

# COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) BILL, 1981

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## EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the National Companies and Securities Commission (State Provisions) Bill, 1981.

The object of this Bill is to adopt as laws of the State the provisions of the Companies (Acquisition of Shares) Act 1980 of the Commonwealth and regulations under that Act. The Bill also authorises the provisions as so applied to be reprinted in the form in which they apply in New South Wales. The provisions of the Commonwealth Act so applying may be cited as the "Companies (Acquisition of Shares) (New South Wales) Code".

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Interpretation.

Clause 4 applies the provisions of the Companies (Acquisition of Shares) Act 1980 of the Commonwealth as laws of New South Wales, with amendments as set out in Schedule 1.

Clause 5 provides that the provisions applying by reason of the proposed section 4 operate to the exclusion of the existing takeover provisions contained in the Companies Act, 1961, and are to be treated as part of that Act.

Clause 6 applies the provisions of the regulations in force under the Companies (Acquisition of Shares) Act 1980 of the Commonwealth as regulations made under the provisions applying by reason of the proposed section 4, with amendments to the regulations as set out in Schedule 2.

Clause 7 provides that the provisions applying by reason of the proposed section 6 are to be treated as part of the regulations made under the Companies Act, 1961.

Clause 8 provides that references to the Corporate Affairs Commission in the Companies Act, 1961, shall be construed as references to the National Companies and Securities Commission in connection with matters arising under the provisions applied by the proposed sections 4 and 6.

Clause 9 requires fees to be paid to the Corporate Affairs Commission in respect of documents lodged and other matters connected with the National Companies and Securities Commission. The fees are to be those prescribed by regulations in force under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth, with amendments as set out in Schedule 3.

Clause 10 empowers regulations to be made by the Governor-in-Council which are to have the effect of varying the provisions of regulations applying by reason of the proposed sections 6 and 9.

Clauses 11–13 authorise the publication of the applied laws in the form of documents as applying in the State and respectively called the “Companies (Acquisition of Shares) (New South Wales) Code”, the “Companies (Acquisition of Shares) (New South Wales) Regulations” and the “Companies (Acquisition of Shares—Fees) (New South Wales) Regulations”.

Clause 14 authorises the publication of provisions of the applied laws following amendments made by Commonwealth legislation.

Clause 15 provides that a reference in any State law to a provision of such a Code or regulations is to be construed as a reference to the provision of the Commonwealth Act or regulations applying by reason of the proposed Act.

Clause 16 enables certain amendments to be made by regulations if the Ministerial Council agrees.

Clause 17 deals with matters of a transitional nature in connection with takeovers pending at the commencement of the proposed Act.

Clause 18 makes consequential amendments to the Companies Act, 1961.

Schedule 1 contains amendments to the provisions of the Companies (Acquisition of Shares) Act 1980 of the Commonwealth in their application to New South Wales.

Schedules 2 and 3 contain amendments to the provisions of regulations under the Commonwealth Act in their application to New South Wales.

Schedules 4, 5 and 6 set out the headings and preliminary provisions to be included in the provisions to be published under clauses 11–13.

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**COMPANIES (ACQUISITION OF SHARES)  
(APPLICATION OF LAWS) BILL, 1981**

No. , 1981.

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**A BILL FOR**

**An Act relating to the application of laws to regulate the acquisition of shares in companies incorporated in New South Wales and matters connected therewith, to amend the Companies Act, 1961, and for other purposes.**

[MR WALKER—18 March, 1981.]

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*Companies (Acquisition of Shares) (Application of Laws).*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**5 Short title.**

**1.** This Act may be cited as the "Companies (Acquisition of Shares) (Application of Laws) Act, 1981".

**Commencement.**

**2. (1)** This section and section 1 shall commence on the date 10 of assent to this Act.

**(2)** Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**15 Interpretation.**

**3. (1)** In this Act, unless the contrary intention appears—

20 "Agreement" means the agreement made on 22nd December, 1978, between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected;

25 "Commission" or "National Commission" means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

"Ministerial Council" means the Ministerial Council for Companies and Securities established by the Agreement;



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“State Commission” means the Corporate Affairs Commission continued in existence by the Corporate Affairs Commission Act, 1981;

5 “the applied provisions” means the provisions applying by reason of sections 4 and 6;

“the Commonwealth Act” means the Companies (Acquisition of Shares) Act 1980 of the Commonwealth.

(2) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and  
10 in force for the time being and to an Act passed in substitution for that Act.

(3) The provisions of the Interstate Corporate Affairs Agreement do not apply to or with respect to the applied provisions or the administration of the applied provisions.

15 (4) In this Act, a reference to the commencement of this Act is a reference to the commencement of this Act except sections 1 and 2.

**Application of law relating to acquisition of shares.**

4. Subject to this Act, the provisions of the Commonwealth  
20 Act (other than sections 1, 2, 3, 4 and 5) apply—

(a) as if amended as set out in Schedule 1; and

(b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

25 as laws of New South Wales.

**Incorporation in Companies Act, 1961.**

5. (1) The provisions applying by reason of section 4—

(a) except as provided by section 17, operate to the exclusion  
30 of Part VIB of, and the Tenth Schedule to, the Companies Act, 1961; and

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(b) are incorporated with, and shall be read as one with, the Companies Act, 1961 (other than Part VI B of, and the Tenth Schedule to, that Act).

(2) The provisions of subsection (1) do not, unless the contrary intention appears—

(a) revive anything not in force or existing at the time at which the exclusion of the provisions of Part VI B of, and the Tenth Schedule to, the Companies Act, 1961, takes effect;

10 (b) affect the previous operation of that Part or Schedule or anything duly done or suffered under that Part or Schedule;

(c) affect any right, privilege, obligation or liability acquired or incurred under that Part or Schedule;

15 (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that Part or Schedule; or

20 (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

25 **Application of regulations relating to acquisition of shares.**

6. Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply—

30 (a) as if amended as set out in Schedule 2; and



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- (b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as regulations made under the provisions applying by reason of section 4.

**Incorporation in Companies Regulations.**

7. The provisions applying by reason of section 6 are incorporated with, and shall be read as one with, regulations under the Companies Act, 1961 (other than regulations under or for the purposes of Part VI B of that Act).

**Operation of Companies Act, 1961.**

8. For the purposes of the operation of the Companies Act, 1961, 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, the applied provisions—

- (a) references in that Act or those regulations to the State Commission shall be construed as references to the National Commission;
- 20 (b) references in that Act or those regulations to documents submitted to, or filed or lodged with, the State Commission shall be construed as references to documents submitted to, or filed or lodged with, the National Commission under the applied provisions; and
- 25 (c) references in those regulations to the Companies Act, 1961, shall be construed as including references to the Companies (Acquisition of Shares) (New South Wales) Code.

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**Fees payable.**

9. (1) There shall be paid to the State Commission, for and on behalf of the State, for or in respect of—

- 5 (a) the lodgment of documents with the National Commission under the applied provisions;
- (b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- 10 (c) the production by the National Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the National Commission under the applied provisions;
- 15 (d) the issuing of documents or copies of documents, the granting of consents or approvals or the doing of other acts or things by the National Commission under the applied provisions; and
- 20 (e) the making of inquiries of, or applications to, the National Commission in relation to matters arising under the applied provisions,

such fees (if any) as are prescribed by regulations in force for the time being under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, 25 unless the contrary intention appears, expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the National Commission and 30 the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.



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(3) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of any matter involving the doing of any act or thing by the National Commission, the National Commission shall not do that  
5 act or thing until the fee has been paid.

(4) This section has effect notwithstanding anything contained in the applied provisions.

(5) Nothing in this section prevents the State Commission for and on behalf of the State from—

- 10 (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or
- (b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

15 (6) In this section, unless the contrary intention appears, the expressions used have the same respective meanings as in the applied provisions.

**Amendment of regulations pursuant to Agreement.**

20 **10. (1)** Where, under the Agreement, the Ministerial Council approves a proposed amendment of regulations in force for the time being under the Commonwealth Act or the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth and, upon the expiration of 6 months after the date on which the Ministerial Council so approved, the amendment has not been  
25 made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 6 or the  
30 regulations referred to in section 9, as the case may be.

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(2) Regulations made by the Governor under subsection (1) may amend Schedule 2 or 3, as the case may be, and that Schedule as so amended shall be Schedule 2 or 3, as the case may be, to this Act.

5 (3) In this Act—

- (a) a reference to provisions of regulations applying by reason of section 6 includes a reference to provisions as so applying as amended in accordance with this section; and
- 10 (b) a reference to fees prescribed by regulations under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

**Publication of Companies (Acquisition of Shares) (New South Wales)  
15 Code.**

11. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5), amended as set out in Schedule 1 and in operation, or to come  
20 into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the headings and sections set out in Schedule 4;
- 25 (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- 30 (d) may be cited as the “Companies (Acquisition of Shares) (New South Wales) Code”.



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(3) A document that is or purports to be a copy of the Companies (Acquisition of Shares) (New South Wales) Code that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the  
 5 Commonwealth Act applying by reason of section 4 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

**Publication of Companies (Acquisition of Shares) (New South Wales) Regulations.**

10 12. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) amended as set out in Schedule 2 and in operation, or to come  
 15 into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the headings and provisions set out in Schedule 5;
- 20 (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- 25 (d) may be cited as the "Companies (Acquisition of Shares) (New South Wales) Regulations".

(3) A document that is or purports to be a copy of the Companies (Acquisition of Shares) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the  
 30 provisions applying by reason of section 6 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

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**Publication of Companies (Acquisition of Shares—Fees) (New South Wales) Regulations.**

13. (1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth amended as set out in Schedule 3 and in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

- 10 (a) shall include the headings and provisions set out in Schedule 6;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- 15 (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the “Companies (Acquisition of Shares—Fees) (New South Wales) Regulations”.

(3) A document that is or purports to be a copy of the 20 Companies (Acquisition of Shares—Fees) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the Schedule to regulations referred to in section 9 as in operation, or to come into operation, in New South Wales as notified in the document 25 in accordance with subsection (2) (b).

**Publication of provisions of amended Code or regulations.**

14. (1) The Minister may from time to time authorize the publication by the Government Printer of a document setting out—

- (a) provisions that by reason of—
- 30 (i) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and



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- (ii) the operation of section 4 (including the operation, if applicable, of Schedule 1),  
 apply, or will apply, as laws of New South Wales;
- (b) provisions that by reason of—
- 5 (i) regulations under the Commonwealth Act; and  
 (ii) the operation of section 6 (including the operation, if applicable, of Schedule 2),  
 apply, or will apply, as regulations made under the provisions applying by reason of section 4; or
- 10 (c) fees that by reason of—
- (i) regulations under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth; and
- 15 (ii) the operation of section 9 (including the operation, if applicable, of Schedule 3),  
 are, or will be, payable under that section.

(2) A document published under subsection (1) shall include a notification of the date, or dates, on which the provisions or fees set out in the document came, or come, into operation in  
 20 New South Wales.

(3) A document that has been or purports to have been published in accordance with this section is prima facie evidence of provisions or fees referred to in subsection (1) set out in the document.

**25 Interpretation of references to the applied provisions.**

15. (1) Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or any other Act or in any other document made by or under the authority of, or for the purposes of, a law of New South Wales—
- 30 (a) a reference to the Companies (Acquisition of Shares) (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 4;

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- (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;
- 5 (c) a reference to the Companies (Acquisition of Shares) (New South Wales) Regulations is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 6;
- 10 (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
- 15 (e) a reference to the Companies (Acquisition of Shares—Fees) (New South Wales) Regulations is a reference to the Schedule to regulations prescribing fees under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth as referred to in section 9; and
- (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations in force under that Act as referred to in section 9.
- 20 (2) In subsection (1), “provision” includes Part, Division, section, sub-section, paragraph, sub-paragraph, Schedule, form, regulation, clause, sub-clause or other division.

**Amendment of certain provisions in accordance with approval of Ministerial Council.**

- 25 16. Where, under the Agreement, the Ministerial Council—
- (a) approves—
- (i) a proposed amendment of the Commonwealth Act;
- 30 (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);



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- (iii) a proposed amendment of the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth; or
- 5 (iv) regulations proposed to be made under that Act (whether or not amending other regulations); and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),
- 10 the Governor may make regulations amending Schedule 1, 2 or 3 or section 9, as the case may be, in accordance with that approval, and that Schedule or section as so amended shall be Schedule 1, 2 or 3 or section 9, as the case may be, of this Act.

**Take-overs pending at commencement of Act.**

- 15 17. (1) Where a take-over offer in relation to shares in a company was dispatched more than 30 days before the date of commencement of this Act and the period during which the take-over offer remains open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation
- 20 is expressed to remain open, had not expired before that date—
- (a) this Act, other than this section, does not apply to or in relation to—
- (i) the acquisition of shares in the company pursuant to the take-over offer; or
- 25 (ii) any other acquisition of shares in the company during the period during which the take-over offer remains open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation is expressed to
- 30 remain open, by the offeror or invitor who dispatched the take-over offer; and
- (b) the superseded take-over laws continue to apply to and in relation to any offers or invitations to acquire shares in the company, being offers or invitations referred to in
- 35 paragraph (a).

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(2) Where a take-over offer in relation to shares in a company was dispatched during the period of 30 days before the date of commencement of this Act and the period during which the take-over offer remains open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation is expressed to remain open, had not expired before that date, this Act, other than this section—

10 (a) does not apply to or in relation to the acquisition by any person of shares in the company during the period commencing on the date of commencement of this Act and ending at the expiration of 60 days after—

(i) if the take-over offer was not under a take-over scheme—the date on which the take-over offer was dispatched; or

15 (ii) if the take-over offer was under a take-over scheme—the last day before the date of commencement of this Act on which a take-over offer under the take-over scheme was dispatched; and

20 (b) does not apply to or in relation to the acquisition by any person of shares in the company after the expiration of the period referred to in paragraph (a) pursuant to offers or invitations made or issued before the end of that period,

25 and the superseded take-over laws continue to apply to and in relation to offers or invitations to acquire shares in the company made or issued before the end of that period.

(3) For the purposes of this section—

30 (a) “the superseded take-over laws” means the provisions of the law relating to take-overs in force immediately before the date of commencement of this Act, including the provisions of Part VI B of, and the Tenth Schedule to, the Companies Act, 1961;

35 (b) a reference to the application of the superseded take-over laws to and in relation to offers or invitations to acquire shares in a company includes, without limiting



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5 the generality of those words, a reference to the application of sections 180x and 180y of the Companies Act, 1961, as amended and in force immediately before the date of commencement of this Act in relation to shares in that company consequent upon the making of those offers or the issuing of those invitations; and

- 10 (c) except where the contrary intention appears, expressions used in this section have the same respective meanings as those expressions have in Part VI<sub>B</sub> of the Companies Act, 1961, as amended and in force immediately before the date of commencement of this Act.

**Consequential amendment of Act No. 71, 1961.**

**18.** The Companies Act, 1961, is amended—

**Sec. 5.**

15 **(Interpretation.)**

- 20 (a) by inserting in section 5 (6) (d) after the words “a company” the words “or, within the meaning of section 42 of the Companies (Acquisition of Shares) (New South Wales) Code, to a dissenting offeree in relation to shares in a company”;

**Sec. 69D.**

**(Substantial shareholder to notify company of relevant interests.)**

- (b) by omitting from section 69D (2) the matter “14 days” and by inserting instead the matter “2 days”;

25 **Sec. 69E.**

**(Substantial shareholder to notify company of change in his relevant interests.)**

- (c) by omitting from section 69E (2) the words “fourteen days” and by inserting instead the matter “2 days”;

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**Sec. 69F.**

**(Person who ceases to be substantial shareholder to notify company.)**

- 5 (d) by omitting from section 69F (2) the words "fourteen days" and by inserting instead the matter "2 days";

**Sec. 122.**

**(Power to restrain certain persons from managing companies.)**

- 10 (e) by inserting in section 122 (1) (c) before the words "or under section 113" the words "or under section 44 of the Companies (Acquisition of Shares) (New South Wales) Code or the corresponding provision of the law of another State or of a Territory of the Commonwealth";

**Sec. 127.**

15 **(General duty to make disclosure.)**

- (f) by inserting in section 127 (1) (c) after the word "Schedule" the words "or the Companies (Acquisition of Shares) (New South Wales) Code";

**Sec. 129.**

20 **(Payments to director for loss of office, &c.)**

- (g) by inserting in section 129 (2) after the matter "Part VIB" the words "or the Companies (Acquisition of Shares) (New South Wales) Code";

**Sec. 185.**

25 **(Acquisition of shares of shareholders dissenting from scheme or contract approved by majority.)**

- 30 (h) by omitting from section 185 (1) the words "(not being a take-over scheme as referred to in subsection (4) of section 180A)" and by inserting instead the words ", not being—

- (a) a take-over scheme as referred to in section 180A (4);



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- 5 (b) a scheme involving the acquisition of shares in a company as a result of the acceptance of offers to acquire those shares made under a take-over scheme in relation to that company as referred to in section 16 of the Companies (Acquisition of Shares) (New South Wales) Code; or
- 10 (c) a scheme involving the acquisition of shares in a listed public company where the shares are acquired as a result of the acceptance of offers made in accordance with section 17 of the Companies (Acquisition of Shares) (New South Wales) Code;”;

**Sec. 354.****(The branch register.)**

- 15 (i) by inserting in section 354 (8) after the matter “185” the words “of this Act or section 42 of the Companies (Acquisition of Shares) (New South Wales) Code”.

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**SCHEDULE 1.**

(Sec. 4.)

20 The provisions of the Commonwealth Act apply as if—

1. Unless inconsistent with another provision of this Schedule—

- 25 (a) for the words “*Companies Ordinance 1962*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Companies Act, 1961*” or the words “*Companies Act, 1961*,” whichever are applicable;
- (b) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “New South Wales”;
- 30 (c) for the words “this Act” in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words “commencement of”) there were substituted the words “this Code”;

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## SCHEDULE 1—continued.

- (d) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the words “commencement of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*” or the words “commencement of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*,” whichever are applicable;
- (e) for the words “law of a State or of another Territory” and “law of a State or another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law of a State other than New South Wales or of a Territory”.
2. In section 6 of the Commonwealth Act—
- (a) before the definition of “company” there were inserted the following definition:—
- “*Companies (Acquisition of Shares) (New South Wales) Code*” or “Code” means the provisions applying by reason of section 4 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*;
- (b) in the definition of “convertible note” after the matter “1936” there were inserted the words “of the Commonwealth as amended and in force for the time being”;
- (c) after the definition of “recorded” there were inserted the following definition:—
- “regulations” means the provisions applying as regulations made under this Code by reason of section 6 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*;
3. In section 28 (7) of the Commonwealth Act—
- (a) for the words “stock exchange in a State or in another Territory” there were substituted the words “stock exchange in a State other than New South Wales or in a Territory”;
- (b) for the words “other Territory” there were substituted the word “Territory”.
4. In section 42 of the Commonwealth Act—
- (a) for the words “*Unclaimed Moneys Ordinance 1950*” (wherever occurring) there were substituted the words “*Unclaimed Moneys Act, 1917*” or the words “*Unclaimed Moneys Act, 1917*,” whichever are applicable;
- (b) in sub-section (15) for the words “that Ordinance” there were substituted the words “that Act”;



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SCHEDULE 1—continued.

- (c) in sub-section (18) for the word "Commonwealth" there were substituted the word "State".
5. In section 53 (5) of the Commonwealth Act for the words "section 5 of this Act" there were substituted the words "section 5 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*".
6. In section 56 (1) and (2) of the Commonwealth Act for the words ", or of a regulation made for the purposes of sub-section 62 (3) or (4)," there were substituted the words "or of the regulations".
- 10 7. Sections 62 and 64 of the Commonwealth Act were repealed.

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SCHEDULE 2.

(Sec. 6.)

The provisions of regulations in force for the time being under the Commonwealth Act apply as if in those regulations—

- 15 1. For the words "the Act" (wherever occurring) there were substituted the words "the Code".
2. For the words "*Companies (Acquisition of Shares) Act 1980*" (wherever occurring) there were substituted the words "*Companies (Acquisition of Shares) (New South Wales) Code*".
- 20 3. For the words "Supreme Court of the Australian Capital Territory" (wherever occurring) there were substituted the words "Supreme Court of New South Wales".

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SCHEDULE 3.

(Sec. 9.)

- 25 The provisions of regulations in force for the time being under the *Companies (Acquisition of Shares—Fees) Act 1980* of the Commonwealth apply as if in those regulations—
1. For the words "the Act" (wherever occurring) there were substituted the words "the *Companies (Acquisition of Shares) (New South Wales)*
- 30 *Code*".
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*Companies (Acquisition of Shares) (Application of Laws).*

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SCHEDULE 4.

(Sec. 11.)

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 11:—

5 COMPANIES (ACQUISITION OF SHARES) (NEW SOUTH WALES) CODE

RELATING TO THE ACQUISITION OF SHARES IN COMPANIES INCORPORATED IN NEW SOUTH WALES AND MATTERS CONNECTED THEREWITH

PART I—PRELIMINARY

1. This Code may be cited as the *Companies (Acquisition of Shares)*  
10 *(New South Wales) Code.*

2. This Code comes into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, commences.

3. This Code shall be read and construed together with the agreement made on 22 December 1978 between the Commonwealth and the States  
15 in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected.

4. This Code has effect subject to and in accordance with the *Companies*  
20 *(Acquisition of Shares) (Application of Laws) Act, 1981.*

5. This Code has effect subject to and in accordance with the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981.*

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SCHEDULE 5.

(Sec. 12.)

25 The following headings and provisions shall be included in the publication under section 12 of the provisions of regulations in force for the time being under the Commonwealth Act:—

30 COMPANIES (ACQUISITION OF SHARES) (NEW SOUTH WALES)  
REGULATIONS

1. (1) These regulations may be cited as the *Companies (Acquisition of Shares) (New South Wales) Regulations.*



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*Companies (Acquisition of Shares) (Application of Laws).*

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SCHEDULE 5—*continued.*

(2) These regulations shall come into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, commences.

5 (3) These regulations have effect subject to and in accordance with—

(a) the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*; and

10 (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.

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SCHEDULE 6.

(Sec. 13.)

The following headings and provisions shall be included in the publication under section 13 of the Schedule to regulations in force for the time being  
15 prescribing fees under the *Companies (Acquisition of Shares—Fees) Act 1980* of the Commonwealth:—

COMPANIES (ACQUISITION OF SHARES—FEES) (NEW SOUTH WALES)  
REGULATIONS

1. These regulations may be cited as the *Companies (Acquisition of  
20 Shares—Fees) (New South Wales) Regulations*.

2. These regulations shall come into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, commences.

3. These regulations have effect subject to and in accordance with—

25 (a) the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*; and

(b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.

