



# Companies and Securities Legislation Amendment Act 1986

No. 68 of 1986

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# Companies and Securities Legislation Amendment Act 1986

No. 68 of 1986

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## An Act to amend laws relating to companies and securities

[Assented to 24 June 1986]

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

1. This Act may be cited as the *Companies and Securities Legislation Amendment Act 1986*.

#### Commencement

2. (1) Parts I and II shall come into operation on the day on which this Act receives the Royal Assent.

(2) Part III shall come into operation on a day to be fixed by Proclamation.

**PART II—AMENDMENTS OF COMPANIES (ACQUISITION OF SHARES) ACT 1980**

**Principal Act**

3. The *Companies (Acquisition of Shares) Act 1980*<sup>1</sup> is in this Part referred to as the Principal Act.

**Other interpretative and evidentiary provisions**

4. Section 8 of the Principal Act is amended—

- (a) by omitting sub-section (2); and
- (b) by omitting from sub-section (3) “other than section 25”.

**Acquisition of shares permitted in certain circumstances**

5. Section 13 of the Principal Act is amended by omitting paragraph (4) (a) and substituting the following paragraph:

“(a) the offers under the take-over scheme are made in accordance with sub-paragraph 16 (2) (a) (i); and”.

**Take-over offers**

6. Section 16 of the Principal Act is amended—

- (a) by omitting from sub-paragraph (2) (a) (i) all the words from and including “holds,” and substituting “holds”;
- (b) by omitting from sub-paragraph (2) (e) (ii) “and”;
- (c) by omitting sub-paragraph (2) (f) (iii);
- (d) by adding at the end of sub-section (2) the following paragraphs:

“(g) in a case where—

- (i) the consideration that under each of the offers is to be paid or provided for the acquisition of the shares to which the offer relates consists solely of a cash sum or includes alternative considerations one of which consists solely of a cash sum; and
- (ii) during the period of 4 months ending on the day on which the first of the offers is dispatched, the offeror, or a person associated with the offeror, purchased or agreed to purchase shares in the target company included in the relevant class of shares,

the amount per share of that cash sum is not less than—

- (iii) unless sub-paragraph (iv) applies—the highest price per share paid or agreed to be paid, pursuant to such a purchase or agreement to purchase, for any of the shares first referred to in sub-paragraph (ii); or
- (iv) if the target company, at any time during that period—

- (A) made, agreed to make, or announced a proposal to make, or to agree to make, an allotment of any of its shares;
- (B) granted, agreed to grant, or announced a proposal to grant, or to agree to grant, an option to subscribe for any of its shares;
- (C) issued, agreed to issue, or announced a proposal to issue, or to agree to issue, convertible notes; or
- (D) declared, or announced a proposal to declare, a dividend,

and an approval by the Commission of an amount in relation to the offers is in force under sub-section (2AB)—the last-mentioned amount;

- (h) none of the offers is subject to a condition (however expressed, and whatever the purported effect of fulfilment or failure of the condition) the fulfilment or failure of which depends on, or depends on matters including, one or both of the following matters:

- (i) whether the number of shares in respect of which the offeror receives an acceptance or acceptances of one or more of the offers exceeds a particular number of shares;
- (ii) whether the number of offers accepted exceeds a particular number,

however the particular number was, or is to be, determined, whether or not the particular number is specified in the condition and, if the particular number is so specified, however the particular number is expressed; and

- (j) without limiting the generality of paragraph (h), none of the offers is subject to a condition (however expressed) that permits the offeror to acquire, or that may result in the offeror acquiring, shares included in the relevant class of shares from some but not all of the persons who accept the respective offers made to the last-mentioned persons.”; and

- (e) by inserting after sub-section (2) the following sub-sections:

“(2AA) For the purposes of paragraph (2) (g), where a person has entered into an agreement for the purchase of a share or shares in a company, being an agreement that provides that the price payable for the share or any of the shares is a price (in this sub-section referred to as the ‘original price’) specified in the agreement but may be varied in accordance with the terms of the agreement, the price agreed to be paid for the share or any of the shares shall be deemed to be the original price.

“(2AB) Upon application by an offeror who proposes to dispatch offers to acquire shares included in a class of shares in a company, the Commission may, by instrument in writing, approve, for the purposes of paragraph (2) (g), a specified amount in relation to the offers.

