



Companies (Acquisition of Shares) Amendment Act (No. 2) 1981

No. 94 of 1981

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

[Assented to 18 June 1981]

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

PART I—PRELIMINARY

Short title, &c.

1. (1) This Act may be cited as the *Companies (Acquisition of Shares) Amendment Act (No. 2) 1981*.

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

Commencement

2. (1) Part I of this Act shall come into operation on the day on which this Act receives the Royal Assent.

(2) The provisions of Parts II and III of this Act shall come into operation on such date as is, or on such respective dates as are, fixed by Proclamation.

(3) Part IV of this Act shall come into operation on the day on which the *Companies Act 1981* comes into operation.

PART II—MISCELLANEOUS AMENDMENTS

Definitions

3. Section 6 of the Principal Act is amended by omitting the definition of “listed public company” and substituting the following definition:

“ ‘listed public company’ means a company that has been admitted to the official list of a stock exchange and has not been removed from that official list;”.

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

4. Section 7 of the Principal Act is amended—

(a) by omitting paragraph (6) (a) and substituting the following paragraph:

“(a) one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person;”;

(b) by omitting from paragraph (b) “or” (last occurring); and

(c) by adding at the end of sub-section (6) the following word and paragraph:

“; or (d) the other person has been appointed by the first-mentioned person as a proxy or representative to exercise, at a meeting of members or of a class of members of a company, votes attached to shares of which the first-mentioned person is the holder, where the relevant interest of that person in those shares that arises by reason of his appointment as a proxy or representative would be disregarded under sub-section 9 (8) by reason of paragraph (e) of that sub-section.”.

Relevant interests in shares

5. Section 9 of the Principal Act is amended by inserting in paragraph (8) (e) “only” after “reason” and “particular” before “meeting”.

Take-over announcements

6. Section 17 of the Principal Act is amended by omitting from paragraph (3) (a) “that” and substituting “than”.

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

7. Section 20 of the Principal Act is amended by omitting from paragraphs (1) (a) and (b) “of affairs”.

Notification of acquisitions and disposals of shares

8. Section 39 of the Principal Act is amended—

(a) by omitting from sub-paragraph (1) (b) (ii) “5%” and substituting “the prescribed percentage”;

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- (b) by omitting from sub-paragraph (5) (b) (ii) “1 %” and substituting “the prescribed percentage”; and
- (c) by adding at the end thereof the following sub-section:
 - “(13) A reference to the prescribed percentage is—
 - (a) in sub-paragraph (1) (b) (ii)—a reference to 5% or, where a lesser percentage is prescribed by regulations in force for the time being for the purposes of that sub-paragraph, a reference to that lesser percentage; and
 - (b) in sub-paragraph (5) (b) (ii)—a reference to 1% or, where a lesser percentage is prescribed by regulations in force for the time being for the purposes of that sub-paragraph, a reference to that lesser percentage.”.

Schedule

9. The Schedule to the Principal Act is amended—

- (a) by inserting after paragraph 1 (d) of Part A the following paragraphs:
 - “(da) set out particulars of all acquisitions or disposals of shares in the target company by the offeror, or any person associated with the offeror, in the period of 4 months immediately preceding the date on which the statement is lodged with the Commission for registration, including particulars of the price per share in relation to each acquisition or disposal;
 - (db) where the offeror is or includes a corporation or corporations—set out particulars of all acquisitions or disposals of shares in that corporation or any of those corporations by any person included in, or associated with, the offeror, in the period of 4 months immediately preceding the date on which the statement is lodged with the Commission for registration, including particulars of the price per share in relation to each acquisition or disposal;”;
- (b) by omitting sub-paragraph 1 (e) (iv) of Part A and substituting the following sub-paragraph:
 - “(iv) full particulars of any alterations in the capital structure of any corporation that, at any time during the period of 5 years referred to in sub-paragraph (iii), was a subsidiary of the corporation referred to in that sub-paragraph, being alterations occurring at any time during that period of 5 years when the corporation was a subsidiary of the corporation referred to in that sub-paragraph, and particulars of the dates on which any such corporation became a subsidiary or ceased to be a subsidiary, the date of any such alteration in its capital structure and the source of any increase in its capital;”;
- (c) by omitting from sub-paragraphs 4 (a) (i) and (ii) of Part A “of affairs”;