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*Companies (Acquisition of Shares) (Application of Laws).*

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SCHEDULE 6—*continued.*

4. The fees payable for the purposes of section 9 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, are the fees specified in the Schedule in relation to the respective matters so specified.

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SCHEDULE

FEEs

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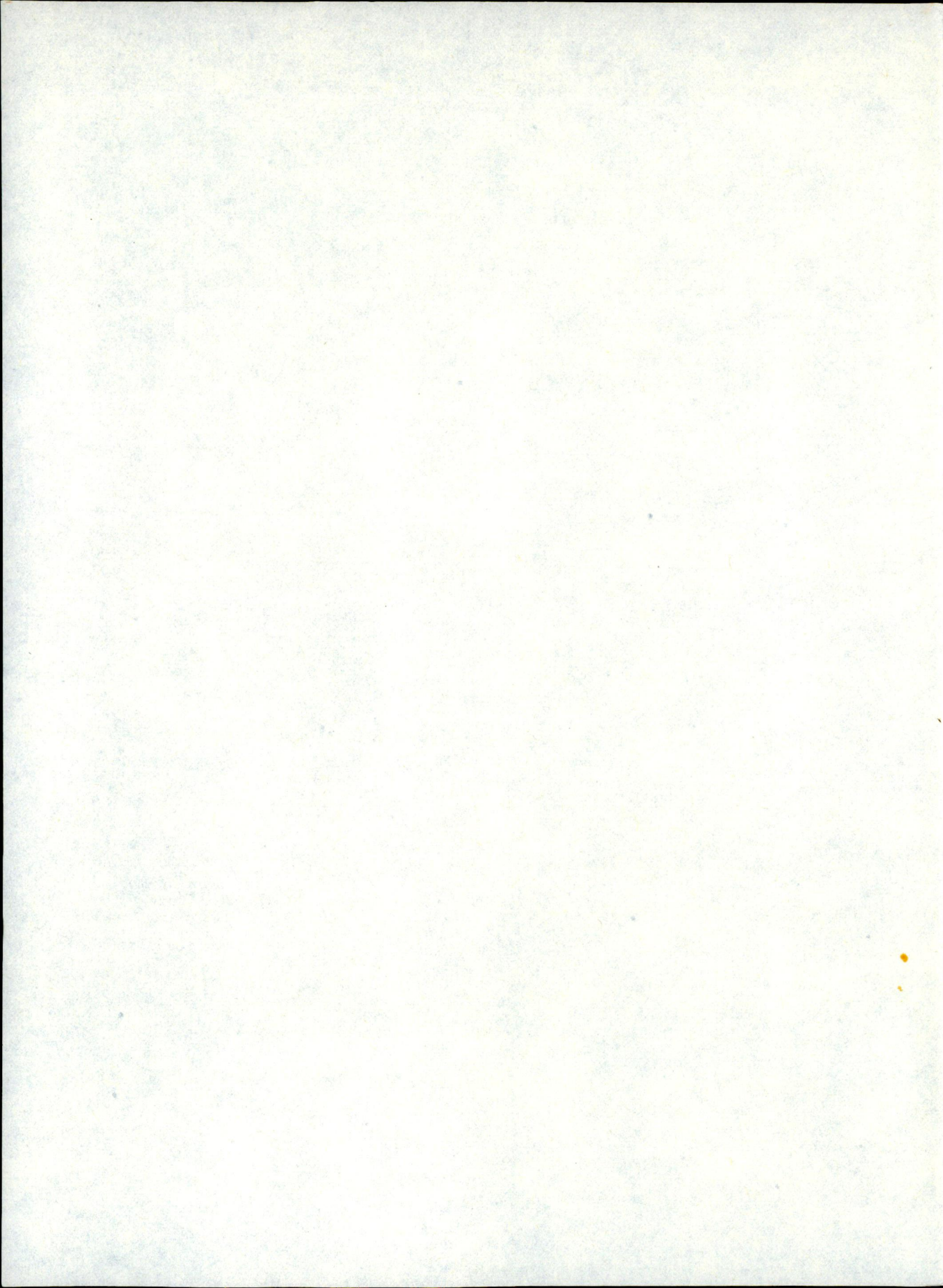
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D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981

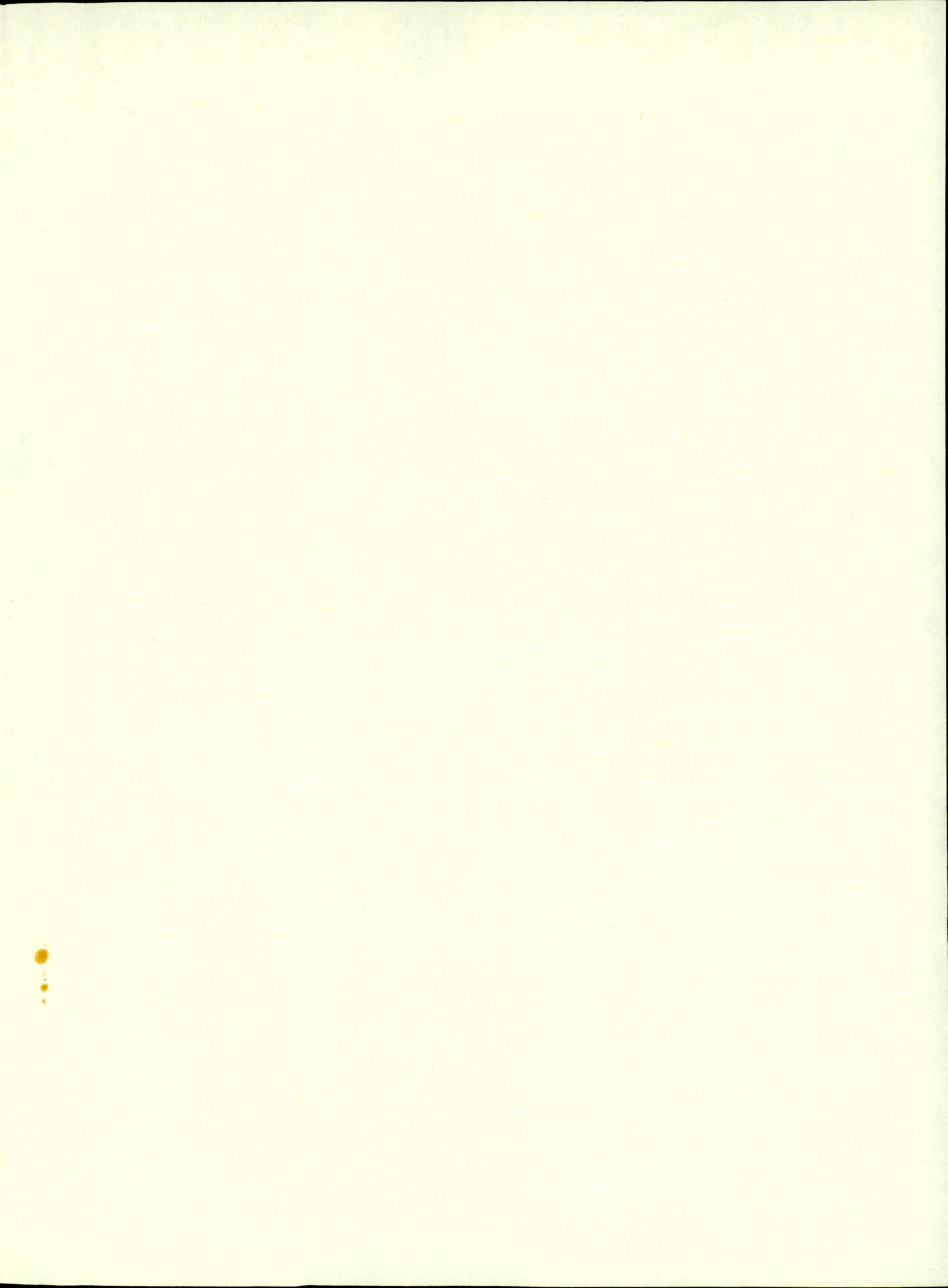
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# PROPOSED COMPANIES (ACQUISITION OF SHARES) (NEW SOUTH WALES) CODE

This document is issued only as a guide to the provisions of the Code that will come into operation if the *Companies (Acquisition of Shares) (Application of Laws) Bill, 1981*, is enacted and brought into operation. It contains the text of the *Companies (Acquisition of Shares) Act 1980* of the Commonwealth, as amended by the *Companies (Acquisition of Shares) Amendment Act 1981* of the Commonwealth, with alterations proposed by the *Companies (Acquisition of Shares) (Application of Laws) Bill, 1981*. The document does not, at the date of its issue, have the force of law.

NEW SOUTH WALES.



## COMPANIES (ACQUISITION OF SHARES) (NEW SOUTH WALES) CODE

### 10 RELATING TO THE ACQUISITION OF SHARES IN COMPANIES INCORPORATED IN NEW SOUTH WALES AND MATTERS CONNECTED THEREWITH

#### PART I—PRELIMINARY

##### Short title

1. This Code may be cited as the *Companies (Acquisition of Shares) (New South Wales) Code*.

##### Commencement

2. This Code comes into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, commences.

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The several provisions of this document come into operation in New South Wales on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981* (except sections 1 and 2) comes into operation.

### **Agreement**

3. This Code shall be read and construed together with the agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected.

### **Code subject to Act**

4. This Code has effect subject to and in accordance with the *Companies (Acquisition of Shares) (Application of Laws) Act*, 1981.

### **10 Interpretation**

5. This Code has effect subject to and in accordance with the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act*, 1981.

### **Definitions**

15 6. In this Code, unless the contrary intention appears—

“business rules”, in relation to a stock exchange, means rules, regulations or by-laws—

(a) governing the activities or conduct of the stock exchange or of its members; or

20 (b) governing the activities or conduct of other persons in relation to the stock market of the stock exchange,

being rules, regulations or by-laws made by the stock exchange or contained in any of the constituent documents of the stock exchange, but does not include rules, regulations or by-laws that are listing rules of the stock exchange;

25 “*Companies (Acquisition of Shares) (New South Wales) Code*” or “Code” means the provisions applying by reason of section 4 of the *Companies (Acquisition of Shares) (Application of Laws) Act*, 1981;

30 “company” means a company as defined by sub-section 5 (1) of the *Companies Act*, 1961, and includes a body corporate incorporated in New South Wales that has a share capital;

35 “convertible note” has the same meaning as in Division 3A of Part III of the *Income Tax Assessment Act* 1936 of the Commonwealth as amended and in force for the time being;



"dealing in securities" means (whether as principal or agent) acquiring, disposing of, subscribing for, underwriting or sub-underwriting securities or making or offering to make, or inducing or attempting to induce a person to make or to offer to make, an agreement—

- 5 (a) for or with respect to acquiring, disposing of, subscribing for, underwriting or sub-underwriting securities; or
- (b) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for, underwrites or sub-underwrites securities or to any of the parties to the agreement in relation to securities;
- 10

"director", in relation to a corporation, includes—

- (a) any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy or duly authorized to act in the position; and
- 15 (b) any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act;

"executive officer", in relation to a corporation, means any person, by whatever name called and whether or not he is a director of the corporation, who is concerned, or takes part, in the management of affairs of the corporation;

20

"expert", in relation to a matter, means any person whose profession or reputation gives authority to a statement made by him in relation to that matter;

25 "home exchange", in relation to a listed public company, means the stock exchange designated to the company as its Home Exchange by the Australian Associated Stock Exchanges;

"invitation" means a statement, however expressed, that is not an offer but expressly or impliedly invites a holder of shares to offer to dispose of shares or a holder of a right, being a right to acquire a share or an interest in a share under an option, to dispose of the right;

30

"listed public company" means a company shares in which are listed for quotation on the stock market of a stock exchange;

35 "listing rules", in relation to a stock exchange, means rules, regulations or by-laws governing or relating to—

- (a) the admission to, or removal from, the official list of the stock exchange of bodies corporate, governments, unincorporate bodies or other persons for the purposes of the quotation on

the stock market of the stock exchange of securities of, or made available by, bodies corporate, governments, unincorporate bodies or other persons and for other purposes;  
or

- 5 (b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are admitted to that list,

whether those rules, regulations or by-laws—

- 10 (c) are made by the stock exchange or are contained in any of the constituent documents of the stock exchange; or  
(d) are made by another person and adopted by the stock exchange;

15 “marketable parcel”, in relation to shares in a listed public company, means a marketable parcel of shares in that listed public company within the meaning of the relevant business rules or listing rules of the stock exchange that is the home exchange in relation to that listed public company;

20 “marketable securities” means debentures, stocks, shares or bonds of any Government, of any local government authority or of any corporation, association or society, and includes any right or option in respect of shares in any corporation and any prescribed interest;

“nominee corporation” means a corporation whose principal business is the business of holding marketable securities as a trustee or nominee;

25 “non-voting share”, in relation to a company, means an issued share in the company that is not a voting share;

“offeror” means—

- 30 (a) a person who dispatches or proposes to dispatch a take-over offer, whether he dispatches or proposes to dispatch the offer himself or by an agent or nominee; or  
(b) 2 or more persons who together dispatch or propose to dispatch a take-over offer, whether they dispatch or propose to dispatch the offer themselves or by an agent or nominee;

“officer”, in relation to a corporation, means—

- 35 (a) a director, secretary or executive officer of the corporation;  
(b) a receiver and manager of the property or any part of the property of the corporation appointed under a power contained in an instrument;



- 5 (c) an official manager or deputy official manager of the corporation appointed under the provisions of Part IX of the *Companies Act, 1961*, or under the provisions of the law of a State other than New South Wales or of a Territory that correspond with that Part;
- (d) a liquidator of the corporation appointed in a voluntary winding up of the corporation; and
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and its creditors,
- 10 but does not include—
- (f) a receiver who is not also a manager;
- (g) a receiver and manager appointed by a court; or
- (h) a liquidator appointed by a court;
- “on-market offeror” means—
- 15 (a) a person who makes, or proposes to make, offers to acquire shares in accordance with section 17; or
- (b) 2 or more persons who together make, or propose to make, offers to acquire shares in accordance with section 17;
- 20 “Part A statement” means a statement in writing that complies with the requirements of Part A of the Schedule;
- “Part B statement” means a statement in writing that complies with the requirements of Part B of the Schedule;
- “Part C statement” means a statement in writing that complies with the requirements of Part C of the Schedule;
- 25 “Part D statement” means a statement in writing that complies with the requirements of Part D of the Schedule;
- “prescribed condition”, in relation to a take-over offer, means—
- 30 (a) a condition that will, in circumstances referred to in the condition, result in the rescission of, or entitle the offeror to rescind, a contract that results from an acceptance of the offer; or
- (b) a condition that prevents a binding contract from resulting from an acceptance of the offer unless or until the condition is fulfilled;
- 35 “prescribed interest” means an interest as defined in sub-section 76 (1) of the *Companies Act, 1961*;

“prescribed occurrence”, in relation to a target company, means—

- 5 (a) any one or more of the provisions of the constituent documents of the target company or of a subsidiary of the target company being altered in any of the ways mentioned in sub-section 62 (1) of the *Companies Act, 1961*;
- (b) the target company or a subsidiary of the target company resolving to reduce its share capital in any way;
- 10 (c) the target company or a subsidiary of the target company making an allotment of, or granting an option to subscribe for, any of its shares, or agreeing to make such an allotment or grant such an option;
- (d) the target company or a subsidiary of the target company issuing, or agreeing to issue, convertible notes;
- 15 (e) the target company or a subsidiary of the target company disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (f) the target company or a subsidiary of the target company charging, or agreeing to charge, the whole, or a substantial part, of its business or property;
- 20 (g) the target company or a subsidiary of the target company resolving that it be wound up;
- (h) the appointment of a provisional liquidator of the target company or of a subsidiary of the target company;
- 25 (j) the making of an order by a court for the winding up of the target company or of a subsidiary of the target company;
- (k) the target company or a subsidiary of the target company being placed under official management; or
- 30 (l) the appointment of a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of the target company or of a subsidiary of the target company;

“recorded”, in relation to a dealing in shares in a listed public company, means recorded by a stock exchange;

35 “regulations” means the provisions applying as regulations made under this Code by reason of section 6 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*;



"renounceable option" means an option to have an allotment of shares in a corporation made to the holder of the option, being an option that is capable of being assigned;

"securities", in relation to a corporation, means—

- 5
- (a) shares in, or debentures of, the corporation;
  - (b) any right or option in respect of any such shares or debentures; and
  - (c) any prescribed interest made available by the corporation;

10 "stock exchange" means a body corporate (whether or not incorporated in New South Wales) that is declared by the regulations to be a stock exchange for the purposes of this Code;

15 "stock market" means a market, exchange or other place (whether or not in New South Wales) at which, or a facility (whether or not in New South Wales) by means of which, securities of corporations are regularly offered for sale, purchase or exchange;

"take-over announcement" means an announcement made in accordance with section 17;

"take-over offer" means an offer to acquire shares made under a take-over scheme;

20 "take-over scheme" means a take-over scheme referred to in section 16;

"target company" means—

- 25
- (a) in relation to a take-over offer—the company for the acquisition of shares in which that offer has been, or is proposed to be, dispatched;
  - (b) in relation to a take-over scheme—the company shares in which are proposed to be acquired under the scheme; and
  - (c) in relation to a take-over announcement—the company in relation to shares in which the take-over announcement has been, or is proposed to be, made;

30 "trading day", in relation to a stock exchange, means a day on which the stock market of that stock exchange is open for the sale, purchase or exchange of securities.

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

7. (1) For the purposes of this Code, a person shall be taken to acquire shares in a company (in this sub-section referred to as the "shares concerned") if, and only if—

- (a) he acquires a relevant interest in the shares concerned as a direct or indirect result of a transaction entered into by him or on his behalf in relation to those shares, in relation to any other securities of that company or in relation to securities of any other corporation; or
- 10 (b) he acquires any legal or equitable interest in securities of that company or in securities of any other corporation and, as a direct or indirect result of the acquisition, another person acquires a relevant interest in the shares concerned.

(2) For the purposes of this Code, a person shall be taken to dispose of 15 shares in a company if, and only if, having a relevant interest in those shares, he ceases to have a relevant interest in those shares as a result of the doing of any act, the entering into of any transaction or the occurrence of any circumstance.

(3) For the purposes of this Code, the shares in a company to which a 20 person (in this sub-section and sub-section (4) referred to as the "person concerned") is entitled include—

- (a) shares in which the person concerned has a relevant interest; and
- 25 (b) except where the person concerned is a nominee corporation in respect of which a certificate by the Commission is in force under sub-section (8)—shares in which a person who is an associate of the person concerned has a relevant interest.

(4) A reference in paragraph (3) (b) to a person who is an associate of the person concerned shall be construed as a reference to—

- (a) if the person concerned is a corporation—
  - 30 (i) a director or secretary of the corporation;
  - (ii) a corporation that is related to the person concerned; or
  - (iii) a director or secretary of such a related corporation;



- (b) a person with whom the person concerned has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—
- 5 (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to shares in the company referred to in sub-section (3);
  - 10 (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the company referred to in sub-section (3); or
  - (iii) under which either of those persons may acquire from the other of them shares in the company referred to in sub-section (3) or may be required to dispose of such shares in accordance with the directions of the other of them;
- 15 (c) a person in concert with whom the person concerned is acting, or proposes to act, in relation to the acquisition or proposed acquisition of shares in the company referred to in sub-section (3);
- (d) a person with whom the person concerned is, or proposes to become, associated, whether formally or informally with a view to controlling
- 20 or influencing the composition of the board of directors, or the conduct of affairs, of the company referred to in sub-section (3);
- (e) a person with whom the person concerned is, by virtue of the regulations, to be regarded as associated in relation to the acquisition or proposed acquisition of shares in the company referred to in sub-
- 25 section (3);
- (f) a person with whom the person concerned is, or proposes to become, associated, whether formally or informally, in any other way in relation to shares in the company referred to in sub-section (3); or
- 30 (g) if the person concerned has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with another person as mentioned in paragraph (b), (c), (d), (e) or (f)—that other person.
- (5) A reference in this Code other than sub-section (4) to a person associated with another person shall be construed as a reference to—
- 35 (a) if the other person is a corporation—
- (i) a director or secretary of the corporation;
  - (ii) a corporation that is related to the other person; or
  - (iii) a director or secretary of such a related corporation;

- 5 (b) where the matter to which the reference relates is a take-over offer or take-over announcement relating to shares in a company, or the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation—a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—
- 10 (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the company or corporation, as the case may be;
- (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the company or corporation, as the case may be; or
- 15 (iii) under which either of those persons may acquire from the other of them shares in the company or corporation, as the case may be, or may be required to dispose of such shares in accordance with the directions of the other of them;
- 20 (c) a person in concert with whom the other person is acting, or proposes to act, in respect of the matter to which the reference relates;
- (d) a person with whom the other person is, by virtue of the regulations, to be regarded as associated in respect of the matter to which the reference relates;
- 25 (e) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- 30 (f) if the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in paragraph (b), (c), (d) or (e)—that last-mentioned person.
- (6) A person shall not be taken to be an associate of another person by virtue of paragraph (4) (b), (c), (d), (f) or (g) or to be associated with another person by virtue of paragraph (5) (b), (c), (e) or (f) by reason only that—
- 35 (a) one of those persons furnishes advice to, or acts on behalf of, the other person in a professional capacity;



(b) without limiting the generality of paragraph (a), where the ordinary business of one of those persons includes dealing in securities—specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of that business; or

(c) one of those persons—

(i) has dispatched or proposes to dispatch to the other person a take-over offer in relation to shares in a company held by the other person; or

(ii) has made, or proposes to make, a take-over announcement that relates to shares held by the other person.

(7) For the purposes of paragraphs (4) (b) and (5) (b), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

(8) The Commission may, in its discretion, issue to a nominee corporation a certificate declaring the nominee corporation to be an approved nominee corporation for the purposes of this section and may at any time, in its discretion, by notice in writing to the nominee corporation, revoke the certificate.

## 20 Other interpretative and evidentiary provisions

8. (1) For the purposes of this Code, where the shares in a company are not divided into 2 or more classes, those shares shall be deemed to constitute a class.

(2) In this Code—

(a) a reference to an offeror who does not propose to acquire all the shares in a company that are included in a class of shares shall be construed as a reference to an offeror who has made offers under a take-over scheme in accordance with sub-paragraph 16 (2) (a) (i) in respect of shares included in that class of shares, being offers in which the number of shares specified in accordance with sub-paragraph 16 (2) (f) (iii) (or, if that number is expressed as a percentage, the number of shares represented by that percentage) is less than the total number of shares in the target company included in that class of shares (excluding any shares included in that class to which the offeror is entitled), and a reference to the number of shares proposed to be acquired by such an offeror shall be construed as a reference to the number of shares so specified; and

5 (b) a reference to an offeror who proposes to acquire all the shares in a company that are included in a class of shares shall be construed as a reference to an offeror who has made offers under a take-over scheme in accordance with sub-paragraph 16 (2) (a) (i) in respect of shares included in that class of shares other than an offeror referred to in paragraph (a) of this sub-section.

