

STATUTORY INSTRUMENTS

S.I. No. 255 of 2006

European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006

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I, Micheál Martin, T.D., Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 22 of 1972), and for the purpose of giving effect to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, hereby make the following regulations:

Part 1

Preliminary and General

Citation, construction and commencement

1. (1) These Regulations may be cited as the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006.

(2) In relation to a company referred to in Regulation 4(1), the Act of 1997 and Parts 1, 2 and 3 shall be read together as one.

(3) In relation to a company referred to in Regulation 21(1), the Companies Acts and Part 4 shall be read together as one.

(4) In relation to a body corporate referred to in Regulation 22, the Companies Acts and Part 5 shall be read together as one.

(5) These Regulations come into operation on 20 May 2006.

Interpretation

2. (1) In these Regulations -

“Act of 1997” means the Irish Takeover Panel Act 1997 (No. 5 of 1997);

“collective investment undertakings other than the closed-end type” means investment companies -

- (a) the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading, and
- (b) the units of which are, at the holders’ request, repurchased or redeemed, directly or indirectly, out of the assets of those companies,

and, for the purposes of this definition, action taken by such companies to ensure that the stock exchange value of their units does not vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption;

“company” means a company within the meaning of the Companies Act 1963 (No. 33 of 1963) or any other body corporate;

“Directive” means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

“EEA State” means a state which is a contracting party to the EEA Agreement;

“Member State” means -

- (a) a Member State of the European Communities, or
- (b) an EEA State;

“offeree company” means a company, the securities of which are the subject of a bid;

“offeror” means any natural or legal person governed by public or private law making a bid;

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

- (a) an opting-in resolution has effect, and

(b) the conditions in Regulation 16(2) continue to be met;

“opting-in resolution” has the meaning assigned to it by Regulation 16;

“opting-out resolution” has the meaning assigned to it by Regulation 16;

“parties to the bid” means the offeror, the members of the offeror’s board if the offeror is a company, the offeree company, holders of securities of the offeree company and the members of the board of the offeree company, and persons acting in concert with such parties;

“regulated market” means a market as defined by Article 1(13) of the Directive 93/22/EEC;

“security holder” means the holder of securities;

“securities” means transferable securities carrying voting rights in a company;

“takeover bid” or “bid” means a public offer (other than by the offeree company itself) made to the holder of the securities of a company governed by the law of a Member State to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with the law of a Member State;

“Panel” means the Irish Takeover Panel;

“voluntary bid” means a bid which is a voluntary offer under the rules made by the Panel under section 8 of the Act of 1997.

(2) A word or expression that is used in these Regulations and is also used in the Directive shall have in these Regulations the same meaning as it has in the Directive.

Non-application of Regulations

3. (1) These Regulations shall not apply to -

(a) securities issued by collective investment undertakings, other than the closed-end type, or

(b) securities issued by a Central Bank of a Member State.

(2) These Regulations shall not apply to a bid made before the commencement of these Regulations.

Part 2

Jurisdiction of Panel and Application of Act of 1997

Application of Act of 1997

4. (1) Subject to these Regulations, the Act of 1997 shall apply to each company a bid in respect of which the Panel has (by virtue of Regulation 6) jurisdiction to supervise.

(2) Paragraph (1) does not affect the continued application of the Act of 1997 to companies which, though falling within the definition of “relevant company” in section 2 of that Act (as that section has effect apart from the operation of this Regulation), do not fall within paragraph (1).

(3) For the purpose of the application of the Act of 1997 by paragraph (1), each reference in that Act to a “relevant company” shall be read as including a reference to a company referred to in paragraph (1).

Competent authority

5. The Panel is designated as the competent authority for the purpose of Article 4(1) of the Directive.

Jurisdiction of Panel

6. (1) Subject to paragraphs (3) and (4), the Panel shall be the competent authority to supervise a bid -

- (a) if the offeree company has its registered office in the State - in a case where the securities of it are admitted to trading on a regulated market

in the State (whether or not they are also admitted to trading on relevant markets in one or more other Member States),

(b) if the offeree company has its registered office in a Member State other than the State - in a case where the securities of it are admitted solely to trading on a regulated market in the State,

(c) in each of the cases specified in paragraph (2) if the following conditions are satisfied -

(i) the offeree company does not have its registered office in the State, and

(ii) none of the Member States referred to in the cases so specified is the state in which the offeree company has its registered office.

(2) The cases mentioned in paragraph (1)(c) are -

(a) the securities of the offeree company are admitted to trading on regulated markets in more than one Member State (including the State) but the regulated market on which they were first admitted to trading is a regulated market in the State,

- (b) the securities of the offeree company have been admitted to trading on regulated markets in more than one Member State (including the State) simultaneously and the offeree company determines, in accordance with Article 4(2)(c) of the Directive, that the Panel shall be the competent authority to supervise the bid,
- (c) the securities of the offeree company have already been admitted to trading on regulated markets in more than one Member State (including the State) on the date laid down in Article 21(1) of the Directive and were admitted simultaneously and -
 - (i) the supervisory authorities of those Member States agree, in accordance with Article 4(2)(c) of the Directive, that the Panel shall be the competent authority to supervise the bid, or
 - (ii) in default of such agreement, the offeree company determines, in accordance with Article 4(2)(c) of the Directive, that the Panel shall be the competent authority to supervise the bid.

(3) In a case specified in paragraph (1)(b), or in any of the cases specified in paragraph (2) where the conditions referred to in paragraph (1)(c) are satisfied in respect of it -

- (a) as regards matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in

particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, those matters shall be dealt with in accordance with the rules of the Panel,

- (b) as regards matters relating to the information to be provided to the employees of the offeree company and matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a bid, as well as the conditions under which the board of the offeree company may undertake any action which might result in frustration of the bid, the applicable rules and the competent authority in relation to them shall be those of the Member State in which the offeree company has its registered office.

(4) In a case where -

- (a) the offeree company has its registered office in the State, and
- (b) the securities of it are admitted to trading solely on a regulated market in one or more other Member States,

as regards the matters specified in paragraph (3)(b), the applicable rules and the competent authority in relation to them shall be those of the State.

(5) Where, in accordance with Article 4(2)(c) of the Directive -

- (a) the supervisory authorities of Member States agree that the Panel shall be the competent authority to supervise a bid, or
- (b) the offeree company determines that the Panel shall be the competent authority to supervise a bid,

the Panel shall ensure that notice of that agreement or determination is published by the offeree company in at least one daily newspaper circulating in the State.