- (d) by inserting after paragraph 2 (d) of Part B the following paragraphs:
 - “(da) where the offeror is or includes a corporation or corporations—particulars of all acquisitions or disposals of shares in that corporation or any of those corporations by the target company or any person associated with the target company, in the period of 4 months immediately preceding the date on which the Part A statement relating to the offers was served on the target company, including particulars of the price per share in relation to each acquisition or disposal;
 - (db) particulars of all acquisitions or disposals of shares in the target company, by any person associated with the target company, in the period of 4 months immediately preceding the date on which the Part A statement relating to the offers was served on the target company, including particulars of the price per share in relation to each acquisition or disposal;”;
- (e) by omitting from sub-paragraphs 2 (e) (i) and (ii) of Part B “of affairs”;
- (f) by omitting paragraph 2 (e) of Part C and substituting the following paragraphs:
 - “(e) set out particulars of all acquisitions or disposals of shares in the target company by the on-market offeror, or any person associated with the on-market offeror, in the period of 4 months immediately preceding the date of the take-over announcement, including particulars of the price per share in relation to each acquisition or disposal;
 - (ea) where the on-market offeror is or includes a corporation or corporations—set out particulars of all acquisitions or disposals of shares in that corporation or any of those corporations by any person included in, or associated with, the on-market offeror, in the period of 4 months immediately preceding the date of the take-over announcement, including particulars of the price per share in relation to each acquisition or disposal; and”;
- (g) by omitting from sub-paragraphs 4 (a) (i) and (ii) of Part C “of affairs”;
- (h) by inserting after paragraph 2 (d) of Part D the following paragraphs:
 - “(da) where the on-market offeror is or includes a corporation or corporations—particulars of all acquisitions or disposals of shares in that corporation or any of those corporations by the target company or any person associated with the target company, in the period of 4 months immediately preceding the date of the take-over announcement, including particulars of the price per share in relation to each acquisition or disposal;
 - (db) particulars of all acquisitions or disposals of shares in the target company, by any person associated with the target company, in the period of 4 months immediately preceding

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the date of the take-over announcement, including particulars of the price per share in relation to each acquisition or disposal;” and

- (j) by omitting from sub-paragraphs 2 (e) (i) and (ii) of Part D “of affairs”.

PART III—AMENDMENTS RELATING TO CROSSINGS

Other interpretative and evidentiary provisions

10. Section 8 of the Principal Act is amended by omitting sub-section (9) and substituting the following sub-section:

“(9) A reference in sub-section 13 (3) or 40 (3) to an acquisition of shares in a company at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange does not include a reference to an acquisition of shares pursuant to a transaction that, when it is reported to the relevant stock exchange, is, pursuant to the business rules or listing rules of that stock exchange, described as ‘special’.”.

Take-over announcements

11. Section 17 of the Principal Act is amended by omitting paragraphs (1) (a), (b) and (c) and substituting the following paragraphs:

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

PART IV—AMENDMENTS CONSEQUENTIAL ON ENACTMENT OF COMPANIES ACT 1981

12. Section 5 of the Principal Act is repealed and the following section substituted:

Incorporation

“5. (1) Subject to this Act and the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*, the *Companies Act 1981* is incorporated, and shall be read as one, with this Act as if this Act were part of the *Companies Act 1981* and any regulations under the *Companies Act 1981* shall have effect for the purposes of the *Companies Act 1981* as so incorporated with this Act.

“(2) For the purposes of the operation of the *Companies Act 1981* and regulations under that Act and the performance of functions and the exercise of powers under that Act or those regulations, with respect to the provisions of, or matters relating to or arising under, this Act—

- (a) references in the *Companies Act 1981* or those regulations to documents submitted to, or lodged with, the Commission shall be construed as references to documents submitted to, or lodged with, the Commission under this Act; and

- (b) references in those regulations to the *Companies Act 1981* shall be construed as references to that Act as incorporated with this Act by reason of sub-section (1)."

Definitions

13. Section 6 of the Principal Act is amended—

- (a) by omitting "*Companies Ordinance 1962*" from the definition of "company" and substituting "*Companies Act 1981*";
- (b) by omitting the definitions of "dealing in securities", "director", "executive officer", "expert", "marketable securities", "nominee corporation" and "officer";
- (c) by adding "and of sub-section 16 (2A)" at the end of the definition of "Part A statement";
- (d) by omitting the definition of "prescribed interest";
- (e) by omitting "sub-section 62 (1) of the *Companies Ordinance 1962*" from paragraph (a) of the definition of "prescribed occurrence" and substituting "sub-section 121 (1) of the *Companies Act 1981*"; and
- (f) by omitting the definition of "securities".

Acquisitions to which section 11 does not apply

14. Section 12 of the Principal Act is amended—

- (a) by omitting from sub-paragraph (b) (i) "that contained" and substituting "in relation to";
- (b) by omitting from sub-paragraphs (b) (ii), (c) (iii) and (d) (i) "*Companies Ordinance 1962*" and substituting "*Companies Act 1981* or under the corresponding provisions of a previous law of the Territory";
- (c) by omitting from paragraph (ea) "Part VII of the *Companies Ordinance 1962*" and substituting "Part VIII of the *Companies Act 1981*"; and
- (d) by omitting from paragraph (f) "section 270 of the *Companies Ordinance 1962*" and substituting "section 409 of the *Companies Act 1981* or under a corresponding provision of a previous law of the Territory".

