



Number 5 of 1997

IRISH TAKEOVER PANEL ACT, 1997

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SCHEDULE

PRINCIPLES APPLICABLE TO THE CONDUCT OF TAKEOVERS, ETC.

ACTS REFERRED TO

Companies Act, 1963	1963, No. 33
Companies Act, 1990	1990, No. 33
Companies Acts, 1963 to 1990	
Defamation Act, 1961	1961, No. 40
European Communities Act, 1972	1972, No. 27
Mergers, Take-overs and Monopolies (Control) Act, 1978	1978, No. 17
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Stock Exchange Act, 1995	1995, No. 9



Number 5 of 1997

IRISH TAKEOVER PANEL ACT, 1997

AN ACT TO PROVIDE FOR THE MONITORING AND SUPERVISION OF TAKEOVERS AND CERTAIN OTHER TRANSACTIONS IN RELATION TO SECURITIES IN CERTAIN COMPANIES, TO SPECIFY THE PRINCIPLES THAT SHALL GOVERN THE CONDUCT OF TAKEOVERS AND OTHER TRANSACTIONS AFORESAID, TO CONFER ON A COMPANY DESIGNATED BY THE MINISTER FOR ENTERPRISE AND EMPLOYMENT FOR THE PURPOSE FUNCTIONS IN RESPECT OF THE MATTERS AFORESAID AND TO PROVIDE FOR RELATED MATTERS. [12th March, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“acting in concert” shall, in relation to a takeover or other relevant transaction, be construed in accordance with subsection (3);

“the Act of 1963” means the Companies Act, 1963;

“the Act of 1990” means the Companies Act, 1990;

“the Central Bank” means the Central Bank of Ireland;

“company” means a company (within the meaning of the Act of 1963) or any other body corporate, whether incorporated in the State or elsewhere;

“control” means, in relation to a relevant company, the holding, whether directly or indirectly, of securities of the company that confer, in aggregate, not less than 30 per cent. (or such other percentage as may be prescribed) of the voting rights in that company;

“the Court” means the High Court;

“European Communities” has the meaning assigned to it by the European Communities Act, 1972;

“interest in a security” includes rights in respect of a security arising by virtue of—

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- (a) an agreement to purchase securities;
- (b) an agreement to subscribe for securities;
- (c) an option to acquire or to subscribe for securities;
- (d) an irrevocable commitment to accept an offer;
- (e) a right to a convertible security;
- (f) a right to exercise or to control the exercise of the voting rights attaching to a security;
- (g) a right to subscribe for securities to be issued pursuant to a rights issue of a company; or
- (h) a right to securities that have been allotted but not issued,

whether or not the agreement, option or other thing aforesaid confers a proprietary interest in the security;

“Irish Stock Exchange” has the meaning assigned to it by section 3 (1) of the Stock Exchange Act, 1995;

“the Minister” means the Minister for Enterprise and Employment;

“offer” means an offer (by whatever name called), made to the holders of securities in a relevant company, to acquire some or all of those securities by the payment of cash or other valuable consideration or in exchange for other securities or by means of both such a payment and such an exchange;

“offeree” means a relevant company—

- (a) any securities of which are the subject of an offer 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 an offer to holders of securities in that company;

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

“the Order” has the meaning assigned to it by *section 13* and includes the Order as amended or re-enacted (with or without modification) by rules of court;

“other relevant transaction” means—

- (a) any offer, agreement or transaction in relation to the acquisition of securities conferring voting rights in a relevant company (including a substantial acquisition of securities) which the Panel specifies, in rules under *section 8*, to be a relevant transaction for the purposes of this Act,
- (b) any agreement, transaction, proposal or action entered into, made or taken in contemplation of, or which is consequent upon or incidental to, a takeover or an offer, agreement or transaction referred to in *paragraph (a)* of this definition;

“parties to a takeover or other relevant transaction” includes—

- (a) the offeror;
- (b) any person acting in concert with the offeror;
- (c) the directors of the offeror if the offeror is a company;
- (d) the offeree;
- (e) the holders of the securities to whom the offer is made;
- (f) the directors of the offeree;
- (g) any person acting as an adviser to any of the foregoing persons in relation to the takeover or other relevant transaction;
- (h) any person who, following a request made of him or her to do so by the offeror pursuant to rules under *section 8*, confirms that there are available to the offeror resources of such an amount as will enable the offer, if it is fully accepted, to be implemented;
- (i) such other persons as are specified in rules under *section 8* for the purposes of this definition or whom the Panel deems in the circumstances of a particular takeover or other relevant transaction to be parties to that takeover or transaction;

“prescribed” means prescribed by regulations made by the Minister under this Act and “prescribe” shall be construed accordingly;

“public limited company” has the same meaning as it has in the Companies Acts, 1963 to 1990;

“recognised stock exchange” means a stock exchange prescribed for the purposes of this Act;

“relevant company” has the meaning assigned to it by *section 2*;

“scheduled principles” means the principles set out in the *Schedule* to this Act;

“security” means, in relation to a company—

- (a) any interest in the capital of the company and includes any interest in the nature of a share, stock, debenture or bond, by whatever name called, and irrespective of the rights, if any attaching thereto, of or issued by the company,
- (b) an interest in a security falling within paragraph (a) of this definition;

“shareholder” means a person who holds securities in a company;

“substantial acquisition of securities” means an acquisition of securities which the Panel specifies, in rules under *section 8*, to be a substantial acquisition of securities for the purposes of this Act;

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“takeover” means—

- (a) any agreement or transaction (including a merger) whereby or in consequence of which control of a relevant company is or may be acquired; or
- (b) any invitation, offer or proposal made, or intended or required to be made, with a view to concluding or bringing about such an agreement or transaction;

“UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989);

“voting right” means, in relation to a company, a right exercisable for the time being to cast, or to control the casting of, a vote at general meetings of members of the company, not being such a right that is exercisable only in special circumstances.