General principles

7. The Panel shall ensure compliance with the following principles when performing its functions in accordance with these Regulations:

- (a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected,
- (b) the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business,

- (c) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid,
- (d) false markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted,
- (e) an offeror must announce a bid only after ensuring that he or she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration,
- (f) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

Acting in concert - definition for certain purposes

8. (1) Without prejudice to the continued application of section 1(3) of the Act of 1997, in its terms as originally enacted, to companies referred to in Regulation 4(2), paragraph (2) has effect in relation to the application of the Act of 1997 by virtue of Regulation 4(1).

(2) For the purposes of that application, section 1 of the Act of 1997 has effect as if the following subsection were substituted for subsection (3):

- “(3) (a) In this Act ‘persons acting in concert’ means persons who cooperate on the basis of an agreement, either express or tacit, either oral or written, aimed at acquiring control of the offeree company or at frustrating the successful outcome of a bid.
- (b) For the purposes of this subsection, persons controlled by another person within the meaning of Article 87 of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 shall be deemed to be persons acting in concert with that other person and with each other.”.

Cooperation with other authorities

9. (1) Without prejudice to section 17 of the Act of 1997, the Panel shall, in so far as it is reasonably able to do so, supply to relevant authorities in other Member States information wherever necessary for the application of measures adapted in those states to implement the Directive. This cooperation shall extend in particular to cases the subject of measures adapted to implement Article 4(2)(b), (c) and (e) of the Directive.

(2) Without prejudice to the generality of paragraph (1), such cooperation shall extend to the Panel’s serving documents or notices necessary to enforce measures taken by relevant authorities in connection with bids as well as providing such other assistance as may

reasonably be requested by the relevant authority concerned for the purpose of investigating any actual or alleged breaches of measures adapted in another Member State to implement the Directive.

(3) There is, by virtue of this Regulation, vested in the Panel all such powers as are necessary so as to enable it to do each of the things referred to in paragraphs (1) and (2).

(4) In this Regulation “relevant authorities” means competent authorities designated for the purposes of the Directive and authorities, designated by Member States for the purposes of supervising capital markets, in particular in accordance with -

- (a) Council Directive 93/22/EEC of 10 May 1993,
- (b) Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001,
- (c) Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003,
- (d) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, and
- (e) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004.

Powers of Panel

10. (1) The Panel shall have all the powers necessary for the performance of the functions conferred on it by these Regulations, including that of ensuring that the parties to a bid comply with the rules made by the Panel.

(2) In exercising its powers under this Regulation, the Panel shall not do so in a manner or for a purpose inconsistent with the Directive or these Regulations.

(3) Without prejudice to the generality of its powers under section 8 of the Act of 1997, the Panel is empowered, by virtue of this Regulation, to specify in rules under that section circumstances in which the Panel is enabled to grant derogations from, or waive, any rules under that section.

(4) The powers of the Panel under this Regulation are in addition to, and not in substitution for, the powers of the Panel under the Act of 1997.

(5) If the Panel grants a waiver pursuant to subsection (7) of section 8 of the Act of 1997 (as distinct from pursuant to a power in that behalf in rules made, by virtue of paragraph (3), under that section 8) a reasoned decision shall be given by the Panel for granting the waiver.

(6) Without prejudice to section 9(5) of the Act of 1997, the Panel may require a person to provide to the Panel, at any time on request being made by the Panel therefor, all

the information in the person's possession concerning a bid that is deemed necessary by the Panel for the purpose of the Panel performing its functions.

(7) For the avoidance of doubt, the functions of the Panel in relation to a bid shall not be regarded as having ceased merely by reason of either of the lapse or the completion of the bid.

Rules of Panel

11. (1) The Irish Takeover Panel Act 1997, Takeover Rules 2001 to 2005 shall, in so far as they do not already apply to bids in relation to each Directive company, apply to bids in relation to each such company, but subject to the amendments mentioned in paragraph (2).

(2) The foregoing rules are amended in the manner specified in the Schedule.

(3) In this Regulation "Directive company" means a company a bid in respect of which the Panel has (by virtue of Regulation 6) jurisdiction to supervise.

Voluntary bid

12. Where control of an offeree company has been acquired following a voluntary bid made to all the holders of securities for all their holdings, nothing in the rules made by the Panel pursuant to section 8(3) of the Act of 1997 shall operate to require an offer or offers of the kind referred to in paragraph (a) of that section 8(3) to be made.

Adjustment of equitable price

13. (1) Without prejudice to the generality of its powers under section 8 of the Act of 1997, the Panel is empowered, by virtue of this Regulation, to specify in rules under that section circumstances in which the Panel is enabled to adjust the equitable price referred to in Article 5(4) of the Directive upwards or downwards by reference to specified criteria.

(2) Any decision by the Panel to adjust the equitable price shall be substantiated and published.

Requirements for translation and inclusion of additional information

14. (1) Where an offer document is subject to the prior approval of a competent authority in another Member State and has been so approved and is then sought to be relied upon by the offeror in the State (and the securities of the offeree company are admitted to trading in the State) the offer document shall be recognised in the State for the purposes of the Directive.

(2) In respect of such an offer document, the Panel may require that a translation of it be prepared.

(3) The Panel may also require the inclusion of additional information in such an offer document but only if such information is specific to obligations in the State and relates to the formalities to be complied with to accept the bid and to receive the consideration due at

the close of the bid as well as to the taxes or charges under any enactment to which the consideration offered to the holders of the securities will be subject.

Obligations of board of offeree company

15. (1) Approval of a general meeting of shareholders shall be necessary in respect of any decision of the directors of the offeree company which is taken and not yet partly or fully implemented before the company becomes aware that a bid is imminent if -

(a) such a decision does not form part of the normal course of the company's business, and

(b) the implementation of the decision may result in the frustration of the bid.

(2) For the avoidance of doubt, where the offeree company has a two-tier board structure, "directors" in this Regulation means directors on the management board and the supervisory board, by whatever name called, of the company.

Part 3

Breakthrough Provisions

Opting into Part 3 and opting out of it

16. (1) A company which has its registered office in the State may by special resolution (an “opting-in resolution”) opt to be bound by this Part if the following conditions are satisfied.

