection (2), shall have retrospective application and effect accordingly.

(2) An act or omission which occurred before the date on which this Act was assented to for and on behalf of Her Majesty shall be deemed not to have been an offence against this Act.

Object.

3. The object of this Act is to regulate the acquisition of shares in companies incorporated in Western Australia.

Exclusion of  
certain  
provisions.

4. (1) Except as provided by section 57, this Act operates to the exclusion of Part VIB of, and the Tenth Schedule to, the Companies Act, 1961.

(2) The provisions of the Interstate Corporate Affairs Agreement do not apply to or with respect to the provisions of this Act or the administration of those provisions.

Incorporation.

5. Subject to this Act, the Companies Act, 1961, (other than Part VIB and the Tenth Schedule) is incorporated, and shall be read as one, with this Act as if this Act were part of that Act.

Definitions.

6. In this Act, unless the contrary intention appears—

“business rules”, in relation to a stock exchange, means rules, regulations or by-laws—

(a) governing the activities or conduct of the stock exchange or of its members; or

(b) governing the activities or conduct of other persons in relation to the stock market of the stock exchange,

being rules, regulations or by-laws made by the stock exchange or contained in any

of the constituent documents of the stock exchange, but does not include rules, regulations or by-laws that are listing rules of the stock exchange;

“company” means a company as defined by subsection (1) of section 5 of the Companies Act, 1961, and includes a body corporate incorporated in the State that has a share capital;

“constituent documents”, in relation to a body corporate, means the law, charter, memorandum of association, memorandum of association and articles of association, or other instrument, constituting, or defining the constitution of, the body corporate or governing the activities or conduct of the body corporate or of its members;

“convertible note” has the same meaning as in Division 3A of Part III of the Income Tax Assessment Act 1936 of the Commonwealth;

“dealing in securities” means (whether as principal or agent) acquiring, disposing of, subscribing for, underwriting or sub-underwriting securities or making or offering to make, or inducing or attempting to induce a person to make or to offer to make, an agreement—

(a) for or with respect to acquiring, disposing of, subscribing for, underwriting or sub-underwriting securities; or

(b) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for, underwrites or sub-underwrites securities or to any of the parties to the agreement in relation to securities;

“director” includes any person occupying or acting in the position of director of a corporation, by whatever name called and whether or not validly appointed to occupy

or duly authorized to act in the position, and includes any person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;

“expert”, in relation to a matter, means any person whose profession or reputation gives authority to a statement made by him in relation to that matter;

“home exchange”, in relation to a listed public company, means the stock exchange designated to the company as its Home Exchange by the Australian Associated Stock Exchanges;

“invitation” means a statement, however expressed, that is not an offer but expressly or impliedly invites a holder of shares to offer to dispose of shares or a holder of a right, being a right to acquire a share or an interest in a share under an option, to dispose of the right;

“listed public company” means a company shares in which are listed for quotation on the stock market of a stock exchange;

“listing rules”, in relation to a stock exchange, means rules, regulations or by-laws governing or relating to—

(a) the admission to, or removal from, the official list of the stock exchange of bodies corporate, governments, unincorporate bodies or other persons for the purposes of the quotation on the stock market of the stock exchange of securities of, or made available by, bodies corporate, governments, unincorporate bodies or other persons and for other purposes; or

(b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are admitted to that list,

whether those rules, regulations or by-laws—

(c) are made by the stock exchange or are contained in any of the constituent documents of the stock exchange; or

(d) are made by another person and adopted by the stock exchange;

“marketable parcel”, in relation to shares in a listed public company, means a marketable parcel of shares in that listed public company within the meaning of the relevant business rules or listing rules of the stock exchange that is the home exchange in relation to that listed public company;

“marketable securities” means debentures, stocks, shares or bonds of any Government, of any local government authority or of any corporation, association or society, and includes any right or option in respect of shares in any corporation and any prescribed interest;

“nominee corporation” means a corporation that carries on a business of holding shares as a trustee or nominee and does not carry on any other business;

“non-voting share”, in relation to a company, means an issued share in the company that is not a voting share;

“offeror” means—

(a) a person who dispatches or proposes to dispatch a take-over offer, whether he dispatches or proposes to dispatch the offer himself or by an agent or nominee; or

(b) two or more persons who together dispatch or propose to dispatch a take-over offer, whether they dispatch or propose to dispatch the offer themselves or by an agent or nominee;

“officer”, in relation to a corporation, means—

- (a) a director, secretary or principal executive officer of the corporation;
- (b) a receiver and manager of the undertaking or any part of the undertaking of the corporation appointed under a power contained in an instrument;
- (c) an official manager or deputy official manager of the corporation appointed under the provisions of Part IX of the Companies Act, 1961, or under the provisions of the law of another State or of a Territory that correspond with that Part; and
- (d) a liquidator of the corporation appointed in a voluntary winding up of the corporation,

but does not include—

- (e) a receiver who is not also a manager;
- (f) a receiver and manager appointed by the Court; or
- (g) a liquidator appointed by the Court or by the creditors;

“on-market offeror” means—

- (a) a person who makes, or proposes to make, offers to acquire shares in accordance with section 17; or
- (b) two or more persons who together make, or propose to make, offers to acquire shares in accordance with section 17;

“paragraph” means a paragraph of the section or subsection in which the term is used;

“Part A statement” means a statement in writing that complies with the requirements of Part A of the Schedule;

“Part B statement” means a statement in writing that complies with the requirements of Part B of the Schedule;

“Part C statement” means a statement in writing that complies with the requirements of Part C of the Schedule;

“Part D statement” means a statement in writing that complies with the requirements of Part D of the Schedule;

“prescribed condition”, in relation to a take-over offer, means—

(a) a condition that will, in circumstances referred to in the condition, result in the rescission of, or entitle the offeror to rescind, a contract that results from an acceptance of the offer; or

(b) a condition that prevents a binding contract from resulting from an acceptance of the offer unless or until the condition is fulfilled;

“prescribed interest” means an interest as defined in subsection (1) of section 76 of the Companies Act, 1961;

“prescribed occurrence”, in relation to a target company, means—

(a) any one or more of the provisions of the constituent documents of the target company or of a subsidiary of the target company being altered in any of the ways mentioned in subsection (1) of section 62 of the Companies Act, 1961;

(b) the target company or a subsidiary of the target company resolving to reduce its share capital in any way;

(c) the target company or a subsidiary of the target company making an allotment of, or granting an option to subscribe for, any of its shares, or agreeing to make such an allotment or grant such an option;

- (d) the target company or a subsidiary of the target company issuing, or agreeing to issue, convertible notes;
- (e) the target company or a subsidiary of the target company disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (f) the target company or a subsidiary of the target company charging, or agreeing to charge, the whole, or a substantial part, of its business or property;
- (g) the target company or a subsidiary of the target company resolving that it be wound up;
- (h) the appointment of a provisional liquidator of the target company or of a subsidiary of the target company;
- (j) the making of an order by a court for the winding up of the target company or of a subsidiary of the target company;
- (k) the target company or a subsidiary of the target company being placed under official management; or
- (l) the appointment of a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the undertaking of the target company or of a subsidiary of the target company;

“principal executive officer”, in relation to a corporation, includes any person who is concerned, or takes part, in the management of affairs of the corporation;

“recorded”, in relation to a dealing in shares in a listed public company, means recorded by a stock exchange;

“renounceable option” means an option to have an allotment of shares in a corporation made to the holder of the option, being an option that is capable of being assigned;

“Schedule” means the Schedule to this Act;

“section” means a section of this Act;

“securities”, in relation to a corporation, means—

- (a) shares in, or debentures of, the corporation;
- (b) any right or option in respect of any such shares or debentures; and
- (c) any prescribed interest made available by the corporation;

“stock exchange” means a body corporate (whether or not incorporated in the State) that is declared by the regulations to be a stock exchange for the purposes of this Act;

“stock market” means a market, exchange or other place (whether or not in the State) at which, or a facility (whether or not in the State) by means of which, securities of corporations are regularly offered for sale, purchase or exchange;

“subparagraph” means a subparagraph of the paragraph in which the term is used;

“subsection” means a subsection of the section in which the term is used;

“take-over announcement” means an announcement made in accordance with section 17;

“take-over offer” means an offer to acquire shares made under a take-over scheme;

“take-over scheme” means a take-over scheme referred to in section 16;

“target company” means—

- (a) in relation to a take-over offer—the company for the acquisition of shares in which that offer has been, or is proposed to be, dispatched;
- (b) in relation to a take-over scheme—the company shares in which are proposed to be acquired under the scheme; and
- (c) in relation to a take-over announcement—the company in relation to shares in which the take-over announcement has been, or is proposed to be, made;

“Territory” means a Territory of the Commonwealth;

“trading day”, in relation to a stock exchange, means a day on which the stock market of that stock exchange is open for the sale, purchase or exchange of securities.

Provisions relating to acquisition and disposal of, and entitlement to, shares, and associated persons.

7. (1) For the purposes of this Act, a person shall be taken to acquire shares in a company (in this subsection referred to as the “shares concerned”) if, and only if—

- (a) he acquires a relevant interest in the shares concerned as a direct or indirect result of a transaction entered into by him in relation to those shares, in relation to any other shares in that company or in relation to shares in any other corporation; or
- (b) he acquires any legal or equitable interest in shares in that company or in shares in any other corporation and as a direct or

indirect result of the acquisition another person acquires a relevant interest in the shares concerned.

(2) For the purposes of this Act, a person shall be taken to dispose of shares in a company if, and only if, having a relevant interest in those shares, he ceases to have a relevant interest in those shares as a result of the doing of any act, the entering into of any transaction or the occurrence of any circumstance.

(3) For the purposes of this Act, the shares in a company to which a person is entitled include—

- (a) shares in which that person has a relevant interest; and
- (b) except in the case of a person being a nominee corporation in respect of which a certificate by the Commissioner is in force under subsection (8)—shares in which an associate of that person has a relevant interest.

(4) A reference in paragraph (b) of subsection (3) to an associate of a person shall be construed as a reference to—

- (a) if the person is a corporation—
  - (i) a director, secretary or principal executive officer of the corporation;
  - (ii) a corporation that is related to that person; or
  - (iii) a director, secretary or principal executive officer of such a related corporation;
- (b) a person who has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied, with the first-mentioned person—
  - (i) by reason of which he or the first-mentioned person may exercise, directly or indirectly control the

exercise of, or substantially influence the exercise of, any voting power attached to shares in the company referred to in subsection (3);

- (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of the affairs, of the company referred to in subsection (3); or
  - (iii) under which he or the first-mentioned person may acquire from the other of them shares in the company referred to in subsection (3) or may be required to dispose of such shares in accordance with the directions of the other of them;
- (c) a person who is acting, or proposes to act, in concert with the first-mentioned person in relation to the acquisition or proposed acquisition of shares in the company referred to in subsection (3);
  - (d) a person who is, or proposes to become, associated, whether formally or informally, with the first-mentioned person with a view to controlling or influencing the composition of the board of directors, or the conduct of the affairs, of the company referred to in subsection (3);
  - (e) a person who is, or proposes to become, associated, whether formally or informally, in any other way with the first-mentioned person in relation to shares in the company referred to in subsection (3); or
  - (f) a person who has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to enabling him to become associated with the first-mentioned person as mentioned in paragraph (b), (c), (d) or (e).

(5) A reference in this Act other than subsection (4) to a person associated with another person shall be construed as a reference to—

(a) if the other person is a corporation—

- (i) a director, secretary or principal executive officer of the corporation;
- (ii) a corporation that is related to the other person; or
- (iii) a director, secretary or principal executive officer of such a related corporation;

(b) where the matter to which the reference relates is a take-over offer or take-over announcement relating to shares in a company, or the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation—a person who has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied, with the other person—

- (i) by reason of which he or the other person may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the company or corporation, as the case may be;
- (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of the affairs, of the company or corporation, as the case may be; or
- (iii) under which he or the other person may acquire from the other of them shares in the company or corporation, as the case may be, or may be required to dispose of such shares in accordance with the directions of the other of them;

- (c) a person who is acting, or proposes to act, in concert with the other person in respect of the matter to which the reference relates;
- (d) a person who is, or proposes to become, associated, whether formally or informally, in any other way with the other person in respect of the matter to which the reference relates; or
- (e) a person who has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to enabling him to become associated with the other person as mentioned in paragraph (b), (c) or (d).

(6) A person shall not be taken to be an associate of another person by virtue of paragraph (b), (c), (d), (e) or (f) of subsection 4 or to be associated with another person by virtue of paragraph (b), (c), (d) or (e) of subsection (5) by reason only that—

- (a) one of those persons furnishes advice to, or acts on behalf of, the other person in a professional capacity; or
- (b) without limiting the generality of paragraph (a), where the ordinary business of one of those persons includes dealing in securities—specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of that business.

(7) For the purposes of paragraph (b) of subsection (4) and paragraph (b) of subsection (5), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

(8) The Commissioner may, in his discretion, issue to a nominee corporation a certificate declaring the nominee corporation to be an approved nominee

corporation for the purposes of this section and may at any time, in his discretion, by notice in writing to the nominee corporation, revoke the certificate.

8. (1) For the purposes of this Act, where the shares in a Company are not divided into two or more classes, those shares shall be deemed to constitute a class.

Other  
interpreta-  
tive and  
evidentiary  
provisions.

(2) In this Act—

- (a) a reference to an offeror who does not propose to acquire all the shares in a company that are included in a class of shares shall be construed as a reference to an offeror who has made offers under a take-over scheme in accordance with subparagraph (1) of paragraph (a) of subsection (2) of section 16 in respect of shares included in that class of shares, being offers in which the number of shares specified in accordance with subparagraph (iii) of paragraph (f) of subsection (2) of section 16 (or, if that number is expressed as a percentage, the number of shares represented by that percentage) is less than the total number of shares in the target company included in that class of shares (excluding any shares included in that class to which the offeror is entitled), and a reference to the number of shares proposed to be acquired by such an offeror shall be construed as a reference to the number of shares so specified; and
- (b) a reference to an offeror who proposes to acquire all the shares in a company that are included in a class of shares shall be construed as a reference to an offeror who has made offers under a take-over scheme in accordance with subparagraph (i) of paragraph (a) of subsection (2) of section 16 in respect of shares included in that class of shares other than an offeror referred to in paragraph (a) of this subsection.

(3) A reference in this Act other than section 25 to the period during which an offer under a take-over scheme or made by virtue of a take-over announcement remains open shall, in the case of an offer that is accepted, be construed as a reference to the period during which the offer would have remained open if it had not been accepted.

(4) In relation to a company the whole or a portion of the share capital of which consists of stock, a reference in this Act to a number of shares includes a reference, in relation to an amount of stock, to a number of shares equal to the number of shares represented by that amount of stock.

(5) For the purposes of this Act—

- (a) a parcel of shares in a listed public company constitutes an odd lot if the number of shares in that parcel is less than one marketable parcel of shares in that company; and
- (b) if the number of shares in a parcel of shares in a listed public company is greater than one marketable parcel of shares in that company and, after excluding so many of the shares in that parcel as constitute a marketable parcel or marketable parcels of shares in that company, a number of shares remains, that remaining number of shares constitutes an odd lot.

(6) In this Act—

- (a) a reference to an offeror or an on-market offeror shall, if two or more persons constitute an offeror or an on-market offeror, be construed as a reference to those persons or either or any of them; and
- (b) a reference to a person associated with an offeror or an on-market offeror shall, if two or more persons constitute an offeror or an on-market offeror, be construed as a reference to a person associated with those persons or with either or any of them.

(7) In this Act, a reference to entering into a transaction in relation to shares includes a reference to making a contract in relation to shares and a reference to exercising an option to have shares allotted.

(8) In this Act, a reference to a corporation or to a body corporate includes a reference to an unincorporated society, association or other body that is for the time being declared by the Minister, by notice in writing published in the *Government Gazette*, to be a corporation for the purposes of this Act.

(9) In any proceedings under or arising out of this Act, a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person having duties or acting on behalf of his master or principal in connection with the matter to which the proceedings relate was aware at the time.

9. (1) Subject to this section, a person has a relevant interest in a share in a corporation for the purposes of this Act if that person has power—

Relevant  
interest  
in shares.

- (a) where the share is a voting share—to exercise, or to control the exercise of, the right to vote attached to that share; or
- (b) to dispose of, or to exercise control over the disposal of, that share whether or not it is a voting share.

(2) It is immaterial for the purposes of this section whether the power of a person—

- (a) to exercise, or to control the exercise of, the right to vote attached to a voting share in the corporation; or
- (b) to dispose of, or to exercise control over the disposal of, a share,

is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular share, or is, or is capable of being made, subject to restraint or restriction, and any such power exercisable jointly with another person or other persons shall, for those purposes, be deemed to be exercisable by either or any of those persons.

(3) A reference in this section to power or control includes a reference to power or control that is direct or indirect or is, or is capable of being, exercised as a result of, or by means of, or in breach of, or by revocation of, trusts, agreements, arrangements, understandings and practices, or any of them, whether or not they are enforceable, and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(4) For the purposes of this section, where a body corporate has power—

- (a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or
- (b) to dispose of, or to exercise control over the disposal of, a share,

and—

- (c) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power;
- (d) a person has a controlling interest in the body corporate; or
- (e) a person has power to exercise, or to control the exercise of, the voting power attached to not less than 20% of the voting shares in the body corporate,

that person shall be deemed to have the same power in relation to that share as the body corporate has.

(5) For the purposes of paragraph (e) of subsection (4), a person shall be deemed to have the power referred to in that paragraph if—

- (a) a person associated with the first-mentioned person has that power;
- (b) persons associated with the first-mentioned person together have the power; or
- (c) the first-mentioned person and a person or persons associated with him together have the power.

(6) Where a person—

- (a) has entered into an agreement with respect to an issued share;
- (b) has a right relating to an issued share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not; or
- (c) has an option with respect to an issued share,

and, on performance of the agreement, enforcement of the right or exercise of the option, as the case may be, that person would have a relevant interest in the share, he shall, for the purposes of this section, be deemed to have that relevant interest in the share.

(7) a relevant interest in a share shall be disregarded—

- (a) if the ordinary business of the person who has the relevant interest includes the lending of money and he has authority to exercise his powers as the holder of the relevant interest only by reason of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with the first-mentioned person;
- (b) if the relevant interest is that of a person who has it by reason of his holding a prescribed office;

(c) if the share is subject to a trust, the relevant interest is that of a trustee and—

(i) a beneficiary is deemed, by subsection (6), to have a relevant interest in the share by virtue of a presently enforceable and unconditional right referred to in paragraph (b) of that subsection; or

(ii) the trustee is a bare trustee;

(d) if the ordinary business of the person who has the relevant interest includes dealing in securities and he has authority to exercise his powers as the holder of the relevant interest only by reason of instructions given to him by or on behalf of another person to dispose of that share on behalf of the other person in the ordinary course of business; or

(e) if the relevant interest is that of a person who has it by reason of his having been appointed as a proxy or representative to vote at a meeting of members, or of a class of members, of a corporation, not being an appointment in return for the making of which the person or a person associated with the person provided valuable consideration.

(8) For the purposes of subparagraph (ii) of paragraph (c) of subsection (7), a trustee shall not be taken not to be a bare trustee by reason only of the fact that the trustee is entitled in his capacity as a trustee to be remunerated out of the income or property of the trust.

(9) A relevant interest in a share shall not be disregarded by reason only of—

(a) its remoteness; or

(b) the manner in which it arose.

10. Section 12 does not apply to or in relation to—

Acquisitions  
to which  
section 12  
does not  
apply.