“(2AC) Where a copy of a Part A statement relating to an offer to acquire shares (whether the offer was made before, or is made at or after, the relevant commencement) was lodged with the Commission before the relevant commencement for registration under sub-section 18 (1), then, notwithstanding the amendments made, and the repeals effected, by sections 4, 5, 6, 8 and 11 of the relevant Act, but subject to sub-section (2AD) of this section—

- (a) the provisions of sections 8 and 13, of sub-section (2) of this section, and of sections 25, 25A, 25C and 42, of this Act, being those provisions as in force after the relevant commencement, do not apply; and
- (b) the provisions of sections 8 and 13, of sub-section (2) of this section, and of sections 25, 26 and 42, of this Act, being those provisions as in force immediately before the relevant commencement, apply,

in relation to—

- (c) an offer to which the Part A statement relates;
- (d) a contract resulting from the acceptance of an offer to which the Part A statement relates; or
- (e) the take-over scheme under which the offers to which the Part A statement relates were or are made.

“(2AD) Where—

- (a) a take-over offer (in this sub-section referred to as the ‘relevant offer’) relating to shares included in a class of shares in a company has been made (whether before, at or after the relevant commencement) under a take-over scheme;
- (b) by virtue of sub-section (2AC), the provisions referred to in paragraph (2AC) (b), being those provisions as in force as mentioned in that paragraph, apply in relation to the relevant offer;
- (c) but for this sub-section, the take-over offers made under the take-over scheme would be taken to have been made in accordance with sub-paragraph (2) (a) (i);
- (d) the number (in this sub-section referred to as the ‘first relevant number’) specified, in accordance with sub-paragraph (2) (f) (iii), in the relevant offer (or, if that number is expressed as a percentage, the number (in this sub-section also referred to as the ‘first relevant number’) of shares represented by that percentage) is less than the total number (in this sub-section referred to as the ‘second relevant

- number') of shares (other than shares to which the offeror was entitled at the time when the first take-over offer was made under the take-over scheme) included in that class; and
- (e) in a case where the relevant offer was made before the relevant commencement—as at the relevant commencement, the period during which the relevant offer remains open has not ended,

then—

- (f) the take-over offers made under the take-over scheme shall be deemed not to have been made in accordance with sub-paragraph (2) (a) (i) and to have been made in accordance with sub-paragraph (2) (a) (ii);
- (g) the relevant offer shall be deemed always to have related to, to relate to, and, if the relevant offer has been or is accepted, to have been or to be accepted in relation to, a proportion of the shares to which the relevant offer would, but for this sub-section and section 26, relate, being the proportion that the first relevant number bears to the second relevant number; and
- (h) in a case where paragraph (e) applies and the period during which the relevant offer remains open would, but for this paragraph, end before the end of the period of 7 days commencing at the relevant commencement—the period during which the relevant offer remains open shall, except for the purposes of sub-section 27 (8), be deemed to be extended until the end of that period of 7 days.

“(2AE) The document prepared by the Companies and Securities Law Review Committee, entitled “Report to the Ministerial Council on Partial Takeover Bids” and dated August 1985 is hereby declared to be a relevant document for the purposes of section 5B of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* but, notwithstanding that section, consideration shall not be given to that document in the interpretation of a provision of this Act other than a provision as in force after the relevant commencement.

“(2AF) Neither section 25, as in force after the relevant commencement, nor section 25C shall be taken to affect by implication the interpretation of this Act as in force at any time before the relevant commencement.

“(2AG) In sub-sections (2AC), (2AD), (2AE) and (2AF) and in this sub-section—

‘relevant Act’ means the *Companies and Securities Legislation Amendment Act 1986*;

‘relevant commencement’ means the commencement of Part II of the relevant Act.”.

**Take-over announcements**

7. Section 17 of the Principal Act is amended—

- (a) by omitting from sub-section (7) “specified in the agreement as the price payable for the share or any of the shares may be increased” and substituting “payable for the share or any of the shares is a price (in this sub-section referred to as the ‘original price’) specified in the agreement but may be varied”; and
- (b) by omitting from sub-section (7) “taken to be the price so specified in the agreement” and substituting “deemed to be the original price”.