10 (3) A reference in this Code other than section 25 to the period during which an offer under a take-over scheme or made by virtue of a take-over announcement remains open shall, in the case of an offer that is accepted, be construed as a reference to the period during which the offer would have remained open if it had not been accepted.

15 (4) In relation to a company the whole or a portion of the share capital of which consists of stock, a reference in this Code to a number of shares (including a number expressed as a percentage) shall, in relation to an amount of stock, be construed as a reference to the amount of stock that represents that number of shares.

(5) For the purposes of this Code—

20 (a) a parcel of shares in a listed public company constitutes an odd lot if the number of shares in that parcel is less than one marketable parcel of shares in that company; and

25 (b) if the number of shares in a parcel of shares in a listed public company is greater than one marketable parcel of shares in that company and, after excluding so many of the shares in that parcel as constitute a marketable parcel or marketable parcels of shares in that company, a number of shares remains, that remaining number of shares constitutes an odd lot.

(6) In this Code—

30 (a) a reference to an offeror or an on-market offeror shall, if 2 or more persons constitute an offeror or an on-market offeror, be construed as a reference to those persons or either or any of them; and

(b) a reference to a person associated with an offeror or an on-market offeror shall, if 2 or more persons constitute an offeror or an on-market offeror, be construed as a reference to a person associated with those persons or with either or any of them.

35 (7) In this Code, a reference to entering into a transaction in relation to shares includes—

(a) a reference to entering into or becoming a party to an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied, in relation to shares; and



(b) a reference to exercising an option to have shares allotted.

(8) In this Code, a reference to a corporation or to a body corporate includes a reference to an unincorporated society, association or other body that is for the time being declared by the Commission, by notice in writing published in the *Gazette*, to be a corporation or to be a body corporate, as the case may be, for the purposes of this Code.

(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—

10 (a) a reference to an acquisition of shares pursuant to a transaction that is a "crossing" within the meaning of the business rules or listing rules of that stock exchange; or

(b) 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".

15 (10) In any proceedings under or arising out of this Code, a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person having duties or acting on behalf of his master or principal in connection with the matter to which the proceedings relate was aware at the time.

### **Relevant interests in shares**

9. (1) Subject to this section, a person has a relevant interest in a share in a corporation for the purposes of this Code if that person has power—

25 (a) where the share is a voting share—to exercise, or to control the exercise of, the right to vote attached to that share; or

(b) to dispose of, or to exercise control over the disposal of, that share whether or not it is a voting share.

(2) It is immaterial for the purposes of this section whether the power of a person—

30 (a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or

(b) to dispose of, or to exercise control over the disposal of, a share, is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular share, or is, or is capable of being made, subject to restraint or restriction, and any such

power exercisable by a person jointly with another person or other persons shall, for those purposes, be deemed to be exercisable by either or any of those persons.

(3) A reference in this section to power or control includes a reference to power or control that is direct or indirect or is, or is capable of being, exercised as a result of, or by means of, or in breach of, or by revocation of, trusts, agreements, arrangements, understandings and practices, or any of them, whether or not they are enforceable, and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

10 (4) For the purposes of this section, where a body corporate has power—

(a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or

(b) to dispose of, or to exercise control over the disposal of, a share,

and—

15 (c) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power;

(d) a person has a controlling interest in the body corporate; or

20 (e) a person has power to exercise, or to control the exercise of, the voting power attached to not less than the prescribed percentage of the voting shares in the body corporate,

that person shall be deemed to have the same power in relation to that share as the body corporate has.

25 (5) For the purposes of paragraph (4) (e), a person shall be deemed to have the power referred to in that paragraph if—

(a) a person associated with the first-mentioned person has that power;

(b) persons associated with the first-mentioned person together have that power; or

30 (c) the first-mentioned person and a person or persons associated with him together have that power.

(6) Where a person—

(a) has entered into an agreement with respect to an issued share;

35 (b) has a right relating to an issued share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not; or



(c) has an option with respect to an issued share,  
and, on performance of the agreement, enforcement of the right or exercise  
of the option, as the case may be, that person would have a relevant interest  
in the share, he shall, for the purposes of this section, be deemed to have that  
5 relevant interest in the share.

(7) For the purposes of this section, where a body corporate is deemed by  
sub-section (6) to have a relevant interest in a share in a corporation and—

- 10 (a) the body corporate is, or its directors are, accustomed or under an  
obligation, whether formal or informal, to act in accordance with the  
directions, instructions or wishes of a person in relation to the exer-  
cise of, or the control of the exercise of, the right to vote attached to  
shares in the corporation, or in relation to the disposal of, or the  
exercise of control over the disposal of, shares in the corporation;
- 15 (b) a person has a controlling interest in the body corporate; or
- (c) a person has power to exercise, or to control the exercise of, the  
voting power attached to not less than the prescribed percentage of  
the voting shares in the body corporate,

that person shall be deemed to have a relevant interest in that share.

(8) A relevant interest in a share shall be disregarded—

- 20 (a) if the ordinary business of the person who has the relevant interest  
includes the lending of money and he has authority to exercise his  
powers as the holder of the relevant interest only by reason of a  
security given for the purposes of a transaction entered into in the  
25 ordinary course of business in connection with the lending of money,  
not being a transaction entered into with a person associated with the  
first-mentioned person;
- (b) if the relevant interest is that of a person who has it by reason of his  
holding a prescribed office;
- 30 (c) if the share is subject to a trust, the relevant interest is that of a trustee  
and—
- (i) a beneficiary is deemed, by sub-section (6), to have a relevant  
interest in the share by virtue of a presently enforceable and  
unconditional right referred to in paragraph (b) of that sub-  
section; or
- 35 (ii) the trustee is a bare trustee;
- (d) if the ordinary business of the person who has the relevant interest  
includes dealing in securities and he has authority to exercise his  
powers as the holder of the relevant interest only by reason of instruc-

tions given to him by or on behalf of another person to dispose of that share on behalf of the other person in the ordinary course of business; or

- 5 (e) if the relevant interest is that of a person who has it by reason of his having been appointed as a proxy or representative to vote at a meeting of members, or of a class of members, of a corporation, not being an appointment in return for the making of which the person or a person associated with the person provided valuable consideration.

10 (9) For the purposes of sub-paragraph (8) (c) (ii), a trustee shall not be taken not to be a bare trustee by reason only of the fact that the trustee is entitled in his capacity as a trustee to be remunerated out of the income or property of the trust.

(10) A relevant interest in a share shall not be disregarded by reason only of—

- 15 (a) its remoteness; or  
(b) the manner in which it arose.

(11) A reference in this section to the prescribed percentage is a reference to 20% or, where a lesser percentage is prescribed by regulations in force for the time being for the purposes of section 11, a reference to that lesser  
20 percentage.

#### **Persons to whom Code applies**

10. (1) This Code applies to and in relation to all natural persons, whether resident in New South Wales or in Australia or not and whether Australian citizens or not, and to all bodies corporate or unincorporate, whether incor-  
25 porated or carrying on business in New South Wales or in Australia or not, and extends to acts done or omitted to be done outside New South Wales, whether in Australia or not.

(2) Nothing in sub-section (1) extends the definition of "company" in section 6 so as to include a body corporate that is not incorporated in New  
30 South Wales.

## **PART II—CONTROL OF ACQUISITION OF SHARES**

### **Restriction on acquisition of shares**

11. (1) Except as provided by this Code, a person shall not, either alone or together with another person or other persons, acquire shares in a company  
35 if any person who is not entitled to any voting shares in the company or is



entitled to less than the prescribed percentage of the voting shares in the company would, immediately after the acquisition, be entitled to more than the prescribed percentage of the voting shares in the company.

5 (2) Except as provided by this Code, a person shall not, either alone or together with another person or other persons, acquire shares in a company if any person (in this sub-section referred to as a "relevant person") who is entitled to not less than the prescribed percentage, but less than 90%, of the voting shares in the company would, immediately after the acquisition, be  
10 entitled to a greater percentage of the number of voting shares in the company than the percentage to which that relevant person was entitled immediately before the acquisition.

(3) A person shall not offer to acquire, or issue an invitation in relation to, shares in a company if the person is prohibited by sub-section (1) or (2) from acquiring those shares.

15 (4) It is a defence to a prosecution for a contravention of this section if the defendant establishes that the contravention was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence.

(5) An acquisition of shares is not invalid by reason of a contravention of this section.

20 (6) . . . . .

(7) A reference in this section to the prescribed percentage is a reference to 20% or, where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this section, a reference to that lesser percentage.

25 **Acquisitions to which section 11 does not apply**

12. Section 11 does not apply to or in relation to—

- (a) an acquisition of shares by will or by operation of law;
- (b) an acquisition of shares by virtue of an allotment or purchase pursuant to a prospectus—

- 30 (i) that contained an invitation to the public to subscribe for or purchase the shares or an offer to the public to accept subscriptions for or to sell the shares; and
- (ii) a copy of which has been registered under Division 1 of Part IV of the *Companies Act, 1961*;

- (c) an acquisition of shares in a company by virtue of an allotment made in accordance with a proposal particulars of which were set out in a prospectus where—
- 5 (i) the prospectus was the first prospectus issued by the company;
  - (ii) the person who acquired the shares was a promoter in respect of the prospectus; and
  - (iii) a copy of the prospectus has been registered under Division 1 of Part IV of the *Companies Act, 1961*;
- 10 (d) an acquisition of shares by virtue of an allotment or purchase of shares pursuant to—
- (i) an underwriting agreement particulars of which were set out in a prospectus a copy of which has been registered under Division 1 of Part IV of the *Companies Act, 1961*; or
  - 15 (ii) a sub-underwriting agreement that is related to such an underwriting agreement,
- where the prospectus contained an invitation to the public to subscribe for or purchase the shares or an offer to the public to accept subscriptions for or to sell the shares;
- 20 (e) an acquisition of shares by virtue of an allotment made by a company that has not commenced any business and has not exercised any borrowing power;
- (ea) an acquisition of shares pursuant to a compromise or arrangement approved by the Court under Part VII of the *Companies Act, 1961*;
- 25 (f) an acquisition of shares pursuant to section 270 of the *Companies Act, 1961*;
- (g) an acquisition of shares in a company by virtue of an allotment or purchase where the company has agreed to the allotment or purchase by a resolution passed at a general meeting at which no votes were cast in relation to the resolution in respect of any shares held by—
- 30 (i) the person to whom the first-mentioned shares were to be allotted or by whom or from whom the first-mentioned shares were to be purchased, as the case may be; or
  - (ii) a person associated with a person referred to in sub-paragraph (i);
- 35 (h) an acquisition of shares resulting from the exercise by a person of a renounceable option or of an option or right granted or conferred by a convertible note, where, if the person had acquired the shares at



the time when he acquired the renounceable option or the convertible note, as the case may be, the acquisition of the shares would not, by reason of sub-section 13 (3), have contravened this Code;

- 5 (j) an acquisition of shares by a person as a result of the acceptance by that person of a take-over offer, where the shares constituted, or formed part of, the consideration for the take-over offer;
- (k) an acquisition of shares in a company as a result of the acquisition of shares in another corporation that are listed for quotation on the stock market of a stock exchange;
- 10 (l) an acquisition of shares by a person whose ordinary business includes the lending of money where the acquisition results from the exercise by that person of a power in relation to the shares conferred on or vested in him pursuant to, by reason of or in connection with a transaction in connection with the lending of money entered into by him in the ordinary course of that business, not being a transaction entered into with a person associated with the first-mentioned person;
- 15 (m) an acquisition of forfeited shares at an auction conducted at a place at which, or by a facility by means of which, a stock exchange maintains or provides a stock market;
- 20 (n) any other acquisition of shares made in a prescribed manner or in prescribed circumstances; or
- (o) any other acquisition of shares approved by the Commission in writing.

**Acquisition of shares permitted in certain circumstances**

- 25 13. (1) Section 11 does not—
  - (a) prohibit the acquisition of shares in a company that does not have more than 15 members; or
  - (b) prohibit the acquisition of shares in a proprietary company that has more than 15 members where the members of the company have consented in writing to the provisions of this Code not applying to or with respect to the acquisition,
  - 30 if the acquisition would not result in—
    - (c) a contravention of section 11 in relation to the acquisition of shares in another company; or
    - 35 (d) a contravention of a provision of a law of a State other than New South Wales or of a Territory that corresponds with section 11 in relation to the acquisition of shares in a corporation in relation to which that provision applies.

(2) For the purposes of sub-section (1), 2 or more persons holding jointly shares in a company shall be deemed to be one member of the company,

(3) Subject to sub-section (4), section 11 does not—

- 5 (a) prohibit the 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, during the period commencing when a Part A statement relating to offers under a relevant take-over scheme in respect of shares in that company of the same class as the first-mentioned shares is served on the company and ending at the expiration of 28 days after the day on which the Part A statement is served or, if take-over offers are dispatched pursuant to the Part A statement within those 28 days, at the expiration of the period during which those take-over offers remain open, by the offeror under that take-over scheme; or
- 10
- 15 (b) prohibit the 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, during the period commencing when a take-over announcement is made in relation to shares in that company of the same class as the first-mentioned shares and ending at the expiration of the period in which offers constituted by that announcement remain open, by the on-market offeror who caused the announcement to be made.
- 20

(4) For the purposes of sub-section (3), a take-over scheme is a relevant take-over scheme if, and only if—

- 25 (a) the offeror proposes to acquire all the shares in the company that are included in the class of shares to which the take-over scheme relates, other than shares to which the offeror was entitled at the time when the relevant Part A statement was served; and
- 30 (b) no offer under the take-over scheme is subject to any prescribed condition other than any one or more of the following conditions:
- 35 (i) a condition that the offeror receives an acceptance or acceptances of an offer or offers under the take-over scheme in respect of a number of shares referred to in the condition, being a number that does not exceed a number equivalent to 90% of the shares in the company included in the class of shares concerned;
- (ii) a condition that a prescribed occurrence in relation to the target company does not take place;



(iii) any other condition approved by the Commission.

**(5) Where—**

- (a) a Part A statement relating to offers under a take-over scheme is served on a company;
- 5 (b) after the Part A statement is served the offeror referred to in the Part A statement acquires shares in the target company;
- (c) the acquisition of those shares would, but for paragraph (3) (a), have contravened section 11; and
- 10 (d) the offeror does not dispatch the offers to which the Part A statement relates within the period of 28 days after the Part A statement is served on the target company,

the offeror is not entitled, without the consent of the Commission, to exercise, or to authorize another person to exercise, any voting rights attached to the shares referred to in paragraph (b) of this sub-section.

**15 *Pari passu* allotments**

**14. (1)** Section 11 does not prohibit the acquisition of shares in a company pursuant to an allotment if—

- (a) the requirements set out in sub-section (2) have been complied with in relation to the allotment; and
- 20 (b) the allotment—
- (i) is made to a person as a result of the acceptance by that person of an offer made to him in accordance with paragraph (2) (b);
- (ii) is made to a person in his capacity as an underwriter or sub-underwriter in relation to the allotment; or
- 25 (iii) is made to a nominee in accordance with sub-section (3).

**(2)** The requirements referred to in sub-section (1) are as follows:

- (a) the directors of the company shall pass a resolution agreeing to make available a number of shares in, or ascertained in accordance with, the resolution for allotment to all persons who were registered as the holders of shares in the company, or to all persons who were registered as the holders of voting shares in the company, on the date specified in the resolution;
- 30 (b) the company shall make an offer to each person to allot to him such number of those shares as he agrees to subscribe for, being a number that does not exceed the number specified in the offer in accordance with paragraph (c); and
- 35

5 (c) the number of shares to be specified in an offer for the purposes of paragraph (b) is the number that bears to the total number of shares agreed to be made available in accordance with paragraph (a) as nearly as practicable the same proportion as the number of shares in the company, or the number of voting shares in the company, as the case may be, held by the person to whom the offer is made immediately before the date specified in the resolution bears to the total number of shares in the company, or the total number of voting shares in the company, as the case may be, immediately before that date.

10 (3) A company shall be deemed to comply with the requirements of sub-section (2) in relation to the holders of shares in the company whose addresses as shown in the register of members are places outside Australia and the external Territories (in this sub-section referred to as "foreign shareholders") if the company, in lieu of making offers to the foreign shareholders in accordance with sub-section (2)—

(a) allots to a nominee approved—

20 (i) where the company is a listed public company—by the stock exchange that is the home exchange in relation to the company; or

(ii) where the company is not a listed public company—by the Commission,

25 a number of shares equal to the number of shares in respect of which the company would, but for this sub-section, be required to make offers to foreign shareholders in accordance with sub-section (2);

(b) causes the shares so allotted to be offered for sale in such manner, at such price and on such other terms and conditions as are approved by that stock exchange or the Commission, as the case may be; and

30 (c) pays to each of the foreign shareholders so much of the amount (if any) remaining after deducting from the proceeds of sale—

(i) the expenses of the sale; and

(ii) the amounts (if any) payable to the company in respect of the allotment of the shares,

35 as bears to that remaining amount the same proportion as the number of shares in respect of which the company would, but for this sub-section, be required to make an offer to the foreign shareholder concerned in accordance with sub-section (2) bears to the total number of shares allotted to the nominee in accordance with paragraph (a) of this sub-section.



**Acquisition of not more than 3% of voting shares permitted in each 6 months**

15 **15. (1)** Section 11 does not prohibit an acquisition of voting shares in a company by reason of the effect of the acquisition on the entitlement to voting shares in the company of a person (in this section referred to as a "relevant person") if the relevant person has been entitled to not less than the prescribed percentage of the voting shares in the company for a continuous period of not less than 6 months immediately preceding the acquisition and the number ascertained in accordance with the formula

10  $100 \frac{a + b - c}{d}$  does not exceed 3, where—

a is the number of voting shares to be acquired;

15 b is the number of voting shares in the company that were acquired by any person during the period of 6 months immediately preceding the first-mentioned acquisition, being voting shares the acquisition of which by the person concerned increased the number of voting shares in the company to which the relevant person was entitled;

20 c is the number of voting shares in the company that were disposed of by any person during the period of 6 months immediately preceding the first-mentioned acquisition, being voting shares the disposal of which by the person concerned decreased the number of voting shares in the company to which the relevant person was entitled;

d is the number of voting shares in the company.

25 **(2)** A reference in sub-section (1) to the prescribed percentage is—

(a) a reference to 19%; or

(b) where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this section—a reference to that lesser percentage.

30 **Take-over offers**

**16. (1)** Section 11 does not prohibit the acquisition of shares in a company as a result of the acceptance of offers to acquire those shares made under a take-over scheme in relation to that company.

(2) For the purposes of this Code, offers to acquire shares are made under a take-over scheme if, and only if, the offers relate only to shares included in a class of shares (in this section referred to as the "relevant class of shares") and—

5 (a) one of the following sub-paragraphs is applicable in relation to the offers:

10 (i) each offer relates to all the shares in the target company included in the relevant class of shares that the offeree holds, whether the offeror proposes to acquire all the shares in the target company to which he is not already entitled that are included in the relevant class of shares or proposes to acquire only a proportion of the shares in the target company to which he is not already entitled that are included in the relevant class of shares;

15 (ii) each offer relates to a proportion of the shares in the target company included in the relevant class of shares that the offeree holds, being a proportion that is the same in respect of each offer;

(b) the offers are the same disregarding—

20 (i) the fact that the offerees are different persons and the fact that the number of shares that may be acquired under each offer is limited by the number of shares held by the offeree; and

25 (ii) any differences in the consideration specified for each share in the offers that are attributable only to the fact that the offers relate to shares having different accrued dividend entitlements or relate to shares on which different amounts are paid up;

(c) an offer is dispatched in a manner approved by the Commission to each holder of shares in the target company (other than the offeror) included in the relevant class of shares;

30 (d) the offeror has, not earlier than 28 days and not later than 14 days before the offers are dispatched, served on the target company—

(i) a Part A statement relating to the offers that—

35 (A) is signed, where the offeror is, or includes, a natural person or natural persons, by that person or by each of those persons and, where the offeror is, or includes, a corporation or corporations, by not less than 2 directors of the corporation, or by 2 directors of each of those corporations, authorized so to sign pursuant to a resolution passed at a meeting of the directors, or, in the case of a corporation that has only one director, by that director; and

40



- 5
- (B) has endorsed on it a statement that a copy of the Part A statement has been registered by the Commission and that the Commission takes no responsibility as to its contents and specifying the date on which the copy was so registered; and
- (ii) a copy of one of the proposed offers to which the Part A statement referred to in sub-paragraph (i) relates, being a copy that need not include the name or address of the offeree, the date that the offer will bear or any other date that is related to or dependent upon that date or the particulars referred to in sub-paragraph (f) (iv);
- 10
- (e) the offeror has, on the day on which the Part A statement is served under paragraph (d)—
- (i) lodged with the Commission a notice in writing stating that the Part A statement has been so served; and
- 15
- (ii) if the target company is a listed public company—served on the stock exchange that is the home exchange in relation to that company a copy of each of the documents served on that company in accordance with paragraph (d); and
- 20
- (f) each offer is in writing and—
- (i) bears the same date, being a date that is not more than 3 days before the date on which the offer is dispatched and is not later than the date on which the offer is dispatched;
- (ii) states that the offer will, unless withdrawn, remain open during a period ending on a specified date, being a date that is not earlier than one month, or later than 6 months, after the date that the offer bears;
- 25
- (iii) in the case of an offer that relates to all the shares held by the offeree in the target company that are included in the relevant class of shares—specifies the maximum number of shares included in that class that are proposed to be acquired after the Part A statement is served but before the expiration of the period in which the offer remains open (which may be expressed as a number of shares or as a percentage of the total number of shares included in that class of shares or of the total number of shares included in that class of shares to which the offeror is not entitled);
- 30
- (iv) specifies the number of shares included in each class of shares in the target company to which the offeror was entitled immediately before the offer was dispatched (which may be
- 35
- 40

expressed as a number of shares or as a percentage of the total number of shares included in the class of shares concerned);

- 5 (v) in the case of an offer that is subject to a prescribed condition—specifies a date, being a date that is not less than 7 days and not more than 14 days before the end of the period during which the offer remains open, for the publication of the notice referred to in sub-section 28 (4);
- 10 (vi) sets out how the obligations of the offeror are to be satisfied;
- (vii) contains a provision setting out when the obligations of the offeror are to be satisfied, being a provision under which the consideration for the offer is to be paid or provided—
- 15 (A) in the case of an offer that is not subject to a prescribed condition—within 30 days after the offer is accepted; or
- (B) in the case of an offer that is subject to a prescribed condition—within 30 days after the offer is accepted or the offer or the contract resulting from the acceptance of the offer becomes unconditional, whichever is the later; and
- 20 (viii) is accompanied by—
- (A) a copy of the Part A statement referred to in subparagraph (d) (i); and
- 25 (B) if the target company has given to the offeror a Part B statement in relation to the offers—a copy of that statement and a copy of any report that accompanied that statement.
- (3) A Part A statement referred to in this section may contain, in addition to the information referred to in Part A of the Schedule, such information as the offeror thinks fit, not being information that is false in a material particular or materially misleading in the form or context in which it appears.
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### **Take-over announcements**

17. (1) Section 11 does not prohibit the acquisition of shares in a listed public company if—

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

5 (2) Subject to the following provisions of this section, a person, or 2 or more persons together, may make offers to acquire shares in a listed public company that are included in a class of shares by causing an announcement to be made on his or their behalf by a member of the stock exchange that is the home exchange in relation to that company at an official meeting of that  
10 stock exchange to the effect that, during the period of one month commencing on the first trading day after the expiration of 14 days after the day on which the announcement is made, the member offers, on behalf of that person or those persons, to acquire, at a cash price per share specified in the announcement, all the shares included in that class of shares in that company in  
15 respect of which any such offers are accepted—

(a) at an official meeting of that stock exchange; or

(b) if the offers cannot be accepted at a particular meeting of that stock exchange, whether by reason that the member of the stock exchange by whom or on whose behalf the announcement was made or his  
20 representative is not present at the meeting or the committee of management, board of directors or other governing authority of that stock exchange do not or does not permit dealings in the shares at that meeting or otherwise—by notice in writing signed by or on behalf of a holder of shares to which the offers relate and served on  
25 that stock exchange on the day on which that meeting is held.