- (a) an acquisition of shares by will or by operation of law;
- (b) an acquisition of shares by virtue of an allotment or purchase pursuant to a prospectus—
  - (i) that contained an offer or invitation to the public to subscribe for or purchase the shares; and
  - (ii) a copy of which has been registered under Division 1 of Part IV of the Companies Act, 1961;
- (c) an acquisition of shares in a company by virtue of an allotment made in accordance with a proposal particulars of which were set out in a prospectus where—
  - (i) the prospectus was the first prospectus issued by the company;
  - (ii) the person who acquired the shares was a promoter in respect of the prospectus; and
  - (iii) a copy of the prospectus has been registered under Division 1 of Part IV of the Companies Act, 1961;
- (d) an acquisition of shares by virtue of an allotment or purchase of shares pursuant to—
  - (i) an underwriting agreement particulars of which were set out in a prospectus a copy of which has been registered under Division 1 of Part IV of the Companies Act, 1961; or
  - (ii) a sub-underwriting agreement that is related to such an underwriting agreement,

where the prospectus contained an offer or invitation to the public to subscribe for or purchase the shares;

- (e) an acquisition of shares by virtue of an allotment made by a company that has not commenced any business and has not exercised any borrowing powers;
- (f) an acquisition of shares by virtue of an allotment made to a holding company by a subsidiary of the holding company;
- (g) an acquisition of shares pursuant to section 270 of the Companies Act, 1961;
- (h) an acquisition of shares in a company by virtue of an allotment or purchase where the company has agreed to the allotment or purchase by a resolution passed at a general meeting at which no votes were cast in relation to the resolution in respect of any shares held by the person to whom the first-mentioned shares were to be allotted or held by the person by whom or from whom the first-mentioned shares were to be purchased, or held by a person associated with either of those persons;
- (j) an acquisition of shares resulting from the exercise by a person of a renounceable option or of an option or right granted or conferred by a convertible note, where, if the person had acquired the shares at the time when he acquired the renounceable option or the convertible note, as the case may be, the acquisition of the shares would not, by reason of subsection (3) of section 13, have contravened this Act;
- (k) an acquisition of shares by a person as a result of the acceptance by that person of a take-over offer, where the shares constituted, or formed part of, the consideration for the take-over offer;
- (l) an acquisition of shares in a company as a result of the acquisition of shares in another corporation that are listed for quotation on the stock market of a stock exchange;

- (m) an acquisition of shares by a person whose ordinary business includes the lending of money where the acquisition results from the exercise by that person of a power in relation to the shares conferred on or vested in him pursuant to, by reason of or in connection with a transaction in connection with the lending of money entered into by him in the ordinary course of that business, not being a transaction entered into with a person associated with the first-mentioned person;
- (n) an acquisition of forfeited shares at an auction conducted at a place at which, or by a facility by means of which, a stock exchange maintains or provides a stock market; or
- (o) any other acquisition approved by the Minister.

11. (1) This Act applies to and in relation to all natural persons, whether resident in the State or in Australia or not and whether Australian citizens or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in the State or in Australia or not, and extends to acts done or omitted to be done outside the State, whether in Australia or not.

Persons to whom Act applies.

(2) Nothing in subsection (1) extends the definition of "company" in section 6 so as to include a body corporate that is not incorporated in the State.

## PART II—CONTROL OF ACQUISITION OF SHARES.

12. (1) Except as provided by this Act, a person shall not either alone or together with another person or other persons, acquire shares in a company if any person who is not entitled to any voting shares in the company or is entitled to less than 20% of the voting shares in the company would, immediately after the acquisition, be entitled to more than 20% of the voting shares in the company.

Restriction on acquisition of shares.

(2) Except as provided by this Act, a person shall not, either alone or together with another person or other persons, acquire shares in a company if any person (in this subsection referred to as a "relevant person") who is entitled to not less than 20%, but less than 90%, of the voting shares in the company would, immediately after the acquisition, be entitled to a greater percentage of the number of voting shares in the company than the percentage to which that relevant person was entitled immediately before the acquisition.

(3) A person shall not offer to acquire, or issue an invitation in relation to, shares in a company if the person is prohibited by subsection (1) or (2) from acquiring those shares.

(4) It is a defence to a prosecution for a contravention of this section if the defendant establishes that the contravention was due to his inadvertance or mistake or to his not being aware of a relevant fact or occurrence.

(5) An acquisition of shares is not invalid by reason of a contravention of this section.

(6) Sections 181, 183 and 185 of the Companies Act, 1961, have effect subject to this section.

Acquisition  
of shares  
permitted  
in certain  
circum-  
stances.

13. (1) Section 12 does not—

- (a) prohibit the acquisition of shares in a company that does not have more than fifteen members; or
- (b) prohibit the acquisition of shares in a proprietary company that has more than fifteen members where the members of the company have consented in writing to the provisions of this Act not applying to or with respect to the acquisition,

if the acquisition would not result in a contravention of section 12 in relation to the acquisition of shares in another company.

(2) For the purposes of subsection (1), two or more persons holding jointly shares in a company shall be deemed to be one member of the company.

(3) Subject to subsection (4), section 12 does not—

- (a) prohibit the acquisition of shares in a company at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange, during the period commencing when a Part A statement relating to offers under a relevant take-over scheme in respect of shares in that company of the same class as the first-mentioned shares is served on the company and ending at the expiration of twenty-eight days after the day on which the Part A statement is served or, if take-over offers are dispatched pursuant to the Part A statement within those twenty-eight days, at the expiration of the period during which those take-over offers remain open, by the offeror under that take-over scheme; or
- (b) prohibit the acquisition of shares in a company at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange, during the period commencing when a take-over announcement is made in relation to shares in that company of the same class as the first-mentioned shares and ending at the expiration of the period in which offers constituted by that announcement remain open, by the on-market offeror who caused the announcement to be made.

(4) For the purposes of subsection (3), a take-over scheme is a relevant take-over scheme if, and only if—

- (a) the shares proposed to be acquired under the take-over scheme constitute more than 20% of the voting shares in the company

other than shares to which the offeror was entitled at the time when the relevant Part A statement was served; and

- (b) no offer under the take-over scheme is subject to any prescribed condition other than any one or more of the following conditions:
  - (i) a condition that the offeror receives an acceptance or acceptances of an offer or offers under the take-over scheme in respect of a number of shares referred to in the condition;
  - (ii) a condition that a prescribed occurrence in relation to the target company does not take place;
  - (iii) any other condition approved by the Minister.

(5) Where—

- (a) a Part A statement relating to offers under a take-over scheme is served on the company;
- (b) after the Part A statement is served the offeror referred to in the Part A statement acquires shares in the company;
- (c) the acquisition of those shares would, but for paragraph (a) of subsection (3), have contravened section 12; and
- (d) the offeror does not dispatch the offers to which the Part A statement relates within the period of twenty-eight days after the Part A statement is served on the target company,

the offeror is not entitled, without the leave of the Court, to exercise, or to authorize another person to exercise, any voting rights attached to the shares referred to in paragraph (b) of this subsection.

14. (1) Section 12 does not prohibit the acquisition of shares in a company pursuant to an allotment if— *Pari passu allotments.*

- (a) the requirements set out in subsection (2) have been complied with in relation to the allotment; and
- (b) the allotment—
  - (i) is made to a person as a result of the acceptance by that person of an offer made to him in accordance with paragraph (b) of subsection (2);
  - (ii) is made to a person in his capacity as an underwriter or sub-underwriter in relation to the allotment; or
  - (iii) is made to a nominee in accordance with subsection (3).

(2) The requirements referred to in subsection (1) are as follows:

- (a) the directors of the company shall pass a resolution agreeing to make available a number of shares specified in, or ascertained in accordance with, the resolution for allotment to all persons who were registered as the holders of shares in the company, or to all persons who were registered as the holders of voting shares in the company, on the date specified in the resolution;
- (b) the company shall make an offer to each such person to allot to him such number of those shares as he agrees to subscribe for, being a number that does not exceed the number specified in the offer in accordance with paragraph (c); and
- (c) the number of shares to be specified in an offer for the purposes of paragraph (b) is the number that bears to the total number of shares agreed to be made available in accordance with paragraph (a) as nearly as practicable the same proportion as the number of shares in the company, or the

number of voting shares in the company, as the case may be, held by the person to whom the offer is made immediately before the date specified in the resolution bears to the total number of shares in the company, or the total number of voting shares in the company, as the case may be, immediately before that date.

(3) A company shall be deemed to comply with the requirements of subsection (2) in relation to the holders of shares in the company whose addresses as shown in the register of members are places outside Australia and the external Territories (in this subsection referred to as "foreign shareholders") if the company, in lieu of making offers to the foreign shareholders in accordance with subsection (2)—

(a) allots to a nominee approved—

- (i) where the company is a listed public company—by the stock exchange that is the home exchange in relation to the company; or
- (ii) where the company is not a listed public company—by the Commissioner,

a number of shares equal to the number of shares in respect of which the company would, but for this subsection, be required to make offers to foreign shareholders in accordance with subsection (2);

- (b) causes the shares so allotted to be offered for sale in such manner, at such price and on such other terms and conditions as are approved by that stock exchange or the Commissioner, as the case may be; and
- (c) pays to each of the foreign shareholders so much of the amount (if any) remaining after deducting from the proceeds of sale—
  - (i) the expenses of the sale; and
  - (ii) the amounts (if any) payable to the company in respect of the allotment of the shares,

as bears to that remaining amount the same proportion as the number of shares in respect of which the company would, but for this subsection, be required to make an offer to the foreign shareholder concerned in accordance with subsection (2) bears to the total number of shares allotted to the nominee in accordance with paragraph (a) of this subsection.

15. Section 12 does not prohibit an acquisition of voting shares in a company by reason of the effect of the acquisition on the entitlement to voting shares in the company of a person (in this section referred to as a "relevant person") if the relevant person has been entitled to not less than 19% of the voting shares in the company for a continuous period of not less than six months immediately preceding the acquisition and the number ascertained in accordance with the formula  $100 \frac{(a + b - c)}{d}$

Acquisition of not more than 3% of voting shares permitted in each 6 months.

d

does not exceed 3 where—

- a is the number of voting shares to be acquired;
- b is the number of voting shares in the company that were acquired by any person during the period of six months immediately preceding the first-mentioned acquisition, being voting shares the acquisition of which by the person concerned increased the number of voting shares in the company to which the relevant person was entitled;
- c is the number of voting shares in the company that were disposed of by any person during the period of six months immediately preceding the first-mentioned acquisition, being voting shares the disposal of which by the person concerned decreased the number of voting shares in the company to which the relevant person was entitled;

d is the number of voting shares in the company.

Take-over  
offers.

16. (1) Section 12 does not prohibit the acquisition of shares in a company as a result of the acceptance of offers to acquire those shares made under a take-over scheme in relation to that company.

(2) For the purposes of this Act, offers to acquire shares are made under a take-over scheme if, and only if, the offers relate only to shares included in a class of shares (in this section referred to as the "relevant class of shares") and—

(a) one of the following subparagraphs is applicable in relation to the offers:

(i) each offer relates to all the shares in the target company included in the relevant class of shares that the offeree holds; or

(ii) each offer relates to a proportion of the shares in the target company included in the relevant class of shares that the offeree holds, being a proportion that is the same in respect of each offer;

(b) the offers are the same disregarding—

(i) the fact that the offerees are different persons and the fact that the number of shares that may be acquired under each offer is limited by the number of shares held by the offeree; and

(ii) any differences in the consideration specified for each share in the offers that are attributable only to the fact that the offers relate to shares having different accrued dividend entitlements or relate to shares on which different amounts are paid up;

- (c) an offer is dispatched in a manner approved by the Commissioner to each holder of shares in the target company included in the relevant class of shares;
- (d) the offeror has, not earlier than twenty-eight days and not later than fourteen days before the offers are dispatched, served on the target company—
  - (i) a Part A statement relating to the offers that—
    - (A) is signed, where the offeror is, or includes, a natural person or natural persons, by that person or by each of those persons and, where the offeror is, or includes, a corporation or corporations, by not less than two directors of the corporation, or by two directors of each of those corporations, authorized so to sign pursuant to a resolution passed at a meeting of the directors, or, in the case of a corporation that has only one director, by that director; and
    - (B) has endorsed on it a statement that a copy of the Part A statement has been registered by the Commissioner and that the Commissioner takes no responsibility as to its contents and specifying the date on which the copy was so registered; and
  - (ii) a copy of one of the proposed offers to which the Part A statement referred to in subparagraph (i) relates, being a copy that need not include the name or address of the offeree, the date that the offer will

bear or any other date that is related to or dependent upon that date or the particulars referred to in subparagraph (iv) of paragraph (f);

(e) the offeror has, on the day on which the Part A statement is served under paragraph (d)—

(i) lodged with the Commissioner a notice in writing stating that the Part A statement has been so served; and

(ii) if the target company is a listed public company—served on the stock exchange that is the home exchange in relation to that company a copy of each of the documents served on that company in accordance with paragraph (d); and

(f) each offer is in writing and—

(i) bears the same date, being a date that is not more than three days before the date on which the offer is dispatched and is not later than the date on which the offer is dispatched;

(ii) states that the offer will, unless withdrawn, remain open during a period ending on a specified date, being a date that is not earlier than one month, or later than six months, after the date that the offer bears;

(iii) in the case of an offer that relates to all the shares held by the offeree in the target company that are included in the relevant class of shares—specifies the maximum number of shares included in that class that are proposed to be acquired before the expiration of the period in which the offer remains open (which may be expressed as a

number of shares or as a percentage of the total number of shares included in that class of shares or of the total number of shares included in that class of shares to which the offeror is not entitled);

- (iv) specifies the number of shares included in each class of shares in the target company to which the offeror was entitled immediately before the offer was dispatched (which may be expressed as a number of shares or as a percentage of the total number of shares included in the class of shares concerned);
- (v) in the case of an offer that is subject to a prescribed condition—specifies a date, being a date that is not less than seven days before the end of the period during which the offer remains open, for the publication of the notice referred to in subsection (4) of section 28;
- (vi) sets out how the obligations of the offeror are to be satisfied;
- (vii) contains a provision setting out when the obligations of the offeror are to be satisfied, being a provision under which the consideration for the offer is to be paid or provided—
  - (A) in the case of an offer that is not subject to a prescribed condition—within thirty days after the offer is accepted; or
  - (B) in the case of an offer that is subject to a prescribed condition—within thirty days after the offer is accepted or the offer or the contract resulting from the acceptance

of the offer becomes unconditional, whichever is the later; and

(viii) is accompanied by—

- (A) a copy of the Part A statement referred to in subparagraph (i) of paragraph (d); and
- (B) if the target company has given to the offeror a Part B statement in relation to the offers—a copy of that statement and a copy of any report that accompanied that statement.

(3) A Part A statement referred to in this section may contain, in addition to the information referred to in Part A of the Schedule, such information as the offeror thinks fit, not being information that is false in a material particular or materially misleading in the form and context in which it appears.

Take-over  
announcements.

17. (1) Section 12 does not prohibit the acquisition of shares in a listed public company if—

- (a) the shares are acquired as a result of the acceptance of offers made in accordance with this section; and
- (b) the requirements of this section that are applicable to the person acquiring the shares are complied with.

(2) Subject to the following provisions of this section, a person, or two or more persons together, may make offers to acquire shares in a listed public company that are included in a class of shares by causing an announcement to be made on his or their behalf by a member of the stock exchange that is the home exchange in relation to that company at an official meeting of that stock exchange to the effect that, during the period of one month commencing on the first trading day after

the expiration of fourteen days after the day on which the announcement is made, the member offers, on behalf of that person or those persons, to acquire, at a price per share specified in the announcement, all the shares included in that class of shares in that company in respect of which any such offers are accepted—

(a) at an official meeting of that stock exchange; or

(b) if the offers cannot be accepted at a particular meeting of that stock exchange, whether by reason that the member of the stock exchange by whom or on whose behalf the announcement was made or his representative is not present at the meeting or the committee or other governing authority of that stock exchange does not permit dealings in the shares at that meeting or otherwise—by notice in writing signed by or on behalf of a holder of shares to which the offers relate and served on that stock exchange on the day on which that meeting is held.

(3) Except with the consent of the Commissioner, a person is not entitled, or two or more persons together are not entitled, to make offers pursuant to subsection (2) in relation to shares in a company if that person, or either or any of those persons—

(a) is entitled to not less than 30% of the voting shares in the company; or

(b) in the case of a company the voting shares in which are divided into two or more classes of shares—is entitled to not less than 30% of the shares in one of those classes.

(4) For the purposes of this section, an announcement made at an official meeting of a stock exchange by a representative of a member of a stock exchange shall be deemed to have been made by the member.

(5) Where a notice accepting an offer made by virtue of an announcement made at a meeting of a stock exchange in the State by a member of that stock exchange pursuant to subsection (2) is served on the stock exchange in accordance with that subsection, the stock exchange shall as soon as practicable notify that member of the stock exchange of the acceptance of the offer.

(6) The price to be specified in an announcement made in accordance with subsection (2) on behalf of an on-market offeror in respect of a class of shares in a company as the price per share at which shares will be acquired shall, if the on-market offeror or a person associated with the on-market offeror, in the four months immediately preceding the day of the announcement, purchased or agreed to purchase shares in that company included in that class of shares, be not less than the highest price per share paid or agreed to be paid in respect of any of those shares pursuant to any such purchase or agreement to purchase.

(7) Where, in the four months immediately preceding the date of a take-over announcement, the on-market offeror or a person associated with the on-market offeror has entered into an agreement for the purchase of a share or shares in the target company, being an agreement that provides that the price specified in the agreement as the price payable for the share or any of the shares may be increased in accordance with the terms of the agreement, then, for the purposes of subsection (6), the price agreed to be paid for the share or any of the shares shall be taken to be the price so specified in the agreement.

(8) Nothing in this section prohibits an on-market offeror from acquiring in accordance with paragraph (b) of subsection (3) of section 13 shares to which the relevant take-over announcement relates at a price (in this subsection referred to as a "relevant price") that is higher than the price specified in the announcement or is higher than any price that is deemed by a previous operation of this

subsection or subsection (10) to be specified in the announcement but, if the on-market offeror acquires shares at a relevant price on or after the date on which the announcement is made and before the expiration of the period in which offers constituted by the announcement remain open, that relevant price shall, after the acquisition takes place, be deemed to be the price specified in the announcement unless and until another price is deemed by virtue of the operation of this subsection or of subsection (10) to be specified in the announcement.

(9) An on-market offeror who makes offers constituted by a take-over announcement in relation to shares in a company shall—

(a) on the day on which the announcement is made—

(i) serve on the target company a Part C statement relating to the offers that is signed, where the on-market offeror is, or includes, a natural person or natural persons, by that person or by each of those persons and, where the on-market offeror is, or includes, a corporation or corporations by not less than two directors of the corporation, or by two directors of each of those corporations, authorized so to sign pursuant to a resolution passed at a meeting of the directors, or, in the case of a corporation that has only one director, by that director;

(ii) serve a copy of the statement on the stock exchange that is the home exchange in relation to the target company; and

(iii) lodge a copy of the statement with the Commissioner; and

(b) within fourteen days after the day on which the announcement is made, dispatch a copy of the statement in a manner

approved by the Commissioner to each holder of shares included in the class of shares to which the announcement relates.

(10) If, at any time after the making of a take-over announcement and before the end of the period during which offers constituted by the take-over announcement remain open—

(a) the target company makes an allotment of, or grants an option to subscribe for, any of its shares, or agrees to make such an allotment or to grant such an option;

(b) the target company issues, or agrees to issue, convertible notes; or

(c) the target company declares a dividend,

the on-market offeror may, with the consent of the Commissioner, cause an announcement to be made on behalf of the on-market offeror by a member of the stock exchange that is referred to in subsection (2) at an official meeting of that stock exchange stating that a specified lower price per share is to be substituted for the price per share specified in the take-over announcement and, where such an announcement is made, that lower price shall, unless and until a different price is deemed to be specified in the take-over announcement by virtue of the operation of this subsection or of subsection (8), be deemed to be the price specified in the take-over announcement.