(2) Those conditions are -

(a) the company has securities admitted to trading on a regulated market,

(b) as regards the company’s articles of association -

(i) those articles -

(I) do not contain any such restrictions as are mentioned in Article 11 of the Directive, or

(II) if they do contain any such restrictions, provide for the restrictions not to apply at a time when, or in circumstances in which, they would be disapplied by that Article,

and

(ii) those articles do not contain any other provision which would be incompatible with that Article,

- (c) no securities conferring special rights in the company are held by a Minister of the Government or a nominee of, or a company directly or indirectly controlled by, a Minister of the Government, and
- (d) no special rights in the company are exercisable by a Minister of the Government by or under any enactment.

(3) For the purpose of paragraph (2)(b), a reference in Article 11 of the Directive to Article 7(1) or 9 of that Directive shall be read as a reference to rules under section 8 of the Act of 1997 (being those rules as they stand amended by Regulation 11) providing for the matters to which the relevant Article relates.

(4) A company may revoke an opting-in resolution by a further special resolution (an “opting-out resolution”).

Further provisions in relation to opting in and out

17. (1) An opting-in resolution and an opting-out resolution shall each specify the date from which it is to have effect (the “effective date”).

(2) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.

(3) Subparagraphs (b), (c) and (d) of Regulation 16 (2) shall be satisfied at the time when the opting-in resolution is passed, but subparagraph (a) of Regulation 16(2) does not need to be satisfied until the effective date.

(4) An opting-in resolution passed before the time when securities of the company are admitted to trading on a regulated market complies with paragraph (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.

(5) An opting-in resolution passed before the commencement of this Regulation complies with paragraph (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that commencement.

(6) Where a company has passed an opting-in resolution, any alteration of its articles of association that would prevent subparagraph (b) of Regulation 16(2) from being satisfied is of no effect until the effective date of an opting-out resolution passed by the company.

Consequences of opting in - effect on contractual restrictions

18. (1) The following provisions have effect where a bid is made for an opted-in company.

(2) An agreement to which this Regulation applies is invalid in so far as it places any restriction -

- (a) on the transfer to the offeror, or at his or her direction to another person, of securities in the company during the offer period,
 - (b) on the transfer to any person of securities in the company at a time during the offer period when the offeror holds shares amounting to not less than 75% in nominal value of all the securities in the company,
 - (c) on rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid, or
 - (d) on rights to vote at a general meeting of the company that -
 - (i) is the first such meeting to be held after the end of the offer period, and
 - (ii) is held at a time when the offeror holds securities amounting to not less than 75% in nominal value of all the securities in the company.
- (3) This Regulation applies to an agreement -
- (a) entered into between a person holding securities in the company and another such person on or after 21 April 2004, or

(b) entered into at any time between such a person and the company,

and it applies to such an agreement even if the law applicable to the agreement (apart from this Regulation) is not the law of the State.

(4) For the purposes of paragraph (2)(c), action which might result in the frustration of a bid is any action of the kind specified in rules under section 8 of the Act of 1997 (being those rules as they stand amended by Regulation 11) providing for the matters to which Article 9 of the Directive relates.

(5) A person who -

(a) is party to an agreement falling within paragraph (3), and

(b) suffers loss as a result of any act or omission that would (but for this Regulation) be a breach of the agreement,

shall have a right of action in the High Court to be awarded compensation of such amount as the court considers just and equitable against any person who would (but for this Regulation) be liable to him or her and, on the hearing of such an action, the High Court may award such compensation accordingly.

(6) In this Regulation “offer period” means the offer period relative to the bid concerned under rules under section 8 of the Act of 1997 (being those rules as they stand amended by Regulation 11).

Further consequences of opting in - effect on certain decision making procedures

19. (1) This paragraph applies where -

- (a) a bid is made for an opted-in company,
- (b) the offeror requires, by requisition under section 132 of the Companies Act 1963, the directors of the company to convene an extraordinary general meeting of the company, and
- (c) the offeror holds, at the date of the requisition, securities in the company amounting to not less than 75% in nominal value of all the securities in the company.

(2) Where paragraph (1) applies, section 132 of the Companies Act 1963 shall, in relation to the requisition referred to in that paragraph, apply as if , in subsection (3), “one month” were substituted for “two months”.

(3) This paragraph applies where -

- (a) a bid is made for an opted-in company,
- (b) a general meeting of the company is held after the end of the offer period (being the first such meeting so held), and

- (c) the offeror, at the time the meeting is held, holds securities in the company amounting to not less than 75% in nominal value of all the securities in the company.

(4) Where paragraph (3) applies, section 141 of the Companies Act 1963 shall, in relation to a resolution proposed to be passed at the general meeting referred to in that paragraph (being a resolution proposed as a special resolution) apply as if, in subsection (1), “14 days’ notice” were substituted for “21 days’ notice”.

(5) In paragraph (3)(b) “offer period” has the same meaning as it has in Regulation 18.

Communication of decision

20. (1) If a company passes an opting-in resolution or an opting-out resolution notification of that fact shall be given by it to -

- (a) the Panel, and
- (b) where the company -
 - (i) has securities admitted to trading on a regulated market in a Member State other than in this State, or

(ii) has requested such admission,

the authority designated by that state as the competent authority for the purposes of Article 4(1) of the Directive.

(2) That notification shall be given -

(a) in the case of paragraph (1)(a), immediately after the resolution is passed,

and

(b) in the case of paragraph (1)(b) -

(i) if any admission or request such as is mentioned in that provision occurs on or before the passing of the resolution, immediately after the passing of the resolution,

(ii) if the foregoing admission or request occurs at any time after the passing of the resolution, at that time.

Information Requirements

Information to be contained in directors' annual report

21. (1) The report, pursuant to section 158 of the Companies Act 1963, of the directors of a company which had securities admitted to trading on a regulated market in the financial year in question, shall contain, in addition to the information specified in that section, section 13 of the Companies (Amendment) Act 1986, the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005) and any other enactment, the information specified in paragraph (2).