(3) Except with the consent of the Commission, a person is not entitled, or 2 or more persons together are not entitled, to make offers pursuant to sub-section (2) in relation to shares in a company if that person, or either or any of those persons—

30 (a) is entitled to not less than 30% of the voting shares in the company; or

(b) in the case of a company the voting shares in which are divided into 2 or more classes of shares—is entitled to not less than 30% of the shares in one of those classes.

35 (4) For the purposes of this section, an announcement made at an official meeting of a stock exchange by a representative of a member of a stock exchange shall be deemed to have been made by the member.

(5) Where a notice accepting an offer made by virtue of an announcement made at a meeting of a stock exchange in New South Wales by a member of that stock exchange pursuant to sub-section (2) or the corresponding provision of a law of a State other than New South Wales or of a Territory is served on the stock exchange in accordance with that sub-section or that corresponding provision, the stock exchange shall as soon as practicable notify that member of the stock exchange of the acceptance of the offer.

(6) The price to be specified in an announcement made in accordance with sub-section (2) on behalf of an on-market offeror in respect of a class of shares in a company as the price per share at which shares will be acquired shall, if the on-market offeror or a person associated with the on-market offeror, in the 4 months immediately preceding the day of the announcement, purchased or agreed to purchase shares in that company included in that class of shares, be not less than the highest price per share paid or agreed to be paid in respect of any of those shares pursuant to any such purchase or agreement to purchase.

(7) Where, in the 4 months immediately preceding the date of a take-over announcement, the on-market offeror or a person associated with the on-market offeror has entered into an agreement for the purchase of a share or shares in the target company, being an agreement that provides that the price specified in the agreement as the price payable for the share or any of the shares may be increased in accordance with the terms of the agreement, then, for the purposes of sub-section (6), the price agreed to be paid for the share or any of the shares shall be taken to be the price so specified in the agreement.

(8) Nothing in this section prohibits an on-market offeror from acquiring in accordance with paragraph 13 (3) (b), during the period commencing when the take-over announcement is made and ending at the expiration of the sixth trading day before the expiration of the period in which offers constituted by the take-over announcement remain open, shares to which the relevant take-over announcement relates at a price (in this sub-section referred to as a "relevant price") that is higher than the price specified in the announcement or is higher than any price that is deemed by a previous operation of this sub-section or of sub-section (11) to be specified in the announcement but, if the on-market offeror acquires shares at a relevant price during that period, that relevant price shall, for the purposes of any offer that is accepted after the acquisition takes place, be deemed to be the price specified in the announcement unless and until another price is deemed by virtue of the operation of this sub-section or of sub-section (11) to be specified in the announcement.



**(9)** An on-market offeror shall not, during the period commencing at the end of the period referred to in sub-section (8) and ending at the expiration of the period during which offers constituted by the take-over announcement remain open, acquire shares to which the take-over announcement  
5 relates at a price that is higher than the price that, at the expiration of the period referred to in sub-section (8), is, or is deemed to be, the price specified in the announcement.

**(10)** An on-market offeror who makes offers constituted by a take-over announcement in relation to shares in a company shall—

10 **(a)** on the day on which the announcement is made—

**(i)** serve on the target company a Part C statement relating to the offers that is signed, where the on-market offeror is, or includes, a natural person or natural persons, by that person or by each of those persons and, where the on-market offeror is,  
15 or includes, a corporation or corporations, by not less than 2 directors of the corporation, or by 2 directors of each of those corporations, authorized so to sign pursuant to a resolution passed at a meeting of the directors, or, in the case of a corporation that has only one director, by that director;

20 **(ii)** serve a copy of the statement on the stock exchange that is the home exchange in relation to the target company; and

**(iii)** lodge a copy of the statement with the Commission; and

**(b)** within 14 days after the day on which the announcement is made, dispatch a copy of the statement in a manner approved by the Commission to each holder of shares included in the class of shares to  
25 which the announcement relates.

**(11)** If, at any time after the making of a take-over announcement and before the end of the period during which offers constituted by the take-over announcement remain open—

30 **(a)** the target company makes an allotment of, or grants an option to subscribe for, any of its shares, or agrees to make such an allotment or to grant such an option;

**(b)** the target company issues, or agrees to issue, convertible notes; or

**(c)** the target company declares a dividend,

35 the on-market offeror may, with the consent of the Commission, cause an announcement to be made on behalf of the on-market offeror by a member of the stock exchange that is referred to in sub-section (2) at an official meeting of that stock exchange stating that a specified lower price per share is to be substituted for the price per share specified in the take-over announcement

and, where such an announcement is made, that lower price shall, unless and until a different price is deemed to be specified in the take-over announcement by virtue of the operation of this sub-section or of sub-section (8), be deemed to be the price specified in the take-over announcement.

- 5 (12) An on-market offeror who has made offers constituted by a take-over announcement in relation to shares in a company may cause an announcement to be made on his behalf by a member of the stock exchange that is referred to in sub-section (2) at an official meeting of that stock exchange before the expiration of the sixth trading day before—
- 10 (a) the end of the period of one month referred to in that sub-section; or  
(b) if that period has been extended pursuant to the previous exercise on one or more occasions of the power conferred by this sub-section—the end of the extended period,
- 15 extending that period or that extended period, as the case may be, for a further period of one month, but so that the total period for which the offers remain open does not exceed 6 months.

(13) Where an on-market offeror causes an announcement to be made pursuant to sub-section (11) or (12), the on-market offeror shall, on the day on which the announcement is made—

- 20 (a) serve on the stock exchange at an official meeting of which the announcement is made and on the target company; and  
(b) lodge with the Commission,
- a notice setting out the terms of the announcement.

25 (14) Subject to section 33, offers constituted by an announcement made in accordance with sub-section (2) of this section remain open for the period of one month referred to in that sub-section or, if that period has been extended in accordance with sub-section (12) of this section, for that period as so extended.

30 (15) Where an offer to acquire shares in a company or other corporation that is made by virtue of an announcement made at a meeting of a stock exchange in New South Wales by a member of that stock exchange in accordance with sub-section (2) or the corresponding provision of a law of a State other than New South Wales or of a Territory is accepted—

- 35 (a) if the member is not acting as agent for a member of another stock exchange—the member who made the announcement; or  
(b) if the member is acting as agent for a member of another stock exchange—the member of that other stock exchange,



shall be deemed to have contracted as principal with the person who (whether on his own behalf or on behalf of another person) accepted the offer to acquire the shares to which the acceptance relates, but nothing in this sub-section affects the rights and obligations between the member who is so deemed to have contracted as principal and the on-market offeror.

10 (16) Where, in respect of a contract that resulted from the acceptance of an offer made by virtue of a take-over announcement, a member of a stock exchange who contracted, or is deemed by sub-section (15) to have contracted, as principal with the person who accepted the offer was, at the time when the contract was made, a partner in a partnership that carried on a business of dealing in securities, any liabilities of the member arising by reason of his so having contracted, or being deemed to have contracted, as principal are joint and several liabilities of the persons who were the partners in the partnership at that time.

15 (17) A Part C statement referred to in paragraph (10) (a) may contain, in addition to the information referred to in Part C of the Schedule, such information as the on-market offeror thinks fit, not being information that is false in a material particular or materially misleading in the form or context in which it appears.

20 (18) A reference in this section to a member of the stock exchange that is the home exchange in relation to a company shall be construed as including a reference to a member of another stock exchange who is entitled to trade in securities on the stock market of the first-mentioned stock exchange.

25 (19) A reference in this section to a representative of a member of a stock exchange includes a reference to—

- (a) an employee of the member; and
- (b) if the member is a partner in a partnership that carries on a business of dealing in securities—
  - 30 (i) another partner in the partnership; or
  - (ii) an employee of the partnership.

### **PART III—PROVISIONS RELATING TO TAKE-OVER OFFERS**

#### **Registration of Part A statements and offers**

18. (1) A person, or 2 or more persons together, shall not cause a Part A statement to be served on a target company unless—
- 35 (a) a copy of that Part A statement; and

(b) a copy of one of the proposed offers to which that Part A statement relates, being a copy that need not include—

(i) the name or address of the offeree;

(ii) the date that the offer will bear or any other date that is related to or dependent upon that date; or

(iii) the particulars referred to in sub-paragraph 16 (2) (f) (iv).

have been registered by the Commission not earlier than 21 days before that Part A statement is served.

(2) Where a copy of a Part A statement and a copy of a proposed offer are lodged with the Commission for registration under sub-section (1), the Commission shall not register the copy of the statement or the copy of the proposed offer unless—

(a) the statement and proposed offer appear to comply with the requirements of this Code and the Commission is of the opinion that the statement and the proposed offer do not contain any matter that is false in a material particular or materially misleading in the form or context in which it appears; and

(b) in respect of each report referred to in paragraph 1 (e) of Part A of the Schedule that is set out in the copy of the statement—there is lodged with the Commission 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 inclusion of the report in the statement in the form and context in which it is included.

(3) A Part A statement served on a target company in contravention of this section shall, for the purposes of this Code other than this section and section 44, be deemed not to have been served.

#### **Extension of time for paying consideration**

19. (1) The Commission may, on application made by an offeror before the time by which the consideration specified in the relevant take-over offer is required by the terms of the offer to be paid or provided, fix a later time as the time by which that consideration is to be paid or provided and, where a later time is so fixed, the offer or, if the offer has been accepted, the contract that resulted from the acceptance shall be deemed to be varied accordingly.

(2) An offeror shall ensure that the consideration specified in the relevant take-over offer is paid or provided not later than the time by which that consideration is required by the terms of that take-over offer to be paid or provided or, if a later time has been fixed under sub-section (1), not later than the time so fixed.



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

20. (1) An offeror shall not make a take-over offer that requires the offeree to approve or consent to—

- 5 (a) a payment or other benefit being made or given to a director, secretary or executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, his office as director, secretary or executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company; or
- 10 (b) a payment or other benefit being made or given to a director, secretary or executive officer of a corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as director, secretary or executive officer or any other office in connection with the management of
- 15 affairs of the target company or of a corporation that is related to the target company,

and any such requirement is void.

(2) An offeror shall not make a take-over offer subject to a prescribed condition (however expressed) that the offeror receives an acceptance or  
20 acceptances of an offer or offers under the relevant take-over scheme in respect of a number of shares referred to in the take-over offer unless that number of shares is specified in the take-over offer, and—

- (a) any provision in the take-over offer by virtue of which the number so specified may be varied is void; and
- 25 (b) if a take-over offer is made subject to a condition in contravention of this sub-section, the condition is void.

(3) The number of shares specified in a take-over offer in accordance with sub-section (2) may be expressed as a number of shares or as a percentage of the total number of shares included in the class of shares to which the take-  
30 over offer relates or of the total number of shares included in that class of shares to which the offeror is not entitled.

**Withdrawal of offers**

21. (1) A take-over offer is not capable of being withdrawn without the  
35 consent of the Commission during the period of 14 days after the day on which the offer was dispatched.

(2) A take-over offer is not capable of being withdrawn unless at the same time the offeror withdraws all other offers under the relevant take-over scheme that have not been accepted and, if the offeror so withdraws take-over offers—

5 (a) a contract that resulted from the acceptance of any other offer under the take-over scheme is voidable at the option of the offeree by notice in writing given to the offeror not later than one month after the take-over offers are withdrawn; and

10 (b) no contract that resulted from the acceptance of any other offer under the take-over scheme is voidable at the option of the offeror by reason of the withdrawal of the take-over offers notwithstanding anything contained in that contract or in any agreement, arrangement, understanding or undertaking relating to that contract.

(3) Where a take-over offer or take-over offers is or are withdrawn, the  
15 person withdrawing the take-over offer or take-over offers shall—

(a) forthwith dispatch in a manner approved by the Commission to every  
20 person who, by virtue of the withdrawal, has an option under sub-section (2) to rescind a contract referred to in that sub-section a notice in writing informing that person of the withdrawal and setting out the terms of that sub-section; and

(b) on the day on which notices under paragraph (a) are dispatched—

(i) serve on the target company;

(ii) lodge with the Commission; and

25 (iii) 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 one of the notices dispatched in accordance with paragraph (a).

(4) For the purpose of calculating the period of one month referred to in  
30 paragraph (2) (a), the take-over offers referred to in that paragraph shall be taken to have been withdrawn on the day on which notices are dispatched to offerees under paragraph (3) (a).

(5) A take-over offer dispatched pursuant to an order made by the Court  
35 under paragraph 46 (1) (f) is not capable of being withdrawn without the approval of the Commission.



**Part B statement**

**22. (1)** Where a target company receives a Part A statement served under paragraph 16 (2) (d), the target company shall—

- 5
- (a) not later than 14 days after receipt of the Part A statement, give a Part B statement to the offeror; or
  - (b) not later than 14 days after the receipt of the notice mentioned in sub-section 24 (1), give a Part B statement to the offeror and a copy of that statement to each person to whom an offer to which the Part A statement relates was made.

10 **(2)** The Part B statement shall—

- (a) be signed by all the directors of the target company or by not less than 2 directors of the target company authorized so to sign pursuant to a resolution passed at a meeting of the directors or, in the case of a company that has only one director, by that director; or
- 15 (b) if the company is in the course of being wound up or is under official management—be signed by the liquidator or official manager, as the case may be.

**(3)** A Part B statement shall not refer to any report made by an expert (other than a report set out in the Part A statement or a report that accom-  
20 panies the Part B statement in accordance with section 23) unless—

- (a) the report is set out in the Part B statement; and
- (b) the Part B statement contains or is accompanied by a statement that the person or each of the persons by whom the report is made consents to the inclusion of the report in the form and context in which  
25 it is included.

**(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—

- 30 (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.

5  
10 (5) A Part B statement may contain, in addition to the information referred to in Part B of the Schedule, such information (not being information that is false in a material particular or materially misleading in the form or context in which it appears) as the directors of the target company, or the liquidator or official manager, as the case may be, think or thinks fit.

**Offeror connected with target company**

23. (1) Where—

- 15 (a) take-over offers are, or are to be, made in respect of shares in a company by an offeror who has a prescribed shareholding in the target company;
- (b) take-over offers are, or are to be, made in respect of shares in a company by an offeror that is or includes a natural person who is a director of the target company; or
- 20 (c) take-over offers are, or are to be, made in respect of shares in a company by an offeror that is or includes a corporation or corporations, and a director or directors of the target company is or are a director or directors of that corporation or of either or any of those corporations,

25 the Part B statement given in accordance with sub-section 22 (1) shall be accompanied by a copy of a report made by an expert (not being a person who is associated with the offeror or with the target company) stating whether in his opinion, the take-over offers are fair and reasonable and setting out his reasons for forming that opinion.

30 (2) Where the target company obtains 2 or more reports each of which could be used for the purposes of compliance with sub-section (1), the Part B statement given by the company shall be accompanied by a copy of each report.

(2A) Where—

- 35 (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.

(3) For the purposes of sub-section (1)—

- (a) a person has a prescribed shareholding in a company if he is entitled to not less than 30% of the voting shares in the company; and
- (b) a person has a prescribed shareholding in a company, being a company the voting shares in which are divided into 2 or more classes of shares, if he is entitled to not less than 30% of the shares in one of those classes.

#### **Notice of offers to be served**

24. (1) Where take-over offers have been dispatched, the offeror shall, on the day on which the last of the offers is dispatched—

- (a) serve notice in writing on the target company that the offers have been dispatched and of the date that they bear;
- (b) if the target company is a listed public company—serve a copy of the notice on the stock exchange that is the home exchange in relation to the target company; and
- (c) lodge a copy of the notice with the Commission.

(2) A notice or a copy of a notice referred to in sub-section (1) shall be accompanied by a copy of one of the offers and a copy of every document that accompanied that offer.

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

25. Where, at the time when a take-over offer is made to a person or at any time during the period in which the offer remains open, another person is, or is entitled to be registered as, the holder of shares to which the offer relates, then—

- (a) a corresponding take-over offer shall be deemed to have been made to that other person in respect of those shares; and
- (b) a corresponding take-over offer shall be deemed to have been made to the first-mentioned person in respect of any other shares to which the offer relates.

**Offeror not proposing to acquire all shares in class**

**26. (1) Where—**

- 5 (a) an offeror dispatches in accordance with sub-paragraph 16 (2) (a) (i) take-over offers in relation to shares in a company that are included in a class of shares and the offeror does not propose to acquire all the shares in the company included in that class of shares; and
- 10 (b) the number of shares in respect of which the offeror receives acceptances of take-over offers (in this section referred to as the “available number of shares”) is greater than the number of shares proposed to be acquired by the offeror under the relevant take-over scheme (in this section referred to as the “desired number of shares”),

the following provisions of this section have effect.

- 15 (2) Each take-over offer that has been accepted shall, subject to sub-section (3), be deemed to relate only to, and to have been accepted in relation only to, a number of shares that bears to the total number of shares in respect of which the offeree purported to accept the offer as nearly as practicable the same proportion as the desired number of shares bears to the available number of shares.

20 (3) Where—

- 25 (a) the number of shares in a listed public company in respect of which an offeree has accepted a take-over offer exceeds the number of shares to which the offer would, but for this sub-section, be deemed by sub-section (2) to relate (in this sub-section referred to as the “primary number of shares”); and
- (b) the excess number of shares 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 take-over offer shall, notwithstanding sub-section (2), be deemed to relate 30 to, and to have been accepted in relation to, a number of shares equal to the sum of the primary number of shares and the number of shares in that odd lot of shares.

**Variation or extension of take-over offers**

- 35 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.
- 5 (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  
10 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  
15 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;
- 20 (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;
- 25 (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.
- 30 (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  
35 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.

(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.

5 (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  
10 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  
15 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—

20 (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  
25 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);

30 (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.

35 (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.



**Declaration where take-over offers are conditional**

28. (1) Where an offeror makes a take-over offer that is subject to a prescribed condition, the offeror may not, except in accordance with this section, whether expressly or impliedly and whether in writing or by conduct, 5 declare the take-over offer or any contract resulting from the acceptance of the take-over offer to be free from the condition, and may not otherwise treat the take-over offer or any contract resulting from the acceptance of the take-over offer as being free from the condition.

(2) Where an offer under a take-over scheme is subject to a prescribed 10 condition, the offeror may declare the offer to be free from the condition if—

- (a) it is a term of the offer that he may do so not less than 7 days before the end of the period during which the offer remains open and the offer is declared to be free from the condition in accordance with that term; and
- 15 (b) at the same time he declares all other offers under the take-over scheme, and all contracts formed by the acceptance of offers under the take-over scheme, to be free from the condition.

(3) If an offeror declares all offers under a take-over scheme to be free from a prescribed condition, he shall forthwith cause to be published a notice 20 stating that the offers are free from the condition and specifying the proportion that the number of shares included in the class of shares to which the offers related to which, to his knowledge, he is entitled at the time of lodging the notice for publication bears to the number of shares included in that class.

(4) The offeror shall, whether or not he has caused a notice to be published 25 under sub-section (3), cause to be published on the prescribed date a notice—

- (a) stating whether he has declared the offers to be free from the condition;
- 30 (b) stating whether the offers have become free from the condition by reason of the operation of sub-section 30 (1); and
- (c) stating whether, to his knowledge, the condition was, at the time of lodging the notice for publication, fulfilled.

(5) A reference in sub-section (4) to the prescribed date shall be construed as a reference to—

- 35 (a) the date specified in the take-over offers in accordance with subparagraph 16 (2) (f) (v); or

(b) if the period for which the take-over offers are to remain open has been extended as provided by section 27—the date that is later than the date referred to in paragraph (a) by a period equal to the period of the extension.

5 (6) Where a notice under sub-section (4) states that the offeror has declared the offers to be, or that the offers have become, free from a prescribed condition or that a prescribed condition has been fulfilled, the notice shall also specify the proportion that the number of shares included in the class of shares to which the offers related to which, to his knowledge, he is entitled  
10 at the time of lodging the notice for publication bears to the number of shares included in that class.

(7) A notice under sub-section (3) or (4) shall be published in a newspaper circulating generally in New South Wales and, if shares in the target company are listed for quotation on the stock market of a stock exchange in a  
15 State other than New South Wales or in a Territory and that newspaper does not circulate generally in that State or Territory, in a newspaper that does so circulate.

(8) Where a notice referred to in sub-section (3) or (4) is lodged for publication, the offeror shall, on the first day on which the notice is lodged for  
20 publication—

(a) lodge a copy of the notice with the Commission; and

(b) if the target company is a listed public company—serve a copy of the notice on the stock exchange that is the home exchange in relation to the target company.

25 (9) Where a prescribed condition to which a take-over offer is subject has not been fulfilled and a notice referred to in sub-section (4) has not been published as required by this section, all contracts formed by the acceptance of offers under the relevant take-over scheme are void.

(10) In this section, a reference to lodgment of a notice for publication  
30 shall be construed as a reference to lodgment of the notice at an office of the publisher of the newspaper in which the notice is proposed to be published or at an office of an agent of the publisher of that newspaper.