(11) An on-market offeror who has made offers constituted by a take-over announcement in relation to shares in a company may cause an announcement to be made on behalf of the on-market offeror by a member of the stock exchange that is referred to in subsection (2) at an official meeting of that stock exchange before the end of the period of one month referred to in that subsection (or, if that period has been extended pursuant to the previous exercise on one or more occasions of the power

conferred by this subsection, before the end of the extended period) extending that period or that extended period, as the case may be, for a further period of one month, but so that the total period for which the offers remain open does not exceed six months.

(12) Where an on-market offeror causes an announcement to be made pursuant to subsection (10) or (11), the on-market offeror shall, on the day on which the announcement is made—

(a) serve on the stock exchange at an official meeting of which the announcement is made and on the target company; and

(b) lodge with the Commissioner,

a notice setting out the terms of the announcement.

(13) Subject to section 33, offers constituted by an announcement made in accordance with subsection (2) of this section remain open for the period of one month referred to in that subsection or, if that period has been extended in accordance with subsection (11) of this section, for that period as so extended.

(14) Where an offer to acquire shares in a company or other corporation that is made by virtue of an announcement made at a meeting of a stock exchange in the State by a member of that stock exchange in accordance with subsection (2) is accepted—

(a) if the member is not acting as agent for a member of another stock exchange—the member who made the announcement; or

(b) if the member is acting as agent for a member of another stock exchange—the member of that other stock exchange,

shall be deemed to have contracted as principal with the person who (whether on his own behalf or on behalf of another person) accepted the offer to acquire the shares to which the acceptance relates, but nothing in this subsection affects the rights and

obligations between the member who is so deemed to have contracted as principal and the on-market offeror.

(15) Where, in respect of a contract that resulted from the acceptance of an offer made by virtue of a take-over announcement, a member of a stock exchange who contracted, or is deemed by subsection (14) to have contracted, as principal with the person who accepted the offer was, at the time when the contract was made, a partner in a partnership that carried on a business of dealing in securities, any liabilities of the member arising by reason of his so having contracted, or being deemed to have contracted, as principal are joint and several liabilities of the persons who were the partners in the partnership at that time.

(16) A Part C statement referred to in paragraph (a) of subsection (9) may contain, in addition to the information referred to in Part C of the Schedule, such information as the on-market offeror thinks fit, not being information that is false in a material particular or materially misleading in the form and context in which it appears.

(17) A reference in this section to a member of the stock exchange that is the home exchange in relation to a company shall be construed as including a reference to a member of another stock exchange who is entitled to trade in securities on the stock market of the first-mentioned stock exchange.

(18) A reference in this section to a representative of a member of a stock exchange includes a reference to—

- (a) an employee of the member; and
- (b) if the member is a partner in a partnership that carries on a business of dealing in securities—
  - (i) another partner in the partnership;  
or
  - (ii) an employee of the partnership.

PART III—PROVISIONS RELATING TO  
TAKE-OVER OFFERS.

18. (1) A person, or two or more persons together, shall not cause a Part A statement to be served on a target company unless—

Registration  
of Part A  
statements  
and offers.

- (a) a copy of that Part A statement; and
- (b) a copy of one of the proposed offers to which that Part A statement relates, being a copy that need not include—
  - (i) the name or address of the offeree;
  - (ii) the date that the offer will bear or any other date that is related to or dependent upon that date; or
  - (iii) the particulars referred to in subparagraph (iv) of paragraph (f) of subsection (2) of section 16,

have been registered by the Commissioner not earlier than twenty-one days before that Part A statement is served.

(2) Where a copy of a Part A statement and a copy of a proposed offer are lodged with the Commissioner for registration under subsection (1), the Commissioner shall not register the copy of the statement or the copy of the proposed offer unless—

- (a) the statement and proposed offer appear to comply with the requirements of this Act and the Commissioner is of the opinion that the statement and the proposed offer do not contain any matter that is false in a material particular or materially misleading in the form and context in which it appears; and
- (b) in respect of each report referred to in paragraph (e) of clause 1 of Part A of the Schedule that is set out in the copy of the statement—there is lodged with the Commissioner a notice in writing signed by

the person or persons by whom the report is made to the effect that the person consents, or that each of those persons consents, to the inclusion of the report in the statement in the form and context in which it is included.

(3) A Part A statement served on a target company in contravention of this section shall, for the purposes of this Act other than this section, be deemed not to have been served.

Extension of  
time for  
paying con-  
sideration.

19. (1) The Minister may, on application made by an offeror before the time by which the consideration specified in the relevant take-over offer is required by the terms of the offer to be paid or provided, fix a later time as the time by which that consideration is to be paid or provided and, where a later time is so fixed, the offer or, if the offer has been accepted, the contract that resulted from the acceptance shall be deemed to be varied accordingly.

(2) An offeror shall ensure that the consideration specified in the relevant take-over offer is paid or provided not later than the time by which that consideration is required by the terms of the take-over offer to be paid or provided or, if a later time has been fixed under subsection (1), not later than the time so fixed.

Take-over  
offers not to  
be subject  
to certain  
terms or  
conditions.

20. (1) An offeror shall not make a take-over offer that requires the offeree to approve or consent to—

(a) a payment or other benefit being made or given to a director, secretary or principal executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, his office as director, secretary or

principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company; or

- (b) a payment or other benefit being made or given to a director, secretary or principal executive officer of a corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as director, secretary or principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company,

and any such requirement is void.

(2) An offeror shall not make a take-over offer subject to a prescribed condition (however expressed) that the offeror receives an acceptance or acceptances of an offer or offers under the relevant take-over scheme in respect of a number of shares referred to in the take-over offer unless that number of shares is specified in the take-over offer, and—

- (a) any provision in the take-over offer by virtue of which the number so specified may be varied is void; and
- (b) if a take-over offer is made subject to a condition in contravention of this subsection, the condition is void.

(3) The number of shares specified in a take-over offer in accordance with subsection (2) may be expressed as a number of shares or as a percentage of the total number of shares included in the class of shares to which the take-over offer relates or of the total number of shares included in that class of shares to which the offeror is not entitled.

Withdrawal  
of offers.

21. (1) A take-over offer is not capable of being withdrawn unless at the same time the offeror withdraws all other offers under the relevant take-over scheme that have not been accepted and, if the offeror so withdraws take-over offers—

- (a) a contract that resulted from the acceptance of any other offer under the take-over scheme is voidable at the option of the offeree by notice in writing given to the offeror not later than one month after the take-over offers are withdrawn; and
- (b) no contract that resulted from the acceptance of any other offer under the take-over scheme is voidable at the option of the offeror by reason of the withdrawal of the take-over offers notwithstanding anything contained in that contract or in any agreement, arrangement, understanding or undertaking relating to that contract.

(2) Where a take-over offer or take-over offers is or are withdrawn, the person withdrawing the take-over offer or take-over offers shall—

- (a) forthwith dispatch in a manner approved by the Commissioner to every person who, by virtue of the withdrawal, has an option under subsection (1) to rescind a contract referred to in that subsection a notice in writing informing that person of the withdrawal and setting out the terms of that subsection; and
- (b) on the day on which notices under paragraph (a) are dispatched—
  - (i) serve on the target company;
  - (ii) lodge with the Commissioner; and
  - (iii) if the target company is a listed public company—serve on the stock exchange that is the home exchange in relation to that company,a copy of one of the notices dispatched in accordance with paragraph (a).

(3) A take-over offer dispatched pursuant to an order made by the Court under paragraph (f) of subsection (1) of section 46 is not capable of being withdrawn without the approval of the Commissioner.

22. (1) Where a target company receives a Part A statement served under paragraph (d) of subsection (2) of section 16, the target company shall—

Part B  
statement.

- (a) not later than fourteen days after receipt of the Part A statement, give a Part B statement to the offeror; or
- (b) not later than fourteen days after the receipt of the notice mentioned in subsection (1) of section 24, give a Part B statement to the offeror and a copy of that statement to each person to whom an offer to which the Part A statement relates was made.

(2) The Part B statement shall—

- (a) be signed by all the directors of the target company or by not less than two directors of the target company authorized so to sign pursuant to a resolution passed at a meeting of the directors, or, in the case of a company that has only one director, by that director; or
- (b) if the company is in the course of being wound up or is under official management—be signed by the liquidator or official manager, as the case may be.

(3) A Part B statement shall not refer to any report made by an expert (other than a report set out in the Part A statement or a report that accom-

panies the Part B statement in accordance with section 23) unless—

- (a) the report is set out in the Part B statement; and
- (b) the Part B statement contains or is accompanied by a statement that the person or each of the persons by whom the report is made consents to the inclusion of the report in the form and context in which it is included.

(4) A target company that gives a Part B statement under subsection (1) shall, on the day on which the Part B statement is given—

- (a) if the company is a listed public company—  
serve on the stock exchange that is the home exchange in relation to the company;  
and
- (b) lodge with the Commissioner,

a copy of the Part B statement and of any report or statement accompanying the Part B statement.

(5) A Part B statement may contain, in addition to the information referred to in Part B of the Schedule, such information (not being information that is false in a material particular or materially misleading in the form and context in which it appears) as the directors of the target company, or the liquidator or official manager, as the case may be, think or thinks fit.

Offeror  
connected  
with target  
company.

**23. (1) Where—**

- (a) take-over offers are, or are to be, made in respect of shares in a company by an offeror who has a prescribed shareholding in the target company;
- (b) take-over offers are, or are to be, made in respect of shares in a company by an offeror that is or includes a natural person who is a director of the target company; or

- (c) take-over offers are, or are to be, made in respect of shares in a company by an offeror that is or includes a corporation or corporations, and a director or directors of the target company is or are a director or directors of that corporation or of either or any of those corporations,

the Part B statement given in accordance with subsection (1) of section 22 shall be accompanied by a copy of a report made by an expert (not being a person who is associated with the offeror or with the target company) stating whether, in his opinion, the take-over offers are fair and reasonable and setting out his reasons for forming that opinion.

(2) Where the target company obtains two or more reports each of which could be used for the purposes of compliance with subsection (1), the Part B statement given by the company shall be accompanied by a copy of each report.

(3) For the purposes of subsection (1)—

- (a) a person has a prescribed shareholding in a company if he is entitled to not less than 30 per cent of the voting shares in the company; and
- (b) a person has a prescribed shareholding in a company, being a company the voting shares in which are divided into two or more classes of shares, if he is entitled to not less than 30 per cent of the shares in one of those classes.

24. (1) Where take-over offers have been dispatched, the offeror shall, on the day on which the last of the offers is dispatched—

Notice of  
offers to be  
served.

- (a) serve notice in writing on the target company that the offers have been dispatched and of the date that they bear;
- (b) if the target company is a listed public company—serve a copy of the notice on the

stock exchange that is the home exchange in relation to the target company; and

- (c) lodge a copy of the notice with the Commissioner.

(2) A notice or a copy of a notice referred to in subsection (1) shall be accompanied by a copy of one of the offers and a copy of every document that accompanied that offer.

Acceptance  
of take-over  
offers by  
third parties.

25. Where, at the time when a take-over offer is made to a person or at any time during the period in which the offer remains open, another person is, or is entitled to be registered as, the holder of shares to which the offer relates then—

- (a) a corresponding take-over offer shall be deemed to have been made to that other person in respect of those shares; and
- (b) a corresponding take-over offer shall be deemed to have been made to the first-mentioned person in respect of any other shares to which the offer relates.

Offeror not  
proposing to  
acquire all  
shares in  
class.

26. (1) Where—

- (a) an offeror dispatches in accordance with subparagraph (i) of paragraph (a) of subsection (2) of section 16 take-over offers in relation to shares in a company that are included in a class of shares and the offeror does not propose to acquire all the shares in the company included in that class of shares; and
- (b) the number of shares in respect of which the offeror receives acceptances of take-over offers (in this section referred to as the “available number of shares”) is greater than the number of shares proposed to be acquired by the offeror under the relevant

take-over scheme (in this section referred to as the "desired number of shares"),

the following provisions of this section have effect.

(2) Each take-over offer that has been accepted shall, subject to subsection (3), be deemed to relate only to, and to have been accepted in relation only to, a number of shares that bears to the total number of shares in respect of which the offeree purported to accept the offer as nearly as practicable the same proportion as the desired number of shares bears to the available number of shares.

(3) Where—

- (a) the number of shares in a listed public company in respect of which an offeree has accepted a take-over offer exceeds the number of shares to which the offer would, but for this subsection, be deemed by subsection (2) to relate (in this subsection referred to as the "primary number of shares"); and
- (b) the excess number of shares consists of an odd lot of shares or consists of a marketable parcel or marketable parcels of shares and an odd lot of shares,

the take-over offer shall, notwithstanding subsection (2), be deemed to relate to, and to have been accepted in relation to, a number of shares equal to the sum of the primary number of shares and the number of shares in that odd lot of shares.

27. (1) An offeror may not vary an offer under a take-over scheme unless—

Variation  
of offers.

- (a) the variation is permitted by this section;
- (b) the requirements of this section in relation to the variation are complied with; and
- (c) a corresponding variation is made at the same time to each other offer (other than an offer that has been accepted before the first-mentioned variation is made) under the take-over scheme.

(2) An offeror may vary an offer under a take-over scheme by doing one or more of the following in relation to the whole or a part of the consideration that is specified in the offer as the consideration for the acquisition of the shares to which the offer relates:

- (a) where a cash sum is so specified—by increasing the amount of that sum;
- (b) where shares are, stock is, or debentures are, so specified—by specifying a cash sum in addition to the shares, stock or debentures;
- (c) where shares are so specified—by increasing the number of those shares;
- (d) where stock is so specified—by increasing the amount of that stock;
- (e) where debentures are so specified—by increasing the rate of interest payable under those debentures;
- (f) where debentures are so specified—by increasing the amount of those debentures;
- (g) where an option to acquire unissued shares is so specified—by varying that option so as to increase the number of unissued shares that may be acquired under that option.

(3) Where the consideration that is specified in an offer under a take-over scheme as the consideration for the acquisition of the shares to which the offer relates is varied under subsection (2)—

- (a) if any shares were acquired by the offeror before the variation as a result of the acceptance of another offer under the take-over scheme, the contract resulting from the acceptance of that other offer shall be deemed to be varied so that the consideration under the contract is the consideration that would have been

specified in that other offer if a corresponding variation had been made to that other offer before it was accepted; and

- (b) if the consideration under the contract has already been received, the offeree is entitled to receive the additional consideration forthwith.

(4) An offeror may vary an offer under a take-over scheme in which the consideration specified does not include a cash sum or does not consist solely of a cash sum by offering a cash sum as an alternative consideration to the consideration specified in the offer.

(5) Where an offer under a take-over scheme is varied under subsection (4) so as to offer a cash sum as an alternative consideration and any shares were acquired by the offeror before the variation as a result of the acceptance of another offer under the take-over scheme—

- (a) the contract resulting from the acceptance of that other offer shall be deemed to be varied so as to confer on the person who accepted that other offer the right, by notice in writing given to the offeror within the time mentioned in paragraph (b), to elect to accept the cash sum in lieu of the consideration that was specified in that other offer;
- (b) the offeror shall forthwith dispatch to the person who accepted that other offer a notice in writing informing that person that he may, within one month after receipt of the notice, give notice in writing to the offeror stating that he elects to accept the cash sum in lieu of the consideration that was specified in that other offer; and
- (c) if the consideration under the contract referred to in paragraph (a) was received by the person who accepted that other offer

before he received the notice from the offeror under paragraph (b) and that person gives notice to the offeror in accordance with this subsection electing to accept the cash sum in lieu of the consideration that was specified in that other offer—that person shall return the consideration (together with any necessary documents of transfer) with the notice of election and is entitled, upon receipt of the consideration by the offeror, to receive the cash sum.

(6) If at any time after an offer under a take-over scheme has been made and before the offer has been accepted—

- (a) the target company makes an allotment of, or grants an option to subscribe for, any of its shares, or agrees to make such an allotment or grant such an option;
- (b) the target company issues, or agrees to issue, convertible notes; or
- (c) the target company declares a dividend,

the offeror may, with the consent of the Commissioner, vary the offer by doing one or more of the following in relation to the whole or a part of the consideration that is specified in the offer as the consideration for the acquisition of the shares to which the offer relates:

- (d) where a cash sum is so specified—by reducing the amount of that sum;
- (e) where shares are, stock is, or debentures are, so specified—by reducing the number of those shares, the amount of that stock or of those debentures or the rate of interest payable under those debentures;
- (f) where an option to acquire unissued shares is so specified—by varying the option so as to reduce the number of unissued shares that may be acquired under that option.

(7) An offeror may vary an offer under a take-over scheme—

- (a) in the case of an offer that is subject to a prescribed condition—before the publication of a notice pursuant to subsection (4) of section 28 in relation to offers under the take-over scheme; or
- (b) in the case of an offer to which paragraph (a) does not apply—before the expiration of the period during which the offer remains open,

by extending the period during which the offer remains open for a further period but, subject to subsection (11), so that the total period during which the offer remains open does not exceed twelve months.

(8) The references in subsection (7) to the period during which an offer remains open shall, if that period has been extended pursuant to the previous exercise on one or more occasions of the power conferred by that subsection, be construed as references to the period as so extended.

(9) Where an offeror varies a take-over offer that is subject to a prescribed condition, he shall substitute a date for the date specified in accordance with subparagraph (v) of paragraph (f) of subsection (2) of section 16 for the publication of the notice referred to in subsection (4) of section 28.

(10) Variations of offers under a take-over scheme shall be made by—

- (a) dispatching in a manner approved by the Commissioner to each person to whom such an offer was made (including a person who has accepted an offer) a notice in writing signed in the same manner as a Part A statement is required by paragraph (d) of subsection (2) of section 16 to be signed and setting out the terms of the proposed variation and particulars of such

modifications of the relevant Part A statement as are necessary having regard to the variation; and

- (b) on the same day as the notices are dispatched, serving on the target company a copy of one of the notices.

(11) Where an offeror purports, in accordance with subsection (7), to vary an offer under a take-over scheme that is open for a period not exceeding six months so that the total period during which the offer would remain open exceeds six months, the variation has effect only to extend the period during which the offer remains open until the expiration of six months after the date that the offer bears unless, within the period of one month commencing five months after that date, the offeror has dispatched or dispatches in a manner approved by the Commissioner to each person to whom an offer under the take-over scheme was made (including a person who had accepted an offer) a notice—

- (a) signed in the same manner as a Part A statement is required by paragraph (d) of subsection (2) of section 16 to be signed and setting out the prescribed information; and
- (b) setting out the provisions of subsection (12).

(12) Where an offeree who has accepted a take-over offer that is subject to a prescribed condition receives a notice relating to the offer dispatched pursuant to subsection (11), the offeree may, by notice in writing given to the offeror within one month after receipt of the first-mentioned notice, withdraw his acceptance of the offer and, where such a notice is given by the offeree to the offeror, the offeror shall return to the offeree, within fourteen days after receipt of the notice, any documents that were sent by the offeree to the offeror with the acceptance of the offer.

(13) An offeror is not entitled to dispatch notices under subsection (10) or (11) unless a copy of one of the notices concerned has been registered by the Commissioner.

(14) Where a copy of a notice is lodged with the Commissioner for registration under subsection (13), the Commissioner shall not register the copy of the notice unless—

- (a) in the case of a notice under subsection (10)—the Commissioner is of the opinion that the proposed variation is permitted by this section; and
- (b) in the case of a notice under subsection (10) or (11)—the notice appears to comply with the requirements of this section and the Commissioner is of the opinion that the notice does not contain any matter that is false in a material particular or materially misleading in the form and context in which it appears.

(15) A notice referred to in subsection (10) or (11) shall, when dispatched in accordance with paragraph (a) of subsection (10) or with subsection (11), have endorsed on it a statement that a copy of the notice has been registered by the Commissioner and that the Commissioner takes no responsibility as to the contents of the notice and specifying the date on which the copy was so registered.