8. Sections 25 and 26 of the Principal Act are repealed and the following sections are substituted:

**Acceptance of take-over offers by third parties**

“25. Where—

- (a) a take-over offer (in this sub-section referred to as the ‘original offer’) relating to particular shares (in this sub-section referred to as the ‘relevant shares’) has been made to a person under a take-over scheme under which take-over offers have been made in accordance with sub-paragraph 16 (2) (a) (i); or
- (b) a take-over offer (in this sub-section also referred to as the ‘original offer’) relating to a proportion of particular shares (in this sub-section also referred to as the ‘relevant shares’) has been made to a person under a take-over scheme under which take-over offers have been made in accordance with sub-paragraph 16 (2) (a) (ii),

and another person was at the time when the original offer was made, or becomes at any time during the period during which the original offer remains open and before the original offer is accepted, the holder of, or entitled to be registered as the holder of, shares (in this sub-section referred to as the ‘transferred shares’), being some or all of the relevant shares, the offeror shall be deemed—

- (c) to have made at that time to the other person a corresponding take-over offer relating to—
  - (i) in a case where paragraph (a) applies—the transferred shares; or
  - (ii) in a case where paragraph (b) applies—that proportion of the transferred shares;
- (d) to have made at that time to the person referred to in paragraph (a) or (b), as the case may be, a corresponding take-over offer relating to—
  - (i) in a case where paragraph (a) applies—such (if any) of the relevant shares as are shares other than the transferred shares; or



- (ii) in a case where paragraph (b) applies—that proportion of such (if any) of the relevant shares as are shares other than the transferred shares; and
- (e) notwithstanding section 21, to have withdrawn, immediately after that time, the original offer.

**Acceptance of take-over offers by trustees, nominees, &c.**

“25A. (1) Where—

- (a) a take-over offer (in this sub-section referred to as the ‘original offer’) relating to particular shares (in this sub-section referred to as the ‘relevant shares’) included in a class of shares in a company has been made to a person under a take-over scheme under which take-over offers have been made in accordance with sub-paragraph 16 (2) (a) (i); or
- (b) a take-over offer (in this sub-section also referred to as the ‘original offer’) relating to a proportion of particular shares (in this sub-section also referred to as the ‘relevant shares’) included in a class of shares in a company has been made to a person under a take-over scheme under which take-over offers have been made in accordance with sub-paragraph 16 (2) (a) (ii),

the person may, at any time during the period during which the original offer remains open and before the original offer is accepted, being a time when the relevant shares consist of 2 or more distinct portions, give to the offeror a notice in writing that—

- (c) specifies a number (in this sub-section referred to as the ‘specified number’), being the number of shares of which one of those distinct portions consists, or being the total number of shares of which 2 or more of those distinct portions together consist; and
- (d) states that the person accepts the original offer in so far as it relates to—
  - (i) in a case where paragraph (a) applies—the specified number of shares included in that class; or
  - (ii) in a case where paragraph (b) applies—that proportion of the specified number of shares included in that class,

and, if the person does so—

- (e) the offeror shall be deemed to have made to the person, immediately before the notice is so given, a corresponding take-over offer relating to—
  - (i) in a case where paragraph (a) applies—the specified number of shares included in that class; or
  - (ii) in a case where paragraph (b) applies—that proportion of the specified number of shares included in that class;
- (f) the person shall be deemed to have accepted, upon the giving of the notice, the corresponding take-over offer that the offeror is, by virtue of paragraph (e), to be deemed to have made to the person;

- (g) notwithstanding section 21, the offeror shall be deemed to have withdrawn, immediately after the giving of the notice, the original offer; and
- (h) a corresponding take-over offer shall not, by reason only of the offeror becoming, or becoming entitled to be registered as, the holder of shares as a result of the operation of paragraph (f) of this sub-section, be deemed by virtue of paragraph 25 (d) to have been made to the person.

“(2) Where—

- (a) a take-over offer has been made to a person;
- (b) the person gives to the offeror, at a particular time during the period during which the offer remains open and before the offer is accepted, a notice (in this sub-section referred to as the ‘relevant notice’) that purports to be a notice under sub-section (1) relating to the offer; and
- (c) the person is not entitled under that sub-section so to give the relevant notice,

then—

- (d) in a case where the person so gives the relevant notice knowing that the person is not so entitled—the person contravenes this sub-section; and
- (e) in any case—sub-section (1) has effect in relation to the relevant notice as if the person had been so entitled.

“(3) For the purposes of this section, where a person who holds particular shares included in a class of shares in a company holds some, but not all, of the first-mentioned shares on account of a particular person, such of the first-mentioned shares as the first-mentioned person holds on account of the particular person shall be taken to constitute a distinct portion of the first-mentioned shares.

“(4) For the purposes of this section, where a person holds particular shares included in a class of shares in a company, such (if any) of the first-mentioned shares as the person does not hold on account of a person shall be taken to constitute a distinct portion of the first-mentioned shares.

“(5) For the purposes of this section—

- (a) a person who is, or is entitled to be registered as, the holder of particular shares shall be taken to hold the shares; and
- (b) a person who—
  - (i) is entitled to be registered as the holder of particular shares; and
  - (ii) holds the person’s interest in the shares on account of a particular person,

shall be taken to hold the shares on account of the particular person.

