



Companies (Acquisition of Shares) Amendment Act 1981

No. 2 of 1981

An Act to amend the *Companies (Acquisition of Shares) Act 1980*

[Assented to 5 March 1981]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Companies (Acquisition of Shares) Amendment Act 1981*.

(2) The *Companies (Acquisition of Shares) Act 1980*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on the day on which the *Companies (Acquisition of Shares) Act 1980* comes into operation.

Restriction on acquisition of shares

3. Section 11 of the Principal Act is amended by omitting sub-section (6).

Acquisitions to which section 11 does not apply

4. Section 12 of the Principal Act is amended by inserting after paragraph (e) the following paragraph:

- “(ea) an acquisition of shares pursuant to a compromise or arrangement approved by the Court under Part VII of the *Companies Ordinance* 1962;”.

***Pari passu* allotments**

5. Section 14 of the Principal Act is amended by omitting from sub-paragraph (i) of paragraph (a) of sub-section (3) “or by the Commission”.

Take-over offers

6. Section 16 of the Principal Act is amended by inserting in paragraph (c) of sub-section (2) “(other than the offeror)” after “company”.

Take-over announcements

7. Section 17 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (1) “and”; and
(b) by adding at the end of sub-section (1) the following word and paragraph:
“and (c) the acquisition of shares does not take place pursuant to a transaction that is a ‘crossing’ within the meaning of the business rules or listing rules of the stock exchange that is the home exchange in relation to the listed public company.”.

Part B statement

8. Section 22 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

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

- (a) if the company is a listed public company—serve on the stock exchange that is the home exchange in relation to the company a copy of the Part B statement and of any report or statement accompanying the Part B statement; and
(b) lodge with the Commission—
(i) a copy of the Part B statement and of any report or statement accompanying the Part B statement; and
(ii) in respect of any report accompanying the Part B statement—a notice in writing signed by the person or persons by whom the report is made to the effect that the person consents, or that each of those persons consents, to the report accompanying the Part B statement.”.

Offeror connected with target company

9. Section 23 of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

“(2A) Where—

- (a) a target company obtains a report for the purposes of compliance with sub-section (1); and
- (b) the report contains a statement to which sub-section 37 (2) or 38 (2) would apply if the statement were to be made or issued by the target company,

the report shall not be used for the purposes of compliance with sub-section (1), and, notwithstanding sub-section (2), shall not accompany the relevant Part B statement, except with the consent in writing of the Commission and in accordance with such conditions (if any) as are specified by the Commission.”.

10. Section 27 of the Principal Act is repealed and the following section substituted:

Variation of take-over offers

“27. (1) An offeror may not vary a take-over offer without the consent in writing of the Commission except—

- (a) in accordance with the provisions of this section; or
- (b) where the regulations permit, either unconditionally or subject to conditions, variations of take-over offers or of a class of take-over offers in which the take-over offer is included—in accordance with the regulations.

“(2) The Commission may consent to the variation of a take-over offer either unconditionally or subject to such conditions as are specified in the instrument of consent.

“(3) Where an offeror varies an offer under a take-over scheme as mentioned in paragraph (1) (a), he shall, at the same time, make a corresponding variation to each other offer (other than an offer that has been accepted before the variation is made) under the take-over scheme.

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

- (a) where a cash sum is so specified—by increasing the amount of that sum;
- (b) where shares are, stock is, or debentures are, so specified—by specifying a cash sum in addition to the shares, stock or debentures;
- (c) where shares are so specified—by increasing the number of those shares;
- (d) where stock is so specified—by increasing the amount of that stock;

- (e) where debentures are so specified—by increasing the rate of interest payable under those debentures;
- (f) where debentures are so specified—by increasing the amount of those debentures;
- (g) where an option to acquire unissued shares is so specified—by varying that option so as to increase the number of unissued shares that may be acquired under that option.

“(5) Where the consideration specified in an offer under a take-over scheme as the consideration for the acquisition of the shares to which the offer relates is varied under sub-section (4)—

- (a) if another offer under the take-over scheme has been accepted before the variation, the contract resulting from the acceptance of that other offer shall be deemed to be varied so that the consideration under the contract is the consideration that would have been specified in that other offer if a corresponding variation had been made to that other offer before it was accepted; and
- (b) if the consideration under the contract referred to in paragraph (a) has already been received, the offeree is entitled to receive the additional consideration forthwith.