(16) An offeror shall, on the day on which he dispatches notices referred to in subsection (10) or (11)—

- (a) serve on the target company—
  - (i) a copy of one of the notices; and
  - (ii) a notice in writing stating that the notices referred to in subparagraph (i) have been dispatched and of the date that they bear;

- (b) if the target company is a listed public company—serve on the stock exchange that is the home exchange in relation to the target company a copy of each of the documents served in accordance with paragraph (a); and
- (c) lodge with the Commissioner a copy of the notice referred to in subparagraph (ii) of paragraph (a).

(17) Nothing in this section affects the operation of section 19.

Declaration  
where  
take-over  
offers are  
conditional.

28. (1) Where an offeror makes a take-over offer that is subject to a prescribed condition, the offeror may not, except in accordance with this section, whether expressly or impliedly and whether in writing or by conduct, declare the take-over offer or any contract resulting from the acceptance of the take-over offer to be free from the condition, or treat the take-over offer or any contract resulting from the acceptance of the take-over offer as being free from the condition.

(2) Where an offer under a take-over scheme is subject to a prescribed condition, the offeror may declare the offer to be free from the condition if—

- (a) it is a term of the offer that he may do so not less than seven days before the end of the period during which the offer remains open and the offer is declared to be free from the condition in accordance with that term; and
- (b) at the same time he declares all other offers under the take-over scheme, and all contracts formed by the acceptance of offers under the take-over scheme, to be free from the condition.

(3) If an offeror declares all offers under a take-over scheme to be free from a prescribed condition, he shall forthwith cause to be published a notice

stating that the offers are free from the condition and specifying the proportion that the number of shares included in the class of shares to which the offers related to which, to his knowledge, he is entitled at the time of lodging the notice for publication bears to the number of shares included in that class.

(4) The offeror shall, whether or not he has caused a notice to be published under subsection (3), cause to be published on the date specified in the take-over offers in accordance with subparagraph (v) of paragraph (f) of subsection (2) of section 16, or, if another date has been substituted for that date under subsection (9) of section 27, on the substituted date, a notice—

- (a) stating whether he has declared the offers to be free from the condition;
- (b) stating whether the offers have become free from the condition by reason of the operation of subsection (1) of section 30; and
- (c) stating whether, to his knowledge, the condition was, at the time of lodging the notice for publication, fulfilled.

(5) Where a notice under subsection (4) states that the offeror has declared the offers to be, or that the offers have become, free from a prescribed condition or that a prescribed condition has been fulfilled, the notice shall also specify the proportion that the number of shares included in the class of shares to which the offers related to which, to his knowledge, he is entitled at the time of lodging the notice for publication bears to the number of shares included in that class.

(6) A notice under subsection (3) or (4) shall be published in a newspaper circulating generally in the State and, if shares in the target company are listed for quotation on the stock market of a stock exchange in another State or in a Territory and that newspaper does not circulate generally in that other State or Territory, in a newspaper that does so circulate.

(7) Where a notice referred to in subsection (3) or (4) is lodged for publication, the offeror shall, on the first day on which the notice is lodged for publication—

- (a) lodge a copy of the notice with the Commissioner; and
- (b) if the target company is a listed public company—serve a copy of the notice on the stock exchange that is the home exchange in relation to the target company.

(8) Where a prescribed condition to which a take-over offer is subject has not been fulfilled and a notice referred to in subsection (4) has not been published as required by this section, all contracts formed by the acceptance of offers under the relevant take-over scheme are void.

(9) In this section, “lodged for publication”, in relation to a notice, means lodged at an office of the publisher or at an office of an agent of the publisher of that newspaper.

Conditional  
take-over  
offers not to  
be made  
uncondi-  
tional in  
certain cir-  
cumstances  
etc.

29. (1) Where—

- (a) take-over offers are made in respect of shares in a company;
- (b) each of those offers is subject to a prescribed condition (however expressed) that the offeror receives an acceptance or acceptances of an offer or offers under the relevant take-over scheme in respect of a number of shares referred to in the condition; and
- (c) the offeror would, if he acquired the number of shares referred to in paragraph (b), be entitled to more than 50% of the voting shares in the company,

the offeror may not declare any of the offers to be free from the condition unless he is entitled, or, if the offers were free from the condition, he would be entitled, to more than 50% of the voting shares in the company.

(2) If an offeror declares take-over offers to be free from a condition of a kind mentioned in subsection (1), the copy of the relevant notice lodged by him with the Commissioner under subsection (7) of section 28 shall be accompanied by a statement setting out particulars of the matters by virtue of which the offeror was entitled under this section to declare the offers to be free from that condition.

(3) Nothing in this section affects the operation of section 30.

**30. (1) Where—**

Take-over  
offers  
subject to  
conditions.

- (a) a take-over offer made in relation to shares in a company is subject to a prescribed condition (however expressed) that the offeror receives an acceptance or acceptances of an offer or offers under the relevant take-over scheme in respect of a number of shares referred to in the condition;
- (b) after the relevant Part A statement was served on the target company and before the expiration of the period during which the offer remains open, the offeror becomes entitled to shares in the company included in the same class as the first-mentioned shares otherwise than as a result of the acceptance of an offer under that take-over scheme; and
- (c) the shares to which the offeror became entitled as mentioned in paragraph (b) constitute, in the aggregate, more than 20% of the voting shares in the company,

other than shares to which the offeror was entitled at the time when the Part A statement was served,

the offer shall be deemed to be free from that condition.

(2) Where—

- (a) a take-over offer made in respect of shares in a company is subject to a prescribed condition (however expressed) that the offeror receives an acceptance or acceptances of an offer or offers under the relevant take-over scheme in respect of a number of shares referred to in the condition;
- (b) after the relevant Part A statement was served on the target company and before the expiration of the period during which the offer remains open, the offeror becomes entitled to shares in the company included in the same class as the first-mentioned shares otherwise than as a result of the acceptance of an offer under that take-over scheme; and
- (c) subsection (1) does not operate to deem the offer to be free from the condition,

then, for the purpose of determining whether the condition has been fulfilled, the offeror shall be deemed to have become entitled to the shares referred to in paragraph (b) as a result of receiving an acceptance or acceptances of an offer or offers under that take-over scheme.

Effect of  
acquiring  
shares  
otherwise  
than under  
take-over  
scheme.

31. (1) Where—

- (a) a take-over offer is made in respect of shares in a company;
- (b) the consideration payable under the offer consists solely of a cash sum or includes alternative considerations one of which consists solely of a cash sum;

- (c) after the relevant Part A statement was served on the target company and before the offer is accepted, the offeror purchased or purchases shares in the company included in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the relevant take-over scheme, for a consideration that consists solely of a cash sum; and
- (d) the amount paid or payable for any of the shares referred to in paragraph (c) is higher than the cash sum payable under the offer for each share to which the offer relates,

the offer shall be deemed to be varied so that the cash sum payable for each share to which the offer relates is an amount equal to the highest amount paid or payable by the offeror for any of the shares referred to in paragraph (c).

(2) Where—

- (a) a take-over offer made in respect of shares in a company is accepted;
- (b) the consideration paid or payable under the contract resulting from the acceptance of the offer consisted or consists solely of a cash sum;
- (c) after the acceptance of the offer and before the expiration of the period in which the offer, if it had not been accepted, would have remained open, the offeror purchases shares in the company included in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the relevant take-over scheme, for a consideration that consists solely of a cash sum; and
- (d) the amount paid or payable for any of the shares referred to in paragraph (c) is higher than the consideration paid or payable for each share under the contract referred to in paragraph (b),

that contract shall be deemed to be varied so that the consideration payable for each share under the contract is an amount equal to the highest amount paid or payable by the offeror for any of the shares referred to in paragraph (c) and, if the offeree has already received the whole or any part of the consideration under the contract, he is entitled to receive forthwith the additional consideration resulting from the variation.

(3) Where—

- (a) a take-over offer made in respect of shares in a company is accepted;
- (b) the consideration paid or provided or to be paid or provided under the contract resulting from the acceptance of the offer does not consist solely of a cash sum; and
- (c) after the relevant Part A statement was served on the target company and before the expiration of the period in which the offer, if it had not been accepted, would have remained open, the offeror purchased or purchases shares in the company included in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the relevant take-over scheme, for a consideration that consists solely of a cash sum,

the offeror shall, within fourteen days after the expiration of that period, give notice in writing to the offeree setting out the highest price paid or payable by the offeror for any of the shares referred to in paragraph (c) and informing the offeree that he may, within twenty-eight days after the receipt by him of the notice, by writing given to the offeror, elect to receive for each share in respect of which he has accepted the offer an amount equal to that price in substitution for the consideration under the contract and, where such an election is made, the offeree is entitled to receive for each such share the substituted amount and is entitled to receive that amount forthwith or, if he has already received

the whole or any part of the consideration under the contract, forthwith upon returning that consideration (together with any necessary documents of transfer) to the offeror.

(4) Where—

- (a) a take-over offer made in respect of shares in a company is accepted;
- (b) the consideration under the contract resulting from the acceptance of the offer consists solely of a cash sum and it is a term of the contract that the offeree makes, or that the sum is applied in whole or in part in making, a payment by way of a deposit or loan; and
- (c) after the relevant Part A statement was served on the target company and before the expiration of the period in which the offer, if it had not been accepted, would have remained open, the offeror purchased or purchases shares in the company included in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the relevant take-over scheme, for a consideration that consists solely of a cash sum and the contract for the purchase of those shares does not contain a term of the kind mentioned in paragraph (b),

the offeror shall, within fourteen days after the expiration of that period, give notice in writing to the offeree setting out the highest price paid or payable by the offeror for any of the shares referred to in paragraph (c) and informing the offeree that he may, within twenty-eight days after the receipt by him of the notice, by writing given to the offeror, elect to receive for each share in respect of which he has accepted the offer an amount equal to that price in substitution for the consideration under the contract and, where such an election is made—

- (d) the contract referred to in paragraph (b) shall be deemed not to have included the term referred to in that paragraph;

- (e) the offeree is entitled to receive the substituted amount for each share to which the contract relates and is entitled to receive that amount forthwith;
- (f) the offeree shall forthwith return to the offeror any consideration that the offeree has received under the contract (not including any consideration that has been applied, or an amount equivalent to which has been applied, in making a payment by way of a deposit or loan in accordance with the term referred to in paragraph (b)) and any document evidencing any payment by way of a deposit or loan that the offeree has made in accordance with that term; and
- (g) upon the payment of the substituted amount to the offeree, any debt due to the offeree arising out of any payment by way of a deposit or loan in accordance with the term referred to in paragraph (b) or arising out of the application of the consideration under the contract is, by force of this paragraph, discharged.

PART IV—PROVISIONS RELATING TO  
TAKE-OVER ANNOUNCEMENTS.

Part D  
statement.

32. (1) Where a target company receives a statement that purports to be a Part C statement served under subsection (9) of section 17, the target company shall, not later than fourteen days after the relevant take-over announcement was made, serve a Part D statement on the stock exchange that is the home exchange in relation to that company.

(2) The Part D statement shall—

- (a) be signed by all the directors of the target company or by not less than two directors of the target company authorized so to sign pursuant to a resolution passed at a meeting of the directors or, in the case of a company that has only one director, by that director; or

- (b) if the company is in the course of being wound up or is under official management—be signed by the liquidator or official manager, as the case may be.

(3) A Part D statement shall not refer to any report made by an expert (other than a report set out in the Part C statement) unless—

- (a) the report is set out in the Part D statement; and
- (b) the Part D statement contains or is accompanied by a statement that the person or each of the persons by whom the report is made consents to the inclusion of the report in the form and context in which it is included.

(4) A target company that serves a Part D statement under subsection (1) shall, on the day on which the Part D statement is served, lodge with the Commissioner a copy of the Part D statement and of any statement accompanying the Part D statement.

(5) A Part D statement may contain, in addition to the information referred to in Part D of the Schedule, such information (not being information that is false in a material particular or materially misleading in the form and context in which it appears) as the directors of the target company, or the liquidator or official manager, as the case may be, think or thinks fit.

33. (1) If, after the making of a take-over announcement in relation to shares in a target company and before the end of the period in which offers constituted by the take-over announcement remain open, a prescribed occurrence takes place, the on-market offeror may, before the end of that period, withdraw such of the offers as have not been accepted by causing an announcement to that effect to be made on his behalf by a member of the stock exchange that is referred to in subsection (2) of section 17 at an official meeting of that stock exchange.

Withdrawal  
of on-market  
offers.

(2) An on-market offeror is not entitled, by reason of any of the occurrences referred to in paragraphs (a) to (g), inclusive, of the definition of "prescribed occurrence" in section 6, to withdraw offers made by virtue of a take-over announcement if, at the time of the relevant occurrence, the on-market offeror was entitled to more than 50% of the voting shares in the target company.

(3) If, after the making of a take-over announcement in relation to shares in a company and before the end of the period in which offers constituted by the take-over announcement remain open, being a take-over announcement made on behalf of a natural person or on behalf of two or more persons at least one of whom is a natural person, that natural person or, if there are two or more natural persons, either or any of them—

(a) dies;

(b) becomes bankrupt; or

(c) is declared by a court to be incapable of managing his affairs,

such of the offers made by virtue of the take-over announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the person died, became bankrupt or was declared to be so incapable, as the case may be.

(4) If, after the making of a take-over announcement in relation to shares in a company and before the end of the period in which offers constituted by the take-over announcement remain open, being a take-over announcement made on behalf of a corporation or on behalf of two more persons at least one of whom is a corporation—

(a) that corporation or, if there are two or more corporations, either or any of those corporations is placed under official management;

- (b) an order is made by a court for the winding up of that corporation or, if there are two or more corporations, of either or any of those corporations; or
- (c) a provisional liquidator of that corporation, or, if there are two or more corporations, of either or any of those corporations, is appointed,

such of the offers made by virtue of the take-over announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the corporation was placed under official management, the winding up order was made or the provisional liquidator was appointed, as the case may be.

(5) If, after the making of a take-over announcement by a member of a stock exchange in relation to shares in a company and before the end of the period in which offers constituted by the take-over announcement remain open—

- (a) where the member is not acting as agent for another stock exchange—the member who made the announcement; or
- (b) where the member is acting as agent for a member of another stock exchange—the member of that other stock exchange,

becomes bankrupt, is directed by the committee of management, board of directors or other governing authority of the stock exchange of which he is a member to cease to carry on the business of dealing in securities or, in the case of a member who carries on a business of dealing in securities otherwise than as a partner in a partnership, dies or is declared by a court to be incapable of managing his affairs, such of the offers made by virtue of the take-over announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the member became bankrupt, was so directed to cease to carry on business, died or was so declared to be incapable, as the case may be.

(6) After the making of a take-over announcement and before the end of the period in which offers constituted by the take-over announcement remain open—

- (a) the on-market offeror may, with the consent of the Commissioner, withdraw such of the offers as have not been accepted by causing an announcement to that effect to be made on his behalf by a member of the stock exchange that is referred to in subsection (2) of section 17 at an official meeting of that stock exchange; or
- (b) the member of the stock exchange that is referred to in subsection (2) of section 17 who made the take-over announcement on behalf of the on-market offeror may, with the consent of the Commissioner, withdraw such of the offers as have not been accepted by making an announcement to that effect at an official meeting of that stock exchange,

but the Commissioner shall not grant his consent to such a withdrawal unless he is satisfied that in all the circumstances it is just and equitable so to permit the withdrawal of the offers.

Suspension  
of acceptance  
of  
offers made  
pursuant to  
take-over  
announcement.

34. After the making of a take-over announcement and before the end of the period in which offers constituted by the take-over announcement remain open, the Commissioner may, on the application of the on-market offeror or the member of the stock exchange that is referred to in subsection (2) of section 17 who made the take-over announcement on behalf of the on-market offeror, by order in writing declare that such of the offers as have not been accepted are not capable of being accepted while the order is in force but, where such an order is made, the period for which the offers remain open shall be ascertained for the purpose of this Act as if the order had not been made.

35. After the making of a take-over announcement in relation to shares in a company and before the end of the period in which offers constituted by the take-over announcement remain open, the on-market offeror shall not dispose of any shares in the target company included in the same class of shares as the first-mentioned shares unless another person (not being a person associated with the on-market offeror) has, after the making of the announcement and before the disposal takes place, made a take-over offer or caused a take-over announcement to be made in respect of shares in the target company included in that class of shares.

Restriction  
on disposal  
of shares by  
on-market  
offeror.

PART V—PROVISIONS RELATING TO BOTH TAKE-OVER  
OFFERS AND TAKE-OVER ANNOUNCEMENTS.

36. Where a Part A statement or a Part C statement has been served on a target company, the offeror or on-market offeror may request the company to supply a written statement setting out the names and addresses (so far as they are known to the company) of the persons who, at the date of service of the Part A statement or the Part C statement, as the case may be, held shares in, or renounceable options or convertible notes granted or issued by, the company and, where such a request is made, the company shall, on payment to the company of the prescribed fee, send the statement to the offeror or on-market offeror, as the case may be, within seven days after the day on which the payment is received by the company.

Obligations  
of target  
company  
to provide  
information.

37. (1) Subject to this section, where—

Forecast  
of profits.

- (a) a person proposes, or two or more persons together propose, to dispatch a take-over offer, or to cause a take-over announcement to be made, in respect of shares in a company; or
- (b) a person has, or two or more persons together have, dispatched a take-over or caused a take-over announcement to be

made, in respect of shares in a company and the period during which the take-over offer remains open, or the offers constituted by the take-over announcement remain open, has not expired,

the person, or either or any of those persons, or a person associated with the person or with either or any of those persons, or, if the person or either or any of those persons is a corporation, an officer of the corporation or a person associated with such an officer, shall not make or issue, or cause to be made or issued, any statement to the public or to all or any members of the target company (including a statement included in a Part A statement or a Part C statement but not including a statement made or issued solely to officers of or advisers to the target company) that contains a forecast in respect of the profits or profitability of the target company or, if the person or either or any of those persons or any person associated with the person or with either or any of those persons is a corporation, a forecast in respect of the profits or profitability of that corporation.

(2) Subject to this section, where—

- (a) the directors of a company have reason to believe that a person proposes, or two or more persons together propose, to dispatch a take-over offer, or to cause a take-over announcement to be made, in respect of shares in the company; or
- (b) a person has, or two or more persons together have, dispatched a take-over offer, or caused a take-over announcement to be made, in respect of shares in a company and the period during which the take-over offer remains open, or the offers constituted by the take-over announcement remain open, has not expired,

the target company or a person associated with the target company or with an officer of the target company, or, if a person associated with the target company is a corporation, an officer of that corporation or a person associated with such an officer, shall not make or issue, or cause to be made or issued, any statement to the public or to all or any members of the target company (including a statement included in a Part B statement or a Part D statement but not including a statement made or issued solely to officers of or advisers to the target company) that contains a forecast in respect of the profits or profitability of the target company, or, if the person or either or any of the persons referred to in paragraph (a) or (b) or any person associated with the person or with either or any of those persons is a corporation, a forecast in respect of the profits or profitability of that corporation.

(3) Nothing in subsection (1) or (2) applies in relation to a statement that—

(a) is in writing; and

(b) is issued with the consent in writing of the Commissioner and in accordance with such conditions (if any) as are specified by the Commissioner.

(4) A reference in this section to a forecast in respect of the profits or profitability of a company or other corporation includes a reference to a forecast in respect of the profits or profitability of any business or income-producing activity of a kind engaged in by that company or other corporation or of any industry of which a business or income-producing activity engaged in by that company or other company or other corporation forms part.

38. (1) Subject to this section, where—

Revaluation  
of assets.

(a) a Part A statement has been served on a company in accordance with paragraph (d) of subsection (2) of section 16;

- (b) a Part C statement has been served on a company in accordance with paragraph (a) of subsection (9) of section 17; or
- (c) the directors of a company otherwise have reason to believe that a person proposes, or two or more persons together propose, to make take-over offers, or cause a take-over announcement to be made, in respect of shares in the company,

the following subsections of this section have effect—

- (d) in a case to which paragraph (a) applies—
  - (i) during the period commencing when the Part A statement was served and ending at the expiration of twenty-eight days after the day on which that statement was served or, if take-over offers are dispatched pursuant to the statement within those twenty-eight days, at the expiration of the period during which the take-over offers remain open; and
  - (ii) if take-over offers are dispatched, in accordance with an order under section 46, pursuant to the Part A statement—during the period during which the take-over offers remain open;
- (e) in a case to which paragraph (b) applies—until the end of the period during which offers constituted by the take-over announcement to which the Part C statement relates remain open; or
- (f) in a case to which paragraph (c) applies—during any period in which the directors have reason to believe the matters mentioned in that paragraph.