(2) In this Act references to a ruling made or a direction given by the Panel under *section 9* shall, unless the context otherwise requires, be construed as including—

- (a) references to such a ruling or direction that, for the time being, stands amended under that section,
- (b) references to any decision made by the Panel that is preliminary or incidental to the making of such a ruling or the giving of such a direction (including any decision made by the Panel in relation to the exercise of the powers under *section 11*).

(3) For the purposes of this Act, two or more persons shall be deemed to be acting in concert as respects a takeover or other relevant transaction if, pursuant to an agreement or understanding (whether formal or informal) between them, they actively co-operate in the acquisition by any one or more of them of securities in the relevant company concerned or in the doing, or in the procuring of the doing, of any act that results in an increase in the proportion of such securities held by any one or more of them and “acting in concert” shall be construed accordingly.

(4) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any other enactment is a reference to that enactment as amended, extended or adapted by or under any subsequent enactment including this Act.

Relevant company. 2.—In this Act, “relevant company” means—

- (a) a public limited company or other body corporate incorporated in the State the trading, on a market regulated by a recognised stock exchange, of one or more of the securities of which is for the time being authorised by that exchange,

- (b) a public limited company or other body corporate incorporated in the State the trading as aforesaid of one or more of the securities of which is not for the time being authorised by a recognised stock exchange but was so authorised at any time within the period of 5 years prior to the date on which the relevant proposal in relation to the takeover or other relevant transaction concerned was made,
- (c) any other public limited company which, in order to secure more fully the protection of shareholders, the Minister, after consultation with the Panel, prescribes for the purposes of this definition,

but does not include—

- (i) an undertaking for collective investment in transferable securities (within the meaning of the UCITS Regulations) that is authorised under those Regulations or by a competent authority in another member state of the European Communities in accordance with laws or measures adopted to implement Council Directive 85/611/EEC of 20th December, 1985¹ (as amended by Council Directive 88/220/EEC of 22nd March, 1988²),
- (ii) an investment company within the meaning of Part XIII of the Act of 1990.

3.—(1) In this Act, “the Panel” means a public company formed and registered under the Companies Acts, 1963 to 1990, after the commencement of this section, which is designated by the Minister to be the body that shall perform the functions expressed in this Act to be performable by the Panel. The Panel.

(2) The Minister shall not designate a company for the purposes aforesaid unless the following conditions as respects the company are satisfied, namely—

- (a) the company is a company limited by guarantee,
- (b) the name of the company is the Irish Takeover Panel, and
- (c) the memorandum of association and articles of association of the company are in such form, consistent with this Act, as is approved of by the Minister.

(3) None of the following, namely—

- (a) section 6 (1) (b) of the Act of 1963,
- (b) the requirement contained in section 5 (1) of the Act of 1963 that a public company shall have 7 or more members,
- (c) section 36 of the Act of 1963 or any other provision of the Companies Acts, 1963 to 1990, that makes provision as respects cases in which the requirement referred to in paragraph (b) is not complied with,

¹O.J. No. L375, 31.12.85, p.3.

²O.J. No. L100, 19.4.88, p.3.

S.3

shall apply to a company where the Minister informs the Registrar of Companies in writing that he or she proposes to designate the company under subsection (1).

(4) The following shall be the members of the Panel, namely—

- (a) each body standing specified for the time being in section 6 (1) (b) (not being an unincorporated body of persons),
- (b) in the case of each body standing specified for the time being in section 6 (1) (b) which is an unincorporated body of persons, an individual or body corporate nominated by it to be such a member.

Alterations in
memorandum and
articles of
association of Panel.

4.—Notwithstanding anything contained in the Companies Acts, 1963 to 1990, no alteration in the memorandum of association or articles of association of the Panel after the designation referred to in section 3 (1) has been made shall be valid or effectual unless made with the prior approval of the Minister.

Objects of Panel.

5.—(1) The principal objects of the Panel shall be stated in its memorandum of association to be—

- (a) to monitor and supervise takeovers and other relevant transactions so as to ensure that the provisions of this Act and any rules thereunder are complied with as respects each such transaction;
- (b) to make rules under section 8, for the purposes mentioned in that section, in relation to takeovers and other relevant transactions.

(2) Nothing in this section shall prevent or restrict the inclusion among the objects of the Panel as stated in its memorandum of association of all such objects and powers as are reasonably necessary or proper for or incidental or ancillary to the due attainment of the principal objects aforesaid and are not inconsistent with this Act.