“(6) For the purposes of this section, where a person holds shares, or an interest in shares, as trustee for, as nominee for, or otherwise on behalf of or on account of, a person, the first-mentioned person shall be taken to hold the shares, or the interest in the shares, as the case may be, on account of the second-mentioned person.

**Avoidance of odd lots where take-over offer relates to proportion of offeree's shares**

“25B. (1) Where, at a particular time—

- (a) a take-over offer (in this sub-section referred to as the ‘relevant offer’) relating to a proportion of particular shares (in this sub-section referred to as the ‘relevant shares’) included in a class of shares in a company has been made to a person under a take-over scheme under which take-over offers have been made in accordance with sub-paragraph 16 (2) (a) (ii);
- (b) the target company in relation to the take-over scheme is a listed company;
- (c) the relevant offer is accepted; and
- (d) a proportion of the relevant shares, being the proportion to which the relevant offer does not relate, consists of an odd lot of shares or consists of a marketable parcel or marketable parcels of shares and an odd lot of shares,

the relevant offer shall, except for the purposes of sub-paragraph 16 (2) (a) (ii) and this sub-section, be deemed always to have related to, to relate to, and to have been accepted in relation to, a number of shares included in that class equal to the sum of—

- (e) the number of shares of which the proportion referred to in paragraph (a) of this sub-section consists; and
- (f) the number of shares in that odd lot of shares.

“(2) Sub-section (1) of this section has effect notwithstanding section 25 or sub-section 25A (1).

“(3) Subject to sub-section (4), sub-section (1) applies in relation to an offer made under a take-over scheme if, and only if, the first offer under the take-over scheme was made after the commencement of Part II of the *Companies and Securities Legislation Amendment Act 1986*.

“(4) Where, by virtue of paragraph 16 (2AD) (f), take-over offers made under a take-over scheme are to be deemed to have been made in accordance with sub-paragraph 16 (2) (a) (ii), sub-section (1) of this section has effect in relation to each take-over offer made under the take-over scheme, and so has effect—

- (a) as if the reference in that sub-section to a particular time included a reference to a time before the commencement of Part II of the *Companies and Securities Legislation Amendment Act 1986*; and
- (b) notwithstanding paragraph 16 (2AD) (g) of this Act.

**Offeror not entitled to bid for balance where take-over offer relates to proportion of offeree's shares**

“25C. Where a take-over offer (in this sub-section referred to as the ‘relevant offer’) relating to a proportion of particular shares (in this sub-section referred to as the ‘relevant shares’) has been made to a person under a take-over scheme under which take-over offers have been made in accordance with sub-paragraph 16 (2) (a) (ii), an offer (other than an offer that the offeror is, by virtue of section 25 or sub-section 25A (1), to be deemed to have made) that—

- (a) was or is made by the offeror before, at or after the time when the relevant offer was made;
  - (b) was or is made to that person or to any other person; and
  - (c) relates to shares that are or include some or all of such of the relevant shares as are not shares to which the relevant offer relates,
- shall be taken to have been, or to be, as the case may be, made otherwise than under the take-over scheme.”.

9. After section 31 of the Principal Act the following sections are inserted in Part III:

**Constituent documents of a company may require a resolution approving certain acquisitions of shares in the company**

“31A. (1) In this section—

‘relevant day’, in relation to a take-over scheme, means the day that is 14 days before the end of the period during which the offers under the take-over scheme remain open;

‘take-over approval provisions’, in relation to a company, means provisions of the kind referred to in sub-section (2) that are contained in the constituent documents of the company.

“(2) Subject to this section and section 31B, the constituent documents of a company may contain provisions to the effect that, where offers have been made under a take-over scheme in accordance with sub-paragraph 16 (2) (a) (ii) in respect of shares included in a class of shares in the company (whether the first offer under the take-over scheme was made before, at, or at any time after, the commencement of Part II of the *Companies and Securities Legislation Amendment Act 1986*)—

- (a) the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the take-over scheme is prohibited unless and until a resolution (in this sub-section referred to as a ‘prescribed resolution’) to approve the take-over scheme is passed in accordance with the provisions;
- (b) a person (other than the offeror or a person associated with the offeror) who, as at the end of the day on which the first offer under the take-over scheme was made, held shares included in that class is entitled to vote on a prescribed resolution and, for the purposes

of so voting, is entitled to one vote for each of the last-mentioned shares;

- (c) a prescribed resolution shall be voted on in whichever of the following ways is specified in the provisions:
  - (i) at a meeting, convened and conducted by the company, of the persons entitled to vote on the resolution;
  - (ii) by means of a postal ballot conducted by the company in accordance with a procedure set out in the provisions,or, if the provisions so provide, in whichever of those ways is determined by the directors of the company; and
- (d) a prescribed resolution, being a resolution that has been voted on, shall be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than such proportion (not exceeding one-half) as is specified in the provisions, and otherwise shall be taken to have been rejected.