(2) The target company or a person associated with the target company or with an officer of the target company, or if a person associated with the target company is a corporation, an officer of that corporation, or a person associated with such an officer, shall not make or issue, or cause or permit to be made or issued, any statement to the public or to all or any members of the target company (not being a statement made or issued solely to officers of or advisers to the target company) to the effect that the market value of an asset or assets of the target company or of a corporation that is related to the target company differs from an amount at which the value of the asset or assets is shown in the books of the target company or related corporation unless the statement—

- (a) is in writing; and
- (b) is issued with the consent in writing of the Commissioner and in accordance with such conditions (if any) as are specified by the Commissioner.

(3) A reference in subsection (2) to an amount at which the value of an asset of a company or other corporation is shown in the books of the company or other corporation is a reference to an amount at which the value of the asset of the company or other corporation is shown in the most recently published accounts of the company or other corporation, being accounts required to be prepared by the law of the place where the company or other corporation is incorporated.

(4) Nothing in subsection (2) applies to or in relation to—

- (a) any accounts made out and laid before—
  - (i) a company at an annual general meeting in accordance with the Companies Act, 1961; or
  - (ii) a corporation at an annual general meeting in accordance with the law of the place where the corporation is incorporated that corresponds with the Companies Act, 1961; or

- (b) any document attached to any such accounts in accordance with the Companies Act, 1961, or such a corresponding law.

Notification  
of  
acquisitions  
and disposals  
of shares.

39. (1) For the purposes of the application of this section in relation to a listed public company—

- (a) each of the following periods is a relevant period:

- (i) if a Part A statement is served on the company—

(A) the period commencing when the statement is served and ending at the expiration of twenty-eight days after the day on which the statement is served or, if take-over offers are dispatched pursuant to the statement within those twenty-eight days, at the expiration of the period during which the take-over offers remain open; and

(B) if take-over offers are dispatched, in accordance with an order under section 46, pursuant to the statement—the period during which the take-over offers remain open; and

- (ii) if a take-over announcement is made in relation to shares in the company—the period commencing when the announcement is made and ending at the expiration of the period during which offers constituted by that announcement remain open; and

- (b) a person is, at a relevant time, a prescribed person in relation to a period that is, by reason of the service of a Part A statement

or the making of a take-over announcement, a relevant period in relation to the company if—

- (i) he is the person who is, or one of the persons who constitute, the offeror under the take-over scheme to which the Part A statement relates or is the person or one of the persons who caused the take-over announcement to be made; or
- (ii) he is, at that time, entitled to more than 5% of the voting shares in the company and he is not, and is not associated with, a person referred to in subparagraph (i).

(2) A person who, at the commencement of a period that is a relevant period in relation to a listed public company, is a prescribed person in relation to that period by reason of subparagraph (i) of paragraph (b) of subsection (1) shall—

- (a) serve on the stock exchange that is the home exchange in relation to the company, before 9.30 a.m. on the next trading day of that stock exchange after the date of commencement of that period, a notice in writing setting out—
  - (i) whether he has become entitled or ceased to be entitled to any voting shares in the company since the commencement of that period and, if so, the prescribed particulars of those shares; and
  - (ii) whether he is entitled to any voting shares in the company at the time when the notice is served and, if so, the prescribed particulars of those shares; and
- (b) if, during that period, he becomes entitled or ceases to be entitled to any voting shares in the company and has not previously given a notice under this sub-

section to that stock exchange by reason of his having become entitled or ceased to be entitled, as the case may be, to those shares, serve on that stock exchange, before 9.30 a.m. on the next trading day of that stock exchange after the day on which he so became entitled or ceased to be entitled to shares in the company, a notice in writing setting out—

- (i) whether he has become entitled or ceased to be entitled to any voting shares in the company since the commencement of that period and, if so, the prescribed particulars of those shares; and
  - (ii) whether he is entitled to any voting shares in the company at the time when the notice is served and, if so, the prescribed particulars of those shares; and
- (b) if, during that period, he becomes entitled or ceases to be entitled to any voting shares in the company and has not previously given a notice under this subsection to that stock exchange by reason of his having become entitled or ceased to be entitled, as the case may be, to those shares, serve on that stock exchange, before 9.30 a.m. on the next trading day of that stock exchange after the day on which he so became entitled or ceased to be entitled to shares in the company, a notice in writing setting out—
- (i) the prescribed particulars of those shares; and
  - (ii) if he is entitled to any voting shares in the company at the time when the notice is served—the prescribed particulars of those shares.

(3) A person who, during a period that is a relevant period in relation to a listed public company, becomes a prescribed person in relation

to that period by reason of subparagraph (ii) of paragraph (b) of subsection (1) (whether or not the person had previously been a prescribed person in relation to that period) shall serve on the stock exchange that is the home exchange in relation to the company, before 9.30 a.m. on the next trading day of that stock exchange after the day on which he so became a prescribed person, a notice in writing setting out—

- (a) the prescribed particulars of the voting shares in the company to which he was entitled at the time when he so became a prescribed person; and
- (b) if he is entitled to any voting shares in the company at the time when the notice is served—the prescribed particulars of those shares.

(4) Where—

- (a) during a period that is a relevant period in relation to a listed public company, a person who is a prescribed person in relation to that period by reason of subparagraph (ii) of paragraph (b) of subsection (1) ceases to be entitled to voting shares in the company; and
- (b) as a result of his so ceasing to be entitled to those shares he ceases to be a prescribed person in relation to that period,

the person shall serve on the stock exchange that is the home exchange in relation to the company, before 9.30 a.m. on the next trading day of that stock exchange after the day on which he ceased to be entitled to those shares, a notice in writing setting out the prescribed particulars of those shares and of any other voting shares in the company to which he became entitled or ceased to be entitled since he last served a notice under this section in relation to the company during that period or, if he has not previously served a notice during that period, since the commencement of that period.

## (5) Where—

- (a) during a period that is a relevant period in relation to a listed public company, a person becomes entitled or ceases to be entitled to voting shares in the company at a time when he is a prescribed person in relation to that period by reason of subparagraph (ii) of paragraph (b) of subsection (1);
- (b) the number of voting shares in the company to which he is entitled immediately after he becomes entitled or ceases to be entitled to the first-mentioned shares—
  - (i) is greater or less than the number of voting shares in the company to which he was entitled at the time when he last served a notice under this section in relation to the company during that period or, if he has not previously served a notice during that period, the number of voting shares in the company to which he was entitled at the commencement of that period; and
  - (ii) is so greater or less by a number of voting shares that is not less than 1% of the voting shares in the company; and
- (c) the person has not ceased to be a prescribed person,

the person shall serve on the stock exchange that is the home exchange in relation to the company, before 9.30 a.m. on the next trading day of that stock exchange after the day on which he became entitled or ceased to be entitled to those first-mentioned shares, a notice in writing setting out—

- (d) the prescribed particulars of those first-mentioned shares and of any other voting shares in the company to which he became entitled or ceased to be entitled since he last served a notice under this section in

relation to the company during that period or, if he has not previously served a notice during that period, since the commencement of that period; and

- (e) if he is entitled to any voting shares in the company at the time when the notice is given—the prescribed particulars of those shares.

(6) In a prosecution of a person for failing to serve a notice on a stock exchange under this section, it is a defence if the defendant establishes that—

- (a) at the time when he was required to serve the notice he was not aware of a fact or occurrence that gave rise to the requirement; and
- (b) he did not become aware of that fact or occurrence before the expiration of the relevant period or, if he became so aware before the expiration of that period, he served the notice on the next trading day of the stock exchange after he became so aware.

(7) A person is not required on any day to serve more than one notice under this section in relation to the same company.

(8) Where each of two or more persons would, but for this subsection, be required to serve a notice under subsection (5) in relation to the same shares in a company by reason that each of them has become entitled or each of them has ceased to be entitled to those shares, it is sufficient compliance with that subsection if one of them serves the notice.

(9) The prescribed particulars in relation to shares in a company to which a person is entitled (in this subsection referred to as “relevant shares”) are—

- (a) the number of relevant shares;

- (b) if shares in the company are divided into two or more classes—the number of relevant shares in each class;
- (c) if to the knowledge of the person another person is also entitled to the relevant shares—the name of that other person and a statement as to which of the persons entitled to the shares has a relevant interest in the shares; and
- (d) such other matters (if any) as are prescribed.

(10) The prescribed particulars in relation to shares in a company to which a person has become entitled (in this subsection referred to as “relevant shares”) are—

- (a) the number of relevant shares;
- (b) the consideration (if any) for the acquisition of each share (whether in the company or in another corporation) by virtue of which the person became entitled to the relevant shares;
- (c) if shares in the company are divided into two or more classes—the number of relevant shares in each class;
- (d) if the person became entitled to the relevant shares by reason of a contract that contained prescribed provisions—particulars of those provisions; and
- (e) such other matters (if any) as are prescribed.

(11) The prescribed particulars in relation to shares in a company to which a person has ceased to be entitled (in this subsection referred to as “relevant shares”) are—

- (a) the number of relevant shares;
- (b) the consideration (if any) for the disposal of each share (whether in the company or in another corporation) by virtue of which the person ceased to be entitled to the relevant shares;

- (c) if shares in the company are divided into two more classes—the number of relevant shares in each class;
- (d) if the person ceased to be entitled to the relevant shares by reason of a contract that contained prescribed provisions—particulars of those provisions; and
- (e) such other matters (if any) as are prescribed.

(12) A notice served under this section that specifies, in accordance with paragraph (b) of subsection (10) or paragraph (b) of subsection (11), consideration for two or more acquisitions of shares, two or more disposals of shares, or an acquisition or acquisitions of shares and a disposal or disposals of shares, shall, if the consideration in respect of two or more of the transactions consisted only of a cash sum, also specify separately the higher or highest such sum paid or payable or received or receivable for any of the shares referred to in that notice.

40. (1) Subject to subsection (3), during the period commencing when a Part A statement is served on a target company and ending at the expiration of twenty-eight days after the day on which the statement is served or, if take-over offers are dispatched pursuant to the statement within those twenty-eight days, at the expiration of the period during which the take-over offers remain open the offeror, or a person associated with the offeror, shall not give, offer to give, or agree to give to a person whose shares may be acquired under the relevant take-over scheme, or to a person associated with such a person, any benefit (whether by payment of cash or otherwise) not provided for under the take-over offers or, if the take-over offers are varied in accordance with section 27, under the take-over offers as so varied.

Offerees or on-market offerees not to be given benefits except under take-over scheme or take-over announcement.

(2) Subject to subsection (3), during the period commencing when a take-over announcement is made in relation to shares in a company and ending at the expiration of the period during which offers constituted by that announcement remain open the on-market offeror, or a person associated with the on-market offeror, shall not give, offer to give or agree to give a person whose shares may be acquired pursuant to the take-over announcement, or to a person associated with such a person, any benefit (whether by payment of cash or otherwise) not provided for under the terms of the take-over announcement or, if those terms have been varied under section 17, under the terms as so varied.

(3) Nothing in this section prohibits—

- (a) the variation of a take-over in accordance with section 27; or
- (b) the acquisition of shares in a company at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange.

Expenses of  
directors  
of target  
company.

41. Notwithstanding anything in the constituent documents of a company, the directors of the company are entitled to have refunded to them by the company any expenses reasonably incurred by them in the interest of the members of the company in relation to a take-over scheme involving the acquisition of shares in the company or in relation to a take-over announcement relating to shares in the company.

Provisions  
relating to  
dissenting  
shareholders  
and  
dissenting  
holders of  
options or  
notes.

42. (1) For the purposes of this section—

- (a) where take-over offers have been made in respect of shares included in a class of shares by an offeror who proposes to acquire all the shares included in that class, the shares in respect of which the offers were made constitute shares subject to acquisition;

- (b) where a take-over announcement has been made in respect of shares included in a class of shares, the shares included in that class (other than shares to which the on-market offeror is entitled) constitute shares subject to acquisition;
- (c) a reference to outstanding shares shall be construed as a reference to—
  - (i) shares subject to acquisition by virtue of paragraph (a) in respect of which a take-over offer was made but has not been accepted, not being shares acquired by the offeror otherwise than under the relevant take-over scheme; or
  - (ii) shares subject to acquisition by virtue of paragraph (b) in respect of which an offer made by virtue of a take-over announcement has not been accepted, not being shares acquired by the on-market offeror otherwise than by virtue of the take-over announcement; and
- (d) a reference to a dissenting offeree shall be construed—
  - (i) in relation to shares in respect of which take-over offers have been made—as a reference to a person who is, or is entitled to be registered as, the holder of shares that are outstanding by virtue of subparagraph (i) of paragraph (c); and
  - (ii) in relation to shares in respect of which a take-over announcement has been made—as a reference to a person who is, or is entitled to be registered as, the holder of shares that are outstanding shares by virtue of subparagraph (ii) of paragraph (e).

## (2) Where—

- (a) take-over offers have been made in respect of shares included in a class of shares by an offeror who proposes to acquire all the shares included in that class and, after the relevant Part A statement was served on the target company and before the end of the period during which the offers remain open, the number of shares included in that class to which the offeror is entitled became or becomes not less than 90% of the shares included in that class; and
- (b) if the shares subject to acquisition constitute less than 90% of the shares included in that class—three-quarters of the offerees have disposed of to the offeror (whether under the relevant take-over scheme or otherwise) the shares subject to acquisition that were held by them,

the offeror may, within one month after the last day upon which offers under the take-over scheme remained open, give notice, as prescribed, to a dissenting offeree to the effect that the offeror desires to acquire the outstanding shares held by the dissenting offeree.

## (3) Where—

- (a) a take-over announcement has been made in respect of shares included in a class of shares and, before the end of the period during which the offers constituted by that take-over announcement remain open, the number of shares included in that class to which the on-market offeror is entitled becomes not less than 90% of the shares included in that class; and
- (b) if the shares subject to acquisition constitute less than 90% of the shares included in that class—three-quarters of the offerees

have disposed of to the on-market offeror (whether by acceptance of offers made by virtue of the take-over announcement or otherwise) the shares subject to acquisition that were held by them,

the on-market offeror may within one month after the last day upon which offers constituted by the take-over announcement remained open, give notice, as prescribed, to a dissenting offeree to the effect that the on-market offeror desires to acquire the outstanding shares held by the dissenting offeree.

(4) Where an offeror who has made take-over offers, or an on-market offeror who has caused a take-over announcement to be made, in relation to shares in a company is, at the expiration of the last day upon which any of the offers remained open, entitled to all the voting shares in the company or, in respect of any voting shares in the company to which he is not entitled, entitled to give a notice to the holder of the shares under subsection (2) or (3), the offeror or on-market offeror, as the case may be, may, within one month after that last day—

- (a) give notice, as prescribed, to a holder of shares in the company that are not voting shares to the effect that the offeror or on-market offeror desires to acquire those shares; and
- (b) give notice, as prescribed, to the holder of a renounceable option or convertible note granted or issued by the company to the effect that the offeror or on-market offeror desires to acquire that option or note.

(5) For the purposes of paragraph (b) of subsection (2) or of paragraph (b) of subsection (3), two or more persons holding jointly shares in respect of which a take-over offer has been made or an offer has been made by virtue of a take-over announcement shall be deemed to be one offeree.

(6) An offeror or on-market offeror to whom subsection (2), (3) or (4) applies in relation to a particular company shall, on the day on which he first gives a notice under subsection (2) or (3) or under paragraph (a) or (b) of subsection (4), as the case may be, in relation to that company, lodge a copy of the notice with the Commissioner.

(7) Where a notice is given under subsection (2) or (3), the offeror or on-market offeror is entitled and bound, subject to this section, to acquire the shares to which the notice relates on the terms that were applicable in relation to the acquisition of shares under the take-over scheme or pursuant to the take-over announcement immediately before the expiration of the period for which offers under the take-over scheme or offers constituted by the take-over announcement remained open.

(8) Subsection (7) does not have effect in relation to a dissenting offeree where, on an application made by the dissenting offeree—

(a) within one month after the date on which the notice was given under subsection (2) or (3); or

(b) within fourteen days after the giving to him of a statement under subsection (14),

whichever is the later, the Court orders that subsection (7) is not to have effect in relation to him.

(9) A notice given under subsection (4) shall—

(a) specify the consideration for which, and other terms on which, the offeror or on-market offeror proposes to acquire the shares, renounceable option or convertible note to which the notice relates; and

(b) be accompanied by a report by an expert (other than expert who, at the time when the report was obtained, was associated with the offeror or on-market offeror) stating that in his opinion the consideration and other terms specified in the notice are fair and reasonable.

(10) Where a notice is given under subsection (4), the offeror or on-market offeror is entitled and bound, subject to this section, to acquire the shares, renounceable option or convertible note to which the notice relates on such terms as are agreed or as the Court, on the application of the offeror, on-market offeror or holder of the shares, renounceable option or convertible note, thinks fit to order.

(11) Subsection (10) does not have effect in relation to a holder of shares or of a renounceable option or convertible note where, on an application made by the holder of the shares, option or note—

- (a) within one month after the date on which the notice was given under subsection (4);  
or
- (b) within fourteen days after the giving to him of a statement under subsection (15),

whichever is the later, the Court orders that subsection (10) is not to have effect in relation to him.

(12) Where alternative terms were offered under a take-over offer to which this section applies, the dissenting offeree may, by notice in writing given to the offeror—

- (a) within one month after the date on which the notice was given under subsection (2);  
or
- (b) within fourteen days after the giving to him of a statement under subsection (14),

whichever is the later, specify which of those terms he prefers, and the terms so specified shall apply to the acquisition of the outstanding shares held by him.

(13) If a dissenting offeree fails to give a notice within the period allowed by subsection (12), the offeror may, unless the Court otherwise orders, determine which of the terms referred to in that subsection is to apply to the acquisition of the outstanding shares of the dissenting offeree.

(14) Where the offeror or on-market offeror has given notice under subsection (2) or (3), the dissenting offeree may, by notice in writing served on the offeror or on-market offeror within one month after the date on which the first-mentioned notice was given, ask for a statement in writing of the names and addresses of all other dissenting offerees and the offeror or on-market offeror shall forthwith give a statement in writing accordingly.

(15) Where the offeror or on-market offeror has given notice under subsection (4), the holder of shares, or of a renounceable option or convertible note, to whom the notice was given may, by notice in writing served on the offeror or on-market offeror within one month after the date on which the first-mentioned notice was given, ask for a statement in writing of the names and addresses of all other holders of shares, or of renounceable options or convertible notes, to whom the offeror or on-market offeror is entitled to give notices under that subsection and the offeror or on-market offeror shall forthwith give a statement in writing accordingly.

(16) Where the offeror or on-market offeror has given notice under subsection (2), (3) or (4) and the Court has not, on application made under subsection (8) or (11), ordered to the contrary, the offeror or on-market offeror shall, within fourteen days after—

- (a) the expiration of one month after the notice was given;
- (b) the expiration of fourteen days after the last day on which a statement under subsection (14) or (15) was given; or

- (c) where an application has been made to the Court under subsection (8) or (11)—the application has been disposed of,

whichever last happens, serve a copy of the notice on the company that issued the shares, granted the renounceable option or issued the convertible note concerned, together with an instrument of transfer of the shares, option or note by a person appointed by the offeror or on-market offeror and also executed by the offeror or on-market offeror, and pay, allot or transfer to the target company the consideration for the transfer, and the target company shall thereupon register the offeror or on-market offeror as the holder of those shares or of that option or note.