(3) The Panel shall have power to do anything which appears to it to be requisite, advantageous or incidental to, or which appears to it to facilitate, either directly or indirectly, the performance by it of its functions as specified in this Act or in its memorandum of association and is not inconsistent with any enactment for the time being in force.

Directors of Panel.

6.—(1) The articles of association of the Panel shall provide that—

- (a) the number of directors of the Panel (other than the directors referred to in paragraph (d) but including the chairperson and deputy chairperson) shall be 7;
- (b) the following bodies (or their successors) shall each nominate and appoint one of the said directors (other than the chairperson and deputy chairperson), namely—
 - (i) the Consultative Committee of Accountancy Bodies — Ireland,
 - (ii) the Law Society of Ireland,

(iv) the Irish Bankers Federation,

(v) the Irish Stock Exchange;

(c) the Governor of the Central Bank shall nominate and appoint the chairperson and deputy chairperson;

(d) the directors of the Panel may nominate and appoint 3 persons to be each a director of the Panel;

(e) the Governor of the Central Bank and each body referred to in *paragraph (b)* may nominate and appoint one or more persons to be each an alternate director to the director or directors of the Panel appointed by him or her or it;

(f) the directors of the Panel may act notwithstanding one or more vacancies in their number.

(2) The Panel may, if it reasonably considers it is appropriate to do so having regard to its duties generally under this Act, perform any of its functions through or by any of its officers or employees or any other person duly authorised by the Panel in that behalf.

(3) The members of the Panel shall not at any meeting of members of the Panel or by any other means instruct the directors of the Panel regarding the carrying out by the directors of their duties in so far as they relate to the functions of the Panel.

(4) Section 182 of the Act of 1963 shall not apply to the Panel.

(5) (a) The Minister may, after consultation with such persons as appear to him or her ought to be consulted for the purposes of this subsection, by regulations—

(i) vary *paragraph (b)* of *subsection (1)* by adding to, or deleting from, that paragraph one or more bodies;

(ii) make such consequential amendment of *subsection (1) (a)* as respects the number specified in that provision as he or she considers necessary or expedient.

(b) Upon a body ceasing, by virtue of regulations under this subsection, to be a body mentioned in *subsection (1) (b)*, any person who was appointed a director of the Panel by that body shall cease to hold office as such a director.

7.—(1) The Panel shall monitor and supervise takeovers and other relevant transactions so as to ensure that the provisions of this Act and any rules under *section 8* are complied with as respects each such transaction. Duty of Panel to monitor and supervise takeovers, etc.

(2) Nothing in this section shall be construed as imposing on the Panel, either directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.

(3) The Minister may, after consultation with the Panel, by regulations, amend the *Schedule* to this Act by adding or deleting anything to or from that *Schedule*.

8.—(1) Without prejudice to subsections (2), (3) and (4), the Panel may make rules for the purpose of—

- (a) specifying offers, agreements or transactions in relation to the acquisition of securities conferring voting rights in a relevant company (by reference to such matters as it thinks appropriate, including the amount of securities acquired or to be acquired and the period that has elapsed since any previous acquisition of such securities in the company) to be relevant transactions for the purposes of this Act,
- (b) ensuring that takeovers and other relevant transactions comply with the scheduled principles and the other provisions of this Act,
- (c) otherwise providing where it considers desirable, in the interests of shareholders to do so, for the manner in which transactions as aforesaid and activities relating to them are to be conducted or carried out and otherwise for the governance of such transactions and activities,
- (d) specifying circumstances in which a person shall be presumed, until the contrary is established to the satisfaction of the Panel, to be acting in concert with another person as respects a takeover or other relevant transaction.

(2) The Panel shall, in accordance with subsection (5), make rules specifying the conditions under which an acquisition, by a person (including a person acting pursuant to an agreement or understanding with another person), of securities conferring voting rights in a relevant company is to be regarded, for the purposes of this Act, as a substantial acquisition of securities and those conditions shall be specified by reference to—

- (a) the proportion which the amount of securities conferring voting rights acquired or, as the case may be, to be acquired bears to the total amount of such securities held in the relevant company concerned;
- (b) the extent to which the acquisition of securities conferring voting rights increases or will increase any existing holding of such securities in the relevant company concerned;
- (c) in the case of a series of acquisitions of such securities, the periods of time that elapse between each such acquisition being effected.

(3) (a) The Panel shall make rules requiring that where—

- (i) a person, or persons acting in concert, acquire control of a relevant company (other than in the circumstances referred to in paragraph (b) (i)), or
- (ii) a person, or persons acting in concert, who control a relevant company, acquire, within a specified period, a specified amount of additional securities in that company,

that person or, as the case may be, such one or more of those persons as the Panel shall determine pursuant to the rules, shall make an offer or offers to acquire all or a specified class or classes of the remaining securities in

that company upon or subject to such terms (including S.8 consideration) as the Panel specifies in the rules or in a direction given by it for the purpose pursuant to the rules.