“(3) Except in so far as the constituent documents of a company otherwise provide, the provisions (whether of a law or of the constituent documents, or any other provisions) that apply in relation to a general meeting of the company shall, with such modifications as the circumstances require, apply in relation to a meeting that is convened pursuant to take-over approval provisions of the company and shall so apply as if the last-mentioned meeting were a general meeting of the company.

“(4) Where—

- (a) take-over offers have been made under a take-over scheme in accordance with sub-paragraph 16 (2) (a) (ii) (whether the first offer under the take-over scheme was made before, at, or at any time after, the commencement of Part II of the *Companies and Securities Legislation Amendment Act 1986*); and
- (b) the constituent documents of the target company in relation to the take-over scheme contain take-over approval provisions,

then—

- (c) the directors of the company shall ensure that a resolution to approve the take-over scheme is voted on in accordance with those provisions before the relevant day in relation to the take-over scheme; and
- (d) if the directors fail to ensure that such a resolution is so voted on, each of the directors contravenes this sub-section.

“(5) Where a resolution to approve a take-over scheme is voted on, in accordance with take-over approval provisions of the target company in relation to the take-over scheme, before the relevant day in relation to the take-over scheme, the target company shall, on or before the relevant day—

- (a) give to the offeror; and

(b) in a case where the target company is a listed company—serve on each notifiable securities exchange in relation to the target company, a notice in writing stating that a resolution to approve the take-over scheme has been so voted on and that the resolution has been passed, or has been rejected, as the case requires.

“(6) Where, as at the end of the day before the relevant day in relation to a take-over scheme under which offers have been made in accordance with sub-paragraph 16 (2) (a) (ii)—

- (a) the constituent documents of the target company in relation to the take-over scheme contain take-over approval provisions; and
- (b) no resolution to approve the take-over scheme has been voted on in accordance with those provisions,

a resolution to approve the take-over scheme shall, for the purposes of those provisions, be deemed to have been passed in accordance with those provisions.

“(7) Where—

- (a) the constituent documents of a company contain take-over approval provisions; and
- (b) a resolution to approve a take-over scheme under which offers have been made in accordance with sub-paragraph 16 (2) (a) (ii) is voted on, in accordance with those provisions, before the relevant day in relation to the take-over scheme and is rejected,

then—

- (c) notwithstanding section 21, all offers under the take-over scheme that have not, as at the end of the relevant day, been accepted, and all offers (in this sub-section referred to as the ‘accepted offers’) under the take-over scheme that have been accepted and from whose acceptance binding contracts have not, as at the end of the relevant day, resulted, shall be deemed to be withdrawn at the end of the relevant day;
- (d) the offeror shall, forthwith after the end of the relevant day, return to each person who has accepted any of the accepted offers any documents that were sent by the person to the offeror with the acceptance of the offer;
- (e) the offeror is entitled to rescind, and shall, forthwith after the end of the relevant day, rescind, each contract resulting from the acceptance of an offer made under the take-over scheme; and
- (f) a person who has accepted an offer made under the take-over scheme is entitled to rescind the contract (if any) resulting from that acceptance.

“(8) This section and section 31B have effect notwithstanding anything contained in the business rules or listing rules of a securities exchange, in the constituent documents of a company, or in any agreement.

**Provisions relating to the inclusion, effect and renewal of take-over approval provisions**

“31B. (1) In this section—

‘renew’, in relation to take-over approval provisions of a company, means renew under sub-section (3);

‘requirement’, in relation to a company, includes a requirement of a law or of the constituent documents of the company;

‘take-over approval provisions’, in relation to a company, means provisions of the kind referred to in sub-section 31A (2) that are contained in the constituent documents of the company.