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

“(7) Where an offer under a take-over scheme is varied under sub-section (6) so as to offer a cash sum as an alternative consideration and another offer under the take-over scheme was accepted before the variation—

- (a) the contract resulting from the acceptance of that other offer shall be deemed to be varied so as to confer on the person who accepted that other offer the right, by notice in writing given to the offeror within the time mentioned in paragraph (b), to elect to accept the cash sum in lieu of the consideration that was specified in that other offer;
- (b) the offeror shall forthwith dispatch to the person who accepted that other offer a notice in writing informing that person that he may, within one month after receipt of the notice, give notice in writing to the offeror stating that he elects to accept the cash sum in lieu of the consideration that was specified in that other offer; and
- (c) if the consideration under the contract referred to in paragraph (a) was received by the person who accepted that other offer before he received the notice from the offeror under paragraph (b) and that person gives notice to the offeror in accordance with this sub-section electing to accept the cash sum in lieu of the consideration that was specified in that other offer—that person shall return the consideration (together with any necessary documents of transfer) with the notice of election and is entitled, upon receipt of the consideration by the offeror, to receive the cash sum.

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

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

by extending the period during which the offer remains open for a further period but, subject to sub-section (11), so that the total period during which the offer remains open does not exceed 12 months.

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

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

- (a) serving on the target company a notice in writing signed in the same manner as a Part A statement is required by paragraph 16 (2) (d) to be signed and setting out the terms of the proposed variation and particulars of such modifications of the relevant Part A statement as are necessary having regard to the variation; and
- (b) dispatching in a manner approved by the Commission to each person to whom such an offer was made (including a person who has accepted an offer) a copy of that notice.

“(11) Where an offeror purports, in accordance with sub-section (8), to vary an offer under a take-over scheme that is open for a period not exceeding 6 months so that the total period during which the offer would remain open exceeds 6 months, the offeror shall, within the period of one month commencing 5 months after the date that the offer bears—

- (a) serve on the target company a notice—
 - (i) signed in the same manner as a Part A statement is required by paragraph 16 (2) (d) to be signed and setting out any information that the offeror would have been required to include in the relevant Part A statement if the statement had been lodged with the Commission for registration 5 months after the date that the offer bears, being information that differs from the information included in that relevant Part A statement; and
 - (ii) setting out the provisions of sub-section (12);
- (b) dispatch in a manner approved by the Commission to each person to whom an offer under the take-over scheme was made (including a person who had accepted an offer) a copy of that notice; and
- (c) if the target company is a listed public company—serve on the stock exchange that is the home exchange in relation to that company a copy of that notice.

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“(12) Where an offeree who has accepted a take-over offer that is subject to a prescribed condition receives a copy of a notice relating to the offer dispatched pursuant to sub-section (11), the offeree may, by notice in writing given to the offeror within one month after receipt of the first-mentioned notice and accompanied by any consideration that has been received by the offeree (together with any necessary documents of transfer), withdraw his acceptance of the offer and, where such a notice is given by the offeree to the offeror and is accompanied by any such consideration and any necessary documents of transfer, the offeror shall return to the offeree, within 14 days after receipt of the notice, any documents that were sent by the offeree to the offeror with the acceptance of the offer.

“(13) An offeror is not entitled to serve a notice under sub-section (10) or (11) unless a copy of the notice has been registered by the Commission.

“(14) Where a copy of a notice is lodged with the Commission for registration under sub-section (13), the Commission shall not register the copy of the notice unless—

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

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

“(16) An acquisition of shares pursuant to a take-over offer is not invalid by reason that—

- (a) the offeror has purported to vary the take-over offer in accordance with the requirements of this section but has contravened or failed to comply with a requirement of this section;
- (b) the offeror has purported to vary the take-over offer in accordance with the regulations but has contravened or failed to comply with a requirement of the regulations; or
- (c) the offeror has purported to vary the take-over offer with the consent of the Commission given under sub-section (2) but has contravened or failed to comply with a condition imposed by the Commission under that sub-section.