(2) The information mentioned in paragraph (1) is full information, by reference to the end of the financial year concerned, on the following matters -

- (a) the structure of the company's capital, including in particular -
 - (i) the rights and obligations attaching to the shares or, as the case may be, to each class of shares in the company, and
 - (ii) where there are two or more such classes, the percentage of the total share capital represented by each class,
- (b) any restrictions on the transfer of securities in the company, including in particular -

- (i) limitations on the holding of securities, and
 - (ii) requirements to obtain the approval of the company, or of other holders of securities in the company, for a transfer of securities,
- (c) to the extent not already required to be disclosed pursuant to section 67 or 91 of the Companies Act 1990, in the case of each person with a significant direct or indirect holding of securities in the company, such details as are known to the company of -
 - (i) the identity of the person,
 - (ii) the size of the holding, and
 - (iii) the nature of the holding,
- (d) in the case of each person who holds securities carrying special rights with regard to control of the company -
 - (i) the identity of the person, and
 - (ii) the nature of the rights,
- (e) where -

- (i) the company has an employees' share scheme, and
- (ii) shares to which the scheme relates carry rights with regard to control of the company that are not exercisable directly by the employees,

how those rights are exercisable,

- (f) any restrictions on voting rights, including in particular -
 - (i) limitations on voting rights of holders of a given percentage or number of votes,
 - (ii) deadlines for exercising voting rights, and
 - (iii) arrangements by which, with the company's cooperation, financial rights carried by securities are held by a person other than the holder of the securities,
- (g) any agreements between shareholders that are known to the company and may result in restrictions on the transfer of securities or on voting rights,
- (h) any rules which the company has in force concerning -

- (i) appointment and replacement of directors of the company, or
 - (ii) amendment of the company's articles of association,
-
- (i) the powers of the company's directors, including in particular any powers in relation to the issuing or buying back by the company of its shares,
 - (j) any significant agreements to which the company is a party that take effect, alter or terminate upon a change of control of the company following a bid, and the effects of any such agreements,
 - (k) any agreements between the company and its directors or employees providing for compensation for loss of office or employment (whether through resignation, purported redundancy or otherwise) that occurs because of a bid.

(3) The report of the directors referred to in paragraph (1) shall also contain any necessary explanatory material with regard to information that is required to be included in the report by that paragraph.

(4) For the purposes of paragraph (2)(a) a company's capital includes any securities in the company that are not admitted to trading on a regulated market.

(5) For the purposes of paragraph (2)(c) a person has an indirect holding of securities if -

- (a) they are held on his or her behalf, or
- (b) he or she is able to secure that rights carried by the securities are exercised in accordance with his or her wishes.

(6) Paragraph (2)(j) does not apply to an agreement if -

- (a) disclosure of the agreement would be seriously prejudicial to the company, and
- (b) the company is not under any other obligation to disclose it.

(7) The requirements of this Regulation apply in relation to reports of directors for financial years beginning on or after 20 May 2006.

Part 5

Rights to buy out or be bought out in certain circumstances

Application of Part

22. (1) This Part applies in relation to a bid for a body corporate, being either -

(a) a company within the meaning of the Companies Acts 1963, or

(b) a body corporate established in the State by charter,

and which is a company a bid in respect of which the Panel has (by virtue of Regulation 6) jurisdiction to supervise.

(2) Section 204 of the Companies Act 1963 shall not apply to a bid for a company or other body corporate falling within paragraph (1) in so far as it relates to securities.

Right to buy out dissenting security holders

23. (1) This Regulation applies where an offeror, pursuant to acceptance of a bid for the beneficial ownership of all the securities (other than the securities already in the beneficial ownership of the offeror) in the capital of a company or other body corporate falling within Regulation 22(1), has acquired, or unconditionally contracted to acquire, securities which -

(a) amount to not less than nine tenths in nominal value of the securities affected, and

(b) carry not less than nine tenths of the voting rights attaching to the securities affected.

(2) Where this Regulation applies, the offeror may, not later than the relevant date, give notice to any dissenting security holder that it desires to acquire the beneficial ownership of his or her securities, and when such notice is given the offeror shall be entitled and bound to acquire the beneficial ownership of those securities on the terms on which under the bid the beneficial ownership of the securities in respect of which the bid has been accepted and is to be acquired by the offeror.

(3) For the purposes of paragraph (2), if the offeree company has issued more than one class of securities, then a notice under that paragraph may only be given by the offeror to holders of securities of the class or classes in respect of which the thresholds provided under paragraph (1)(a) and (b) have been reached.

(4) In paragraph (2) “relevant date” means the last day of the period of 3 months beginning with the day after the last day on which the bid referred to in paragraph (1) can be accepted.

(5) For the purposes of this Regulation -

(a) securities in the offeree in the beneficial ownership of a subsidiary of the offeror shall be deemed to be in the beneficial ownership of the offeror,

(b) the acquisition of the beneficial ownership of securities in the offeree by a subsidiary of the offeror shall be deemed to be the acquisition of such beneficial ownership by the offeror, and

- (c) securities shall not be treated as not being in the beneficial ownership of the offeror merely by reason of the fact that those securities are or may become the subject of a charge in favour of another person.

- (6) This Regulation is subject to Regulation 27.

Right of certain security holders to be bought out

24. (1) This Regulation applies where an offeror, pursuant to acceptance of a bid for the beneficial ownership of all the securities (other than the securities already in the beneficial ownership of the offeror) in the capital of a company or other body corporate falling within Regulation 22(1), has acquired, or unconditionally contracted to acquire, some but not all of the securities to which the offer relates and the securities so acquired or unconditionally contracted to be acquired -

- (a) amount to not less than nine tenths in nominal value of the securities affected, and
- (b) carry not less than nine tenths of the voting rights attaching to the securities affected.

- (2) Where this Regulation applies –

- (a) the offeror shall, within 1 month from the circumstances referred to in paragraph (1) having arisen, give to all holders of securities in the offeree company not in the beneficial ownership of the offeror notice of the existence of those circumstances, and
- (b) any such holder may, within 3 months from the giving of that notice to him or her, require, by notice given to the offeror, the offeror to acquire his or her securities,

and where a security holder gives notice under subparagraph (b) in relation to any securities, the offeror shall be bound to acquire the beneficial ownership of those securities on the terms on which under the bid the beneficial ownership of the securities of the assenting security holders was acquired by it.

(3) Regulation 25 shall apply to the steps to be taken by the offeror on foot of a notice given to the offeror under paragraph (2)(b) and matters consequential thereon as it applies to the steps to be taken by an offeror on foot of a notice given under Regulation 23(2) and matters consequential thereon with -

- (a) the modification that a reference in Regulation 25 to a notice under Regulation 23(2) shall be read as a reference to a notice given under paragraph (2)(b) of this Regulation, and
- (b) any other necessary modifications.

- (4) This Regulation is subject to Regulation 27.

Steps to be taken on foot of notice under Regulation 23(2)

25. (1) Where a notice has been given by an offeror under Regulation 23(2), the offeror shall, before the expiration of 1 month from the date of the giving of the notice -

- (a) transmit to the offeree company a copy of the notice together with, subject to paragraph (3), an instrument of transfer of the securities of the dissenting security holders executed on behalf of the dissenting security holders as transferor by any person appointed by the offeror (being either the offeror or a subsidiary of the offeror or a nominee of the offeror or of such a subsidiary), and
- (b) pay to or vest in the offeree company the amount or other consideration representing the price payable by the offeror for the beneficial ownership of the securities which by virtue of Regulation 23 the offeror is entitled to acquire.