**Conditional take-over offers not to be made unconditional  
in certain circumstances, &c.**

35 29. (1) Where—

(a) take-over offers are made in respect of shares in a company;



- (b) each of those offers is subject to a prescribed condition (however expressed) that the offeror receives an acceptance or acceptances of an offer or offers under the relevant take-over scheme in respect of a number of shares referred to in the condition; and
- 5 (c) the offeror would, if he acquired the number of shares referred to in paragraph (b), be entitled to more than 50% of the voting shares in the company,

the offeror may not declare any of the offers to be free from the condition unless he is entitled, or, if the offers were free from the condition, he would  
10 be entitled, to more than 50% of the voting shares in the company.

(2) If an offeror declares take-over offers to be free from a condition of a kind mentioned in sub-section (1), the copy of the relevant notice lodged by him with the Commission under sub-section 28 (8) shall be accompanied by a statement setting out particulars of the matters by virtue of which the  
15 offeror was entitled under this section to declare the offers to be free from that condition.

(3) Nothing in this section affects the operation of section 30.

### **Take-over offers subject to conditions**

#### **30. (1) Where—**

- 20 (a) a take-over offer made in respect of shares in a company is subject to a prescribed condition (however expressed) that the offeror receives an acceptance or acceptances of an offer or offers under the relevant take-over scheme in respect of a number of shares referred to in the condition;
- 25 (b) after the relevant Part A statement was served on the target company and before the expiration of the period during which the offer remains open, the offeror becomes entitled to shares in the company included in the same class as the first-mentioned shares otherwise than as a result of the acceptance of an offer under that take-over scheme; and
- 30 (c) the shares to which the offeror became entitled as mentioned in paragraph (b) constitute, in the aggregate, more than 20% of the voting shares in the company, other than shares to which the offeror was entitled at the time when the Part A statement was served,

the offer shall be deemed to be free from that condition.

**(2) Where—**

- 5 (a) a take-over offer made in respect of shares in a company is subject to a prescribed condition (however expressed) that the offeror receives an acceptance or acceptances of an offer or offers under the relevant take-over scheme in respect of a number of shares referred to in the condition;
- 10 (b) after the relevant Part A statement was served on the target company and before the expiration of the period during which the offer remains open, the offeror becomes entitled to shares in the company included in the same class as the first-mentioned shares otherwise than as a result of the acceptance of an offer under that take-over scheme; and
- (c) sub-section (1) does not operate to deem the offer to be free from the condition,
- 15 then, for the purpose of determining whether the condition has been fulfilled, the offeror shall be deemed to have become entitled to the shares referred to in paragraph (b) as a result of receiving an acceptance or acceptances of an offer or offers under that take-over scheme.

**Effect of acquiring shares otherwise than under take-over scheme**

**31. (1) Where—**

- 20 (a) a take-over offer is made in respect of shares in a company;
- (b) the consideration payable under the offer consists solely of a cash sum or includes alternative considerations one of which consists solely of a cash sum;
- 25 (c) after the relevant Part A statement was served on the target company and before the offer is accepted, the offeror purchased or purchases shares in the company included in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the relevant take-over scheme, for a consideration that consists solely of a cash sum; and
- 30 (d) the amount paid or payable for any of the shares referred to in paragraph (c) is higher than the cash sum payable under the offer for each share to which the offer relates,

the offer shall be deemed to be varied so that the cash sum payable for each share to which the offer relates is an amount equal to the highest amount  
35 paid or payable by the offeror for any of the shares referred to in paragraph (c).

**(2) Where—**

- (a) a take-over offer made in respect of shares in a company is accepted;



- (b) the consideration paid or payable under the contract resulting from the acceptance of the offer consisted or consists solely of a cash sum;
- 5 (c) after the acceptance of the offer and before the expiration of the period in which the offer, if it had not been accepted, would have remained open, the offeror purchases shares in the company included in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the relevant take-over scheme, for a consideration that consists solely of a cash sum; and
- 10 (d) the amount paid or payable for any of the shares referred to in paragraph (c) is higher than the consideration paid or payable for each share under the contract referred to in paragraph (b),

that contract shall be deemed to be varied so that the consideration payable for each share under the contract is an amount equal to the highest amount paid or payable by the offeror for any of the shares referred to in paragraph 15 (c) and, if the offeree has already received the whole or any part of the consideration under the contract, he is entitled to receive forthwith the additional consideration resulting from the variation.

**(3) Where—**

- (a) a take-over offer made in respect of shares in a company is accepted;
- 20 (b) the consideration paid or provided or to be paid or provided under the contract resulting from the acceptance of the offer does not consist solely of a cash sum; and
- 25 (c) after the relevant Part A statement was served on the target company and before the expiration of the period in which the offer, if it had not been accepted, would have remained open, the offeror purchased or purchases shares in the company included in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the relevant take-over scheme, for a consideration that consists solely of a cash sum,
- 30 the offeror shall, within 14 days after the expiration of that period, give notice in writing to the offeree setting out the highest price paid or payable by the offeror for any of the shares referred to in paragraph (c) and informing the offeree that he may, within 28 days after the receipt by him of the notice, by writing given to the offeror, elect to receive for each share in respect of which 35 he has accepted the offer an amount equal to that price in substitution for the consideration under the contract and, where such an election is made, the offeree is entitled to receive for each such share the substituted amount and is entitled to receive that amount forthwith or, if he has already received the

whole or any part of the consideration under the contract, forthwith upon returning that consideration (together with any necessary documents of transfer) to the offeror.

(4) Where—

- 5 (a) a take-over offer made in respect of shares in a company is accepted;
- (b) the consideration under the contract resulting from the acceptance of the offer consists solely of a cash sum and it is a term of the contract that the offeree makes, or that the sum is applied in whole or in part in making, a payment by way of a deposit or loan; and
- 10 (c) after the relevant Part A statement was served on the target company and before the expiration of the period in which the offer, if it had not been accepted, would have remained open, the offeror purchased or purchases shares in the company included in the same class as the first-mentioned shares, otherwise than as a result of the acceptance
- 15 of an offer under the relevant take-over scheme, for a consideration that consists solely of a cash sum and the contract for the purchase of those shares does not contain a term of the kind mentioned in paragraph (b),
- the offeror shall, within 14 days after the expiration of that period, give notice
- 20 in writing to the offeree setting out the highest price paid or payable by the offeror for any of the shares referred to in paragraph (c) and informing the offeree that he may, within 28 days after the receipt by him of the notice, by writing given to the offeror, elect to receive for each share in respect of which he has accepted the offer an amount equal to that price in substitution for the
- 25 consideration under the contract and, where such an election is made—
- (d) the contract referred to in paragraph (b) shall be deemed not to have included the term referred to in that paragraph;
- (e) the offeree is entitled to receive the substituted amount for each share to which the contract relates and is entitled to receive that amount
- 30 forthwith;
- (f) the offeree shall forthwith return to the offeror any consideration that the offeree has received under the contract (not including any consideration that has been applied, or an amount equivalent to which has been applied, in making a payment by way of deposit or loan in
- 35 accordance with the term referred to in paragraph (b)) and any document evidencing any payment by way of a deposit or loan that the offeree has made in accordance with that term; and



(g) upon the payment of the substituted amount to the offeree, any debt due to the offeree arising out of any payment by way of a deposit or loan in accordance with the term referred to in paragraph (b) or arising out of the application of the consideration under the contract is, by force of this paragraph, discharged.

(5) Where, in accordance with sub-section (3) or the provision of a law of a participating State or a participating Territory that corresponds with that sub-section, an offeree returns to a company any certificates (together with any necessary documents of transfer) in respect of shares allotted by that company as the consideration or part of the consideration for the acquisition of shares in a corporation, the company may cancel the allotment of those shares, and any such cancellation shall not be taken to be a reduction of capital.

#### **PART IV—PROVISIONS RELATING TO TAKE-OVER ANNOUNCEMENTS**

##### **15 Part D statement**

32. (1) Where a target company receives a statement that purports to be a Part C statement served under sub-section 17 (10), the target company shall, not later than 14 days after the relevant take-over announcement was made, serve a Part D statement on the stock exchange that is the home exchange in relation to that company.

(2) The Part D statement shall—

- (a) be signed by all the directors of the target company or by not less than 2 directors of the target company authorized so to sign pursuant to a resolution passed at a meeting of the directors or, in the case of a company that has only one director, by that director; or
- (b) if the company is in the course of being wound up or is under official management—be signed by the liquidator or official manager, as the case may be.

(3) A Part D statement shall not refer to any report made by an expert (other than a report set out in the Part C statement) unless—

- (a) the report is set out in the Part D statement; and
- (b) the Part D statement contains or is accompanied by a statement that the person or each of the persons by whom the report is made consents to the inclusion of the report in the form and context in which it is included.

(4) A target company that serves a Part D statement under sub-section (1) shall, on the day on which the Part D statement is served, lodge with the Commission and give to the on-market offeror a copy of the Part D statement and of any statement accompanying the Part D statement.

5 (5) A Part D statement may contain, in addition to the information referred to in Part D of the Schedule, such information (not being information that is false in a material particular or materially misleading in the form or context in which it appears) as the directors of the target company, or the liquidator or official manager, as the case may be, think or thinks fit.

#### 10 Withdrawal of on-market offers

33. (1) If, after the making of a take-over announcement in relation to shares in a target company and before the end of the period in which offers constituted by the take-over announcement remain open, a prescribed occurrence takes place, the on-market offeror may, before the end of that period,  
15 withdraw such of the offers as have not been accepted by causing an announcement to that effect to be made on his behalf by a member of the stock exchange that is referred to in sub-section 17 (2) at an official meeting of that stock exchange.

(2) An on-market offeror is not entitled, by reason of any of the occurrences  
20 referred to in paragraphs (a) to (g), inclusive, of the definition of "prescribed occurrence" in section 6, to withdraw offers made by virtue of a take-over announcement if, at the time of the relevant occurrence, the on-market offeror was entitled to more than 50% of the voting shares in the target company.

(3) If, after the making of a take-over announcement in relation to shares in a company and before the end of the period in which offers constituted by the take-over announcement remain open, being a take-over announcement made on behalf of a natural person or on behalf of 2 or more persons at least one of whom is a natural person, that natural person or, if there are 2 or more  
30 natural persons, either or any of them—

(a) dies;

(b) becomes bankrupt; or

(c) is declared by a court to be incapable of managing his affairs,

such of the offers made by virtue of the take-over announcement as have not  
35 been accepted shall be deemed to have been withdrawn on the day on which the person died, became bankrupt or was declared to be so incapable, as the case may be.



(4) If, after the making of a take-over announcement in relation to shares in a company and before the end of the period in which offers constituted by the take-over announcement remain open, being a take-over announcement made on behalf of a corporation or on behalf of 2 or more persons at least 5 one of whom is a corporation—

- (a) that corporation or, if there are 2 or more corporations, either or any of those corporations is placed under official management;
- 10 (b) an order is made by a court for the winding up of that corporation or, if there are 2 or more corporations, of either or any of those corporations; or
- (c) a provisional liquidator of that corporation, or, if there are 2 or more corporations, of either or any of those corporations, is appointed,

such of the offers made by virtue of the take-over announcement as have not been accepted shall be deemed to have been withdrawn on the day on which 15 the corporation was placed under official management, the winding up order was made or the provisional liquidator was appointed, as the case may be.

(5) If, after the making of a take-over announcement by a member of a stock exchange in relation to shares in a company and before the end of the period in which offers constituted by the take-over announcement remain 20 open—

- (a) where the member is not acting as agent for a member of another stock exchange—the member who made the announcement; or
  - (b) where the member is acting as agent for a member of another stock exchange—the member of that other stock exchange,
- 25 becomes bankrupt, is directed by the committee of management, board of directors or other governing authority of the stock exchange of which he is a member to cease to carry on the business of dealing in securities or, in the case of a member who carries on a business of dealing in securities otherwise than as a partner in a partnership, dies or is declared by a court to be 30 incapable of managing his affairs, such of the offers made by virtue of the take-over announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the member became bankrupt, was so directed to cease to carry on business, died or was so declared to be incapable, as the case may be.

(6) After the making of a take-over announcement and before the end of the period in which offers constituted by the take-over announcement remain open—

- 5 (a) the on-market offeror may, with the consent of the Commission, withdraw such of the offers as have not been accepted by causing an announcement to that effect to be made on his behalf by a member of the stock exchange that is referred to in sub-section 17 (2) at an official meeting of that stock exchange; or
- 10 (b) the member of the stock exchange that is referred to in sub-section 17 (2) who made the take-over announcement on behalf of the on-market offeror may, with the consent of the Commission, withdraw such of the offers as have not been accepted by making an announcement to that effect at an official meeting of that stock exchange,
- 15 but the Commission shall not grant its consent to such a withdrawal unless it is satisfied that in all the circumstances it is just an equitable to permit the withdrawal of the offers.

**Suspension of acceptance of offers made pursuant to take-over announcement**

20 34. After the making of a take-over announcement and before the end of the period in which offers constituted by the take-over announcement remain open, the Commission may, on the application of the on-market offeror or the member of the stock exchange that is referred to in sub-section 17 (2) who made the take-over announcement on behalf of the on-market offeror, by order in writing declare that such of the offers as have not been accepted are

25 not capable of being accepted while the order is in force but, where such an order is made, the period for which the offers remain open shall be ascertained for the purposes of this Code as if the order had not been made.

**PART V—PROVISIONS RELATING TO BOTH TAKE-OVER OFFERS AND TAKE-OVER ANNOUNCEMENTS**

30 **Restriction on disposal of shares by offeror or on-market offeror**

35 35. (1) During—

- (a) the period commencing when a Part A statement is served on the target company and ending at the expiration of 28 days after the day on which the statement is served or, if take-over offers are dispatched pursuant to the statement within those 28 days, at the expiration of the period during which the take-over offers remain open; and



- (b) if take-over offers are dispatched, in accordance with an order under section 46, pursuant to the statement—the period during which the take-over offers remain open,

the offeror shall not dispose of any shares in the target company included in the same class of shares as the shares to which the Part A statement relates unless another person (not being a person associated with the offeror) has, after the Part A statement is served and before the disposal takes place, made a take-over offer or caused a take-over announcement to be made in respect of shares in the target company included in that class of shares.

- 10 (2) After the making of a take-over announcement in relation to shares in a company and before the end of the period in which offers constituted by the take-over announcement remain open, the on-market offeror shall not dispose of any shares in the target company included in the same class of shares as the first-mentioned shares unless another person (not being a person  
15 associated with the on-market offeror) has, after the making of the announcement and before the disposal takes place, made a take-over offer or caused a take-over announcement to be made in respect of shares in the target company included in that class of shares.

#### **Obligations of target company to provide information**

- 20 36. Where a Part A statement or a Part C statement has been served on a target company, the offeror or on-market offeror may request the company to supply a written statement setting out—

- (a) the names and addresses (so far as they are known to the company) of the persons who, at the date of service of the Part A statement or  
25 the Part C statement, as the case may be, held shares in, or renounceable options or convertible notes granted or issued by, the company;
- (b) in respect of each person who held shares—the number of shares held;
- (c) in respect of each person who held renounceable options—particulars  
30 of the renounceable options and the number of shares to which the options relate; and
- (d) in respect of each person who held convertible notes—particulars of the convertible notes and the number of shares into which the notes may be converted,

- 35 and, where such a request is made and there is paid to the company such amount (not exceeding the prescribed amount) as the company requires, the company shall send the statement to the offeror or on-market offeror, as the case may be, within 7 days after the day on which the payment is received by the company.

**Forecasts of profits**

37. (1) Subject to this section, where—

- 5 (a) a person proposes, or 2 or more persons together propose, to dispatch a take-over offer, or to cause a take-over announcement to be made, in respect of shares in a company; or
- 10 (b) a person has, or 2 or more persons together have, dispatched a take-over offer, or caused a take-over announcement to be made, in respect of shares in a company and the period during which the take-over offer remains open, or the offers constituted by the take-over announcement remain open, has not expired,

the person, or either or any of those persons, or a person associated with the person or with either or any of those persons, or, if the person or either or any of those persons or any person associated with the person or with either or any of those persons is a corporation, an officer of the corporation or a  
15 person associated with such an officer, shall not make or issue, or cause to be made or issued, any statement to the public or to all or any members of the target company (including a statement included in a Part A statement or a Part C statement but not including a statement made or issued solely to  
20 officers of or advisers to the target company) that contains a forecast in respect of the profits or profitability of the target company or, if the person or either or any of those persons or any person associated with the person or with either or any of those persons is a corporation, a forecast in respect of the profits or profitability of that corporation.

(2) Subject to this section, where—

- 25 (a) the directors of a company have reason to believe that a person proposes, or 2 or more persons together propose, to dispatch a take-over offer, or to cause a take-over announcement to be made, in respect of shares in the company; or
- 30 (b) a person has, or 2 or more persons together have, dispatched a take-over offer, or caused a take-over announcement to be made, in respect of shares in a company and the period during which the take-over offer remains open, or the offers constituted by the take-over announcement remain open, has not expired,

the target company or a person associated with the target company or with  
35 an officer of the target company, or, if a person associated with the target company is a corporation, an officer of that corporation, or a person associated with such an officer, shall not make or issue, or cause to be made or issued, any statement to the public or to all or any members of the target  
40 company (including a statement included in a Part B statement or a Part D statement but not including a statement made or issued solely to officers of



or advisers to the target company) that contains a forecast in respect of the profits or profitability of the target company, or, if the person or either or any of the persons referred to in paragraph (a) or (b) or any person associated with the person or with either or any of those persons is a corporation, 5 a forecast in respect of the profits or profitability of that corporation.

(3) Nothing in sub-section (1) or (2) applies in relation to a statement that—

10 (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

15 (ii) in accordance with such conditions (if any) as are specified by the Commission in the instrument by which that consent is given.

(4) A reference in this section to a forecast in respect of the profits or profitability of a company or other corporation includes a reference to a forecast in respect of the profits or profitability of any business or income-producing activity of a kind engaged in by that company or other corporation 20 or of any industry of which a business or income-producing activity engaged in by that company or other corporation forms part.

#### **Statements on asset valuations**

38. (1) Subject to this section, where—

25 (a) a Part A statement has been served on a company in accordance with paragraph 16 (2) (d);

(b) a Part C statement has been served on a company in accordance with paragraph 17 (10) (a); or

30 (c) the directors of a company otherwise have reason to believe that a person proposes, or 2 or more persons together propose, to make take-over offers, or cause a take-over announcement to be made, in respect of shares in the company,

the following sub-sections of this section have effect—

(d) in a case to which paragraph (a) applies—

35 (i) during the period commencing when the Part A statement was served and ending at the expiration of 28 days after the day on which that statement was served or, if take-over offers

are dispatched pursuant to the statement within those 28 days, at the expiration of the period during which the take-over offers remain open; and

- 5 (ii) if take-over offers are dispatched, in accordance with an order under section 46, pursuant to the Part A statement—during the period during which the take-over offers remain open;
- (e) in a case to which paragraph (b) applies—until the end of the period during which offers constituted by the take-over announcement to which the Part C statement relates remain open; or
- 10 (f) in a case to which paragraph (c) applies—during any period in which the directors have reason to believe the matters mentioned in that paragraph.
- (2) The target company or a person associated with the target company or with an officer of the target company, or, if a person associated with the target company is a corporation, an officer of that corporation, or a person associated with such an officer, shall not make or issue, or cause or permit to be made or issued, any statement to the public or to all or any members of the target company (not being a statement made or issued solely to officers of or advisers to the target company) to the effect that the market value of an asset or assets of the target company or of a corporation that is related to the target company differs from an amount at which the value of the asset or assets is shown in the books of the target company or related corporation unless the statement—
- 15 (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
- 25 (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
- 30 (ii) in accordance with such conditions (if any) as are specified by the Commission in the instrument by which that consent is given.
- (3) A reference in sub-section (2) to an amount at which the value of an asset of a company or other corporation is shown in the books of the company or other corporation is a reference to an amount at which the value of the asset of the company or other corporation is shown in the most recently published accounts of the company or other corporation, being accounts required to be prepared by the law of the place where the company or other corporation is incorporated or formed.
- 35



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

(a) any accounts made out and laid before—

- 5 (i) a company at an annual general meeting in accordance with the *Companies Act, 1961*; or
- (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 with the *Companies Act, 1961*;

(b) any accounts made out and lodged—

- 10 (i) in accordance with section 74F of the *Companies Act, 1961*; or
- (ii) in accordance with a provision of a law of a State other than New South Wales or of a Territory that corresponds with section 74F of the *Companies Act, 1961*; or

15 (c) any document attached to any such accounts in accordance with the *Companies Act, 1961*, or such a corresponding law or corresponding provision.

#### **Notification of acquisitions and disposals of shares**

20 **39. (1)** For the purposes of the application of this section in relation to a listed public company—

(a) each of the following periods is a relevant period:

(i) if a Part A statement is served on the company—

25 (A) the period commencing when the statement is served and ending at the expiration of 28 days after the day on which the statement is served or, if take-over offers are dispatched pursuant to the statement within those 28 days, at the expiration of the period during which the take-over offers remain open; and

30 (B) if take-over offers are dispatched, in accordance with an order under section 46, pursuant to the statement—the period during which the take-over offers remain open; and

35 (ii) if a take-over announcement is made in relation to shares in the company—the period commencing when the announcement is made and ending at the expiration of the period during which offers constituted by that announcement remain open; and

(b) a person is, at a relevant time, a prescribed person in relation to a period that is, by reason of the service of a Part A statement or the making of a take-over announcement, a relevant period in relation to the company if—

5 (i) he is the person who is, or one of the persons who constitute, the offeror under the take-over scheme to which the Part A statement relates or is the person or one of the persons who caused the take-over announcement to be made; or

10 (ii) he is, at that time, entitled to more than 5% of the voting shares in the company and he is not, and is not associated with, a person referred to in sub-paragraph (i).

(2) A person who, at the commencement of a period that is a relevant period in relation to a listed public company, is a prescribed person in relation to that period by reason of sub-paragraph (1) (b) (i) shall—

15 (a) serve on the stock exchange that is the home exchange in relation to the company, before 9.30 a.m. on the next trading day of that stock exchange after the date of commencement of that period, a notice in writing setting out—

20 (i) whether he has become entitled or ceased to be entitled to any voting shares in the company since the commencement of that period and, if so, the prescribed particulars of those shares; and

25 (ii) whether he is entitled to any voting shares in the company at the time when the notice is served and, if so, the prescribed particulars of those shares; and

30 (b) if, during that period, he becomes entitled or ceases to be entitled to any voting shares in the company and has not previously given a notice under this sub-section to that stock exchange by reason of his having become entitled or ceased to be entitled, as the case may be, to those shares, serve on that stock exchange, before 9.30 a.m. on the next trading day of that stock exchange after the day on which he so became entitled or ceased to be entitled to shares in the company, a notice in writing setting out—

(i) the prescribed particulars of those shares; and

35 (ii) if he is entitled to any voting shares in the company at the time when the notice is served—the prescribed particulars of those shares.