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

Forecasts of profits

11. Section 37 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

- “(3) Nothing in sub-section (1) or (2) applies in relation to a statement that—
- (a) is in writing and is issued with the consent in writing of the Commission and in accordance with such conditions (if any) as are specified by the Commission; or
 - (b) is contained in a report that accompanies a Part B statement—
 - (i) with the consent in writing of the Commission given under sub-section 23 (2A); and
 - (ii) in accordance with such conditions (if any) as are specified by the Commission in the instrument by which that consent is given.”.

Statements on asset valuations

12. Section 38 of the Principal Act is amended—

- (a) by omitting paragraphs (a) and (b) of sub-section (2) and substituting the following paragraphs:

- “(a) is in writing and is issued with the consent in writing of the Commission and in accordance with such conditions (if any) as are specified by the Commission; or
- (b) is contained in a report that accompanies a Part B statement—
 - (i) with the consent in writing of the Commission given under sub-section 23 (2A); and
 - (ii) in accordance with such conditions (if any) as are specified by the Commission in the instrument by which that consent is given.”; and

- (b) by omitting from sub-paragraph (ii) of paragraph (b) of sub-section (4) “another State or” and substituting “a State or another”.

Provisions relating to dissenting shareholders

13. Section 42 of the Principal Act is amended by inserting in sub-section (17) “the provision of” after “under”.

Court may excuse contravention or non-compliance due to inadvertence, &c.

14. Section 48 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

- “(3A) Where—
- (a) an offeror purports to vary offers under a take-over scheme in accordance with section 27 or in accordance with the regulations;
 - (b) a requirement of section 27, or of the regulations, as the case may be, has not been complied with; and

- (c) the Court is satisfied, on application made by the offeror, that the non-compliance was due to inadvertence, mistake or circumstances beyond his control and that the non-compliance ought to be disregarded, or is satisfied on any other grounds that the non-compliance ought to be disregarded,

the Court may make an order directing that the offers shall be deemed to have been varied in accordance with section 27 or in accordance with the regulations, as the case requires.”.

15. After section 49 of the Principal Act the following section is inserted:

Reduction of capital or cancellation of allotment

“49A. Section 64 of the *Companies Ordinance* 1962 does not apply in relation to a reduction of capital, or to a cancellation of shares that have been allotted, where the reduction or cancellation results from, or is necessary by reason of, the operation of this Act, and nothing in that section operates to invalidate any such reduction of capital or cancellation of shares.”.

Continuing offences

16. Section 54 of the Principal Act is amended by omitting from sub-section (3) “sub-section (1) or (2)” and substituting “paragraph (1) (e) or sub-section (2)”.

Power of Commission to declare acquisition of shares or other conduct to be unacceptable

17. Section 60 of the Principal Act is amended—

- (a) by omitting from sub-section (7) “, (3) or (4)” and “, or that as a result of the conduct to which the declaration relates”; and
- (b) by inserting after sub-section (7) the following sub-section:

“(7A) The Commission shall not make a declaration under sub-section (3) or (4) unless it is satisfied that as a result of the conduct to which the declaration relates—

- (a) the shareholders and directors of a company did not know the identity of a person who proposed to acquire a substantial interest in the company;
- (b) the shareholders and directors of a company did not have a reasonable time in which to consider a proposal under which a person would acquire a substantial interest in the company;
- (c) the shareholders and directors of a company were not supplied with sufficient information to enable them to assess the merits of a proposal under which a person would acquire a substantial interest in the company; or
- (d) the shareholders of a company did not have equal opportunities to participate in any benefits accruing to shareholders under a proposal under which a person would acquire a substantial interest in the company.”.

Schedule

18. The Schedule to the Principal Act is amended—

(a) by inserting after clause 5 of Part A the following clause:

“5A. The statement shall set out particulars of the offeror’s intentions regarding—

- (a) the continuation of the business of the target company;
- (b) any major changes to be made to the business of the target company, including any redeployment of the fixed assets of the target company; and
- (c) the future employment of the present employees of the target company.”; and

(b) by adding at the end of Part C the following clause:

“5. The statement shall set out particulars of the on-market offeror’s intentions regarding—

- (a) the continuation of the business of the target company;
- (b) any major changes to be made to the business of the target company, including any redeployment of the fixed assets of the target company; and
- (c) the future employment of the present employees of the target company.”.

NOTE

1. No. 64, 1980.