(2) Upon the foregoing things being done, the offeree company shall register as the holder of those securities the person who executed the instrument as transferee.

(3) Nothing in paragraph (1)(b) shall require an instrument of transfer for any security for which a security warrant is for the time being outstanding.

(4) Any sums received by the offeree company under this Regulation shall be paid into a separate bank account and any such sums and any other consideration so received shall be held by the company on trust for the several persons entitled to the securities in respect of which the said sums or other consideration were respectively received.

(5) The offeree company or a nominee of the offeree company shall not be entitled to exercise any right of voting conferred by any securities in the offeror company issued to it or to its nominee as consideration or part consideration for the transfer to the offeror company of any securities of a dissenting security holder except by and in accordance with instructions given by that security holder or his or her successor in title.

(6) This Regulation is subject to Regulation 27.

Supplemental provisions in relation to Regulation 23 where alternative terms offered

26. (1) Where a bid provides that an assenting security holder may elect between two or more sets of terms for the acquisition by the offeror of the beneficial ownership of the securities affected, the notice given by the offeror under Regulation 23(2) shall be accompanied by or embody a notice stating the alternative sets of terms between which assenting security holders are entitled to elect and specifying which of those terms shall be applicable to the dissenting security holder if he or she does not before the expiration of 14 days from the date of the giving of the notice notify the offeror in writing of his or her election as between such alternative sets of terms.

(2) In the case of a bid of the kind referred to in paragraph (1), the terms upon which the offeror shall under Regulation 23(2) be entitled and bound to acquire the beneficial ownership of the securities of a dissenting security holder shall be the set of terms his or her election in respect of which the dissenting security holder has, in accordance with paragraph (1), notified to the offeror or, in default of such notification, the set of terms specified in the notice secondly mentioned in paragraph (1).

(3) This Regulation is subject to Regulation 27.

Applications to the Court

27. (1) Where a notice is given by an offeror pursuant to Regulation 23(2) a dissenting security holder may, within 21 days from the giving of the notice, apply to the High Court in a summary manner for a declaration that the conditions specified in Regulation 23 for the giving of that notice are not satisfied or that the terms on which the offeror proposes, on foot of that notice, to acquire the securities of the dissenting security holder do not comply with that Regulation (including that Regulation as it has effect by virtue of Regulation 26).

(2) On the hearing of an application under paragraph (1), the High Court shall, as it considers appropriate, grant or refuse to grant the declaration sought and -

(a) if it grants a declaration of the kind firstly mentioned in paragraph (1), it shall also declare the notice referred to in that paragraph void, and

(b) if it grants a declaration of the kind secondly mentioned in paragraph (1), it shall also declare what are the terms, by virtue of Regulation 23 or 26, upon which the securities of the dissenting security holder shall be acquired and make an order requiring the offeror to acquire those securities on those terms accordingly.

(3) A security holder who has given to an offeror a notice, pursuant to Regulation 24(2)(b), may, within 21 days from the giving of the notice, apply to the High Court in a summary manner for a declaration that the terms on which the offeror proposes, on foot of the notice, to acquire the securities of the holder do not comply with Regulation 24(2).

(4) On the hearing of an application under paragraph (3), the High Court shall, as it considers appropriate, grant or refuse to grant the declaration sought and, if it grants the declaration, it shall also declare what are the terms, by virtue of Regulation 24, upon which the securities of the applicant shall be acquired and make an order requiring the offeror to acquire those securities on those terms accordingly.

(5) So long as an application under paragraph (1) or (3) is pending or is being determined by the High Court anything that a preceding Regulation of this Part requires to be done shall not be done until the proceedings in the High Court (including any appeal therefrom) are finally disposed of and then only if its doing would be consistent with the final order in the matter.

Part 5: interpretation and supplemental

28. (1) In this Part -

“assenting security holder” means a holder of any of the securities affected in respect of which the bid has been accepted;

“dissenting security holder” means a holder of any of the securities affected in respect of which the bid has not been accepted by the holder;

“securities affected” means the securities the acquisition of the beneficial ownership of which by the offeror is involved in the bid.

(2) Where a bid has been accepted by a person in respect of a part only of the securities held by him or her, he or she shall be treated, for the purposes of this Part, as an assenting security holder as regards that part of his or her holding and as a dissenting security holder as regards the remainder of his or her holding.

(3) In the application of this Part to an offeree company the capital of which consists of two or more classes of securities, references to the securities in the capital of the offeree company shall be construed as references to the securities in its capital of a particular class.

(4) Paragraph (3) is in addition to, and does not derogate from, Regulation 23(3).

(5) For the purposes of paragraph (1) of Regulation 23 and paragraph (1) of Regulation 24, when the thresholds specified in either of those paragraphs have been reached

in a particular case, the offeror's receiving agent shall issue a certificate to that effect to the offeror.

SCHEDULE

In this Schedule, a reference to a Rule shall be construed as a reference to a Rule contained in the Irish Takeover Panel Act, 1997, Takeover Rules, 2001 (as amended by the Irish Takeover Panel Act, 1997, Takeover (Amendment) Rules, 2002 and the Irish Takeover Panel Act, 1997, Takeover (Amendment) Rules, 2005) and, unless otherwise indicated, shall be construed as a reference to a Rule in Part B of those Rules.