(b) The Panel may make rules imposing the requirement referred to in paragraph (a) on—

- (i) a person, or persons acting in concert (or such one or more of those persons as the Panel shall determine pursuant to the rules), who acquire control of a relevant company wholly or partly by reason of a redemption or purchase by that company of its own securities, or
- (ii) a person, or persons acting in concert (or such one or more of those persons as the Panel shall determine pursuant to the rules), who control a relevant company where, subsequent to that person or those persons acquiring such control, the proportion of securities in that company held by that person or any one or more of those persons is, in a specified period, increased by a specified percentage by reason of a redemption or purchase by that company of its own securities.

(4) The Panel shall, in accordance with subsection (5), make rules specifying requirements to be complied with by a party to a takeover or other relevant transaction, being requirements the specification of which the Panel considers necessary or expedient for the purpose of any case in which the provisions of the Mergers, Take-overs and Monopolies (Control) Act, 1978, fall to be applied to the takeover or other relevant transaction.

(5) The Panel shall submit a draft of the rules it proposes to make under subsections (2) and (4) to the Minister and—

- (a) if the Minister approves of the draft, the Panel shall proceed to make the rules accordingly,
- (b) if the Minister refuses to approve of the draft, the Panel shall submit another draft of rules aforesaid to the Minister.

(6) Paragraphs (a) and (b) of subsection (5) shall apply to a draft of rules submitted to the Minister under the said paragraph (b) (including that paragraph as applied by this subsection) as those paragraphs apply to the first-mentioned draft in subsection (5).

(7) The Panel may grant derogations from, or waive, any rules under this section in relation to a particular matter where, in the opinion of the Panel, having regard to the exceptional circumstances of the matter, but taking into consideration the scheduled principles, it is appropriate to do so.

(8) The Panel shall cause to be published in the *Iris Oifigiúil* rules made by it under this section.

- 9.—(1)** (a) The Panel may of its own volition or on the application of any interested person make a ruling as to whether any activity or proposed activity, as respects a takeover or other relevant transaction, complies with the scheduled principles and any rules under section 8, and any such ruling shall have immediate effect.
- Power of Panel to make rulings, give directions, etc.

- (b) The Panel may publish, in such manner as it thinks fit, any ruling made by it under this section.
- (2) (a) For the purpose of ensuring that the scheduled principles and any rules under *section 8* are complied with as respects the manner in which a takeover or other relevant transaction is conducted, the Panel may give a direction to any party to the takeover or other relevant transaction to do or to refrain from doing anything which the Panel specifies in the direction.
- (b) The Panel may publish, in such manner as it thinks fit, any direction given by it under this section.
- (3) Without prejudice to the generality of *subsection (2)*, a direction under this section may be given by the Panel to a party to a takeover or other relevant transaction to, as appropriate—
- (a) acquire, issue, allot or dispose of any securities or to refrain from the doing of any of those things;
 - (b) refrain from exercising any voting rights or any other rights attaching to securities involved in the takeover or other relevant transaction (including securities acquired prior to the date of the giving of the direction);
 - (c) make an offer upon such terms (if any) as are specified in the direction (and such terms may include terms requiring the offer to be in cash or otherwise or requiring the offer to be of no greater nor no lesser value than that specified in the direction);
 - (d) announce that any offer has lapsed (and the offer concerned shall accordingly lapse on the making of the announcement);
 - (e) renew any offer which has lapsed (whether pursuant to a direction under *paragraph (d)* or otherwise) on the same terms as those on which the offer was originally made or on such other terms as are specified in the direction;
 - (f) disclose any information specified in the direction;
 - (g) disclose shareholdings, transactions in the securities of relevant companies or the identity of any persons acting in concert with the party;
 - (h) make an announcement in relation to the takeover or other relevant transaction in such manner, to such persons (which may include the public generally), at such time and containing such information as is or are specified in the direction;
 - (i) in case the party is a director of the offeree, take, together with the other directors of the offeree, appropriate independent professional advice in relation to the matter concerned and to communicate the substance of any such advice together with his or her views and those of the other directors to the shareholders of the offeree in such manner as is specified in the direction;

(j) procure and publish an independent assessment of any forecasts, valuations or professional reports obtained in respect of matters disclosed by or asserted by any party to the takeover or other relevant transaction; S.9

(k) in case—

- (i) the party has confirmed (following a request made of him or her to do so by the offeror pursuant to rules under *section 8*) that there are available to the offeror resources of such an amount as will enable the offer concerned, if it is fully accepted, to be implemented, and
- (ii) resources of such an amount are not available to the offeror,

provide himself or herself resources of such an amount as will enable that offer, if it is fully accepted, to be implemented.

(4) The Panel may amend or revoke, or suspend for such period as it considers appropriate, any ruling made or direction given by it under this section save where an order has been made by the Court in relation to the direction or ruling under *section 12* or on foot of an application for leave to apply for judicial review under the Order or an application for such judicial review.

(5) The Panel may, by notice in writing served on the party or exchange, require any party to a takeover or other relevant transaction or a recognised stock exchange to furnish to it within such period as is specified in the notice or, if the circumstances so require, immediately, such information as it may reasonably require for the performance of its functions under this Act and which is specified in the notice.

10.—(1) The Panel may on its own initiative, or at the request of any party to a takeover or other relevant transaction or of a recognised stock exchange, enquire into the conduct of any person where it has reasonable grounds for believing that a contravention of the scheduled principles or of rules under *section 8* has occurred or may occur.