“(2) Take-over approval provisions of a company, unless sooner omitted from the constituent documents of the company, cease to have effect at the end of—

(a) unless paragraph (b) or (c) applies—3 years;

(b) if the constituent documents provide that the provisions have effect for a specified period of less than 3 years and the provisions have not been renewed—the specified period; or

(c) if the provisions have been renewed on at least one occasion and the resolution, or the later or last of the resolutions, as the case requires, renewing the provisions states that the provisions are renewed for a specified period of less than 3 years—the specified period,

commencing—

(d) if the provisions were contained in the constituent documents at the time when the company was incorporated or formed and have not been renewed—at that time;

(e) if the provisions were inserted in the constituent documents and have not been renewed—at the time when the provisions were so inserted; or

(f) if the provisions have been renewed on at least one occasion—at the time when the provisions were renewed, or last renewed, as the case requires,

and, upon the provisions ceasing to have effect, the constituent documents are, by force of this sub-section, altered by omitting the provisions.

“(3) A company may renew take-over approval provisions of the company in any manner in which the company may alter its constituent documents by inserting such provisions and shall, in relation to a renewal of such provisions, comply with the requirements that apply in relation to such an alteration of its constituent documents, being an alteration in the manner in which the renewal is effected.

“(4) A company shall, with every notice that—

(a) specifies the intention to propose—

- (i) a resolution for the alteration of the constituent documents of the company by inserting take-over approval provisions; or
  - (ii) a resolution to renew take-over approval provisions of the company; and
- (b) is sent to a person who is entitled to vote on the proposed resolution, send a statement that—
- (c) explains the effect of the proposed provisions, or of the provisions proposed to be renewed, as the case may be;
  - (d) explains the reasons for proposing the resolution and sets out the factual matters and principles underlying those reasons;
  - (e) states whether, as at the day on which the statement is prepared, any of the directors of the company is aware of a proposal by a person to acquire, or to increase the extent of, a substantial interest in the company and, if so, explains the extent (if any) to which such a proposal has influenced the decision to propose the resolution;
  - (f) in a case where sub-paragraph (a) (ii) applies—reviews both the advantages, and disadvantages, of the provisions proposed to be renewed for the directors, and the members, respectively, of the company during the period during which the provisions have been in effect; and
  - (g) discusses both the potential advantages, and the potential disadvantages, of the proposed provisions, or of the provisions proposed to be renewed, as the case may be, for the directors, and the members, respectively, of the company.

“(5) Where a company contravenes sub-section (4), the company and any officer of the company who is in default are each guilty of an offence.

“(6) The penalty for an offence arising under sub-section (5) is a fine not exceeding \$5,000 or imprisonment for a period not exceeding 1 year, or both.

“(7) Where, on a particular day, a company purports to—

- (a) alter its constituent documents by inserting take-over approval provisions; or
- (b) renew take-over approval provisions of the company,

then—

- (c) the holders of not less in the aggregate than 10% of the issued shares included in a class of shares in the company may, within 21 days after that day, apply to the Court to have the purported alteration or renewal set aside; and
- (d) unless and until an application made under paragraph (c) is finally determined by the making of an order setting aside the purported alteration or renewal, the company shall be deemed for all purposes (other than the purposes of such an application)—



- (i) to have validly altered its constituent documents by inserting the provisions referred to in paragraph (a); or
  - (ii) to have validly renewed the provisions referred to in paragraph (b),
- as the case may be.

“(8) An application under paragraph (7) (c) may be made, on behalf of the shareholders entitled to make the application, by such one or more of their number as they appoint in writing.

“(9) On an application under paragraph (7) (c), the Court may, if it is satisfied that it is appropriate in all the circumstances to do so, make an order setting aside the purported alteration or renewal, but otherwise shall dismiss the application.

“(10) A company shall, within 14 days after the Court makes in relation to the company an order of the kind referred to in sub-section (9), lodge an office copy of the order with the Commission.

“(11) Where a company contravenes sub-section (10), the company and any officer of the company who is in default are each guilty of an offence.

“(12) The penalty for an offence arising under sub-section (11) is a fine not exceeding \$2,500 or imprisonment for a period not exceeding 6 months, or both.”.

**10.** Before section 40 of the Principal Act the following section is inserted:

**Persons selling shares before the making of take-over offers or of a take-over announcement not to be given additional benefits in certain cases**

“39B. (1) Where—

- (a) a person acquires shares included in a class of shares in a company;
- (b) within 6 months after the acquisition referred to in paragraph (a)—
  - (i) an offeror makes take-over offers under a take-over scheme; or
  - (ii) an on-market offeror causes a take-over announcement to be made,

in respect of shares included in that class;

- (c) at a particular time, whether before, at or after the end of the period (in this sub-section referred to as the ‘offer period’) during which the take-over offers, or offers constituted by the take-over announcement, as the case may be, remain open, a person (in this sub-section referred to as the ‘relevant person’), being the offeror or a person associated with the offeror, or being the on-market offeror or a person associated with the on-market offeror, as the case may be—
  - (i) gives, offers to give, or agrees to give, a benefit to; or