(17) The target company shall hold the consideration so received in trust for the former holder of the shares, renounceable option or convertible note and shall forthwith notify him in writing that the consideration has been received by the target company and is being held by that company pending his instructions as to how it is to be dealt with.

(18) Where consideration held as provided by subsection (17) consists of or includes money, that shall be paid into a bank account established for that purpose only.

(19) Where money or other property is held in trust by a company for a person under this section and has been so held for not less than two years, the company shall, before the expiration of ten years after the date on which the money or other property was received by the company, pay the money or transfer the property and any accretions (or, if any property has been substituted for the whole or any part of that money or property, the property so substituted) to the Treasurer of the State.

(20) The Treasurer of the State shall sell or dispose of any property other than money so received and any property that becomes substituted for the whole or any part of that property as he thinks fit and shall deal with the proceeds of the sale or disposal and any money so received and any income derived from that property in accordance with the Unclaimed Moneys Act, 1912.

(21) Where any property transferred under this section to the Treasurer, or any property that becomes substituted for the whole or any part of that property, includes marketable securities of a corporation, the Treasurer is not subject to any obligations to pay any calls, to make any contribution to the debts and liabilities of the corporation, to discharge any other liability, or to do any other act or thing, in respect of the marketable securities, whether the obligation arises before or after the date of the transfer, but this subsection does not affect any right of the corporation to forfeit a share.

(22) Neither the State nor the Treasurer of the State is liable for any loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers that are conferred on the Treasurer under this section or that the Treasurer has in relation to property transferred to him under this section or property that becomes substituted for the whole or any part of that property.

Rights of  
remaining  
shareholders  
and holders  
of option  
and notes.

43. (1) Where—

- (a) a Part A statement has been served in respect of shares included in a class of shares in a company and, during the period (in this section referred to as a “relevant period”) commencing when the statement was served and ending at the expiration of twenty-eight days after the day on which

the statement was served or, if take-over offers are dispatched pursuant to the statement within those twenty-eight days, at the expiration of the period during which the take-over offers remain open, the number of shares included in that class to which the offeror is entitled becomes not less than 90% of the shares included in that class; or

- (b) a take-over announcement has been made in respect of shares included in a class of shares in a company and, during the period (in this section also referred to as a "relevant period") commencing when the take-over announcement was made and ending at the expiration of the period in which the offers constituted by the take-over announcement remain open, the number of shares included in that class to which the on-market offeror is entitled becomes not less than 90% of the shares included in that class,

the offeror or on-market offeror shall, within one month after the last day upon which offers under the relevant take-over scheme remained open or offers constituted by the take-over announcement remained open, as the case may be, give notice, as prescribed, that he became entitled to shares as mentioned in paragraph (a) or (b), as the case may be, to the holders of remaining shares included in that class who, when the notice is given, had not been given notice under subsection (2) or (3) of section 42.

(2) A holder of remaining shares referred to in subsection (1) may, within three months after the giving of notice to him under that subsection, require the offeror or on-market offeror to acquire shares included in the class concerned of which he is the holder and where, in the case of a take-over offer, alternative terms were offered in respect of shares included in that class in the take-over, elect which of those terms he will accept.

(3) Where a shareholder gives notice under subsection (2) with respect to his shares, the offeror or on-market offeror is entitled and bound to acquire those shares—

- (a) in the case where a Part A statement was served—on the terms that were applicable in relation to the acquisition of shares under the relevant take-over scheme immediately before the expiration of the period for which offers under that take-over scheme remained open and, where alternative terms were applicable, on the terms for which the shareholder has elected or, where he has not elected, on whichever of the terms the offeror determines; or
- (b) in the case where a take-over announcement was made—on the terms that were applicable in relation to the acquisition of shares pursuant to the take-over announcement immediately before the expiration of the period for which offers constituted by the take-over announcement remained open,

or on such other terms as are agreed or as the Court, on the application of the offeror, on-market offeror or shareholder, thinks fit to order.

(4) Where—

- (a) a Part A statement has been served as mentioned in paragraph (a) of subsection (1) and, during the relevant period referred to in that paragraph, the number of voting shares in the company to which the offeror is entitled becomes not less than 90% of the voting shares in the company; or
- (b) a take-over announcement has been made as mentioned in paragraph (b) of subsection (1) and, during the relevant period referred to in that paragraph, the number of voting shares in the company to which

the on-market offeror is entitled becomes not less than 90% of the voting shares in the company,

the offeror or on-market offeror shall, within one month after the last day upon which offers under the relevant take-over scheme remained open or offers constituted by the take-over announcement remained open, as the case may be, give notice, as prescribed, that he became entitled to shares as mentioned in paragraph (a) or (b), as the case may be, to the holders of non-voting shares in the company to which he is not entitled and to the holders of renounceable options or convertible notes granted or issued by the company to which he is not entitled.

(5) A notice given under subsection (4) shall not propose terms for the acquisition by the offeror or on-market offeror of the shares, renounceable option or convertible note to which the notice relates unless the notice is accompanied by a report by an expert (other than an expert who, at the time when the report was obtained, was associated with the offeror or on-market offeror) stating that in his opinion the terms proposed in the notice are fair and reasonable.

(6) Where a notice is given under subsection (4) to the holder of any non-voting shares, renounceable option or convertible note—

- (a) the holder of the shares, option or note may, within three months after the giving of the notice to him, require the offeror or on-market offeror to acquire the shares, option or note; and
- (b) if a holder of shares or of an option or note so gives notice with respect to the shares, option or note, the offeror or on-market offeror is entitled and bound to acquire those shares or that option or note on such terms as are agreed or as the Court, on the application of the offeror, on-market offeror or holder of the shares, option or note, thinks fit to order.

(7) Where an offeror or on-market offeror has given a notice or notices under subsection (1) or (4), he shall forthwith lodge with the Commissioner a copy of the notice or of one of the notices.

PART VI—MISCELLANEOUS.

Liability  
for misstate-  
ments.

44. (1) Where—

- (a) There is, in a statement that purports to be a Part A statement served under paragraph (d) of subsection (2) of section 16, in a take-over offer or in a notice given under subsection (2) or (4) of section 42 or subsection (1) or (4) of section 43, matter that is false in a material particular or materially misleading in the form and context in which it appears; or
- (b) there is an omission of material matter from such a statement, offer or notice,

a person to whom this subsection applies is, subject to this section, guilty of an offence.

(2) Where—

- (a) there is, in a statement that purports to be a Part B statement given under subsection (1) of section 22 or a Part D statement served under subsection (1) of section 32, matter that is false in a material particular or materially misleading in the form and context in which it appears; or
- (b) there is an omission of material matter from such a statement, a person to whom this subsection applies is, subject to this section, guilty of an offence.

(3) Where—

- (a) there is, in a statement that purports to be a Part C statement served under paragraph (a) of subsection (9) of section 17, or in a notice given under subsection (3) or (4) of section 42 or subsection (1) or (4)

of section 43, matter that is false in a material particular or materially misleading in the form and context in which it appears; or

- (b) there is an omission of material matter from such a statement or notice,

a person to whom this subsection applies is, subject to this section, guilty of an offence.

(4) Where—

(a) there is—

- (i) in a report that is set out in a Part B statement in accordance with paragraph (a) of subsection (3) of section 22 or accompanies a Part B statement in accordance with section 23;
- (ii) in a report that is set out in a Part D statement in accordance with paragraph (a) of subsection (3) of section 32;
- (iii) in a report that accompanies, or is included in, a statement issued with the consent of the Commissioner under section 37 or section 38; or
- (iv) in a report that accompanies a notice given under subsection (4) of section 42 or subsection (4) of section 43,

matter that is false in a material particular or materially misleading in the form and context in which it appears; or

- (b) there is an omission of material matter from such a report,

the person who made the report and, if that person is a corporation, any officer of the corporation who is in default are, subject to this section, each guilty of an offence.

## (5) Where—

- (a) a person proposes, or two or more persons together propose, to dispatch a take-over offer or to cause a take-over offer to be dispatched, or to cause a take-over announcement to be made, in respect of shares in a company;
- (b) the person, or either or any of the persons referred to in paragraph (a), or a person associated with the person or with either or any of the persons, or, if the person or either or any of the persons or any person associated with the person or with either or any of the persons is a corporation, an officer of the corporation or a person associated with such an officer—
  - (i) makes or issues, or causes to be made or issued, an oral or written statement to the public, or publishes, or causes to be published, an advertisement, relating to a prescribed matter; or
  - (ii) dispatches, or causes to be dispatched, a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company; and
- (c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading in the form and context in which it appears,

the person who made or issued the statement, published the advertisement or dispatched the document, or caused the statement to be made or issued, the advertisement to be published or the document to be dispatched, and, if that person is a corporation, any officer of the corporation who is in default, are, subject to this section, each guilty of an offence.

## (6) Where—

- (a) the directors of a company have reason to believe that a person proposes, or two or more persons together propose, to dispatch a take-over offer or to cause a take-over offer to be dispatched, or to cause a take-over announcement to be made, in respect of shares in the company;
- (b) the target company or a corporation that is related to the target company or an officer of the target company or of such a corporation or a person associated with such an officer—
  - (i) makes or issues, or causes to be made or issued, an oral or written statement to the public, or publishes, or causes to be published, an advertisement, relating to a prescribed matter; or
  - (ii) dispatches, or causes to be dispatched, a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company; and
- (c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading in the form and context in which it appears,

the person who made or issued the statement, published the advertisement or dispatched the document, or caused the statement to be made or issued, the advertisement to be published or the document to be dispatched, and, if that person is a corporation, any officer of the corporation who is in default, are, subject to this section, each guilty of an offence.

## (7) Where—

- (a) a take-over offer is dispatched, or a take-over announcement is made, in respect of shares in a company;
- (b) at any time during the period commencing when the take-over offer is dispatched or the take-over announcement is made and ending at the expiration of the period during which the take-over offer remains open or the offers constituted by the take-over announcement remain open, a person to whom this section applies—
  - (i) makes or issues, or causes to be made or issued, an oral or written statement to the public, or publishes, or causes to be published, an advertisement, in connection with the offers under the relevant take-over scheme or in connection with the take-over announcement, relating to a prescribed matter; or
  - (ii) dispatches, or causes to be dispatched, in connection with the offers under the relevant take-over scheme or in connection with the take-over announcement, a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company (not being a document required by this Act to be so dispatched); and
- (c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading in the form and context in which it appears,

that person, and, if that person is a corporation, any officer of the corporation who is in default, are, subject to this section, each guilty of an offence.

(8) For the purposes of subsections (5), (6) and (7)—

- (a) a reference to a document includes a reference to a disc, tape, cinematograph film or other article from which sounds or images can be reproduced; and
- (b) a prescribed matter is a matter relating to affairs of, or to marketable securities issued or to be issued by—
  - (i) the target company or a corporation that is related to the target company;
  - (ii) the offeror or on-market offeror, as the case may be, or a corporation that is related to the offeror or on-market offeror; or
  - (iii) any other offeror or on-market offeror in relation to the target company, or any corporation that is related to such an offeror or on-market offeror.

(9) A person to whom subsection (1), (2) or (3) applies, or a person referred to in subsection (4), is, in the circumstances referred to in that subsection, whether he has been convicted of an offence under that subsection or not, liable, subject to this section, to pay compensation to a person who—

- (a) accepts an offer on the faith of the contents of the relevant statement, offer or report; or
- (b) agrees to sell shares, a renounceable option or a convertible note on the faith of the contents of the relevant notice or report,

for any loss or damage sustained by reason of the false or misleading matter or by reason of the omission.

(10) A person referred to in subsection (5), (6) or (7) is, in the circumstances referred to in that subsection, whether he has been convicted of an offence under that subsection or not, liable, subject to this section, to pay compensation to a person

who accepts an offer on the faith of the contents of the relevant statement, advertisement or document for any loss or damage sustained by reason of the false or misleading matter.

(11) The persons to whom subsection (1) applies are—

- (a) the offeror;
- (b) in a case where false or misleading matter appeared in, or material matter was omitted from, a statement—
  - (i) if the offeror is or includes a corporation—a person who was a director of that corporation at the time when the statement was served, not being—
    - (A) a director who was not present at the meeting at which the resolution authorizing the signing of the statement was agreed to; or
    - (B) a director who voted against that resolution; and
  - (ii) subject to subsection (15), a person a notice of whose consent to the inclusion in the statement of a report made by him has been lodged with the Commissioner under paragraph (b) of subsection (2) of section 18; and
- (c) in a case where—
  - (i) false or misleading matter appeared in, or material matter was omitted from, an offer or notice; and
  - (ii) the offeror is or includes a corporation,  
a person who was a director of that corporation at the time when the offer was dispatched or the notice was given, as the case may be.

(12) The persons to whom subsection (2) applies are—

- (a) the target company;
- (b) where the statement was signed as mentioned in paragraph (a) of subsection (2) of section 22 or paragraph (a) of subsection (2) of section 32—a person who was a director of the target company at the time when the statement was given or served, not being—
  - (i) a director who was not present at the meeting at which the resolution authorizing the signing of the statement was agreed to; or
  - (ii) a director who voted against that resolution; and
- (c) where the statement was signed as mentioned in paragraph (b) of subsection (2) of section 22 or of paragraph (b) of subsection (2) of section 32—the person who signed the statement.

(13) The persons to whom subsection (3) applies are—

- (a) the on-market offeror; and
- (b) in a case where—
  - (i) false or misleading matter appeared in, or material matter was omitted from, a statement; and
  - (ii) the on-market offeror is or includes a corporation,  
a person who was a director of that corporation at the time when the statement was served, not being—
    - (iii) a director who was not present at the meeting at which the resolution authorizing the signing of the statement was agreed to; or

- (iv) a director who voted against that resolution.

(14) The persons to whom subsection (7) applies are—

- (a) the offeror or on-market offeror;
- (b) a person associated with a person referred to in paragraph (a);
- (c) the target company;
- (d) an officer of the target company or a person associated with such an officer; or
- (e) if a person referred to in paragraph (a) or (b) is a corporation—an officer of the corporation or a person associated with such an officer.

(15) A person referred to in subparagraph (ii) of paragraph (b) of subsection (11) is guilty of an offence under subsection (1), and liable to pay compensation under subsection (9), only in respect of false or misleading matter in the report referred to in that subparagraph or an omission of material matter from that report.

(16) It is a defence to a prosecution of a person for an offence against subsection (1), (2), (3) or (4) if the person proves—

- (a) that, when the statement was served or given, the offer was dispatched, the notice was given or the report was made, he—
  - (i) believed on reasonable grounds that the false matter was true;
  - (ii) believed on reasonable grounds that the misleading matter was not misleading;
  - (iii) in the case of an omission, believed on reasonable grounds that no material matter had been omitted; or
  - (iv) in the case of an omission, did not know that the omitted matter was material; and

(b) that—

- (i) on the date of the information, he so believed or did not so know; or
- (ii) before that date, he ceased so to believe or came to know that the omitted matter was material, and forthwith gave reasonable notice containing such matters as were necessary to correct the false or misleading matter or the omission.

(17) It is a defence to a prosecution of a person for an offence against subsection (5), (6) or (7) if the person proves—

(a) that, when the statement was made or issued, the advertisement was published or the document was dispatched, he—

- (i) believed on reasonable grounds that the false matter was true; or
- (ii) believed on reasonable grounds that the misleading matter was not misleading; and

(b) that—

- (i) on the date of the information, he so believed; or
- (ii) before that date, he ceased so to believe and forthwith gave reasonable notice containing such matters as were necessary to correct the false or misleading matter.

(18) It is a defence to an action under subsection (9) if the defendant proves—

(a) any matter referred to in paragraph (a) of subsection (16); and

(b) that—

- (i) when the plaintiff accepted the offer or agreed to sell the shares, renounceable option or convertible note, the defendant believed as

mentioned in subparagraph (i), (ii) or (iii) of paragraph (a) of subsection (16) or did not know that the omitted matter was material; or

- (ii) before the plaintiff accepted the offer or agreed to sell the shares, renounceable option or convertible note, the defendant ceased so to believe or came to know that the omitted matter was material, and forthwith gave reasonable notice containing such matters as were necessary to correct the false or misleading matter or the omission.

(19) It is a defence to an action under subsection (10) if the defendant proves—

(a) any matter referred to in paragraph (a) of subsection (17); and

(b) that—

(i) when the plaintiff accepted the offer, the defendant believed as mentioned in subparagraph (i) or (ii) of paragraph (a) of subsection (17); or

(ii) before the plaintiff accepted the offer, the defendant ceased so to believe and forthwith gave reasonable notice containing such matters as were necessary to correct the false or misleading matter.

(20) This section applies to a notice containing modifications referred to in paragraph (a) of subsection (10) of section 27 and to a notice purporting to set out information prescribed for the purposes of paragraph (a) of subsection (11) of section 27 in like manner as it applies in relation to a statement that purports to be a Part A statement and, for the purposes of this section as it applies by

virtue of this subsection, a reference to a statement that purports to be a Part A statement shall be read as a reference to such a notice.

(21) The penalty for an offence arising under this section is a fine not exceeding \$5 000 or imprisonment for a period not exceeding one year, or both.

(22) Nothing in this section affects any cause of action existing apart from this section.

45. (1) Where a person has acquired shares in a company in contravention of section 12, the Court may, on the application of the Commissioner, the company, a member of the company or the person from whom the shares were acquired, make one or more of the following orders:

Orders whe.  
prohibited  
acquisitions  
take place.

- (a) an order restraining the person who acquired the shares from disposing of, or of any interest in, the shares or such of the shares as are specified in the order;
- (b) an order restraining the exercise of any voting or other rights attached to the shares or such of the shares as are specified in the order;
- (c) an order directing the company not to make payment, or to defer making payment, of any sum or sums due from the company in respect of the shares or such of the shares as are specified in the order;
- (d) an order directing the disposal of, or of any interest in, the shares or such of the shares as are specified in the order;
- (e) an order directing the company not to register the transfer or transmission of the shares or such of the shares as are specified in the order;
- (f) an order that any exercise of the voting or other rights attached to the shares, or such of the shares as are specified in the order, be disregarded;

- (g) for the purpose of securing compliance with any order referred to in any of the preceding paragraphs, an order directing the company or any other person to do or refrain from doing a specified act.

(2) Where, at the hearing of an application under this section, it is proved to the satisfaction of the Court that—

- (a) a person is entitled to shares in a company by reason that another person who is, by virtue of subsection (4) of section 7, an associate of the first-mentioned person has a relevant interest in those shares; and
- (b) that other person became entitled to that relevant interest by reason of an acquisition of shares (whether in that company or in another corporation) that took place within six months immediately preceding the lodgment of the application with the Court,

then in determining for the purposes of the application whether the acquisition referred to in paragraph (b) was made in contravention of section 12, the proof of the matters mentioned in paragraphs (a) and (b) of this subsection constitutes *prima facie* evidence that the other person was, for the purposes of subsection (3) of section 7, an associate of the first-mentioned person immediately after the acquisition took place.

(3) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied—

- (a) that the contravention of section 12 by the person who acquired the shares was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and
- (b) that, in all the circumstances, the contravention ought to be excused.

## 46. (1) Where—

- (a) a Part A statement relating to offers under a take-over scheme is served on a target company;
- (b) after the Part A statement is served the offeror referred to in the Part A statement acquires shares in the company;
- (c) the acquisition of those shares would, but for paragraph (a) of subsection (3) of section 13, have contravened section 12; and
- (d) the offeror does not dispatch the offers to which the Part A Statement relates within the period of twenty-eight days after the Part A statement is served on the target company,

Orders where offers not dispatched pursuant to Part A statement.

the Court may, on the application of the Commissioner, do either or both of the following:

- (e) make one or more of the orders referred to in subsection (1) of section 45;
- (f) order the offeror, within such time as is specified in the order, to dispatch in a manner approved by the Commissioner the offers to which the Part A statement relates.