Power of Panel to advise, admonish or censure.

(2) The Panel may following an enquiry into the conduct of any person under this section, if it so thinks fit, advise, admonish or censure such person in relation to his or her conduct.

(3) The Panel may publish, in such manner as it thinks fit, notice of the giving or administering of any such advice, admonition or censure and of the terms thereof.

(4) A person whom the Panel, under this section, advises, censures or admonishes in relation to his or her conduct may appeal to the Court against the giving or administering of such advice, censure or admonition and the Court, on the hearing of such an appeal, may as it thinks fit—

- (a) confirm the decision of the Panel in the matter, or
- (b) annul that decision and direct the Panel, as the Court considers appropriate, either to—

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- (i) conduct a fresh enquiry into the matter (and the provisions of this section shall apply to such an enquiry), or
- (ii) publish in a specified manner notice of the decision of the Court.

Hearings by Panel.

11.—(1) The Panel may for the purposes of exercising the powers conferred on it by *section 9* or *10* conduct a hearing, in such manner as it may determine, in relation to the matter concerned.

(2) The whole or any part of a hearing referred to in *subsection (1)* may be conducted otherwise than in public if the Panel considers, having regard to the interests of any party concerned or of any company, a transaction or proposed transaction affecting the securities of which is the subject of the hearing, that it is appropriate that the hearing or the part thereof be so conducted.

(3) The Panel shall for the purpose of a hearing referred to in *subsection (1)* have the powers, rights and privileges vested in the Court or a judge thereof on the hearing of an action in respect of—

- (a) the enforcement of the attendance of witnesses and their examination on oath or otherwise, and
- (b) the compelling of the production of documents,

and a summons signed by a director of the Panel may be substituted for and shall be equivalent to any formal process capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.

(4) A witness before the Panel shall be entitled to the same immunities and privileges as if he or she were a witness before the Court.

(5) Without prejudice to *subsections (6)* and *(7)*, if a person—

- (a) on being duly summoned as a witness before the Panel, without just cause or excuse disobeys the summons, or
- (b) being in attendance as a witness before the Panel refuses to take an oath or to make an affirmation when legally required by the Panel to do so, or to produce any documents (which word shall be construed in this subsection and in *subsection (3)* as including things) in his or her power or control legally required by the Panel to be produced by him or her, or to answer any question to which the Panel may legally require an answer, or
- (c) wilfully gives evidence to the Panel which is material to the matter being determined by the Panel and which he or she knows to be false or does not believe to be true, or
- (d) by act or omission, obstructs or hinders the Panel in the conduct by it of a hearing referred to in *subsection (1)*,

the person shall be guilty of an offence.

(6) If a person does or, as the case may be, fails to do anything referred to in paragraph (a), (b) or (d) of subsection (5), the Court may, on application being made, in a summary manner, to it by the Panel, by order require the person to refrain from doing or, as the case may be, to do the thing concerned. S.11

(7) An application for an order under subsection (6) shall be by motion, and the Court when considering the motion may make such interim or interlocutory order as it considers appropriate.

12.—(1) The Panel may, as respects a ruling made by it under section 9 or a direction given by it under that section which, in its opinion, has not been complied with or is unlikely to be complied with, apply to the Court in a summary manner for such order as may be appropriate by way of enforcement of the ruling or direction, including, without prejudice to the foregoing, an order—

Applications to
Court by Panel in
relation to ruling or
direction.

- (a) requiring any party to the takeover or other relevant transaction concerned to do or to refrain from doing anything specified in the order (including anything referred to in section 9 (3)),
- (b) annulling any transaction that has been carried out otherwise than in accordance with the said ruling or direction,
- (c) providing for any consequential relief or relief of a restitutive nature,

and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for any relief as aforesaid.

(2) If the Panel amends or revokes a ruling or direction under section 9 (“the original ruling or direction”) on the grounds that that ruling or direction was made or given by it on the basis of a statement or information made or furnished to it by a party to a takeover or other relevant transaction concerned which was false or misleading in a material respect, the Panel may, without prejudice, in the case of an amendment of the original ruling or direction, to any application it may make under subsection (1) in relation to that ruling or direction as so amended, apply to the Court in a summary manner for an order annulling any transaction carried out by the said party in accordance with the original ruling or direction and, where appropriate, providing for relief of a consequential nature (including relief of a restitutive nature) and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for any relief as aforesaid.

(3) An application for an order under this section shall be by motion, and the Court when considering the motion may make such interim or interlocutory order as it considers appropriate.

(4) An application for an order under this section shall not be made earlier than 7 days from the date on which the ruling or direction concerned is made, given, amended or revoked, as the case may be.

(5) An order under this section shall not be made if an application for leave to apply for judicial review under the Order, or an application for such judicial review, in relation to the ruling or direction concerned is pending.

(6) Subsections (4) and (5) are without prejudice to section 13 (8).

13.—(1) A person shall not question the validity of—

- (a) a rule under *section 8*,
- (b) a derogation from, or waiver of, such a rule, granted by the Panel under *section 8 (7)*, or
- (c) a ruling or direction of the Panel under *section 9*,

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (in this Act referred to as “the Order”).