- (ii) receives, or agrees to receive, a benefit from, a person who had, immediately before the acquisition referred to in paragraph (a), a relevant interest in any of the shares first referred to in that paragraph, or a person who is associated with a person who so had such a relevant interest;
- (d) the giving or receiving of the benefit, the offer to give the benefit, or the agreement to give or receive the benefit, as the case may be, is attributable to, or is attributable to matters including, the acquisition referred to in paragraph (a); and
- (e) the amount or value of the benefit was, or is to be, determined by reference to, or by reference to matters including—
  - (i) in a case where sub-paragraph (b) (i) applies—the amount or value of the consideration that, under an offer made under the take-over scheme (including such an offer as varied, deemed to be varied or proposed to be varied), is to be paid or provided for the acquisition of the shares to which the offer relates;
  - (ii) in a case where sub-paragraph (b) (ii) applies—the price per share specified, or deemed to be specified, in the take-over announcement; or
  - (iii) the amount or value of the consideration for which the offeror or on-market offeror acquires during the offer period (whether or not as a result of the acceptance of an offer made under the take-over scheme, or of an offer constituted by the take-over announcement, as the case may be), or pursuant to section 42 or 43, shares included in that class, or for which the offeror or on-market offeror proposes, offers, or proposes to offer, so to acquire such shares,

the relevant person contravenes this sub-section.

“(2) Where—

- (a) a person acquires shares included in a class of shares in a company;
  - (b) as at a particular time within 6 months after the acquisition referred to in paragraph (a)—
    - (i) an offeror proposes to dispatch take-over offers under a take-over scheme; or
    - (ii) an on-market offeror proposes to cause a take-over announcement to be made,
- in respect of shares included in that class;
- (c) at the time referred to in paragraph (b), a person (in this sub-section referred to as the ‘relevant person’), being the offeror or a person associated with the offeror, or being the on-market offeror or a person associated with the on-market offeror, as the case may be—
    - (i) gives, offers to give, or agrees to give, a benefit to; or
    - (ii) receives, or agrees to receive, a benefit from,

a person who had, immediately before the acquisition referred to in paragraph (a), a relevant interest in any of the shares first referred to in that paragraph, or a person who is associated with a person who so had such a relevant interest;

- (d) the giving or receiving of the benefit, the offer to give the benefit, or the agreement to give or receive the benefit, as the case may be, is attributable to, or is attributable to matters including, the acquisition referred to in paragraph (a); and
- (e) the amount or value of the benefit was, or is to be, determined by reference to, or by reference to matters including—
  - (i) in a case where sub-paragraph (b) (i) applies—the amount or value of the consideration that, under an offer proposed to be made under the take-over scheme, is to be paid or provided for the acquisition of the shares to which the offer relates;
  - (ii) in a case where sub-paragraph (b) (ii) applies—the price per share proposed to be specified in the take-over announcement; or
  - (iii) the amount or value of the consideration for which the offeror or on-market offeror proposes to acquire shares included in that class (whether or not as a result of the acceptance of a proposed offer under the take-over scheme, or of an offer constituted by the proposed take-over announcement, as the case may be) during the period during which the proposed take-over offers, or offers constituted by the proposed take-over announcement, as the case may be, remain open, or for which the offeror or on-market offeror proposes to acquire such shares pursuant to section 42 or 43,

the relevant person contravenes this sub-section.

“(3) An agreement is void to the extent that it purports to provide for—

- (a) a person to give, offer to give, or agree to give, a benefit to a person; or
  - (b) a person to receive, or agree to receive, a benefit from a person,
- in contravention of sub-section (1) or (2).

“(4) In this section—

‘agreement’ means any agreement, arrangement or understanding—

- (a) whether formal or informal or partly formal and partly informal;
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

'benefit' means a benefit whether by way of payment of cash or otherwise."

#### **Provisions relating to dissenting shareholders**

11. Section 42 of the Principal Act is amended by omitting from paragraphs (1) (a) and (2) (a) "in respect of shares included in a class of shares by an offeror who proposes to acquire all the shares included in that class" and substituting "under a take-over scheme in accordance with subparagraph 16 (2) (a) (i) in respect of shares included in a class of shares".