(2) Where, under paragraph (f) of subsection (1), the Court orders a person to dispatch offers, the Court may also order the person—

- (a) to dispatch with each offer a notice setting out such information as the Court specifies; and
- (b) within such period as is specified in the order, to serve on the target company, lodge with the Commissioner and, if the target company is a listed public company, serve on the stock exchange that is the home exchange in relation to the target company, a copy of the notice.

(3) Where offers are dispatched pursuant to an order made by the Court under paragraph (f) of subsection (1), the offers shall be deemed to be made under a take-over scheme.

Orders to protect rights under take-over schemes or announcements.

47. (1) Where a Part A statement relating to offers under a take-over scheme has been served on a target company or a take-over announcement has been made, the Court may, on the application of the Commissioner, the offeror, the on-market offeror, the target company or any person who holds shares in the target company or held shares in the target company at the time when the Part A statement was so served or the take-over announcement was made, if the Court is satisfied that a provision of this Act has been contravened or has not been complied with, make such orders as it thinks necessary or expedient to protect the rights of a person affected by the take-over scheme or take-over announcement (including a person who is the holder of non-voting shares in, or renounceable options or convertible notes granted or issued by, the target company), including, but without limiting the generality of the foregoing, one or more of the following orders:

- (a) an order directing the offeror, the on-market offeror or the target company to supply to the holders of shares in the target company such information as is specified in the order;
- (b) where a person has failed to do an act or thing that he was required by this Act to do—an order directing that person to do that act or thing within such time as is specified in the order, notwithstanding that the time specified in the Act for the doing of that act or thing has expired;
- (c) an order restraining the exercise of any voting or other rights attached to any shares;
- (d) an order restraining the disposal of, or of any interest in, shares in the target company;

- (e) an order directing the disposal of, or of any interest in, shares in the target company;
- (f) an order directing the target company not to register the transfer or transmission of shares;
- (g) an order cancelling a contract, arrangement or offer relating to the take-over scheme or take-over announcement;
- (h) an order declaring a contract, arrangement or offer relating to the take-over scheme or take-over announcement to be voidable; and
- (j) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

(2) In this section, "shares", in relation to a company, includes—

- (a) shares in the company that are not voting shares; and
- (b) renounceable options and convertible notes granted or issued by the company.

48. (1) Where a person has contravened or failed to comply with a provision of this Act and the Court is satisfied that the contravention or non-compliance was due to inadvertence, mistake or circumstances beyond his control and that the contravention or failure ought to be excused or is satisfied on any other grounds that the contravention or failure ought to be excused, the Court may, on the application of an interested person, make such order as it thinks fit declaring any act or matter not to be invalid by reason of the contravention or failure to comply and declaring any act or matter to have force or effect as if there had been no such contravention or failure.

Court may  
excuse  
contraven-  
tion or  
non-compli-  
ance due to  
inadvertence,  
etc.

## (2) Where—

- (a) offers to acquire shares in a company, being offers that purported to be made under a take-over scheme, have been made;
- (b) a requirement of subsection (2) of section 16 has not been complied with; and
- (c) the Court is satisfied, on application made by the person who made the offers, that the non-compliance was due to inadvertence, mistake or circumstances beyond his control and that the non-compliance ought to be disregarded, or is satisfied on any other grounds that the non-compliance ought to be disregarded,

the Court may make an order directing that the offers shall be deemed to have been made under a take-over scheme.

## (3) Where—

- (a) a document purporting to be a Part A statement or a Part C statement is served on a company;
- (b) the document does not comply with all the requirements of Part A or Part C, as the case may be, of the Schedule; and
- (c) the Court is satisfied, on application by the person by whom or on whose behalf the document was served, that the non-compliance was due to inadvertence, mistake or circumstances beyond his control and that the non-compliance ought to be disregarded, or is satisfied on any other grounds that the non-compliance ought to be disregarded,

the Court may make an order directing that the document shall be deemed to be and at all relevant times to have been, a Part A statement or a Part C statement, as the case may be.

(4) This section has effect notwithstanding anything contained in any other provision of this Act.

49. (1) The Court shall, before making an order under section 45, 46, 47, 48, or 55 and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

Miscellaneous  
provisions  
relating  
to orders.

(2) The Court may, before making an order under section 45, 46, 47, 48, or 55, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) An order under section 45, 46, 47, 48, or 55 may include such ancillary or consequential provisions as the Court thinks just.

(4) An order under section 45, 46, or 47 directing the disposal of, or of an interest in, a share may provide that the disposal shall be made within such time and subject to such conditions (if any) as the Court thinks fit, including, if the Court thinks fit, a condition that the disposal shall not be made to a particular person or persons or to persons included in a particular class or classes of persons.

(5) The Court may direct that, where a share or an interest in a share is not disposed of in accordance with an order of the Court under section 45, 46, or 47, the share or interest in the share shall vest in the Commissioner.

(6) Section 311 of the Companies Act, 1961 applies in relation to a share or an interest in a share that vests in the Commissioner under this section in like manner as it applies in relation to an estate or interest in property referred to in the first-mentioned section.

(7) The Court may rescind, vary or discharge an order made by it under section 45, 46, 47, 48 or 55 or suspend the operation of such an order.

(8) A person who contravenes or fails to comply with an order under section 45, 46, 47 or 55 that is applicable to him is guilty of an offence.

(9) Where an offence under subsection (8) is committed by a corporation, any officer of the corporation who is in default is guilty of an offence.

(10) The penalty for an offence arising under this section is a fine not exceeding \$1 000.

(11) Subsection (8) and (9) do not affect the powers of the Court in relation to the punishment of contempts of the Court.

(12) In the application of a provision of this section in relation to orders under section 47, the expression "share" has, in that provision, the meaning given to that expression by subsection (2) of section 47.

Unfair or  
unconscion-  
able agree-  
ments,  
payments or  
benefits.

50. (1) Subject to subsection (3), this section applies to—

(a) an agreement entered into by a corporation for the making of a payment by the corporation to, or for the provision of a benefit by the corporation for, a person who is a director, secretary or principal executive officer of the corporation or of a corporation that is related to the corporation; or

(b) a payment or benefit made or provided by a corporation, otherwise than pursuant to an agreement, to or for such a person,

where the agreement is entered into or the payment or benefit is made or provided by the corporation—

(c) if the corporation is a company—

(i) during the period of twelve months after a Part A statement has been served on, or a take-over announcement has been made in respect of shares in, the company or a company that is related to the company; or

(ii) at a time when the directors of the company have reason to believe that

a person proposes, or two or more persons together propose, to make a take-over offer, or cause a take-over announcement to be made, in respect of shares in the company or in a company that is related to the company; or

(d) if the corporation is not a company—

(i) during the period of twelve months after a Part A statement has been served on, or a take-over announcement has been made in respect of shares in, a company that is related to the corporation; or

(ii) at a time when the directors of the corporation have reason to believe that a person proposes, or two or more persons together propose, to make a take-over offer, or cause a take-over announcement to be made, in respect of shares in a company that is related to the corporation.

(2) For the purposes of paragraph (a) of subsection (1), a corporation that enters into a contract with a person for the employment of, or for the performance of services by, that person for a fixed period shall be taken to have entered into an agreement for the provision of a benefit for that person.

(3) This section does not apply to an agreement that has been entered into, or to a payment or benefit that has been made or provided, by the company (in this subsection referred to as the “target company”) to shares in which the Part A statement or take-over announcement relates, or in respect of shares in which the directors believe that a person proposes or persons propose to make a take-over offer or to cause a take-over announcement to be made, or by a corporation that is related to the target company if—

(a) the agreement, payment or benefit has been approved by an ordinary resolution of

the target company (whether before or after the agreement was entered into or the payment or benefit was made or provided); and

- (b) where the person who is entitled to receive, or has received, the payment or benefit, or a person associated with that person, was a member of the target company at the time when the resolution was passed—that member did not vote, either personally or by proxy, on the resolution.

(4) Where a corporation enters into an agreement, or makes or provides a payment or benefit, to which this section applies and the Court is satisfied, on application by the corporation, by the Commissioner, or by a person who holds, or persons who between them hold, shares in the corporation or in a corporation that is related to the corporation that represent not less than 10% of the aggregate nominal value of the shares in the corporation or in the related corporation, as the case may be, being an application made within twelve months, or such longer period as the Court thinks reasonable in the circumstances, after the agreement was entered into, or the payment or benefit was made or provided, as the case may be, that the entering into the agreement, or the making or provision of the payment or benefit, was unfair or unconscionable having regard to the interests of the corporation, the Court may—

(a) in the case of an agreement—

- (i) make an order declaring the agreement or any part of the agreement to be void and, if the Court thinks fit, to have always been void; and
- (ii) if the Court thinks it just and equitable to do so—make an order directing any person to whom a payment was made or for whom a benefit was provided under the

agreement, or another person specified in the order, to make a payment or transfer property to the corporation or to do any other act for the benefit of the corporation;

- (b) in the case of a payment or benefit—if the Court thinks it just and equitable to do so, make an order directing the person to whom the payment was made or for whom the benefit was provided, or another person specified in the order, to make a payment or transfer property to the corporation or to do any other act for the benefit of the corporation; and
- (c) in either case—make any other order that the Court thinks appropriate.

51. The person who records the minute of a resolution passed for the purposes of this Act at a meeting of the directors of a corporation shall record in the minute the name of any director who is absent from the meeting when the resolution is passed, the name of any director who votes against the resolution and the name of any director who is present when the resolution is passed and abstains from voting on the resolution.

Recording of  
resolutions.

52. (1) A person who does not propose, whether alone or together with another person or other persons, to make take-over offers or to cause take-over offers to be made, or to cause to be made a take-over announcement, in relation to shares in a company shall not, whether alone or together with another person or other persons, give notice or publicly announce that he proposes, or that he and another person or other persons propose together, to make take-over offers or to cause take-over offers to be made, or to cause to be made a take-over announcement, in relation to shares in that company.

Statements  
as to  
proposed  
take-over  
offers or  
announcements.

## (2) Where—

- (a) a person whether alone or together with another person or other persons, gives notice or publicly announces that he proposes, or that he and another person or other persons propose together, to make take-over offers or to cause take-over offers to be made, or to cause to be made a take-over announcement, in relation to shares in a company; and
- (b) the person does not, within two months, or such further period as the Commissioner permits in writing, whether alone or together with another person or other persons, make take-over offers or cause take-over offers to be made, or cause to be made a take-over announcement, in relation to shares in that company,

the person shall be deemed to have contravened subsection (1) unless the person establishes that there was such a change in circumstances after the notice was given or the announcement was made that he could not reasonably be expected to make the take-over offers or cause the take-over offers to be made or cause the take-over announcement to be made.

(3) In any proceeding, if there is produced a certificate in writing by the Commissioner stating that the Commissioner has not permitted a further period for a person or persons specified in the certificate to make take-over offers, or cause a take-over announcement to be made, in relation to shares in a company so specified for the purposes of subsection (2), it shall be presumed, unless the contrary is established, that no such further period was permitted.

(4) A person shall not, whether alone or together with another person or other persons, make take-over offers or cause to be made a take-over announcement, or give notice or publicly announce, whether alone or together with another person or other persons, that he proposes, whether alone or together with another person or other persons, to

make take-over offers or to cause to be made a take-over announcement, if he has no reasonable or probable grounds for believing that he, or that he and the other person or other persons, will be able to perform his or their obligations (including any obligations that may arise under section 43) if the take-over offers or proposed take-over offers or the offers constituted by the take-over announcement or proposed take-over announcement, as the case may be, are accepted.

(5) A person shall not, whether alone or together with another person or other persons, cause take-over offers to be made, or give a notice or publicly announce, whether alone or together with another person or other persons, that he proposes, whether alone or together with another person or other persons, to cause take-over offers to be made, if he has no reasonable or probable grounds for believing that the person or persons by whom the take-over offers are to be made will be able to perform his or their obligations (including any obligations that may arise under section 43) if the take-over offers or proposed take-over offers are accepted.

53. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence. Offences.

(2) Where an offence against this Act is committed by a corporation, an officer of the corporation who is in default is guilty of an offence.

(3) The penalty for an offence arising under this section is a fine not exceeding \$2 500 or imprisonment for a period not exceeding six months, or both.

(4) The preceding provisions of this section do not apply in relation to sections 44 and 49.

(5) Notwithstanding anything in section 5 of this Act, section 379 of the Companies Act, 1961, does not apply in relation to this Act.

Service of  
documents  
and  
publication  
of notices.

54. (1) Where a document (not being a document that is required to be signed) is required by a provision of this Act, or of a regulation made for the purposes of subsection (3) or (4) of section 59, to be served on a stock exchange, the document may be served by sending to the stock exchange, by telegraph, telex or other similar means of communication, a message to the effect of the document.

(2) Where a document is required by a provision of this Act, or of a regulation made for the purposes of subsection (3) or (4) of section 59, to be served on a stock exchange or lodged with the Commissioner on a particular day—

- (a) if that day is not a trading day of that stock exchange—the document shall be served on that stock exchange on the next day that is a trading day of that stock exchange; or
- (b) if the office of the Commissioner is not open on that day—the document shall be lodged at that office on the next day on which that office is open.

(3) Where a person is required by a provision of this Act to lodge with the Commissioner or serve on a stock exchange a copy of a notice dispatched by the person, it is not necessary for the copy to include the name or address of the person to whom the notice was dispatched.

(4) A document that is required by this Act to be lodged with the Commissioner shall be lodged at the office of the Commissioner and any such document that is lodged at that office shall be deemed to be lodged with the Commissioner.

(5) Where by a provision of this Act a person is required to cause a notice to be published in a newspaper and, due to circumstances beyond his

control, the notice is not published in accordance with the provision, the provision shall be deemed to have been complied with if the person—

- (a) did all things that would, but for those circumstances, have resulted in publication of the notice in accordance with the provision; and
- (b) caused the notice to be published on the first practicable date after those circumstances ceased to exist.

55. (1) The Minister may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with all or any of the requirements of this Act.

Power to  
exempt from  
compliance  
with Act.

(2) The Minister may, by instrument in writing, declare that this Act shall have effect in its application to or in relation to a particular person or persons in a particular case as if a provision or provisions of this Act specified in the instrument was or were omitted or was or were modified or varied in a manner specified in the instrument and, where such a declaration is made, this Act has effect accordingly.

(3) A copy of an instrument executed under this section shall be published in the *Government Gazette*.

(4) A person who is exempted by the Minister, subject to a condition, from compliance with a requirement of this Act shall not contravene or fail to comply with the condition.

(5) Where a person has contravened or failed to comply with a condition to which an exemption under this section is subject the Court may, on the application of the Commissioner, order the person to comply with the condition.

Acquisition  
of shares  
within  
6 months  
after com-  
mencement  
of Act.

56. Section 12 does not prohibit an acquisition of voting shares in a company during the period of six months immediately following the commencement of this Act by reason of the effect of the acquisition on the entitlement to voting shares in the company of any person (in this section referred to as a "relevant person") if the number ascertained in accordance with the formula  $\frac{100(a + b - c)}{d}$  does not exceed 3, where—

- a is the number of voting shares to be acquired;
- b is the number of voting shares in the company that were acquired by any person during the period of six months immediately preceding the first-mentioned acquisition, being voting shares the acquisition of which by the person concerned increased the number of voting shares in the company to which the relevant person was entitled;
- c is the number of voting shares in the company that were disposed of by any person during the period of six months immediately preceding the first-mentioned acquisition, being voting shares the disposal of which by the person concerned decreased the number of voting shares in the company to which the relevant person was entitled;
- d is the number of voting shares in the company.

Take-overs  
pending at  
commence-  
ment of Act.

57. (1) Where a take-over offer in relation to shares in a company was dispatched more than thirty days before the date of commencement of this Act and the period during which the take-over offer remains open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation is expressed to remain open, had not expired before that date—

(a) this Act, other than this section, does not apply to or in relation to—

(i) the acquisition of shares in the company pursuant to the take-over offer; or

(ii) any other acquisition of shares in the company during the period during which the take-over offer remains open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation is expressed to remain open, by the offeror or invitor who dispatched the take-over offer; and

(b) the superseded take-over laws continue to apply to and in relation to any offers or invitations to acquire shares in the company referred to in paragraph (a).

(2) Where a take-over offer in relation to shares in a company was dispatched during the period of thirty days before the date of commencement of this Act and the period during which the take-over offer remains open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation is expressed to remain open, had not expired before that date, this Act, other than this section—

(a) does not apply to or in relation to the acquisition by any person of shares in the company during the period commencing on the date of commencement of this Act and ending at the expiration of sixty days after—

(i) if the take-over offer was not under a take-over scheme—the date on which the take-over offer was dispatched; or

(ii) if the take-over offer was under a take-over scheme—the last day before the date of commencement of

this Act on which a take-over offer under the take-over scheme was dispatched; and

- (b) does not apply to or in relation to the acquisition by any person of shares in the company after the expiration of the period referred to in paragraph (a) pursuant to offers or invitations made or issued during that period,

and the superseded take-over laws continue to apply to and in relation to offers or invitations to acquire shares in the company made or issued during that period.

(3) For the purposes of this section—

- (a) “the superseded take-over laws” means the provisions of the law relating to take-overs in force immediately before the date of commencement of this Act, including the provisions of Part VIB of, and the Tenth Schedule to, the Companies Act, 1961;
- (b) a reference to the application of the superseded take-over laws to and in relation to offers or invitations to acquire shares in a company includes, without limiting the generality of those words, a reference to the application of sections 180X and 180Y of the Companies Act, 1961, as amended and in force immediately before the date of commencement of this Act in relation to shares in that company consequent upon the making of those offers or the issuing of those invitations; and
- (c) except where the contrary intention appears, expressions used in this section have the same respective meanings as those expressions have in Part VIB of the Companies Act, 1961, as amended and in force immediately before the date of commencement of this Act.

58. (1) There shall be paid to the Commissioner <sup>Fees payable.</sup> for and on behalf of the State for or in respect of the lodgment of documents with, or the making of applications to, the Commissioner for the registration or issuing of documents or the doing of other acts or things by the Minister or Commissioner under this Act such fees (if any) as are prescribed by the regulations.

(2) Where a fee is payable under this section—

- (a) in respect of the lodgment of a document and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid;
- (b) in respect of the making of an application and the application is made without payment of the fee, the application shall not be dealt with until the fee has been paid.

59. (1) The Governor may make regulations, not <sup>Regulations.</sup> inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations prescribing the fees payable under this Act, and the matters in respect of which such fees shall be paid, shall not make provision for the payment of a fee exceeding \$1 000 in any case.

(3) The regulations may vary the requirements set out in any part of the Schedule, either by omitting or altering any such requirement or by adding additional requirements, and any reference in this Act to the requirements of a Part of the Schedule shall be read as a reference to those requirements as so varied for the time being.

(4) The regulations may require the serving on a stock exchange or stock exchanges, or the lodging with the Commissioner, or both, of—

- (a) a signed copy of a prescribed document, being a document made or given pursuant to this Act and not required by this Act to be so served or lodged; or
- (b) a notice in the prescribed form, and containing the prescribed particulars, of such a document.

Consequen-  
tial amend-  
ment of the  
Companies  
Act, 1961.

60. (1) In this section the Companies Act, 1961-1979, is referred to as “the principal Act”.

(2) The principal Act as amended by this Act may be cited as the Companies Act, 1961-1979.

(3) Subject to section 61, for so long as this Act continues in operation, the principal Act shall be read and construed as if it was amended—

- (a) in paragraph (c) of subsection (1) of section 122, by inserting before the passage “or under section one hundred and thirteen” the passage “, under section forty-four of the Company Take-overs Act, 1979,”;
- (b) in subsection (1) of section 185, by deleting the passage “(not being a take-over scheme as referred to in subsection (4) of section one hundred and eighty A) involving a transfer of shares” and substituting a new passage as follows—

“not being—

- (i) a take-over scheme as referred to in subsection (4) of section one hundred and eighty A;
- (ii) a scheme involving the acquisition of shares in a company as a result of the acceptance of offers to acquire

those shares made under a take-over scheme in relation to that company as referred to in section sixteen of the Company Take-overs Act, 1979 ; or

- (iii) a scheme involving the acquisition of shares in a listed public company where the shares are acquired as a result of the acceptance of offers made in accordance with section seventeen of the Company Take-overs Act, 1979,

involving a transfer of shares"; and

- (c) in subsection (8) of section three hundred and fifty-four, by inserting after the words "one hundred and eighty-five" the expression "or section forty-two of the Company Take-overs Act, 1979,".