(2) A person shall not question, by the means aforesaid, the validity of a rule under *section 8* unless and until the Panel makes a ruling or gives a direction under *section 9* in relation to a takeover or other relevant transaction to which the person is a party, being a ruling or direction the basis for which is, in whole or part, the said rule (in *subsection (3)* referred to as “the related ruling or direction”).

(3) An application for leave to apply for judicial review under the Order in respect of a rule, derogation, waiver, ruling or direction referred to in *subsection (1)* shall—

- (a) subject to *subsection (5)*, be made within the period of 7 days commencing on—
 - (i) in the case of a rule, the date on which the related ruling or direction is made or given,
 - (ii) in the case of a derogation, waiver, ruling or direction, the date on which the derogation, waiver, ruling or direction is granted, made or given,
- (b) be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) to—
 - (i) the Panel,
 - (ii) if the applicant for leave is not the offeror (if any) concerned, the offeror (if any) concerned,
 - (iii) if the applicant for leave is not the offeree (if any) concerned, the offeree (if any) concerned,

and such leave shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the rule, derogation, waiver, ruling or direction is invalid or ought to be quashed.

(4) The Court may, before hearing an application referred to in *subsection (3)*, direct that notice of the application be also served on such persons as the Court may specify.

(5) The Court may extend the period referred to in *paragraph (a)* of *subsection (3)* within which an application for leave to apply for judicial review under the Order may be made in relation to a matter referred to in that subsection if, but only if, it is satisfied that—

- (a) the failure by the applicant for the extension to make such an application for leave within the period aforesaid was not due to any neglect or default of that person or any person acting on his or her behalf, and
- (b) the extension of the period aforesaid would not result in an injustice being done to any other person concerned in the matter and for this purpose the Court shall have regard to—
 - (i) where appropriate, the length of time that has elapsed since any takeover or other relevant transaction to which the rule, derogation, waiver, ruling or direction, the subject of the intended application for leave, relates, or any step of a substantial nature in the effecting of such a takeover or other relevant transaction, has been completed,
 - (ii) the nature of the relief that could ultimately be granted to the applicant for the extension on an application for judicial review under the Order; for the purpose of this subparagraph the Court shall, in particular, have regard to the terms of *section 15*.

(6) The determination of the Court of an application for leave to apply for judicial review as aforesaid or of an application for such judicial review shall be final and no appeal shall lie from the decision of the Court to the Supreme Court in either case save with the leave of the Court which leave shall only be granted where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(7) Subsection (6) shall not apply to a decision of the Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(8) Notwithstanding that an application for leave to apply for judicial review under the Order, or an application for such judicial review, is pending or the period specified in subsection (3) within which such an application for leave may be made has not expired, the Panel may apply to the Court for, and the Court may grant, an order providing for such interim or interlocutory relief in the matter concerned as is appropriate in the circumstances.

(9) References in this section to a ruling or direction of the Panel under *section 9* shall be construed as including references to a decision of the Panel under that section to revoke or suspend such a ruling or direction.

14.—(1) Each of the following, namely—

- (a) an appeal under *section 10* (4),
- (b) an application—
 - (i) under *section 12*, or
 - (ii) for leave to apply for judicial review under the Order in respect of a rule, derogation, waiver, ruling or direction referred to in *section 13* (1), or an application for such judicial review,

Provisions with
respect to appeals,
applications, etc.

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shall be heard by one judge of the Court and the President of the Court shall from time to time make arrangements for securing that all appeals and applications as aforesaid shall, so far as practicable, be heard by the same judge.

(2) The whole or part of any proceedings in relation to an appeal or application as aforesaid may be heard otherwise than in public if the Court, in the interests of justice, considers that the interests of any party concerned or of any company, a transaction or proposed transaction affecting the securities of which is the subject of the appeal or application, so require.

Effect of Act as respects certain transactions.

15.—Without prejudice to the powers of the Court under section 12, nothing in this Act or an instrument thereunder shall operate to invalidate, or to confer on any person a right to have rescinded or otherwise set aside (including on an application for judicial review under the Order), a transaction that—

- (a) has been carried out otherwise than in accordance with the scheduled principles, a rule under section 8 or a ruling or direction under section 9, or
- (b) has been carried out in accordance with a rule, ruling or direction as aforesaid which is subsequently declared invalid or quashed on an application for judicial review under the Order.

Power of Panel to impose charges.

16.—(1) The Panel may, for the purpose of defraying the expenses incurred by it in performing its functions under this Act, impose charges at such rates as are from time to time determined by it with the consent of the Minister—

- (a) on relevant companies,
- (b) on a person (not being a relevant company) in respect of an offer made by that person,
- (c) on any person in respect of a dealing he or she has in the securities of a relevant company,
- (d) on any person in respect of a document furnished by him or her to the Panel, in accordance with rules under section 8, in relation to a takeover or other relevant transaction,
- (e) on any person in respect of a document furnished by him or her to the Panel in relation to any proceedings of the Panel concerning a takeover or other relevant transaction.