1. Rule 2.1 in Part A is amended as follows:

- (a) by the deletion from paragraph (a) of that Rule of the definitions of “acting in concert”, “General Principles”, “Member State”, “offer”, “offeree”, “offeror” and “relevant company”;
- (b) by the insertion into paragraph (a) of that Rule, in alphabetical order, of the following definitions:

“affiliated person”, in relation to another person (the “Parent”), means any undertaking in respect of which the Parent:

- (a) has a majority of the shareholders’ or members’ voting rights; or
- (b) is a shareholder or member and at the same time has the right to appoint or remove a majority of the members of its board of directors; or
- (c) is a shareholder or member and alone controls a majority of the shareholders’ or members’ voting rights pursuant to an agreement entered into with other shareholders or members;

and for the purposes of this definition the rights of a Parent as regards voting, appointment or removal shall include the rights of any other person which is an affiliated person of the Parent and the rights of any person acting in that person’s own name but on behalf of the Parent or of any affiliated person of the Parent;

“competent authority” means the authority designated by a Member State under Article 4 of the Directive to supervise takeover bids for the purposes of the rules which it makes or introduces pursuant to the Directive; under the Regulations the Panel has been designated by the State as competent authority;

the “Directive” means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

“EEA” means the European Economic Area;

“EEA Agreement” means the Agreement on the EEA signed at Oporto on 2 May 1992, as amended for the time being;

“EEA State” means a state which is a contracting party to the EEA Agreement;

“General Principles” means the principles set out in Regulation 7;

“Member State” means a Member State of the European Communities or an EEA State;

“offer” means, where the Panel is the competent authority, in accordance with Regulation 6, to supervise a takeover bid, that bid;

“offeree” means a relevant company –

- (a) any transferable voting securities of which are the subject of a bid that has been made or is intended or required to be made, or
- (b) in respect of which, or in connection with which, a person does any act in contemplation of making a bid to holders of transferable voting securities of that company;

“offeror” means a person who makes, or intends or is required to make, a bid or does any act in contemplation of making a bid;

“regulated market” has the meaning assigned to it by the Regulations;

“Regulations” means the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. [] of 2006) which transposed the Directive into law, and “Regulation” shall be construed accordingly;

“relevant company” means a company which by virtue of Regulation 4(3), is to be regarded as a relevant company for the purposes of the application of the Act;

“takeover bid” or “bid” has the meaning assigned to it by the Regulations;

“transferable voting security” means, in relation to a company, a voting security which is transferable:

- (c) by substituting “recognised market” for the existing expression “regulated market” in paragraph (a) of that Rule and by substituting “recognised market” for the words “regulated market” in the definition of that expression and so that a like substitution shall be made wherever else those words appear in the existing Rules; and
- (d) in paragraph (b) of that Rule, by the substitution of “salary;” for “salary.” and by the insertion, after sub-paragraph (v), of the following sub-paragraphs:

“(vi) a reference to persons acting in concert shall be construed in accordance with Regulation 8;

(vii) Except where the context otherwise requires, references to shares, including when used in other expressions such as shareholders (but excluding equity share capital), shall include securities.”

2. Rule 2.5 in Part A is amended by the substitution for sub-paragraph (i) in paragraph (a) of the following sub-paragraph:

“(i) the registered address of such holder being in a country or territory outside the EEA to which the transmission or delivery of the material is precluded by the laws of a Member State or of such country or territory;”.

3. Rule 3.2 in Part A is amended by the deletion of “and” at the end of paragraph (m) and by the substitution for paragraph (n) of the following:

“(n) a person acting in concert with the offeree, the directors of the offeree, the holders of securities of the offeree or the directors of the offeror; and

(o) any person acting as an adviser to any of the persons specified in paragraphs (a) to (n) in relation to the takeover or other relevant transaction concerned.”

4. Rule 3.3 in Part A is amended as follows:

(a) by the insertion of the following new paragraph at the beginning of that Rule:

“(a) For all purposes of these Rules, a person and each of its affiliated persons shall be deemed to be persons acting in concert, all with each other.”;

(b) by the insertion of “(b)” at the beginning of the paragraph following that new paragraph (a), by renumbering existing paragraphs (a) to (g) as sub-paragraphs (i) to (vii) respectively, by substituting “(1)”, “(2)”, “(3)” and “(4)” for “(i)”, “(ii)”, “(iii)” and “(iv)” respectively where they occur within sub-paragraphs (ii) and (vi) and by substituting “sub-paragraph (i)” for “paragraph (a)” in sub-paragraph (iii); and

(c) in the introductory paragraph in paragraph (b) (as so numbered by the preceding paragraph), by the insertion after “the same paragraph” of “(excluding any persons deemed under paragraph (a) above to be persons acting in concert with each other)”;

5. Rule 2.5 is amended as follows:

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) An offeror may announce a firm intention to make an offer only when the offeror and its financial adviser are satisfied, after careful and responsible consideration, that the offeror is able and will continue at all relevant times to be able to implement the offer. Subject thereto, an offeror shall announce without delay its firm intention to make an offer.”; and

- (b) by the substitution in paragraph (d) of “Where the offer is for cash or includes an element of cash, the announcement of a firm intention to make an offer” for “The announcement of an obligation to make an offer under Rule 9 or Rule 37”.
- 6. Rule 2.6 is amended as follows:
 - (a) by the deletion of “and” at the end of paragraph (a);
 - (b) by the substitution for paragraph (b) of the following paragraph:
 - “(b) if the announcement initiating the offer period is not an announcement pursuant to Rule 2.5, the offeror shall, after the announcement is made, promptly despatch a copy of the announcement, if any, pursuant to Rule 2.5 to each shareholder of the offeree;”;
 - (c) by the insertion after paragraph (b) of the following paragraphs:
 - “(c) after the publication of an announcement made pursuant to Rule 2.5, both the offeror and the offeree shall make that announcement or a circular summarising the terms and conditions of the offer readily and promptly available to the representatives of their respective employees or, where there are no such representatives, to the employees themselves; and
 - (d) where, following an announcement made pursuant to Rule 2.5, a circular summarising the terms and conditions of the offer is sent to shareholders or employee representatives or employees, the offeree shall make the full text of the Rule 2.5 announcement readily and promptly available to them.”
- 7. Rule 9.1 is amended as follows:
 - (a) by the substitution of “the holders of each other class of transferable voting securities of the company” for “the holders of each class of non-equity share capital of the company conferring voting rights of which such person or, in the case of persons acting in concert, any of those persons held shares”; and
 - (b) by the insertion at the end of that Rule of the following paragraph:
 - “An offer shall not be required under this Rule where control of a relevant company is acquired as a result of a voluntary offer made in accordance with the Rules (including, where applicable, Rules 14 and 15) to all the holders of equity share capital conferring voting rights and other transferable voting securities of that company in respect of their entire holdings.”
- 8. Rule 9.4 is amended as follows:
 - (a) by the substitution of the following sentences for the first two sentences in paragraph (a):