Take-over offers

15. Section 16 of the Principal Act is amended—

- (a) by inserting after sub-section (2) the following sub-section:
 - "(2A) In addition to the information referred to in Part A of the Schedule, a Part A statement referred to in this section shall—
 - (a) in the case of—
 - (i) a Part A statement included in a class of Part A statements in relation to which regulations have been made for the purposes of this paragraph;

- (ii) a Part A statement relating to an offer to acquire shares included in a class of offers in relation to which regulations have been made for the purposes of this paragraph; or
- (iii) a Part A statement relating to an offer to acquire shares where the consideration specified in the offer as the consideration for the acquisition of shares is or includes marketable securities included in a class of marketable securities, or is or includes marketable securities of a corporation included in a class of corporations, in relation to which regulations have been made for the purposes of this paragraph,

set out the prescribed matters and contain the prescribed reports, being reports each of which either indicates by way of note any adjustments as respects the figures of any profit or loss or assets and liabilities dealt with by the report that appear necessary to the person making the report or makes those adjustments and indicates that adjustments have been made; or

- (b) in any other case—set out such matters (if any) as the Commission requires and contain such reports (if any) as the Commission requires, being reports each of which either indicates by way of note any adjustments as respects the figures of any profit or loss or assets and liabilities dealt with by the report that appear necessary to the person making the report or makes those adjustments and indicates that adjustments have been made.”; and

- (b) by inserting in sub-section (3) “this section and” before “Part A” (second occurring).

Registration of Part A statements and offers

16. Section 18 of the Principal Act is amended by omitting from paragraph (2) (b) “paragraph 1 (e) of Part A of the Schedule” and substituting “sub-section 16 (2A)”.

Effect of acquiring shares otherwise than under take-over scheme

17. Section 31 of the Principal Act is amended by omitting from sub-section (5) “, and any such cancellation shall not be taken to be a reduction of capital”.

Statements on asset valuations

18. Section 38 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) Nothing in sub-section (2) applies to or in relation to—

- (a) any accounts made out and laid before—

- (i) a company at an annual general meeting in accordance with the *Companies Act* 1981 or a corresponding previous law of the Territory; or

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- (ii) a corporation at an annual general meeting in accordance with the law of the place where the corporation is incorporated or formed that corresponds or corresponded with the *Companies Act 1981* or a corresponding previous law of the Territory;
- (b) any accounts made out and lodged with a person—
 - (i) in accordance with section 158 of the *Companies Act 1981* or a corresponding provision of a previous law of the Territory; or
 - (ii) in accordance with a provision of a law of a State or of another Territory that corresponds or corresponded with a provision referred to in sub-paragraph (i); or
- (c) any document attached to any such accounts in accordance with the *Companies Act 1981* or a previous corresponding law of the Territory or a law of a place where a corporation is incorporated or formed that is referred to in sub-paragraph (a) (ii) or a provision referred to in sub-paragraph (b) (ii).”.

Miscellaneous provisions relating to orders

19. Section 49 of the Principal Act is amended by omitting sub-section (6) and substituting the following sub-sections:

“(6) Section 462 of the *Companies Act 1981* applies in relation to a share or an interest in a share that vests or has vested in the Commission under this section in like manner as it applies in relation to an estate or interest in property referred to in section 462.

“(6A) Sections 463 and 464 of the *Companies Act 1981* apply in relation to a share or an interest in a share that vests or has vested in the Commission under this section in like manner as they apply in relation to property referred to in sections 463 and 464.”.

Repeal

20. Section 49A of the Principal Act is repealed.

Offences

21. Section 53 of the Principal Act is amended by omitting from sub-section (5) “sections 379 and 380 of the *Companies Ordinance 1962*” and substituting “sections 570 and 571 of the *Companies Act 1981*”.

Schedule

22. The Schedule to the Principal Act is amended—

- (a) by omitting sub-paragraphs 1 (e) (i) and (ii) of Part A;
- (b) by omitting from paragraph 2 (j) of Part B “laid before the company in general meeting or dispatched to shareholders in accordance with section 164 of the *Companies Ordinance 1962*” and substituting “of the company, being a balance-sheet that has been laid before the company

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in general meeting or dispatched to shareholders in accordance with section 274 of the *Companies Act* 1981 or a corresponding provision of a previous law of the Territory”; and

- (c) by omitting from paragraph 2 (h) of Part D “laid before the company in general meeting or dispatched to shareholders in accordance with section 164 of the *Companies Ordinance* 1962” and substituting “of the company, being a balance-sheet that has been laid before the company in general meeting or dispatched to shareholders in accordance with section 274 of the *Companies Act* 1981 or a corresponding provision of a previous law of the Territory”.

NOTE

1. No. 64, 1980, as amended. For previous amendments, see No. 2, 1981.