(2) The Minister shall, where he or she considers it appropriate to do so, consult with any persons who are, in the Minister's opinion, interested in the matter before he or she consents to any determination by the Panel of rates of charges under subsection (1).

(3) Any expenses incurred—

- (a) by one or more members of the Panel in the doing of an act (including in the doing of an act expressed to be done by, or on behalf of, the "Irish Takeover Panel") before the formation of the Panel, or

(b) by any other person in the doing, on behalf of one or more S.16 such members (including on behalf of such a member or members purporting to act as the “Irish Takeover Panel”), of an act before the formation of the Panel,

shall, if the said act is ratified by the Panel after its formation, be deemed, for the purposes of this section, to be expenses incurred by the Panel in performing its functions under this Act.

(4) Charges imposed by the Panel under *subsection (1)* shall be recoverable by the Panel from the person on whom they have been imposed as a simple contract debt in any court of competent jurisdiction.

17.—(1) Subject to *subsection (2)*, information obtained by virtue of the performance by the Panel of any of its functions under this Act which has not otherwise come to the notice of members of the public shall not be disclosed, save in accordance with law, by any person, including any of the following, namely—

- (a) a member or director of the Panel,
- (b) a professional or other adviser to the Panel,
- (c) any person employed or formerly employed by the Panel.

(2) *Subsection (1)* shall not apply to the disclosure of information by the Panel—

(a) where such disclosure is necessary to enable the Panel to state the grounds on which it has made any ruling or given any direction under *section 9* or on which it has advised, admonished or censured a person under *section 10*,

(b) where such disclosure is made to—

- (i) the Minister,
- (ii) the Garda Síochána,
- (iii) the Director of Public Prosecutions,
- (iv) an inspector appointed under any enactment,
- (v) a stock exchange for the purpose of assisting it in the orderly and proper supervision of any financial market,
- (vi) the Central Bank,
- (vii) any person performing functions in another state which are similar to the functions of the Panel, or
- (viii) such other person as may be prescribed.

(3) A person who contravenes *subsection (1)* shall be guilty of an offence.

Obligations of professional secrecy.

18.—(1) Nothing in this Act shall compel the disclosure or production by any person of any information or document which he or she would, were the information or document required to be disclosed or produced by him or her in legal proceedings, be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

(2) This section is in addition to *section 11 (4)*.

19.—(1) The Panel shall, as soon as may be, but not later than 4 months, after the end of each financial year, make a report in writing to the Minister of its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas not later than 6 months after the end of that year.

(2) The Minister may, after consultation with the Panel, prescribe the form of a report under this section and the manner in which any matter is to be addressed in such a report:

Provided that the Minister shall not exercise his or her power under this section in such a manner as to require the disclosure of information which could materially injure or unfairly prejudice the legitimate interests of any person.

20.—(1) Neither the Panel nor any member, director, other officer or employee of the Panel shall be liable in damages in respect of anything done or omitted to be done by it or him or her in the performance of its or his or her functions under this Act unless the act or omission concerned was done or made in bad faith.

(2) (a) Without prejudice to the generality of *subsection (1)*, neither the Panel nor any other person mentioned in that subsection shall be liable in damages in respect of any ruling, direction, report, statement or notice made, given, prepared, published or served by it unless the ruling, direction or other matter aforesaid was made, given, prepared, published or served in bad faith.

(b) In this subsection “statement” includes any advice, admonition or censure given or administered by the Panel under *section 10 (2)*.

(3) The appointment by any person referred to in *paragraph (b)* or *(c) of section 6 (1)* (“the appointer”) of a person as a director of the Panel shall not render the appointer liable in damages in respect of anything done or omitted to be done by that director in the performance of his or her functions under this Act nor shall the fact of such appointment be held to create any duty owed by the appointer to any person to supervise or superintend the performance by that director of those functions.

(4) Without prejudice to *subsection (5)*, the Panel may, subject to the provisions of any enactment or rule of law, indemnify any member, director, officer or employee of the Panel in respect of anything done or omitted to be done by him or her in the carrying out of his or her duties as such member, director, officer or employee.

(5) The Panel may indemnify any member, director, officer or employee of the Panel in respect of any liability on his or her part to pay damages or costs by reason of anything done or omitted to be done by him or her in the carrying out of his or her duties as such member, director, officer or employee, being a liability that—

- (a) has been determined in proceedings before a court or tribunal of another state or arises by virtue of an agreement entered into in settlement of proceedings before such a court or tribunal, and
- (b) would not have been determined if the provisions of this section had been applied in those proceedings by the court or tribunal or, as the case may be, would not have been the subject of an agreement as aforesaid but for the reliance, in good faith, by the member or other person aforesaid on any legal opinion or advice to the effect that the provisions of this section would not be applied by the court or tribunal in those proceedings.

(6) Part II of the Second Schedule to the Defamation Act, 1961, (which specifies statements that carry qualified privilege subject to explanation or contradiction) is hereby amended by the addition of the following paragraph after paragraph 5:

“6. (1) A copy or fair and accurate report or summary of any ruling, direction, report, investigation, statement or notice made, given, prepared, published or served by the Irish Takeover Panel.