61. (1) This Act shall continue in operation until 31st December, 1980, and no longer.

Duration  
of Act.

(2) The expiry of this Act shall not affect the previous operation thereof or the validity of any action taken thereunder or any penalty incurred in respect of any contravention of or failure to comply with this Act or any proceedings or remedy in respect thereto.

## SCHEDULE.

Sections  
16, 17, 22,  
and 32.

### PART A—STATEMENT TO BE FURNISHED BY OFFEROR.

#### 1. The statement shall—

- (a) set out the period during which the offers are intended to remain open;

- (b) where the offeror is or includes a corporation or corporations—
  - (i) specify the names, occupations and addresses of all the directors of the corporation or of each corporation;
  - (ii) contain a summary of the principal activities of the corporation or of each corporation; and
  - (iii) if the corporation or either or any of the corporations is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries—contain a summary of the principal activities of the group of corporations;
- (c) set out full particulars of the shares in the target company to which the offeror is entitled or, if there are no such shares, set out a statement to that effect;
- (d) set out full particulars of marketable securities of the target company (not being shares) to which the offeror is entitled or, if there are no such securities, set out a statement to that effect;
- (e) where the offeror is or includes a corporation or corporations and shares may be acquired for a consideration that is or includes marketable securities of that corporation or of any of those corporations or each offer is subject to a condition requiring the making of a payment (whether by way of making a loan, subscribing for shares or otherwise) by the offeree to that corporation or any of those corporations, set out, in respect of that corporation or each of those corporations—
  - (i) the reports that, if the statement were a prospectus issued on the date on which the statement is registered under section 18, would be required to be set out in a statement under clauses 20 and 23, and, if the consideration includes debentures, in a statement under clauses 32, 33 and 34, of the Fifth Schedule to the Companies Act, 1961;
  - (ii) in respect of each report referred to in subparagraph (i)—a statement that the person or each of the persons by whom

the report is made consents to the inclusion of the report in the form and context in which it is included;

- (iii) full particulars of any alterations in the capital structure of the corporation during the period of five years immediately preceding the date on which the statement is served on the target company and particulars of the dates of any such alterations and the source of any increase in its capital; and
  - (iv) full particulars of any alterations in the capital structure of any corporation that, at any time during the period of five years referred to in subparagraph (iii), was a subsidiary of the corporation referred to in that subparagraph, being alterations occurring during the period in which the corporation was a subsidiary of the corporation referred to in that subparagraph, and particulars of the dates on which any such corporation became a subsidiary or ceased to be a subsidiary, the date of any alteration in its capital structure and the source of any increase in its capital;
- (f) where the offeror is or includes a natural person or natural persons—specify the name, address and occupation of that person or of each of those persons, set out a summary of the principal business activities of that person or of each of those persons and specify the corporations (if any) of which that person or any of those persons is a director or other officer, it being sufficient, where a person is a director of one or more subsidiaries of the same holding company, to specify that he holds one or more directorships in a group of companies that may be described by the name of the holding company with the addition of the word “Group”;
- (g) where—
- (i) the offeror has dispatched offers or invitations relating to the acquisition of shares in the target company (whether voting shares or not) of a different class from the shares to which the take-over offers relate or relating to the acquisition of renounceable options or convertible notes granted or

issued by the target company, being offers or invitations that are open or expressed to be open on the day on which the statement is served on the target company; or

- (ii) the offeror proposes to dispatch, while the take-over offers remain open, offers or invitations relating to the acquisition of shares in the target company (whether voting shares or not) of a different class from the shares to which the take-over offers relate or relating to the acquisition of renounceable options or convertible notes granted or issued by the target company,

set out the terms or proposed terms of those offers or invitations; and

(h) where—

- (i) the offeror intends, if he becomes entitled pursuant to subsection (4) of section 42 to acquire shares in, renounceable options granted by, or convertible notes issued by, the target company, to acquire those shares, renounceable options or convertible notes—set out the terms to be proposed by him for the acquisition of those shares, renounceable options or convertible notes; or
- (ii) the offeror intends, if he is required under subsection (4) of section 43 to give notice to the holders of any non-voting shares in, renounceable options granted by, or convertible notes issued by, the target company, to propose terms for the acquisition of those shares, renounceable options or convertible notes—set out those proposed terms.

2. The statement shall set out particulars of any restriction on the right to transfer shares to which the offers relate contained in the constituent documents of the target company that has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the target company or to any other person and, if there is any such restriction, the arrangements (if any) being made to enable the shares to be transferred.

3. If the consideration for the acquisition of the shares to which the take-over offers relate or for the acquisition of

any shares, renounceable options or convertible notes referred to in paragraph (h) of clause 1 is to be satisfied in whole or in part by the payment of cash, the statement shall set out—

- (a) if the offeror is to provide some or all of the cash from his own funds—particulars sufficient to identify the cash amounts held by the offeror for or in respect of payment of the consideration; and
- (b) if the offeror is not to provide all of the cash, or is not to provide any of it, from his own funds—particulars sufficient to identify the other person who is, or each of the other persons who are, to provide, whether directly or indirectly, some or all of the cash from his or their own funds and particulars of the arrangements by which that cash will be provided by that other person or those other persons.

4. The statement shall set out—

- (a) whether it is proposed in connection with the offers that any payment or other benefit will—
  - (i) be made or given to any director, secretary or principal executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company; or
  - (ii) be made or given to any director, secretary or principal executive officer of any corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company,

and, if so, particulars of the proposed payment or benefit;

- (b) whether there is any other agreement or arrangement made between the offeror and any

of the directors of the target company in connection with or conditional upon the outcome of the offers and, if so, particulars of any such agreement or arrangement;

(c) whether, within the knowledge of the offeror the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change known to the offeror;

(d) whether there is any agreement or arrangement whereby any shares acquired by the offeror pursuant to the offers will or may be transferred to any other person and, if so—

(i) the names of the persons who are parties to the agreement or arrangement, the number, description and amount of the shares that will or may be so transferred and, if the transferee is not a party to the agreement or arrangement, the name of the transferee; and

(ii) the number, description and amount of any shares in the target company held by or on behalf of each of the persons who are parties to the agreement or arrangement and, if the transferee is not a party to the agreement or arrangement, by or on behalf of the transferee or, if no such shares are so held, a statement to that effect.

(e) where there is any agreement or arrangement for the acquisition of shares in the target company by the offeror or by a person associated with the offeror, being an agreement or arrangement under which the person, or either or any of the persons, from whom the shares have been or are to be acquired or any person associated with that person or with either or any of those persons may, at any time after an offer is dispatched, become entitled to any benefit, whether by way of receiving an increased price for those shares or by payment of cash or otherwise, that is related to, dependent upon, or calculated in any way by reference to, the consideration payable for shares acquired after the agreement or arrangement was entered into—full particulars of that agreement or arrangement; and

- (f) any other information material to the making of a decision by an offeree whether or not to accept an offer, being information that is within the knowledge of the offeror and has not previously been disclosed to the holders of shares in the target company.

5. Where—

- (a) the consideration to be offered in exchange for shares in the target company consists, in whole or in part, of marketable securities issued, or to be issued, by a corporation that is not, or is not included in, the offeror; or
- (b) the offer is subject to a condition requiring the making of a payment (whether by way of making a loan, subscribing for shares or otherwise) by the offeree to a corporation that is not, or is not included in, the offeror,

the statement shall contain the same information as would have to be given pursuant to a requirement of any other provision of this Schedule if the corporation were the offeror.

6. The succeeding provisions of this Part apply only where the consideration to be offered in exchange for shares in the target company consists, in whole or in part, of marketable securities issued, or to be issued, by a corporation.

7. Where the marketable securities are listed for quotation on the stock market of a stock exchange, the statement shall state the fact, specify the stock exchange concerned and specify—

- (a) the latest recorded sale price before the date on which the statement is served on the target company;
- (b) the highest and lowest recorded sale prices during the three months immediately preceding that date and the respective dates of the relevant sales; and
- (c) where the take-over offers have been the subject of a public announcement in newspapers or by any other means before the statement is served on the target company, the latest recorded sale price immediately before the public announcement.

8. Where the marketable securities are listed for quotation on or dealt in on more than one stock exchange, it is sufficient compliance with paragraphs (a) and (c) of clause

7 if information with respect to the marketable securities is given in relation to the stock exchange at which there has been the greatest number of recorded dealings in the securities in the three months immediately preceding the date on which the statement is served on the target company.

9. Where the securities are not listed for quotation on the stock market of a stock exchange, the statement shall set out all the information that the offeror has as to the number of the securities that have been sold in the three months immediately preceding the date on which the statement is served on the target company and the amount of those securities and the prices at which they were sold and, if the offeror does not have any such information, a statement to that effect.

10. Where marketable securities are to be issued, the information required under clauses 7, 8 and 9 shall be given in respect of such marketable securities as have been issued and are of the same class as those to be issued.

**PART B—STATEMENT TO BE FURNISHED BY TARGET COMPANY TO WHICH TAKE-OVER SCHEME RELATES.**

1. The statement shall set out—

- (a) if the person or persons signing the statement desires or desire to make, and considers himself or consider themselves justified in making, a recommendation in relation to the offers—whether the person or persons recommends or recommend the acceptance of offers made or to be made by the offeror or recommends or recommend against such acceptance and, in either case, the reasons for so recommending; or
- (b) in any other case—that the person or persons signing the statement does not or do not desire to make a recommendation or does not or do not consider himself or consider themselves justified in making a recommendation and the reasons for not so desiring or for so considering.

2. The statement shall set out—

- (a) the number, description and amount of marketable securities of the target company held by or on behalf of each director of the company or, in the case of a director by or on behalf of whom none are so held, that fact;

(b) in respect of each director of the target company by whom, or on whose behalf, shares in the target company are held—

(i) whether the director intends to accept any offer that has been or may be made in respect of those shares; or

(ii) that the director has not decided whether he will accept such an offer;

(c) the name of any director of the target company who voted against the relevant resolution authorizing the Part B statement and, if the director so requires, a statement by that director setting out his reasons for so voting;

(d) where the offeror is or includes a corporation or corporations, whether any marketable securities of that corporation or of any of those corporations are held by, or on behalf of, any director of the target company and, if so, the number, description and amount of those marketable securities;

(e) whether it is proposed that any payment or other benefit will—

(i) be made or given to any director, secretary or principal executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company; or

(ii) be made or given to any director, secretary or principal executive officer of any corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company,

and, if so, particulars of the proposed payment or benefit;

(f) whether there is any other agreement or arrangement made between any director of the

target company and any other person in connection with or conditional upon the outcome of the offers and, if so, particulars of any such agreement or arrangement;

- (g) whether any director of the target company has an interest in any contract entered into by the offeror and, if so, particulars of the nature and extent of each such interest;
- (h) if the shares to which the offers relate are not listed for quotation on the stock market of a stock exchange, all the information that the target company has as to the number of any such shares that have been sold in the six months immediately preceding the date on which the Part A statement relating to the offers was served on the target company and the amount of those shares and the prices at which they were sold;
- (j) whether, within the knowledge of—

- (i) in the case of a Part B statement that is signed as mentioned in paragraph (a) of subsection (2) of section 22—any of the directors of the target company; or

- (ii) in the case of a Part B statement that is signed as mentioned in paragraph (b) of subsection (2) of section 22—the liquidator or official manager, as the case may be,

the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of any such change or changes; and

- (k) any other information material to the making of a decision by an offeree whether or not to accept an offer, being information that is within the knowledge of—

- (i) in the case of a Part B statement that is signed as mentioned in paragraph (a) of subsection (2) of section 22—any of the directors of the target company; or

- (ii) in the case of a Part B statement that is signed as mentioned in paragraph (b) of subsection (2) of section 22—the liquidator or official manager, as the case may be,

and has not previously been disclosed to the holders of shares in the target company.

PART C—STATEMENT TO BE FURNISHED BY  
ON-MARKET OFFEROR.

1. The statement shall set out full particulars of the offers constituted by the take-over announcement, including the period for which the offers will, unless withdrawn, remain open.
2. The statement shall—
  - (a) where the on-market offeror is or includes a corporation or corporations—
    - (i) specify the names, occupations and addresses of all the directors of the corporation or of each corporation;
    - (ii) contain a summary of the principal activities of the corporation or of each corporation; and
    - (iii) if the corporation or either or any of the corporations is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries—contain a summary of the principal activities of the group of corporations;
  - (b) set out full particulars of the shares in the target company to which the on-market offeror is entitled or, if there are no such shares, set out a statement to that effect;
  - (c) set out full particulars of marketable securities of the target company (not being shares) to which the on-market offeror is entitled or, if there are no such securities, set out a statement to that effect;
  - (d) where the on-market offeror is or includes a natural person or natural persons, specify the name, address and occupation of that person or of each of those persons and set out a summary of the principal business activities of that person or of each of those persons and specify the corporations (if any) of which that person or any of those persons is a director or other officer, it being sufficient, where a person is a director of one or more subsidiaries of the same holding company, to specify that he holds one or more directorships in a group of

companies that may be described by the name of the holding company with the addition of the word "Group";

- (e) particulars of all acquisitions or disposals of shares in the target company by the on-market offeror or any person associated with the offeror in the period of three months preceding the date of the take-over announcement, including particulars of the price per share in relation to each acquisition or disposal; and

(f) where—

- (i) the on-market offeror intends, if he becomes entitled pursuant to subsection (4) of section 42 to acquire shares in, renounceable options granted by, or convertible notes issued by, the target company, to acquire those shares, renounceable options or convertible notes—set out the terms to be proposed by him for the acquisition of those shares renounceable options or convertible notes; or
- (ii) the on-market offeror intends, if he is required under subsection (4) of section 43 to give notice to the holders of any non-voting shares in, renounceable options granted by, or convertible notes issued by, the target company, to propose terms for the acquisition of those shares, renounceable options or convertible notes—set out those proposed terms.

3. The statement shall set out—

- (a) if the on-market offeror is to provide from his own funds some or all of the cash payable as consideration for the acquisition of shares to which the take-over announcement relates or for the acquisition of any shares, renounceable options, or convertible notes referred to in paragraph (f) of clause 2—particulars sufficient to identify the cash amounts held by the on-market offeror for or in respect of payment of the consideration; and
- (b) if the on-market offeror is not to provide from his own funds all of the cash payable as consideration for the acquisition of shares, to which the take-over announcement relates or for the acquisition of any shares, renounceable options or convertible notes referred to in paragraph (f) of clause 2, or is

not to provide any of that cash from his own funds—particulars sufficient to identify the other person who is, or each of the other persons who are, to provide, whether directly or indirectly, some or all of the cash from his or their own funds and particulars of the arrangements by which that cash will be provided by that other person or those other persons.

4. The statement shall set out—

(a) whether it is proposed in connection with the take-over announcement that any payment or other benefit will—

(i) be made or given to any director, secretary or principal executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company; or

(ii) be made or given to any director, secretary or principal executive officer of any corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company,

and, if so, particulars of the proposed payment or benefit;

(b) whether there is any other agreement or arrangement made between the on-market offeror and any of the directors of the target company in connection with or conditional upon the outcome of the take-over announcement and, if so, particulars of any such agreement or arrangement;

(c) whether, within the knowledge of the on-market offeror, the financial position of the target company has materially changed since the date of the last balance-sheet laid before

the company in general meeting and, if so, full particulars of the change known to the on-market offeror;

- (d) whether there is any agreement or arrangement whereby any shares acquired by the on-market offeror pursuant to the take-over announcement will or may be transferred to any other person, and, if so—
  - (i) the names of the persons who are parties to the agreement or arrangement, the number, description and amount of the shares that will or may be so transferred and, if the transferee is not a party to the agreement or arrangement, the name of the transferee; and
  - (ii) the number, description and amount of any shares in the target company held by or on behalf of each of the persons who are parties to the agreement or arrangement and, if the transferee is not a party to the agreement or arrangement, by or on behalf of the transferee or, if no such shares are so held, a statement to that effect;
- (e) where there is any agreement or arrangement for the acquisition of shares in the target company by the on-market offeror or by a person associated with the on-market offeror, being an agreement or arrangement under which the person, or either or any of the persons, from whom the shares have been or are to be acquired or any person associated with that person or with either or any of those persons may, at any time after the take-over announcement is made, become entitled to any benefit, whether by way of receiving an increased price for those shares or by payment of cash or otherwise, that is related to, dependent upon, or calculated in any way by reference to, the consideration payable for shares acquired after the agreement or arrangement was entered into—full particulars of that agreement or arrangement; and
- (f) any other information material to the making of a decision by an offeree whether or not to accept an offer, being information that is within the knowledge of the on-market offeror and has not previously been disclosed to the holders of shares in the target company.

PART D—STATEMENT TO BE FURNISHED BY TARGET  
COMPANY TO WHICH TAKE-OVER ANNOUNCEMENT  
RELATES.

1. The statement shall set out—

- (a) if the person or persons signing the statement desires or desire to make, and considers himself or consider themselves justified in making, a recommendation in relation to the on-market offers—whether the person or persons recommends or recommend to the shareholders the acceptance of offers made by virtue of the take-over announcement or recommends or recommend against such acceptance and, in either case, the reasons for so recommending; or
- (b) in any other case—that the person or persons signing the statement does not or do not desire to make a recommendation or does not or do not consider himself or consider themselves justified in making a recommendation and the reasons for not so desiring or for so considering.

2. The statement shall set out—

- (a) the number, description and amount of marketable securities of the target company held by or on behalf of each director of the company or, in the case of a director by or on behalf of whom none are so held, the fact;
- (b) in respect of each director of the target company by whom, or on whose behalf, shares in the target company are held—
  - (i) whether the director intends to accept any offer that has been made in respect of those shares; or
  - (ii) that the director has not decided whether he will accept such an offer;
- (c) the name of any director of the target company who voted against the relevant resolution authorizing the Part D statement and, if the director so requires, a statement by that director setting out his reasons for so voting;
- (d) where the on-market offeror is or includes a corporation or corporations, whether any marketable securities of that corporation or of any of those corporations are held by, or on behalf of, any director of the target company and, if so, the number, description and amount of those marketable securities;

(e) whether it is proposed in connection with the take-over announcement that any payment or other benefit will—

(i) be made or given to any director, secretary or principal executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company; or

(ii) be made or given to any director, secretary or principal executive officer of any corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or principal executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company,

and, if so, particulars of the proposed payment or benefit;

(f) whether there is any other agreement or arrangement made between any director of the target company and any other person in connection with or conditional upon the outcome of the offers constituted by the take-over announcement and, if so, particulars of any such agreement or arrangement;

(g) whether any director of the target company has an interest in any contract entered into by the on-market offeror and, if so, particulars of the nature and extent of each such interest;

(h) whether, within the knowledge of—

(i) in the case of a Part D statement that is signed as mentioned in paragraph (a) of subsection (2) of section 32—any of the directors of the target company; or

(ii) in the case of a Part D statement that is signed as mentioned in paragraph (b) of subsection (2) of section 32—the liquidator or official manager, as the case may be,

the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of any such change or changes; and

- (j) any other information material to the making of a decision by an offeree whether or not to accept an offer made by virtue of the take-over announcement, being information that is within the knowledge of—

(i) in the case of a Part D statement that is signed as mentioned in paragraph (a) of subsection (2) of section 32—any of the directors of the target company; or

(ii) in the case of a Part D statement that is signed as mentioned in paragraph (b) of subsection (2) of section 32—the liquidator or official manager, as the case may be,

and has not previously been disclosed to the holders of shares in the target company.

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