(3) A person who, during a period that is a relevant period in relation to a listed public company, becomes a prescribed person in relation to that period 40 by reason of sub-paragraph (1) (b) (ii) (whether or not the person had



previously been a prescribed person in relation to that period) shall serve on the stock exchange that is the home exchange in relation to the company, before 9.30 a.m. on the next trading day of that stock exchange after the day on which he so became a prescribed person, a notice in writing setting out—

- 5 (a) the prescribed particulars of the voting shares in the company to which he was entitled at the time when he so became a prescribed person; and
  - (b) if he is entitled to any voting shares in the company at the time when the notice is served—the prescribed particulars of those shares.
- 10 (4) Where—
- (a) during a period that is a relevant period in relation to a listed public company, a person who is a prescribed person in relation to that period by reason of sub-paragraph (1) (b) (ii) ceases to be entitled to voting shares in the company; and
- 15 (b) as a result of his so ceasing to be entitled to those shares he ceases to be a prescribed person in relation to that period,
- the person shall serve on the stock exchange that is the home exchange in relation to the company, before 9.30 a.m. on the next trading day of that stock exchange after the day on which he ceased to be entitled to those
- 20 shares, a notice in writing setting out the prescribed particulars of those shares and of any other voting shares in the company to which he became entitled or ceased to be entitled since he last served a notice under this section in relation to the company during that period or, if he has not previously served a notice during that period, since the commencement of that period.
- 25 (5) Where—
- (a) during a period that is a relevant period in relation to a listed public company, a person becomes entitled or ceases to be entitled to voting shares in the company at a time when he is a prescribed person in relation to that period by reason of sub-paragraph (1) (b) (ii);
- 30 (b) the number of voting shares in the company to which he is entitled immediately after he becomes entitled or ceases to be entitled to the first-mentioned shares—
- (i) is greater or less than the number of voting shares in the
- 35 company to which he was entitled at the time when he last served a notice under this section in relation to the company during that period or, if he has not previously served a notice during that period, the number of voting shares in the company to which he was entitled at the commencement of that period; and

(ii) is so greater or less by a number of voting shares that is not less than 1% of the voting shares in the company; and

(c) the person has not ceased to be a prescribed person,

5 the person shall serve on the stock exchange that is the home exchange in relation to the company, before 9.30 a.m. on the next trading day of that stock exchange after the day on which he became entitled or ceased to be entitled to those first-mentioned shares, a notice in writing setting out—

10 (d) the prescribed particulars of those first-mentioned shares and of any other voting shares in the company to which he became entitled or ceased to be entitled since he last served a notice under this section in relation to the company during that period or, if he has not previously served a notice during that period, since the commencement of that period; and

15 (e) if he is entitled to any voting shares in the company at the time when the notice is given—the prescribed particulars of those shares.

(6) In a prosecution of a person for failing to serve a notice on a stock exchange under this section, it is a defence if the defendant establishes that—

(a) at the time when he was required to serve the notice he was not aware of a fact or occurrence that gave rise to the requirement; and

20 (b) he did not become aware of that fact or occurrence before the expiration of the relevant period or, if he became so aware before the expiration of that period, he served the notice on the next trading day of the stock exchange after he became so aware.

25 (7) A person is not required on any day to serve more than one notice under this section in relation to the same company.

30 (8) Where each of 2 or more persons would, but for this sub-section, be required to serve a notice under sub-section (5) in relation to the same shares in a company by reason that each of them has become entitled or each of them has ceased to be entitled to those shares, it is sufficient compliance with that sub-section if one only of them serves the notice.

(9) The prescribed particulars in relation to shares in a company to which a person is entitled (in this sub-section referred to as "relevant shares") are—

(a) the number of relevant shares;

35 (b) if shares in the company are divided into 2 or more classes—the number of relevant shares in each class;



- (c) if to the knowledge of the person another person is also entitled to the relevant shares—the name of that other person and a statement as to which of the persons entitled to the shares has a relevant interest in the shares; and
- 5 (d) such other matters (if any) as are prescribed.

(10) The prescribed particulars in relation to shares in a company to which a person has become entitled (in this sub-section referred to as “relevant shares”) are—

- (a) the number of relevant shares;
- 10 (b) the consideration (if any) for the acquisition of each share (whether in the company or in another corporation) by virtue of which the person became entitled to the relevant shares;
- (c) if shares in the company are divided into 2 or more classes—the number of relevant shares in each class;
- 15 (d) if the person became entitled to the relevant shares by reason of a contract that contained provisions of a prescribed kind—particulars of those provisions; and
- (e) such other matters (if any) as are prescribed.

(11) The prescribed particulars in relation to shares in a company to which 20 a person has ceased to be entitled (in this sub-section referred to as “relevant shares”) are—

- (a) the number of relevant shares;
- (b) the consideration (if any) for the disposal of each share (whether in the company or in another corporation) by virtue of which the 25 person ceased to be entitled to the relevant shares;
- (c) if shares in the company are divided into 2 or more classes—the number of relevant shares in each class;
- (d) if the person ceased to be entitled to the relevant shares by reason of a contract that contained provisions of a prescribed kind—particu- 30 lars of those provisions; and
- (e) such other matters (if any) as are prescribed.

(12) A notice served under this section that specifies, in accordance with paragraph (10) (b) or (11) (b), consideration for 2 or more acquisitions of shares, 2 or more disposals of shares, or an acquisition or acquisitions of 35 shares and a disposal or disposals of shares, shall, if the consideration in respect of 2 or more of the transactions consisted only of a cash sum, also specify separately the higher or highest such sum paid or payable or received or receivable for any of the shares referred to in that notice.

**Offerees or on-market offerees not to be given benefits except under take-over scheme or take-over announcement**

40. (1) Subject to sub-section (3), during the period commencing when a Part A statement is served on a target company and ending at the expiration of 28 days after the day on which the statement is served or, if take-over offers are dispatched pursuant to the statement within those 28 days, at the expiration of the period during which the take-over offers remain open the offeror, or a person associated with the offeror, shall not give, offer to give or agree to give to a person whose shares may be acquired under the relevant take-over scheme, or to a person associated with such a person, any benefit (whether by payment of cash or otherwise) not provided for under the take-over offers or, if the take-over offers are varied in accordance with section 27, under the take-over offers as so varied.

(2) Subject to sub-section (3), during the period commencing when a take-over announcement is made in relation to shares in a company and ending at the expiration of the period during which offers constituted by that announcement remain open the on-market offeror, or a person associated with the on-market offeror, shall not give, offer to give or agree to give to a person whose shares may be acquired pursuant to the take-over announcement, or to a person associated with such a person, any benefit (whether by payment of cash or otherwise) not provided for under the terms of the take-over announcement or, if those terms have been varied under section 17, under the terms as so varied.

(3) Nothing in this section prohibits—

- 25 (a) the variation of a take-over offer as provided by section 27; or
- (b) the 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.

**Expenses of directors of target company**

30 41. Notwithstanding anything in the constituent documents of a company, the directors of the company are entitled to have refunded to them by the company any expenses reasonably incurred by them in the interest of the members of the company in relation to a take-over scheme involving the acquisition of shares in the company or in relation to a take-over  
35 announcement relating to shares in the company.



**Provisions relating to dissenting shareholders**

**42. (1) For the purposes of this section—**

- 5
- (a) where take-over offers have been made in respect of shares included in a class of shares by an offeror who proposes to acquire all the shares included in that class, the shares in respect of which the offers were made constitute shares subject to acquisition;
- 10
- (b) where a take-over announcement has been made in respect of shares included in a class of shares, the shares included in that class (other than shares to which the on-market offeror is entitled) constitute shares subject to acquisition;
- (c) a reference to outstanding shares shall be construed as a reference to—
- 15
- (i) shares subject to acquisition by virtue of paragraph (a) in respect of which a take-over offer was made but has not been accepted, not being shares acquired by the offeror otherwise than under the relevant take-over scheme; or
- 20
- (ii) shares subject to acquisition by virtue of paragraph (b) in respect of which an offer made by virtue of a take-over announcement has not been accepted, not being shares acquired by the on-market offeror otherwise than by virtue of the take-over announcement; and
- (d) a reference to a dissenting offeree shall be construed—
- 25
- (i) in relation to shares in respect of which take-over offers have been made—as a reference to a person who is the holder of shares that are outstanding shares by virtue of sub-paragraph (c) (i); and
- 30
- (ii) in relation to shares in respect of which a take-over announcement has been made—as a reference to a person who is the holder of shares that are outstanding shares by virtue of sub-paragraph (c) (ii).

**(2) Where—**

- 35
- (a) take-over offers have been made 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, after the relevant Part A statement was served on the target company and before the end of the period during which the offers remain open, the number of shares included in that class to which the offeror is entitled became or becomes not less than 90% of the shares included in that class; and

5 (b) if the shares subject to acquisition constitute less than 90% of the shares included in that class—three-quarters of the offerees have disposed of to the offeror (whether under the relevant take-over scheme or otherwise) the shares subject to acquisition that were held by them,

the offeror may, within one month after the last day upon which offers under the take-over scheme remained open, give notice, as prescribed, to a dissenting offeree to the effect that the offeror desires to acquire the outstanding shares held by the dissenting offeree.

10 (3) Where—

15 (a) a take-over announcement has been made in respect of shares included in a class of shares and, before the end of the period during which the offers constituted by that take-over announcement remain open, the number of shares included in that class to which the on-market offeror is entitled becomes not less than 90% of the shares included in that class; and

20 (b) if the shares subject to acquisition constitute less than 90% of the shares included in that class—three-quarters of the offerees have disposed of to the on-market offeror (whether by acceptance of offers made by virtue of the take-over announcement or otherwise) the shares subject to acquisition that were held by them,

the on-market offeror may, within one month after the last day upon which offers constituted by the take-over announcement remained open, give notice, as prescribed, to a dissenting offeree to the effect that the on-market offeror  
25 desires to acquire the outstanding shares held by the dissenting offeree.

(4) For the purposes of paragraph (2) (b) or (3) (b), 2 or more persons holding jointly shares in respect of which a take-over offer has been made or an offer has been made by virtue of a take-over announcement shall be deemed to be one offeree.

30 (5) An offeror or on-market offeror to whom sub-section (2) or (3) applies in relation to a particular company shall, on the day on which he first gives a notice under sub-section (2) or (3), as the case may be, in relation to that company, lodge a copy of the notice with the Commission.

35 (6) Where a notice is given under sub-section (2) or (3), the offeror or on-market offeror is entitled and bound, subject to this section, to acquire the shares to which the notice relates on the terms that were applicable in relation to the acquisition of shares under the take-over scheme or pursuant



to the take-over announcement immediately before the expiration of the period for which offers under the take-over scheme or offers constituted by the take-over announcement remained open.

**(7)** Sub-section (6) does not have effect in relation to a dissenting offeree where, on an application made by the dissenting offeree—

(a) within one month after the date on which the notice was given under sub-section (2) or (3); or

(b) within 14 days after the giving to him of a statement under sub-section (10),

10 whichever is the later, the Court orders that sub-section (6) is not to have effect in relation to him.

**(8)** Where alternative terms were offered under a take-over offer to which this section applies, the dissenting offeree may, by notice in writing given to the offeror—

15 (a) within one month after the date on which the notice was given under sub-section (2); or

(b) within 14 days after the giving to him of a statement under sub-section (10),

20 whichever is the later, specify which of those terms he prefers, and the terms so specified shall apply to the acquisition of the outstanding shares held by him.

**(9)** If a dissenting offeree fails to give a notice within the period allowed by sub-section (8), the offeror may, unless the Court otherwise orders, determine which of the terms referred to in that sub-section is to apply to the 25 acquisition of the outstanding shares of the dissenting offeree.

**(10)** Where the offeror or on-market offeror has given notice under sub-section (2) or (3), the dissenting offeree may, by notice in writing served on the offeror or on-market offeror within one month after the date on which the first-mentioned notice was given, ask for a statement in writing of the 30 names and addresses of all other dissenting offerees and the offeror or on-market offeror shall forthwith give a statement in writing accordingly.

**(11)** Where the offeror or on-market offeror has given notice under sub-section (2) or (3) and the Court has not, on an application made under sub-section (7), ordered to the contrary, the offeror or on-market offeror 35 shall, within 14 days after—

(a) the expiration of one month after the notice was given;

(b) the expiration of 14 days after the last day on which a statement under sub-section (10) was given; or

- (c) where an application has been made to the Court under sub-section (7)—the application has been disposed of, whichever last happens, serve a copy of the notice on the company that issued the shares, together with an instrument of transfer of the shares executed on behalf of the holder of the shares by a person appointed by the offeror or on-market offeror and also executed by the offeror or on-market offeror, and pay, allot or transfer to the target company the consideration for the transfer, and the target company shall thereupon register the offeror or on-market offeror as the holder of those shares.
- 10 (12) The target company shall hold the consideration so received in trust for the former holder of the shares and shall forthwith notify him in writing that the consideration has been received by the target company and is being held by that company pending his instructions as to how it is to be dealt with.
- 15 (13) Where consideration held as provided by sub-section (12) consists of or includes money, that money shall be paid into a bank account opened and maintained for that purpose only.
- (14) Where money or other property is held in trust by a company for a person under this section and has been so held for not less than 2 years, the company shall, before the expiration of 10 years after the date on which the money or other property was received by the company, pay the money or transfer the property and any accretions (or, if any property has been substituted for the whole or any part of that money or property, the property so substituted) to the Minister administering the *Unclaimed Moneys Act, 1917*.
- 25 (15) The Minister administering the *Unclaimed Moneys Act, 1917*, shall sell or dispose of any property other than money so received and any property that becomes substituted for the whole or any part of that property as he thinks fit and shall deal with the proceeds of the sale or disposal and any money so received and any income derived from that property in accordance with that Act.
- 30 (16) Where any property transferred under this section to the Minister administering the *Unclaimed Moneys Act, 1917*, or any property that becomes substituted for the whole or any part of that property, includes marketable securities of a corporation, that Minister is not subject to any obligation to pay any calls, to make any contribution to the debts and liabilities of the corporation, to discharge any other liability, or to do any other act or thing, in respect of the marketable securities, whether the obligation arises before or after the date of the transfer, but this sub-section does not affect any right of the corporation to forfeit a share.



(17) Where, under the provision of the law of a State other than New South Wales or of a Territory that corresponds with this section, marketable securities of a company are transferred to any authority specified in that law, that authority is not subject to any obligation as specified in sub-section 5 (16) in respect of those marketable securities, but this sub-section does not affect any right of the company to forfeit a share.

(18) Neither the State nor the Minister administering the *Unclaimed Moneys Act, 1917*, is liable for any loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers that 10 are conferred on that Minister under this section or that that Minister has in relation to property transferred to him under this section or property that becomes substituted for the whole or any part of that property.

### **Rights of remaining shareholders and holders of options and notes**

#### **43. (1) Where—**

15 (a) a Part A statement has been served in respect of shares included in a class of shares in a company and, during the period (in this section referred to as a "relevant period") commencing when the statement was served and ending at the expiration of 28 days after the day on which the statement was served or, if take-over offers are dispatched 20 pursuant to the statement within those 28 days, at the expiration of the period during which the take-over offers remain open, the number of shares included in that class to which the offeror is entitled becomes not less than 90% of the shares included in that class; or

25 (b) a take-over announcement has been made in respect of shares included in a class of shares in a company and, during the period (in this section also referred to as a "relevant period") commencing when the take-over announcement was made and ending at the expiration of the period during which the offers constituted by the take-over announcement remain open, the number of shares included 30 in that class to which the on-market offeror is entitled becomes not less than 90% of the shares included in that class,

the offeror or on-market offeror shall, within one month after the last day upon which offers under the relevant take-over scheme remained open or offers constituted by the take-over announcement remained open, as the case 35 may be, give, as prescribed, a notice to the holders of remaining shares included in that class who, when the notice is given, had not been given notice under sub-section 42 (2) or (3) stating that he became entitled to shares as mentioned in paragraph (a) or (b), as the case may be, and containing such other information (if any) as is prescribed.

(2) A holder of remaining shares referred to in sub-section (1) may within 3 months after the giving of notice to him under that sub-section, require the offeror or on-market offeror to acquire shares included in the class concerned of which he is the holder and where, in the case of a take-over offer, alternative terms were offered in respect of shares included in that class in the take-over offer, elect which of those terms he will accept.

(3) Where a shareholder gives notice under sub-section (2) with respect to his shares, the offeror or on-market offeror is entitled and bound to acquire those shares—

10 (a) in the case where a Part A statement was served—on the terms that were applicable in relation to the acquisition of shares under the relevant take-over scheme immediately before the expiration of the period for which offers under that take-over scheme remained open and, where alternative terms were applicable, on the terms for which  
15 the shareholder has elected or, where he has not elected, on whichever of the terms the offeror determines; or

(b) in the case where a take-over announcement was made—on the terms that were applicable in relation to the acquisition of shares pursuant to the take-over announcement immediately before the expiration  
20 of the period for which offers constituted by the take-over announcement remained open,

or on such other terms as are agreed or as the Court, on the application of the offeror, on-market offeror or shareholder, thinks fit to order.

(4) Where—

25 (a) a Part A statement has been served as mentioned in paragraph (1) (a) and, during the relevant period referred to in that paragraph, the number of voting shares in the company to which the offeror is entitled becomes not less than 90% of the voting shares in the company; or

30 (b) a take-over announcement has been made as mentioned in paragraph (1) (b) and, during the relevant period referred to in that paragraph, the number of voting shares in the company to which the on-market offeror is entitled becomes not less than 90% of the voting shares in the company,

35 the offeror or on-market offeror shall, within one month after the last day upon which offers under the relevant take-over scheme remained open or offers constituted by the take-over announcement remained open, as the case may be, give, as prescribed, a notice to the holders of non-voting shares in the company to which he is not entitled, and to the holders of renounceable  
40 options or convertible notes granted or issued by the company to which he is



not entitled, stating that he became entitled to shares as mentioned in paragraph (a) or (b), as the case may be, and containing such other information (if any) as is prescribed.

(5) A notice given under sub-section (4) shall not propose terms for the acquisition by the offeror or on-market offeror of the shares, renounceable option or convertible note to which the notice relates unless the notice is accompanied by a report by an expert (other than an expert who, at the time when the report was obtained, was associated with the offeror or on-market offeror) stating that in his opinion the terms proposed in the notice are fair and reasonable.

(6) Where a notice is given under sub-section (4) to the holder of any non-voting shares, renounceable option or convertible note—

(a) the holder of the shares, option or note may, within 3 months after the giving of the notice to him, require the offeror or on-market offeror to acquire the shares, option or note; and

(b) if a holder of shares or of an option or note so gives notice with respect to the shares, option or note, the offeror or on-market offeror is entitled and bound to acquire those shares or that option or note on such terms as are agreed or as the Court, on the application of the offeror, on-market offeror or holder of the shares, option or note, thinks fit to order.

(7) Where an offeror or on-market offeror has given a notice or notices under sub-section (1) or (4), he shall forthwith lodge with the Commission a copy of the notice or of one of the notices.

25

## **PART VI—MISCELLANEOUS**

### **Liability for mis-statements**

44. (1) Where—

(a) there is, in a statement that purports to be a Part A statement served under paragraph 16 (2) (d), in a take-over offer or in a notice given under sub-section 42 (2) or sub-section 43 (1) or (4), matter that is false in a material particular or materially misleading in the form or context in which it appears; or

(b) there is an omission of material matter from such a statement, offer or notice,

35 a person to whom this sub-section applies is, subject to this section, guilty of an offence.

**(2) Where—**

5 (a) there is, in a statement that purports to be a Part B statement given under sub-section 22 (1) or a Part D statement served under sub-section 32 (1), matter that is false in a material particular or materially misleading in the form or context in which it appears; or

(b) there is an omission of material matter from such a statement,  
a person to whom this sub-section applies is, subject to this section, guilty of an offence.

**(3) Where—**

10 (a) there is, in a statement that purports to be a Part C statement served under paragraph 17 (10) (a); or in a notice given under sub-section 42 (3) or sub-section 43 (1) or (4), matter that is false in a material particular or materially misleading in the form or context in which it appears; or

15 (b) there is an omission of material matter from such a statement or notice,

a person to whom this sub-section applies is, subject to this section, guilty of an offence.

**(4) Where—**

20 (a) there is—

(i) in a report that is set out in a Part B statement in accordance with paragraph 22 (3) (a) or accompanies a Part B statement in accordance with section 23;

25 (ii) in a report that is set out in a Part D statement in accordance with paragraph 32 (3) (a);

(iii) in a report that accompanies, or is included in, a statement issued with the consent of the Commission under section 37 or 38; or

30 (iv) in a report that accompanies a notice given under sub-section 43 (4),

matter that is false in a material particular or materially misleading in the form or context in which it appears; or

(b) there is an omission of material matter from such a report,  
the person who made the report and, if that person is a corporation, any  
35 officer of the corporation who is in default are, subject to this section, each guilty of an offence.



**(5) Where—**

- 5 (a) a person proposes, or 2 or more persons together propose, to dispatch a take-over offer or to cause a take-over offer to be dispatched, or to cause a take-over announcement to be made, in respect of shares in a company;
- 10 (b) the person, or either or any of the persons, referred to in paragraph (a), or a person associated with the person or with either or any of the persons, or, if the person or either or any of the persons or any person associated with the person or with either or any of the persons is a corporation, an officer of the corporation or a person associated with such an officer—
- 15 (i) makes or issues, or causes to be made or issued, an oral or written statement to the public, or publishes, or causes to be published, an advertisement, relating to a prescribed matter; or
- (ii) dispatches, or causes to be dispatched, a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company; and
- 20 (c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading in the form or context in which it appears,

the person who made or issued the statement, published the advertisement or dispatched the document, or caused the statement to be made or issued, the advertisement to be published or the document to be dispatched, and, if that person is a corporation, any officer of the corporation who is in default, are, subject to this section, each guilty of an offence.

**(6) Where—**

- 30 (a) the directors of a company have reason to believe that a person proposes, or 2 or more persons together propose, to dispatch a take-over offer or to cause a take-over offer to be dispatched, or to cause a take-over announcement to be made, in respect of shares in the company;
- 35 (b) the target company or a corporation that is related to the target company or an officer of the target company or of such a corporation or a person associated with such an officer—
- (i) makes or issues, or causes to be made or issued, an oral or written statement to the public, or publishes, or causes to be published, an advertisement, relating to a prescribed matter; or

- (ii) dispatches, or causes to be dispatched, a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company; and
- 5 (c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading in the form or context in which it appears,

the person who made or issued the statement, published the advertisement or dispatched the document, or caused the statement to be made or issued, the  
10 advertisement to be published or the document to be dispatched, and, if that person is a corporation, any officer of the corporation who is in default, are, subject to this section, each guilty of an offence.