“ Except with the consent of the Panel and subject as otherwise provided by this Rule 9.4, an offer made under Rule 9 shall in respect of each class of shares the subject of the offer be in cash, or be accompanied by a cash alternative offer, at a price per share which shall not be less than the highest value of the consideration per share paid by the offeror or any person acting in concert with it for shares of the offeree of that class during the period (in Rule 9.4 referred to as the “relevant period”) beginning 12 months prior to the announcement by the offeror of a firm intention to make that offer and ending on the date on which the offer closes for acceptance. Accordingly, if after the time of the announcement of the offeror’s firm intention to make the offer but before the offer closes for acceptance, the offeror or any person acting in concert with it acquires shares in the offeree of a class the subject of the offer at a price per share higher than the offer price, the offeror shall increase the offer price in respect of that class of shares to not less than the highest price per share paid for any of the shares so acquired.”; and

(b) by the substitution of the following paragraphs for paragraph (f):

“(f) In certain circumstances, the Panel may, having regard to the General Principles, determine that the highest price calculated under paragraph (a) shall be adjusted. Circumstances which the Panel may take into account when considering such an adjustment are:

- (i) the size and timing of the relevant purchases;
- (ii) the attitude of the offeree board;
- (iii) where securities had been purchased from directors or other persons closely connected with the offeror or the offeree, the price at which such securities were purchased;
- (iv) the number of securities purchased in the preceding 12 months, and the pattern of such purchases, by number of securities and prices paid, over that period;
- (v) if an offer is required in order to enable a company in serious financial difficulty to be rescued;
- (vi) if an offer is required as a result of a person acquiring securities by way of bona fide gift or inheritance; and
- (vii) if the market prices of the securities have been manipulated or affected by exceptional occurrences.

In any case in which the highest price is adjusted under this Rule, the Panel will publish its decision.

(g) The consent of the Panel under paragraph (a) to an offer consideration which does not consist of cash or include a cash alternative will not be granted where:

- (i) the consideration does not consist of liquid securities admitted to trading on a recognised market; or
 - (ii) the offeror or persons acting in concert with the offeror have purchased for cash during the relevant period securities carrying 5% or more of the voting rights in the offeree.”
9. Rule 10 is amended by the substitution of the following paragraph for the first paragraph:
- “Except with the consent of the Panel, it shall be a condition of any voluntary offer for equity share capital conferring voting rights or for other transferable voting securities which, if accepted in full, could result in the offeror holding securities conferring more than 50% of the voting rights in the offeree that the offer shall not become unconditional as to acceptances unless the offeror has acquired or agreed to acquire (either pursuant to the offer or otherwise) securities conferring more than 50% of the voting rights in the offeree.”
10. Rule 19.7 is amended as follows:
- (a) by the insertion in paragraph (a), after “any advertisement or other material (including any notes to editors) shall” of “, subject to the exception in paragraph (b) below,”;
 - (b) by the insertion after paragraph (a) of the following paragraph:

“(b) An offeror shall deliver a copy of the offer document and any revised offer document to the Panel prior to releasing it pursuant to paragraph (a).”; and
 - (c) by the renumbering of existing paragraphs (b) and (c) as paragraphs (c) and (d) respectively and by the insertion in paragraph (d) (as so renumbered) after “Stock Exchange” of “, which announcement, in the case of an offer document, a revised offer document, a first response circular or a response circular in relation to a revised offer, shall state where that document is available for inspection in accordance with Rule 26”.
11. Rule 21.1 is amended as follows:
- (a) by the substitution of “frustrating action;” for “frustrating action (as defined in paragraph (c)); or” at the end of sub-paragraph (ii) in paragraph (a);
 - (b) by the substitution for sub-paragraph (iii) in paragraph (a) of the following paragraphs:

“(iii) with the consent of the Panel where the holders of securities carrying more than 50% of the voting rights in the offeree state in writing that they approve the action proposed and would vote in favour of any resolution to that effect proposed at a general meeting of the offeree;

- (iv) with the consent of the Panel in pursuance of a contract entered into prior to the announcement of the offer or (as the case may be) to any such earlier time as is referred to below; or
 - (v) with the consent of the Panel where a decision to take the proposed action was made prior to the announcement of the offer or (as the case may be) to any such earlier time as is referred to below and such decision: (1) has been partly or fully implemented before that time; or (2) has not been partly or fully implemented before that time but is in the ordinary course of business, ”;
- (c) by the substitution for sub-paragraph (6) in paragraph (a) of the following sub-paragraph:
- “(6) take any action, other than seeking alternative offers, which may result in frustration of an offer or possible offer or in offeree shareholders being denied the opportunity to decide on the merits of such an offer or possible offer.”; and
- (d) by the deletion of paragraph (c).

12. Rule 24.1 is amended by the substitution therefor of the following:

“24.1 INTENTIONS REGARDING THE OFFEREE, THE OFFEROR AND THEIR EMPLOYEES

An offeror shall inform the shareholders of the offeree of the following matters in the offer document:

- (a) its intentions regarding the future business of the offeree and its subsidiaries;
- (b) its strategic plans for the offeree and their likely repercussions on employment and on the locations of the offeree’s places of business;
- (c) its intentions regarding any redeployment of the fixed assets of the offeree and its subsidiaries;
- (d) the long-term commercial justification for the offer; and
- (e) its intentions with regard to safeguarding the employment of the employees and management of the offeree and of its subsidiaries, including any material change in the conditions of employment.

Where the offeror is a company and insofar as it is affected by the offer the offeror shall also disclose in the offer document the information set out in paragraphs (a), (b) and (e) in relation to itself.”

13. Rule 24.2 is amended by the substitution for paragraph (b) of the following paragraph:

- “(b) the offer document (including, where relevant, any revised offer document) shall include:
- (i) a heading stating “If you are in doubt about this offer, you should consult an independent financial adviser who, if you are taking advice in Ireland, is authorised or exempted under the Investment Intermediaries Act, 1995”;
 - (ii) the date when the document is despatched, the name and address of the offeror, including where the offeror is a company, its type and the address of its registered office, and, if appropriate, of the person making the offer on behalf of the offeror;
 - (iii) the identity of every person acting in concert with the offeror or, to the extent that this is known to the offeror, with the offeree, including, in the case of a company, its type, the address of its registered office and its relationship with the offeror or, to the extent that this is known to the offeror, with the offeree, as applicable;
 - (iv) details of each class of securities for which the offer is made, including whether those securities will be transferred “cum” or “ex” any dividend and the maximum and minimum percentages of those securities which the offeror undertakes to acquire;
 - (v) the terms of the offer, the total consideration offered including the consideration offered for each class of security and particulars of the way in which the consideration is to be paid in accordance with Rule 31.8;
 - (vi) in the case of an offer under Rule 9, the information required under sub-paragraph (b)(v) shall include the method employed under Rule 9.4 in calculating the consideration offered;
 - (vii) all conditions to which the offer is subject;
 - (viii) particulars of all documents required, and procedures to be followed, for acceptance of the offer;
 - (ix) the market price quotations for the securities the subject of the offer, and (in the case of a securities exchange offer) the securities offered, for the first business day in each of the six months immediately before the date of the offer document, for the last business day before the commencement of the offer period and for the latest practicable date before the despatch of the offer document. Price quotations stated in respect of securities quoted on a recognised market shall be the closing dealt price on the relevant day as published by that market. Where securities the subject of the offer or securities offered as consideration under the offer are quoted on more than one

recognised market, the relevant quotations on each such market shall be included. If there have been no dealings in the securities on any relevant day, the price to be quoted shall be the midpoint between the high and low market guide prices, or the market guide price if only one is quoted. If any of the securities are not quoted on a recognised market, any information available as to the number and price of transactions which have taken place during the preceding six months shall be stated together with the source, or an appropriate negative statement;