(2) In this paragraph ‘statement’ includes any advice, admonition or censure given or administered by the Irish Takeover Panel under *section 10 (2)* of the *Irish Takeover Panel Act, 1997*.

(3) Nothing in this paragraph or any other provision of this Act shall prejudice the provisions of *section 20* of the *Irish Takeover Panel Act, 1997*.”.

21.—The Panel may, where it considers it necessary to make such a request in order properly to perform its functions under this Act in relation to a particular matter, request—

Panel may request certain reports to be furnished to it.

- (a) an inspector appointed under section 7, 8 or 14 of the Act of 1990 who has made a report to the Court or, as the case may be, the Minister under the said section 7, 8 or 14; or
- (b) a relevant authority of a recognised stock exchange (within the meaning of Part V of the Act of 1990) which has made a report to the Director of Public Prosecutions under section 115 (1) of the Act of 1990;

to furnish a copy of that report to it and the said inspector or relevant authority shall comply with such a request.

22.—(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed.

Regulations.

(2) Every regulation made by the Minister under this Act (other than a regulation referred to in *subsection (3)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and,

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if a resolution annulling the regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(3) Where regulations under *subsection (1)* for the purpose of the definition of "control" in *section 1 (1)* or of *section 2 (c)*, or under *section 7 (3)*, are proposed to be made, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.

Judicial notice to be taken of seal of Panel.

23.—Judicial notice shall be taken of the seal of the Panel and every document purporting to be an instrument made by the Panel and to be sealed with the seal of the Panel (purporting to be authenticated in accordance with the articles of association of the Panel) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

Service of notices.

24.—(1) Where a notice, direction or other document is authorised or required by this Act or an instrument made thereunder to be served on or given to a person, it shall, unless otherwise specified in this Act or the instrument, be addressed to him or her and shall be served on or given to him or her in one of the following ways—

- (a) by addressing it to the person by name and delivering it to him or her;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address (hereafter in this section referred to as "an address for service");
- (c) by sending it by ordinary prepaid post addressed to the person at the address at which he or she ordinarily resides or at an address for service; or
- (d) in any case where the Panel considers the immediate service or giving of it is required, by sending it, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or at an address for service.

(2) For the purposes of this section, a company registered under the Companies Acts, 1963 to 1990, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

Penalties and proceedings.

25.—(1) A person guilty of an offence under *section 11 (5)* or *17 (3)* shall be liable, on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.

(2) Proceedings for an offence under *section 11 (5)* or *17 (3)* may be brought and prosecuted by the Panel.

(3) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, proceedings for an offence under *section 11 (5)* or *17 (3)* may be instituted within 2 years from the date of the offence.

26.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

27.—(1) This Act may be cited as the Irish Takeover Panel Act, 1997. Short title and commencement.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister, may be fixed therefor, either generally or with reference to any particular purpose or provision and different days may be fixed for different purposes and different provisions.

SCHEDULE

Section I (1).

PRINCIPLES APPLICABLE TO THE CONDUCT OF TAKEOVERS, ETC.

1. All shareholders of the same class of the offeree shall be treated similarly by an offeror.

2. Where information is tendered by the offeror or offeree or their respective advisers to shareholders of the offeree in the course of any offer it shall be made available equally to all of the shareholders who may accept the offer.

3. No offer shall be made and no announcement of a proposed offer shall be made save after careful and responsible consideration of the matter by the offeror and any advisers of the offeror and only if the offeror and any advisers of the offeror are satisfied that the offeror will be able to implement the offer if it is accepted.

4. Shareholders to whom an offer is made shall be entitled to receive such information and advice as will enable them to make an informed decision on the offer. For that purpose the information and advice should be accurate and adequate and be furnished to the shareholders in a timely fashion.

5. It is the duty of all parties to a takeover or other relevant transaction to prevent the creation of a false market in any of the securities of the offeror or offeree and to refrain from any statement or conduct which could mislead shareholders or the market.

6. It is the duty of the directors of an offeree when an offer is made or when they have reason to believe that the making of an offer is imminent to refrain from doing anything as respects the conduct of the affairs of the offeree which might frustrate that offer or deprive shareholders of the opportunity of considering the merits of the offer, except upon the authority of those shareholders given in general meeting.

7. Directors of the offeree shall give careful consideration before they enter into any commitment with an offeror (or any other person) which would restrict their freedom to advise shareholders of the offeree in the future.

8. The directors of the offeree and (if it is a company) of the offeror owe a duty to the offeree and the offeror respectively and to the respective shareholders of those companies to act in disregard to personal interest when giving advice and furnishing information in relation to the offer; in discharging that duty the said directors shall be bound to consider the interests of the shareholders as a whole.

9. Rights of control must be exercised in good faith and the oppression of a minority is not acceptable in any circumstances.

10. Where an acquisition of securities is contemplated as a result of which a person may incur an obligation to make an offer, he or she must, before making the acquisition, ensure that he or she can and will continue to be able to implement such an offer.

11. An offeree ought not to be disrupted in the conduct of its affairs beyond a reasonable time by an offer for its securities.

12. A substantial acquisition of securities (whether such acquisition is to be effected by one transaction or a series of transactions) shall take place only at an acceptable speed and shall be subject to adequate and timely disclosure.