**(7) Where—**

- 15 (a) a take-over offer is dispatched, or a take-over announcement is made, in respect of shares in a company;
- (b) at any time during the period commencing when the take-over offer is dispatched or the take-over announcement is made and ending at the expiration of the period during which the take-over offer remains open or the offers constituted by the take-over announcement remain open, a person to whom this section applies—
  - 20 (i) makes or issues, or causes to be made or issued, an oral or written statement to the public, or publishes, or causes to be published, an advertisement, in connection with the offers under the relevant take-over scheme or in connection with the take-over announcement, relating to a prescribed matter; or
  - 25 (ii) dispatches, or causes to be dispatched, in connection with the offers under the relevant take-over scheme or in connection with the take-over announcement, a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company (not being a document required by this Code to be so dispatched); and
- 30 (c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading in the form or context in which it appears,
- 35

that person, and, if that person is a corporation, any officer of the corporation who is in default, are, subject to this section, each guilty of an offence.



- (8) For the purposes of sub-sections (5), (6) and (7)—
- (a) a reference to a document includes a reference to a disc, tape, cinematograph film or other article from which sounds or images can be reproduced; and
  - 5 (b) a prescribed matter is a matter relating to affairs of, or to marketable securities issued or to be issued by—
    - (i) the target company or a corporation that is related to the target company;
    - 10 (ii) the offeror or on-market offeror, as the case may be, or a corporation that is related to the offeror or on-market offeror; or
    - (iii) any other offeror or on-market offeror in relation to the target company, or any corporation that is related to such an offeror or on-market offeror.
- 15 (9) A person to whom sub-section (1), (2) or (3) applies, or a person referred to in sub-section (4), is, in the circumstances referred to in that sub-section, whether or not he has been convicted of an offence under that sub-section, liable, subject to this section, to pay compensation to a person who acts, or refrains from acting, on the faith of the contents of the relevant statement, offer, notice or report for any loss or damage sustained by that person
- 20 by reason of his reliance on the false or misleading matter or by reason of the omission of material matter.
- (10) A person referred to in sub-section (5), (6) or (7) is, in the circumstances referred to in that sub-section, whether or not he has been convicted
- 25 of an offence under that sub-section, liable, subject to this section, to pay compensation to a person who acts, or refrains from acting, on the faith of the contents of the relevant statement, advertisement or document for any loss or damage sustained by that person by reason of his reliance on the false or misleading matter.
- 30 (11) The persons to whom sub-section (1) applies are—
- (a) the offeror;
  - (b) in a case where false or misleading matter appeared in, or material matter was omitted from, a statement—
    - 35 (i) if the offeror is or includes a corporation—a person who was a director of that corporation at the time when the statement was served, not being—
      - (A) a director who was not present at the meeting at which the resolution authorizing the signing of the statement was agreed to; or

- (B) a director who voted against that resolution; and
- (ii) subject to sub-section (15), a person a notice of whose consent to the inclusion in the statement of a report made by him has been lodged with the Commission under paragraph 18 (2) (b); and
- 5 (c) in a case where—
- (i) false or misleading matter appeared in, or material matter was omitted from, an offer or notice; and
- (ii) the offeror is or includes a corporation,
- 10 a person who was a director of that corporation at the time when the offer was dispatched or the notice was given, as the case may be.
- (12)** The persons to whom sub-section (2) applies are—
- (a) the target company;
- 15 (b) where the statement was signed as mentioned in paragraph 22 (2) (a) or 32 (2) (a)—a person who was a director of the target company at the time when the statement was given or served, not being—
- (i) a director who was not present at the meeting at which the resolution authorizing the signing of the statement was agreed to; or
- 20 (ii) a director who voted against that resolution; and
- (c) where the statement was signed as mentioned in paragraph 22 (2) (b) or 32 (2) (b)—the person who signed the statement.
- (13)** The persons to whom sub-section (3) applies are—
- 25 (a) the on-market offeror; and
- (b) in a case where—
- (i) false or misleading matter appeared in, or material matter was omitted from, a statement; and
- (ii) the on-market offeror is or includes a corporation,
- 30 a person who was a director of that corporation at the time when the statement was served, not being—
- (iii) a director who was not present at the meeting at which the resolution authorizing the signing of the statement was agreed to; or
- 35 (iv) a director who voted against that resolution.
- (14)** The persons to whom sub-section (7) applies are—
- (a) the offeror or on-market offeror;



- (b) a person associated with a person referred to in paragraph (a);
- (c) the target company;
- (d) an officer of the target company or a person associated with such an officer; or
- 5 (e) if a person referred to in paragraph (a) or (b) is a corporation—an officer of the corporation or a person associated with such an officer.

**(15)** A person referred to in sub-paragraph (11) (b) (ii) is guilty of an offence under sub-section (1), and liable to pay compensation under sub-section (9), only in respect of false or misleading matter in the report referred to in that sub-paragraph or an omission of material matter from that report.

**(16)** It is a defence to a prosecution of a person for an offence against sub-section (1), (2), (3) or (4) if the person proves—

15 (a) that, when the statement was served or given, the offer was dispatched, the notice was given or the report was made, he—

- (i) believed on reasonable grounds that the false matter was true;
- (ii) believed on reasonable grounds that the misleading matter was not misleading;
- 20 (iii) in the case of an omission, believed on reasonable grounds that no material matter had been omitted; or
- (iv) in the case of an omission, did not know that the omitted matter was material; and

(b) that—

- 25 (i) on the date of the information, he so believed or did not so know; or
- (ii) before that date, he ceased so to believe or came to know that the omitted matter was material, and forthwith gave reasonable notice containing such matters as were necessary to correct the false or misleading matter or the omission.

30 **(17)** It is a defence to a prosecution of a person for an offence against sub-section (5), (6) or (7) if the person proves—

(a) that, when the statement was made or issued, the advertisement was published or the document was dispatched, he—

- 35 (i) believed on reasonable grounds that the false matter was true; or
- (ii) believed on reasonable grounds that the misleading matter was not misleading; and

(b) that—

- (i) on the date of the information, he so believed; or
- (ii) before that date, he ceased so to believe and forthwith gave reasonable notice containing such matters as were necessary to correct the false or misleading matter.

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**(18)** It is a defence to an action under sub-section (9) if the defendant proves—

(a) any matter referred to in paragraph (16) (a); and

10

(b) in a case where the action is brought by a person who acted on the faith of the contents of the relevant statement, offer, notice or report, that—

(i) when the plaintiff so acted, the defendant believed as mentioned in sub-paragraph (16) (a) (i), (ii) or (iii) or did not know that the omitted matter was material; or

15

(ii) before the plaintiff so acted, the defendant ceased so to believe or came to know that the omitted matter was material, and forthwith gave reasonable notice containing such matters as were necessary to correct the false or misleading matter or the omission.

**(19)** It is a defence to an action under sub-section (10) if the defendant proves—

(a) any matter referred to in paragraph (17) (a); and

25

(b) in a case where the action is brought by a person who acted on the faith of the contents of the relevant statement, advertisement or document, that—

(i) when the plaintiff so acted, the defendant believed as mentioned in sub-paragraph (17) (a) (i) or (ii); or

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(ii) before the plaintiff so acted, the defendant ceased so to believe and forthwith gave reasonable notice containing such matters as were necessary to correct the false or misleading matter.

**(20)** The penalty for an offence arising under this section is a fine not exceeding \$5,000 or imprisonment for a period not exceeding 1 year, or both.

**(21)** Nothing in this section affects any cause of action existing apart from this section.



**Orders where prohibited acquisitions take place**

45. (1) Where a person has acquired shares in a company in contravention of section 11, the Court may, on the application of the Commission, the company, a member of the company or the person from whom the shares were acquired, make one or more of the following orders:

- (a) an order restraining the person who acquired the shares from disposing of, or of any interest in, the shares or such of the shares as are specified in the order;
- 10 (b) an order restraining the exercise of any voting or other rights attached to the shares or such of the shares as are specified in the order;
- (c) an order directing the company not to make payment, or to defer making payment, of any sum or sums due from the company in respect of the shares or such of the shares as are specified in the order;
- 15 (d) an order directing the disposal of, or of any interest in, the shares or such of the shares as are specified in the order;
- (e) an order directing the company not to register the transfer or transmission of the shares or such of the shares as are specified in the order;
- 20 (f) an order that any exercise of the voting or other rights attached to the shares, or such of the shares as are specified in the order, be disregarded;
- (g) for the purpose of securing compliance with any order referred to in any of the preceding paragraphs, an order directing the company or 25 any other person to do or refrain from doing a specified act.

(2) Where, at the hearing of an application under subsection (1), it is proved to the satisfaction of the Court that—

- 30 (a) a person is entitled to shares in a company by reason that another person who is, by virtue of sub-section 7 (4), an associate of the first-mentioned person has a relevant interest in those shares; and
- (b) that other person became entitled to that relevant interest by reason of an acquisition of shares (whether in that company or in another corporation) that took place within 6 months immediately preceding the filing of the application with the Court,

35 then, in determining for the purposes of the application whether the acquisition referred to in paragraph (b) of this sub-section was made in contravention of section 11, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b) of this sub-section constitutes *prima*

*facie* evidence that the other person was, for the purposes of sub-section 7 (3), an associate of the first-mentioned person immediately after the acquisition took place.

(3) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied—

(a) that the contravention of section 11 by the person who acquired the shares was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that, in all the circumstances, the contravention ought to be excused.

#### 10 Orders where offers not dispatched pursuant to Part A statement

46. (1) Where—

(a) a Part A statement relating to offers under a take-over scheme is served on a target company;

15 (b) after the Part A statement is served the offeror referred to in the Part A statement acquires shares in the company;

(c) the acquisition of those shares would, but for paragraph 13 (3) (a), have contravened section 11; and

20 (d) the offeror does not dispatch the offers to which the Part A statement relates within the period of 28 days after the Part A statement is served on the target company,

the Court may, on the application of the Commission, do either or both of the following:

(e) make one or more of the orders referred to in sub-section 45 (1);

25 (f) order the offeror, within such time as is specified in the order, to dispatch in a manner approved by the Commission the offers to which the Part A statement relates.

(2) Where, under paragraph (1) (f), the Court orders a person to dispatch offers, the Court may also order the person—

30 (a) to dispatch with each offer a notice setting out such information as the Court specifies; and

(b) within such period as is specified in the order, to serve on the target company, lodge with the Commission, and, if the target company is a listed public company, serve on the stock exchange that is the home exchange in relation to the target company, a copy of the notice.

35 (3) Where offers are dispatched pursuant to an order made by the Court under paragraph (1) (f), the offers shall be deemed to be made under a take-over scheme.



**Orders to protect rights under take-over schemes or announcements**

47. (1) Where a Part A statement relating to offers under a take-over scheme has been served on a target company or a take-over announcement has been made, the Court may, on the application of the Commission, the offeror, the on-market offeror, the target company or any person who holds shares in the target company or held shares in the target company at the time when the Part A statement was so served or the take-over announcement was made, if the Court is satisfied that a provision of this Code has been contravened or has not been complied with, make such orders as it thinks necessary or expedient to protect the rights of a person affected by the take-over scheme or take-over announcement (including a person who is the holder of non-voting shares in, or renounceable options or convertible notes granted or issued by, the target company), including, but without limiting the generality of the foregoing, one or more of the following orders:

- 15 (a) an order directing the offeror, the on-market offeror or the target company to supply to the holders of shares in the target company such information as is specified in the order;
- (b) where a person has failed to do an act or thing that he was required by this Code to do—an order directing that person to do that act or thing within such time as is specified in the order, notwithstanding that the time specified in this Code for the doing of that act or thing has expired;
- (c) an order restraining the exercise of any voting or other rights attached to any shares;
- 25 (d) an order restraining the disposal of, or of any interest in, shares in the target company;
- (e) an order directing the disposal of, or of any interest in, shares in the target company;
- (f) an order directing the target company not to register the transfer or transmission of shares;
- 30 (g) an order cancelling a contract, arrangement or offer relating to the take-over scheme or take-over announcement;
- (h) an order declaring a contract, arrangement or offer relating to the take-over scheme or take-over announcement to be voidable;
- 35 (j) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

(2) In this section, "shares", in relation to a company, includes—

- (a) shares in the company that are not voting shares; and

- (b) renounceable options and convertible notes granted or issued by the company.

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

5 48. (1) Where a person has contravened or failed to comply with a provision of this Code and the Court is satisfied that the contravention or failure was due to inadvertence, mistake or circumstances beyond his control and that the contravention or failure ought to be excused or is satisfied on any other grounds that the contravention or failure ought to be excused, the  
10 Court may, on the application of an interested person, make such order as it thinks fit declaring any act or matter not to be invalid by reason of the contravention or failure and declaring any act or matter to have force or effect as if there had been no such contravention or failure.

**(2) Where—**

- 15 (a) offers to acquire shares in a company, being offers that purported to be made under a take-over scheme, have been made;  
(b) a requirement of sub-section 16 (2) has not been complied with; and  
(c) the Court is satisfied, on application made by the person who made  
20 the offers, 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 made under a take-over scheme.

25 **(3) Where—**

- (a) a document purporting to be a Part A statement or a Part C statement is served on a company;  
(b) the document does not comply with all the requirements of Part A or Part C, as the case may be, of the Schedule; and  
30 (c) the Court is satisfied, on application by the person by whom or on whose behalf the document was served, 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,  
35 the Court may make an order directing that the document shall be deemed to be, and at all relevant times to have been, a Part A statement or a Part C statement, as the case may be.



**(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;
- 5 (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-
- 10 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 **(4)** This section has effect notwithstanding anything contained in any other provision of this Code.

**Miscellaneous provisions relating to orders**

**49. (1)** The Court shall, before making an order under section 45, 46, 47, 48, 57 or 60 and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice

20 any person.

**(2)** The Court may, before making an order under section 45, 46, 47, 48, 57 or 60, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

25 **(3)** An order under section 45, 46, 47, 48, 57 or 60 may include such ancillary or consequential provisions as the Court thinks just.

**(4)** An order under section 45, 46, 47 or 60 directing the disposal of, or of an interest in, a share may provide that the disposal shall be made within such time and subject to such conditions (if any) as the Court thinks fit,

30 including, if the Court thinks fit, a condition that the disposal shall not be made to a particular person or persons or to persons included in a particular class or classes of persons.

**(5)** The Court may direct that, where a share or an interest in a share is not disposed of in accordance with an order of the Court under section 45,

35 46, 47 or 60, the share or interest in the share shall vest in the Commission.

(6) Section 311 of the *Companies Act*, 1961, applies in relation to a share or an interest in a share that vests in the Commission under this section in like manner as it applies in relation to an estate or interest in property referred to in the first-mentioned section.

5 (7) The Court may rescind, vary or discharge an order made by it under section 45, 46, 47, 48, 57 or 60 or suspend the operation of such an order.

(8) A person who contravenes or fails to comply with an order under section 45, 46, 47, 57 or 60 that is applicable to him is guilty of an offence.

10 (9) Where an offence under sub-section (8) is committed by a corporation, any officer of the corporation who is in default is guilty of an offence.

(10) The penalty for an offence arising under this section is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 3 months, or both.

15 (11) Sub-sections (8) and (9) do not affect the powers of the Court in relation to the punishment of contempts of the Court.

(12) In the application of a provision of this section in relation to orders under section 47, the expression "share" has, in that provision, the meaning given to that expression by sub-section 47 (2).

### **Reduction of capital or cancellation of allotment**

20 49A. Section 64 of the *Companies Act*, 1961, 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 Code, and nothing in that section operates to invalidate any such reduction of capital or cancellation of shares.

### **25 Unfair or unconscionable agreements, payments or benefits**

50. (1) Subject to sub-section (3), this section applies to—

30 (a) an agreement entered into by a corporation for the making of a payment by the corporation to, or for the provision of a benefit by the corporation for, a person who is a director, secretary or executive officer of the corporation or of a corporation that is related to the corporation; or

(b) a payment or benefit made or provided by a corporation, otherwise than pursuant to an agreement, to or for such a person, where the agreement is entered into or the payment or benefit is made or  
35 provided by the corporation—



(c) if the corporation is a company—

- 5 (i) during the period of 12 months after a Part A statement has been served on, or a take-over announcement has been made in respect of shares in, the company or a corporation that is related to the company; or
- (ii) at a time when the directors of the company have reason to believe that a take-over offer or take-over announcement is to be made in respect of shares in the company or in a corporation that is related to the company; or

10 (d) if the corporation is not a company—

- (i) during the period of 12 months after a Part A statement has been served on, or a take-over announcement has been made in respect of shares in, a company that is related to the corporation; or
- 15 (ii) at a time when the directors of the corporation have reason to believe that a take-over offer or take-over announcement is to be made in respect of shares in a company that is related to the corporation.

(2) For the purposes of paragraph (1) (a), a corporation that enters into a  
20 contract with a person for the employment of, or for the performance of services by, that person for a fixed period shall be taken to have entered into an agreement for the provision of a benefit for that person.

(3) This section does not apply to an agreement that has been entered into, or to a payment or benefit that has been made or provided, by the company  
25 (in this sub-section referred to as the "target company") to shares in which the Part A statement or take-over announcement relates, or in respect of shares in which the directors believe that a take-over offer or take-over announcement is to be made, or by a corporation that is related to the target company if—

30 (a) the agreement, payment or benefit has been approved by an ordinary resolution of the target company (whether before or after the agreement was entered into or the payment or benefit was made or provided); and

35 (b) where the person who is entitled to receive, or has received, the payment or benefit, or a person associated with that person, was a member of the target company at the time when the resolution was passed—that member did not vote, either personally or by proxy, on the resolution.

(4) Where a corporation enters into an agreement, or makes or provides a payment or benefit, to which this section applies and the Court is satisfied, on application by the corporation, by the Commission, or by a person who holds, or persons who between them hold, shares in the corporation or in a corporation that is related to the corporation that represent not less than 10% of the aggregate nominal value of the shares in the corporation or in the related corporation, as the case may be, being an application made within 12 months, or such longer period as the Court thinks reasonable in the circumstances, after the agreement was entered into, or the payment or benefit was made or provided, as the case may be, that the entering into the agreement, or the making or provision of the payment or benefit, was unfair or unconscionable having regard to the interests of the corporation, the Court may—

(a) in the case of an agreement—

15 (i) make an order declaring the agreement or any part of the agreement to be void and, if the Court thinks fit, to have always been void; and

20 (ii) if the Court thinks it just and equitable to do so—make an order directing any person to whom a payment was made or for whom a benefit was provided under the agreement, or another person specified in the order, to make a payment or transfer property to the corporation or to do any other act for the benefit of the corporation;

25 (b) in the case of a payment or benefit—if the Court thinks it just and equitable to do so, make an order directing the person to whom the payment was made or for whom the benefit was provided, or another person specified in the order, to make a payment or transfer property to the corporation or to do any other act for the benefit of the corporation; and

30 (c) in either case—make any other order that the Court thinks appropriate.

(5) The references in paragraph (1) (c) to a Part A statement having been served on, or a take-over announcement having been made in respect of shares in, a corporation or to a take-over or take-over announcement that is to be made in respect of shares in a corporation shall, in the case of a corporation that is not a company, be construed as a reference to a Part A statement, take-over announcement or take-over offer under the corresponding law of the State or Territory in which the corporation is incorporated.



### **Recording of resolutions**

51. The person who records the minute of a resolution passed for the purposes of this Code at a meeting of the directors of a corporation shall record in the minute the name of any director who is absent from the meeting  
5 when the resolution is passed, the name of any director who votes against the resolution and the name of any director who is present when the resolution is passed and abstains from voting on the resolution.

### **Statements as to proposed take-over offers or announcements**

52. (1) A person who does not propose, whether alone or together with  
10 another person or other persons, to make take-over offers or to cause take-over offers to be made, or to cause to be made a take-over announcement, in relation to shares in a company shall not, whether alone or together with another person or other persons, give notice or publicly announce that he proposes, or that he and another person or other persons propose together, to  
15 make take-over offers or to cause take-over offers to be made, or to cause to be made a take-over announcement, in relation to shares in that company.

(2) Where—

(a) a person whether alone or together with another person or other  
20 persons, gives notice or publicly announces that he proposes, or that he and another person or other persons propose together, to make take-over offers or to cause take-over offers to be made, or to cause to be made a take-over announcement, in relation to shares in a company; and

(b) the person does not, within 2 months, or such further period as the  
25 Commission permits in writing, whether alone or together with another person or other persons, make take-over offers or cause take-over offers to be made, or cause to be made a take-over announcement, in relation to shares in that company,

the person shall be deemed to have contravened sub-section (1) unless the  
30 person establishes that there was such a change in circumstances after the notice was given or the announcement was made that he could not reasonably be expected to make the take-over offers or cause the take-over offers to be made or cause the take-over announcement to be made.

(3) In any proceeding, if there is produced a certificate in writing by the  
35 Commission stating that the Commission has not, pursuant to paragraph (2) (b), permitted a further period for a person or persons specified in the certificate to make take-over offers, or cause a take-over announcement to be made, in relation to shares in a company so specified, it shall be presumed, unless the contrary is established, that no such further period was permitted.

(4) A person shall not, whether alone or together with another person or other persons, make take-over offers or cause to be made a take-over announcement, or give notice or publicly announce, whether alone or together with another person or other persons, that he proposes, whether alone or together with another person or other persons, to make take-over offers or to cause to be made a take-over announcement, if he has no reasonable or probable grounds for believing that he, or that he and the other person or other persons, will be able to perform his or their obligations (including any obligations that may arise under section 43) if the take-over offers or proposed take-over offers or the offers constituted by the take-over announcement or proposed take-over announcement, as the case may be, are accepted.

(5) A person shall not, whether alone or together with another person or other persons, cause take-over offers to be made, or give a notice or publicly announce, whether alone or together with another person or other persons, that he proposes, whether alone or together with another person or other persons, to cause take-over offers to be made, if he has no reasonable or probable grounds for believing that the person or persons by whom the take-over offers are to be made will be able to perform his or their obligations (including any obligations that may arise under section 43) if the take-over offers or proposed take-over offers are accepted.

#### **Offences**

53. (1) A person who contravenes or fails to comply with a provision of this Code is guilty of an offence.

(2) Where an offence against this Code is committed by a corporation, an officer of the corporation who is in default is guilty of an offence.

(3) The penalty for an offence arising under this section is a fine not exceeding \$2,500 or imprisonment for a period not exceeding 6 months, or both.

(4) The preceding provisions of this section do not apply in relation to sections 44 and 49.