- (x) in the case of a securities exchange offer, full particulars of the securities being offered, including the rights attaching to them, the first dividend or interest payment in which the new securities to be issued as consideration under the offer will participate and how the securities will rank for dividends or interest, capital and redemption; a statement indicating the effect of acceptance on the capital and income position of the offeree's shareholders; and a statement specifying whether an application for quotation for the securities has been or will be made to a recognised market and whether a quotation on any other stock exchange or market has been or will be sought;
 - (xi) in the case of a securities exchange offer, the effect of full acceptance of the offer upon the offeror's assets, profits and business which may be significant for a proper appraisal of the offer;
 - (xii) the compensation offered for any removal of rights pursuant to Regulation 18, together with particulars of the way in which the compensation is to be paid and the method employed in determining it; and
 - (xiii) the national law which will govern contracts concluded between the offeror and the holders of securities of the offeree as a result of the offer, and the competent courts."
14. Rule 24.6 is amended by the insertion, after "The offer document shall" of "state the time allowed for acceptance of the offer and any alternative offer and shall".
15. Rule 25.1 is amended by the substitution of "opinion" for "views" wherever that word appears in that Rule, including its title.
16. Rule 25.2 is amended by the substitution of "OFFEREE" for "COMPANY" in its title and by the substitution for that Rule of the following:
- "The opinion referred to in Rule 25.1(a)(i) shall include the views of the offeree board on:
- (a) the effects of implementation of the offer on all the offeree's interests including, specifically, employment; and

- (b) the offeror’s strategic plans for the offeree and their likely repercussions on employment and on the locations of the offeree’s places of business, as set out in the offer document pursuant to Rule 24.1;

and shall state the offeree board’s reasons for forming its opinion.”

17. Rule 30 is amended as follows:

- (a) by the insertion in its title of “AND MAKING AVAILABLE” after “DESPATCHING”;

- (b) by the insertion of “(a)” at the beginning of Rule 30.2 and by the insertion after paragraph (a) of that Rule of the following:

“(b) Simultaneously with the despatch of the offer document under paragraph (a), both the offeror and the offeree shall make the offer document readily available to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.”; and

- (c) by the substitution for Rule 30.3 of the following:

“(a) Except with the consent of the Panel, the offeree board shall advise the shareholders of the offeree of its opinion on the offer in a circular (the “first response circular”) which it shall despatch to those shareholders within 14 days after the date of despatch of the offer document.

(b) The offeree board shall append to the first response circular a separate opinion from the representatives of its employees on the effects of the offer on employment, provided such opinion is received in good time before the despatch of that circular.

(c) Simultaneously with the despatch of the first response circular under paragraph (a), the offeree shall make the circular readily available to the offeree’s employee representatives or, where there are no such representatives, to the employees themselves.”

18. Rule 31.2 is amended as follows:

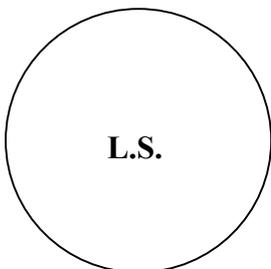
- (a) by the insertion after paragraph (c) of the following:

“(d) Where an offer remains open for acceptance beyond the 70th day following the despatch of the offer document, the offeror shall despatch to offeree shareholders who have not accepted the offer a notice specifying the date beyond which the offer will not be open for acceptance, such date not being less than 14 days after the despatch of such notice.”; and

- (b) by the renumbering of existing paragraph (d) as paragraph (e).

19. Rule 32 is amended as follows:

- (a) in paragraph (a) of Rule 32.1, by the substitution for the words “If an offer is revised, the offeror” of the words “If an offer is revised, the offeror shall despatch to the shareholders of the offeree a revised offer document, drawn up in accordance with Rules 24 and 27. The offeror”; and
 - (b) by the insertion after Rule 32.4 of the following:
 - “32.5 THE OFFEREE BOARD’S OPINION
 - (a) The offeree board shall despatch to the shareholders of the offeree a response circular containing its opinion under Rule 25.1(a)(i) on a revised offer, drawn up in accordance with Rules 25 and 27.
 - (b) The offeree board shall append to the response circular containing its opinion on a revised offer a separate opinion from the representatives of its employees on the effects of the revised offer on employment, provided such opinion is received in good time before despatch of that response circular.
 - 32.6 INFORMING EMPLOYEES
 - (a) When any revised offer document is despatched to shareholders of the offeree, both the offeror and the offeree shall make that document readily and promptly available to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.
 - (b) When the offeree board despatches to its shareholders a response circular containing its opinion under Rule 25.1(a)(i) on a revised offer, it shall make that circular readily and promptly available to its employee representatives or, where there are no such representatives, to the employees themselves.”
20. Rule 36.4 is amended by the deletion from that Rule of “Except with the consent of the Panel”.
21. Except in the case of relevant companies which fall within the definition of “relevant company” in section 2 of the Act of 1997 (as that section has effect apart from the operation of Regulation 4), Rules 3.1 in Part A and Rule 3.2, Rule 5, Rule 7.2, paragraph (b) in Rule 9.1, Rule 14, Rule 15, Rule 36 (to the extent that such Rule relates to partial offers that will not constitute takeover bids), Rule 37, Rules 39 to 41 (inclusive) and Appendix 4 to the Rules shall be deleted.



GIVEN under my Official Seal,
the 18th day of May 2006.

MICHEÁL MARTIN

Minister for Enterprise,
Trade and Employment,
Trade and Employment

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation).

These Regulations give effect to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids.

Prn:A6/0805

Price: €6.60