#### **Offences**

12. Section 53 of the Principal Act is amended by inserting in subsection (4) "31B," before "44".

### **PART III—AMENDMENTS OF COMPANIES ACT 1981**

#### **Principal Act**

13. The *Companies Act 1981*<sup>2</sup> is in this Part referred to as the Principal Act.

#### **Substantial shareholdings, substantial shareholders, notifiable changes, &c.**

14. Section 136 of the Principal Act is amended by adding at the end the following sub-sections:

"(10) For the purposes of this Division, a notifiable change in the entitlement of a person to shares in a company shall be taken to occur if, and only if, there occurs a change in the relevant interest or relevant interests of the person, or in the relevant interest or relevant interests of an associate of the person, in voting shares in the company.

"(11) For the purposes of sub-section (10), but without limiting the generality of that sub-section, where a person acquires, or disposes of, voting shares in a company, a change in the relevant interest or relevant interests of the person in voting shares in the company shall be deemed to occur.

"(12) For the purposes of this Division—

- (a) a person who becomes required to give a notice under sub-section 137 (1) shall be taken to have become, at the time when the person became a substantial shareholder in the company, required to give a substantial shareholding notice to the company;
- (b) a person who becomes required to give a notice under sub-section 138 (1) of this Act as in force after the commencement of Part III of the *Companies and Securities Legislation Amendment Act 1986* shall be taken to have become, immediately after the change referred to in paragraph 138 (1) (a) of this Act as so in force, required to give a substantial shareholding notice to the company; and
- (c) a person who became required to give a notice under sub-section 138 (1) of this Act as in force at any time before the commencement

of that Part shall be taken to have become, immediately after the change first referred to in that sub-section as so in force, required to give a substantial shareholding notice to the company.”.

15. Sections 138 and 139 of the Principal Act are repealed and the following sections are substituted:

**Substantial shareholder to notify company of changes in interests**

“138. (1) Where—

- (a) there occurs at a particular time a notifiable change in the entitlement of a person to shares in a company;
- (b) immediately before the change, the person was a substantial shareholder in the company; and
- (c) immediately after the change, the person is a substantial shareholder in the company and is entitled to a percentage of the shares included in a class of voting shares in the company, being a percentage that is greater than, or less than, by 1% of the shares included in that class, the percentage of the shares included in that class to which the person was entitled at the time (in this sub-section referred to as the ‘relevant time’) when the person last became required to give a substantial shareholding notice to the company,

the person shall give to the company a notice in the prescribed form that—

- (d) sets out the person’s name;
- (e) sets out, in relation to each notifiable change in the entitlement of the person to shares in the company (not being a prescribed change) that occurred during the period commencing at the relevant time and ending immediately after the time referred to in paragraph (a)—
  - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate;
  - (ii) the date of the change and the prescribed particulars of the change; and
  - (iii) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the change occurred; and
- (f) is accompanied by the prescribed documents.

“(1A) For the purposes of sub-section (1), where the voting shares in a company are not divided into 2 or more classes, those shares shall be deemed to constitute a class.

“(2) A person required to give a notice under sub-section (1) shall give the notice within 2 business days after that person becomes aware of the change referred to in paragraph (1) (a).

**Person who ceases to be a substantial shareholder to notify company**

“139. (1) A person who ceases at a particular time (in this sub-section referred to as the ‘relevant time’) to be a substantial shareholder in a company shall give to the company a notice in the prescribed form that—

- (a) sets out the person’s name;
- (b) sets out, in relation to each notifiable change in the entitlement of the person to shares in the company (not being a prescribed change) that occurred during the period commencing at the time when the person last became required to give a substantial shareholding notice to the company and ending at the relevant time—
  - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate;
  - (ii) the date of the change and the prescribed particulars of the change; and
  - (iii) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the change occurred;
- (c) sets out the date on which the person ceased to be a substantial shareholder in the company and the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the person ceased to be a substantial shareholder in the company; and
- (d) is accompanied by the prescribed documents.

“(2) A person required to give a notice under sub-section (1) shall give the notice within 2 business days after the person becomes aware that the person or an associate has ceased to have a relevant interest or relevant interests in a share or shares in the company to the extent necessary to make the person a substantial shareholder in the company.”.

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**NOTES**

- 1. No. 64, 1980, as amended. For previous amendments, see Nos. 2, 94 and 153, 1980; No. 26, 1982; No. 108, 1983; and No. 192, 1985.
- 2. No. 89, 1981, as amended. For previous amendments, see No. 153, 1981; Nos. 26 and 80, 1982; No. 108, 1983; No. 13, 1984; and Nos. 140, 192 and 193, 1985.

[*Minister’s second reading speech made in—  
House of Representatives on 14 March 1986  
Senate on 30 April 1986*]