(5) Notwithstanding anything in section 5 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, sections 379 and 380 of the *Companies Act, 1961*, do not apply in relation to this Code.

#### **Continuing offences**

54. (1) Where—

(a) by or under a section, or a sub-section of a section, of this Code an act or thing is required or directed to be done within a particular period or before a particular time;



- (b) failure to do that act or thing within the period or before the time referred to in paragraph (a) constitutes an offence; and
- (c) that act or thing is not done within the period or before the time referred to in paragraph (a),

5 the following provisions have effect :

- (d) the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until the act or thing is done;
- 10 (e) where a person is convicted of an offence that, by virtue of paragraph (d), is constituted by failure to do that act or thing after the expiration of that period or after that time, as the case may be, that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues; and
- 15 (f) the penalty for each such separate and further offence is a fine not exceeding \$50.

(2) Where—

- 20 (a) by or under a section, or a sub-section of a section, of this Code an act or thing is required or directed to be done but no period within which or time by which that act or thing is to be done is specified;
- (b) failure to do that act or thing constitutes an offence; and
- (c) a person is convicted of an offence in respect of a failure to do that act or thing,

25 that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues and the penalty for each such separate and further offence is a fine not exceeding \$50.

30 (3) Charges against the same person for any number of offences under paragraph (1) (e) or sub-section (2) may be joined in the same information if those offences relate to a failure to do the same act or thing.

(4) If a person is convicted of more than one offence under paragraph (1) (e) or more than one offence under sub-section (2), the court by which he is convicted may impose one penalty in respect of all the offences of which the person is so convicted under that paragraph or sub-section, as the case may be, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

### **Officers in default**

55. Where a provision of this Code provides that an officer of a corporation who is in default is guilty of an offence, the reference to the officer who is in default shall, in relation to a contravention of, or failure to comply with, the provision, be construed as a reference to any officer of the corporation (including a person who subsequently ceased to be an officer of the corporation) who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or failure.

### **Service of documents and publication of notices**

10 56. (1) Where a document (not being a document that is required to be signed) is required by a provision of this Code or of the regulations to be served on a stock exchange, the document may be served by sending to the stock exchange, by telegraph, telex or other similar means of communication, a message to the effect of the document.

15 (2) Where a document is required by a provision of this Code or of the regulations, to be served on a stock exchange or lodged with the Commission on a particular day—

- 20 (a) if that day is not a trading day of that stock exchange—the document shall be served on that stock exchange on the next day that is a trading day of that stock exchange; or
- (b) if the office of the Commission is not open on that day—the document shall be lodged at that office on the next day on which that office is open.

25 (3) Where a person is required by a provision of this Code to lodge with the Commission or serve on a stock exchange a copy of a notice dispatched by the person, it is not necessary for the copy to include the name or address of the person to whom the notice was dispatched.

30 (4) Where by a provision of this Code a person is required to cause a notice to be published in a newspaper and, due to circumstances beyond his control, the notice is not published in accordance with the provision, the provision shall be deemed to have been complied with if the person—

- 35 (a) did all things that would, but for those circumstances, have resulted in publication of the notice in accordance with the provision; and
- (b) caused the notice to be published on the first practicable date after those circumstances ceased to exist.



**Power to exempt from compliance with Code**

57. (1) The Commission may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with all or any of the requirements of this Code.

(2) A copy of an instrument executed under this section shall be published in the *Gazette*.

(3) A person who is exempted by the Commission, subject to a condition, from compliance with a requirement of this Code shall not contravene or fail to comply with the condition.

(4) Where a person has contravened or failed to comply with a condition to which an exemption under this section is subject the Court may, on the application of the Commission, order the person to comply with the condition.

**Power to declare that Code applies as if modified**

58. (1) The Commission may, by instrument in writing, declare that this Code shall have effect in its application to or in relation to a particular person or persons in a particular case as if a provision or provisions of this Code specified in the instrument was or were omitted or was or were modified or varied in a manner specified in the instrument, and, where such a declaration is made, this Code has effect accordingly.

(2) A copy of an instrument executed under this section shall be published in the *Gazette*.

**Commission to take account of certain matters**

59. In exercising any of its powers under section 57 or 58, the Commission shall take account of the desirability of ensuring that the acquisition of shares in companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure—

- (a) that the shareholders and directors of a company know the identity of any person who proposes to acquire a substantial interest in the company;
- (b) that the shareholders and directors of a company have a reasonable time in which to consider any proposal under which a person would acquire a substantial interest in the company;

(c) that the shareholders and directors of a company are supplied with sufficient information to enable them to assess the merits of any proposal under which a person would acquire a substantial interest in the company; and

- 5 (d) that, as far as practicable, all shareholders of a company have equal opportunities to participate in any benefits accruing to shareholders under any proposal under which a person would acquire a substantial interest in the company,

10 but nothing in this section shall be taken to require the Commission to exercise any of its powers in a particular way in a particular case.

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

15 **60. (1)** The Commission may, within 14 days after an acquisition of shares in a company, by instrument in writing, declare that acquisition of shares to have been an unacceptable acquisition and, where such a declaration is made, the person who acquired those shares shall be deemed, for the purposes only of section 45, to have acquired those shares in contravention of section 11.

20 **(2)** Where an application is made to the Court under section 45 in relation to an acquisition of shares that has been declared by the Commission pursuant to sub-section (1) to have been an unacceptable acquisition of shares, the Court may, instead of making any of the orders referred to in section 45, declare that the acquisition of shares was not an unacceptable acquisition of shares and where the Court so declares, the declaration of the  
25 Commission has no further effect.

**(3)** Where a Part A statement has been served in respect of shares in a company, the Commission may, within 14 days after particular conduct has been engaged in by a specified person in relation to shares in, or the affairs of, the target company during the period commencing when the statement  
30 was served and ending at the expiration of 28 days after the day on which the statement was served or, if take-over offers are dispatched pursuant to the statement within those 28 days, at the expiration of the period during which the take-over offers remain open, by instrument in writing, declare that conduct to have been unacceptable conduct.

35 **(4)** Where a take-over announcement has been made in respect of shares in a company, the Commission may, within 14 days after particular conduct has been engaged in by a specified person in relation to shares in, or the affairs of, the target company during the period commencing when the take-over announcement was made and ending at the expiration of the period



during which the offers constituted by the take-over announcement remain open, by instrument in writing, declare that conduct to have been unacceptable conduct.

(5) Where, pursuant to sub-section (3) or (4), the Commission declares  
5 conduct that has been engaged in by a person to have been unacceptable  
conduct, the Court may, on the application of the Commission, make—

10 (a) any order that it thinks necessary or expedient to protect the rights of  
any person affected by the conduct or to ensure, as far as possible,  
that the relevant take-over scheme or take-over announcement pro-  
ceeds as if that conduct had not taken place;

(b) without limiting the generality of paragraph (a), any one or more  
orders of the kinds referred to in paragraphs 47 (1) (a), (c), (d),  
(e), (f), (g) and (h); and

15 (c) for the purpose of securing compliance with any order made pursuant  
to paragraph (a) or (b), an order directing a person to do or refrain  
from doing a specified act,

or, instead of making any order, the Court may declare that the conduct con-  
cerned was not unacceptable conduct, and, where the Court so declares, the  
declaration of the Commission has no further effect.

20 (6) Where the Commission makes a declaration under sub-section (1), (3)  
or (4) in relation to an acquisition of shares by, or in relation to conduct  
engaged in by, a person, the Court may, on the application of that person,  
declare that the acquisition of shares, or the conduct, as the case may be,  
was not an unacceptable acquisition of shares or was not unacceptable con-  
25 duct, as the case may be, and, where the Court so declares, the declaration  
of the Commission has no further effect.

(7) The Commission shall not make a declaration under sub-section (1)  
unless it is satisfied that the acquisition of shares to which the declaration  
relates occurred in circumstances where—

30 (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;

35 (b) the shareholders and directors of a company did not have a reason-  
able 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 all 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.

5 (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—

10 (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;

15 (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

20 (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.

(8) Where the Commission makes a declaration under this section, the Commission shall as soon as practicable—

25 (a) cause a copy of the instrument of declaration to be given to, or served on, any person to whom the declaration relates; and

(b) cause a copy of that instrument to be published in the *Gazette*.

#### **Power of Commission to intervene in proceedings**

61. (1) The Commission may intervene in any proceeding relating to a matter arising under this Code.

30 (2) Where the Commission intervenes in any proceeding referred to in sub-section (1), the Commission shall be deemed to be a party to the proceeding with all the rights, duties and liabilities of such a party.

(3) Without limiting the generality of sub-section (2), the Commission may appear and be represented in any proceeding in which it wishes to  
35 intervene pursuant to sub-section (1)—

(a) by an employee of the Commission;



- (b) by a natural person to whom, or by an officer or employee of a person to whom or to which, the Commission has delegated its functions and powers under this Code or such of those functions and powers as relate to a matter to which the proceeding relates; or
- 5 (c) by solicitor or counsel.

62. \* \* \* \* \*

**Acquisition of shares within 6 months after commencement of Code**

63. Section 11 does not prohibit an acquisition of voting shares in a company during the period of 6 months immediately following the commencement of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, by reason of the effect of the acquisition on the entitlement to voting shares in the company of any person (in this section referred to as a "relevant person") if the number ascertained in accordance with the formula

15  $\frac{100(a + b - c)}{d}$  does not exceed 3, where—

d

- a is the number of voting shares to be acquired;
- b is the number of voting shares in the company that were acquired by any person during the period of 6 months immediately preceding the first-mentioned acquisition, being voting shares the acquisition of which by the person concerned increased the number of voting shares in the company to which the relevant person was entitled;
- 20
- c is the number of voting shares in the company that were disposed of by any person during the period of 6 months immediately preceding the first-mentioned acquisition, being voting shares the disposal of which by the person concerned decreased the number of voting shares in the company to which the relevant person was entitled;
- 25
- d is the number of voting shares in the company.

64. \* \* \* \* \*

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Sections 16, 17, 22 and 32

**SCHEDULE**

**PART A—STATEMENT TO BE FURNISHED BY OFFEROR**

1. The statement shall—
- (a) set out the period during which the offers are intended to remain open;
- 35 (b) where the offeror is or includes a corporation or corporations—
- (i) specify the names, occupations and addresses of all the directors of the corporation or of each corporation;

SCHEDULE—*continued*

- (ii) contains a summary of the principal activities of the corporation or of each corporation; and
- 5 (iii) if the corporation or either or any of the corporations is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries—contain a summary of the principal activities of the group of corporations;
- (c) set out full particulars of the shares in the target company to which the offeror is entitled or, if there are no such shares, set out a statement to that effect;
- 10 (d) set out full particulars of marketable securities of the target company (not being shares) to which the offeror is entitled or, if there are no such securities to which the offeror is entitled set out a statement to that effect;
- (e) where the offeror is or includes a corporation or corporations and shares may be acquired for a consideration that is or includes marketable securities of that corporation or of any of those corporations or each offer is subject to a condition requiring the making of a payment (whether by way of making a loan, subscribing for shares or otherwise) by the offeree to that corporation or any of those corporations, set out, in respect of that corporation or each of those corporations—
- 15 (i) the reports that, if the statement were a prospectus issued on the date on which the statement is registered under section 18, would be required to be set out in a statement under clauses 20 and 23, and, if the consideration includes debentures, in a statement under clauses 32, 33 and 34, of the Fifth Schedule to the *Companies Act, 1961*;
- 20 (ii) in respect of each report referred to in sub-paragraph (i)—a statement that the person or each of the persons by whom the report is made consents to the inclusion of the report in the form and context in which it is included;
- 25 (iii) full particulars of any alterations in the capital structure of the corporation during the period of 5 years immediately preceding the date on which the statement is lodged with the Commission for registration and particulars of the dates of any such alterations and the source of any increase in its capital; and
- 30 (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 during the period in which 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 alteration in its capital structure and the source of any increase in its capital;
- 35 (f) where the offeror is or includes a natural person or natural persons—specify the name, address and occupation of that person or of each of those persons, set out a summary of the principal business activities of that person or of each of those persons and specify the corporations (if any) of which that person or
- 40 any of those persons is a director or other officer, it being sufficient, where a
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SCHEDULE—continued

person is a director of one or more subsidiaries of the same holding company, to specify that he holds one or more directorships in a group of companies that may be described by the name of the holding company with the addition of the word "Group";

5

(g) where—

10

(i) the offeror has dispatched offers or invitations relating to the acquisition of shares in the target company (whether voting shares or not) of a different class from the shares to which the take-over offers relate or relating to the acquisition of renounceable options or convertible notes granted or issued by the target company, being offers or invitations that are open or expressed to be open on the day on which the statement is served on the target company; or

15

(ii) the offeror proposes to dispatch, while the take-over offers remain open, offers or invitations relating to the acquisition of shares in the target company (whether voting shares or not) of a different class from the shares to which the take-over offers relate or relating to the acquisition of renounceable options or convertible notes granted or issued by the target company,

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set out the terms or proposed terms of those offers or invitations; and

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(h) where the offeror intends, if he is required under sub-section 43 (4) to give notice to the holders of any non-voting shares in, renounceable options granted by, or convertible notes issued by, the target company, to propose terms for the acquisition of those shares, renounceable options or convertible notes—set out those proposed terms.

2. The statement shall set out particulars of any restriction on the right to transfer shares to which the offers relate contained in the constituent documents of the target company that has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the target company or to any other person and, if there is any such restriction, the arrangements (if any) being made to enable the shares to be transferred.

3. If the consideration for the acquisition of the shares to which the take-over offers relate or for the acquisition of any shares, renounceable options or convertible notes referred to in paragraph 1 (h) is to be satisfied in whole or in part by the payment of cash, the statement shall set out—

35

(a) if the offeror is to provide some or all of the cash from his own funds—particulars sufficient to identify the cash amounts held by the offeror for or in respect of payment of the consideration; and

40

(b) if the offeror is not to provide all of the cash, or is not to provide any of it, from his own funds—particulars sufficient to identify the other person who is, or each of the other persons who are, to provide, whether directly or indirectly, some or all of the cash from his or their own funds and particulars of the arrangements by which that cash will be provided by that other person or those other persons.

**SCHEDULE—continued**

**4. The statement shall set out—**

- (a) where it is proposed in connection with the offers that any payment or other benefit will—
- 5 (i) be made or given to any director, secretary or executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company; or
- 10 (ii) be made or given to any director, secretary or executive officer of any corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company,
- 15 particulars of the proposed payment or benefit;
- (b) where there is any other agreement or arrangement made between the offeror and any of the directors of the target company in connection with or conditional upon the outcome of the offers—particulars of any such agreement or arrangement;
- 20 (c) whether, within the knowledge of the offeror, the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change known to the offeror;
- 25 (d) where there is any agreement or arrangement whereby any shares acquired by the offeror pursuant to the offers will or may be transferred to any other person—
- 30 (i) the names of the persons who are parties to the agreement or arrangement, the number, description and amount of the shares that will or may be so transferred and, if the transferee is not a party to the agreement or arrangement, the name of the transferee; and
- 35 (ii) the number, description and amount of any shares in the target company held by or on behalf of each of the persons who are parties to the agreement or arrangement and, if the transferee is not a party to the agreement or arrangement, by or on behalf of the transferee or, if no such shares are so held, a statement to that effect;
- (e) where there is any agreement or arrangement for the acquisition of shares in the target company by the offeror or by a person associated with the offeror, being an agreement or arrangement under which the person, or either or any of the persons, from whom the shares have been or are to be acquired or any person associated with that person or with either or any of those persons may, at any time after an offer is dispatched, become entitled to any benefit, whether by way of receiving an increased price for those shares or by payment of cash or otherwise, that is related to, dependent upon, or calculated in any way by reference to, the consideration payable for shares acquired after the agreement or arrangement was entered into—full particulars of that agreement or arrangement; and
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- 45



**SCHEDULE—continued**

- 5 (f) any other information (other than matter that is not permitted to be included in a statement referred to in section 37 or 38 without the consent of the Commission) material to the making of a decision by an offeree whether or not to accept an offer, being information that is within the knowledge of the offeror and has not previously been disclosed to the holders of shares in the target company.
5. Where—
- 10 (a) the consideration to be offered in exchange for shares in the target company consists, in whole or in part, of marketable securities issued, or to be issued, by a corporation that is not, or is not included in, the offeror; or
- (b) the offer is subject to a condition requiring the making of a payment (whether by way of making a loan, subscribing for shares or otherwise) by the offeree to a corporation that is not, or is not included in, the offeror,
- 15 the statement shall contain the same information as would have to be given pursuant to a requirement of any other provision of this Schedule if the corporation were the offeror.
- 5A. The statement shall set out particulars of the offeror's intentions regarding—
- 20 (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.
6. The succeeding provisions of this Part apply only where the consideration to be offered in exchange for shares in the target company consists, in whole or in part,
- 25 of marketable securities issued, or to be issued, by a corporation.
7. Where the marketable securities are listed for quotation on the stock market of a stock exchange, the statement shall state the fact, specify the stock exchange concerned and specify—
- 30 (a) the latest recorded sale price before the date on which the statement is lodged with the Commission for registration;
- (b) the highest and lowest recorded sale prices during the 3 months immediately preceding that date and the respective dates of the relevant sales; and
- (c) where the take-over offers have been the subject of a public announcement in newspapers or by any other means before the statement is served on the target
- 35 company, the latest recorded sale price immediately before the public announcement.
8. Where the marketable securities are listed for quotation on or dealt in on more than one stock exchange, it is sufficient compliance with paragraphs 7 (a) and (c) if
- 40 information with respect to the marketable securities is given in relation to the stock exchange at which there has been the greatest number of recorded dealings in the securities in the 3 months immediately preceding the date on which the statement is served on the target company.

SCHEDULE—continued

9. Where the securities are not listed for quotation on the stock market of a stock exchange, the statement shall set out all the information that the offeror has as to the number of the securities that have been sold in the 3 months immediately preceding the date on which the statement is served on the target company and the amount of those securities and the prices at which they were sold and, if the offeror does not have any such information, a statement to that effect.

10. Where marketable securities are to be issued, the information required under clauses 7, 8 and 9 shall be given in respect of such marketable securities as have been issued and are of the same class as those to be issued.

PART B—STATEMENT TO BE FURNISHED BY TARGET COMPANY TO WHICH TAKE-OVER SCHEME RELATES

1. The statement shall set out—

- 15 (a) except in the case of a target company that is in the course of being wound up or is under official management, in relation to each director of the target company—
- 20 (i) if the director desires to make and considers himself justified in making, a recommendation in relation to the offers—whether the director recommends the acceptance of offers made or to be made by the offeror or recommends against such acceptance and, in either case, his reasons for so recommending;
- 25 (ii) if the director is not available to consider the offers—that the director is not so available and the reasons for his being not so available; or
- (iii) in any other case—that the director does not desire to make a recommendation or does not consider himself justified in making a recommendation and his reasons for not so desiring or for so considering; or
- (b) in the case of a target company that is in the course of being wound up or is under official management, in relation to each liquidator or each official manager, as the case requires—
- 30 (i) if the liquidator or official manager, as the case may be, desires to make and considers himself justified in making, a recommendation in relation to the offers—whether the liquidator or official manager, as the case may be, recommends the acceptance of offers made or to be made by the offeror or recommends against such acceptance and, in either case, his reasons for so recommending; or
- 35 (ii) in any other case—that the liquidator or official manager, as the case may be, does not desire to make a recommendation or does not consider himself justified in making a recommendation and his reasons for not so desiring or for so considering.
- 40 2. The statement shall set out—
- (a) the number, description and amount of marketable securities of the target company held by or on behalf of each director of the company or, in the case of a director by or on behalf of whom none are so held, that fact;



**SCHEDULE—continued**

- (b) in respect of each director of the target company by whom, or on whose behalf, shares in the target company are held—
- 5 (i) whether the director intends to accept any offer that has been or may be made in respect of those shares; or
- (ii) that the director has not decided whether he will accept such an offer;
- (c) the name of any director of the target company who voted against the relevant resolution authorizing the Part B statement and, if the director so requires, a statement by that director setting out his reasons for so voting;
- 10 (d) where the offeror is or includes a corporation or corporations, whether any marketable securities of that corporation or of any of those corporations are held by, or on behalf of, any director of the target company and, if so, the number, description and amount of those marketable securities;
- (e) where it is proposed that any payment or other benefit will—
- 15 (i) be made or given to any director, secretary or executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the
- 20 target company; or
- (ii) be made or given to any director, secretary or executive officer of any corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or executive officer or any other office in
- 25 connection with the management of affairs of the target company or of a corporation that is related to the target company,
- particulars of the proposed payment or benefit;
- (f) where there is any other agreement or arrangement made between any director of the target company and any other person in connection with or conditional
- 30 upon the outcome of the offers—particulars of any such agreement or arrangement;
- (g) whether any director of the target company has an interest in any contract entered into by the offeror and, if so, particulars of the nature and extent of each such interest;
- 35 (h) if the shares to which the offers relate are not listed for quotation on the stock market of a stock exchange, all the information that the target company has as to the number of any such shares that have been sold in the 6 months immediately preceding the date on which the Part A statement relating to the
- 40 offers was served on the target company and the amount of those shares and the prices at which they were sold;
- (i) whether, within the knowledge of—
- (i) in the case of a Part B statement that is signed as mentioned in paragraph 22 (2) (a)—any of the directors of the target company; or
- 45 (ii) in the case of a Part B statement that is signed as mentioned in paragraph 22 (2) (b)—the liquidator or official manager, as the case may be,

**SCHEDULE—continued**

- the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting or dispatched to shareholders in accordance with section 164 of the *Companies Act, 1961*, and, if so, full particulars of any such change or changes; and
- 5 (k) any other information (other than matter that is not permitted to be included in a statement referred to in section 37 or 38 without the consent of the Commission) material to the making of a decision by an offeree whether or not to accept an offer, being information that is within the knowledge of—
- 10 (i) in the case of a Part B statement that is signed as mentioned in paragraph 22 (2) (a)—any of the directors of the target company; or
- (ii) in the case of a Part B statement that is signed as mentioned in paragraph 22 (2) (b)—the liquidator or official manager, as the case may be,
- 15 and has not previously been disclosed to the holders of shares in the target company.

**PART C—STATEMENT TO BE FURNISHED BY ON-MARKET OFFEROR**

1. The statement shall set out full particulars of the offers constituted by the take-over announcement, including the period for which the offers will, unless withdrawn, remain open.
- 20 2. The statement shall—
- (a) where the on-market offeror is or includes a corporation or corporations—
- (i) specify the names, occupations and addresses of all the directors of the corporation or of each corporation;
- 25 (ii) contain a summary of the principal activities of the corporation or of each corporation; and
- (iii) if the corporation or either or any of the corporations is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries—contain a summary of the principal activities of the group of corporations;
- 30 (b) set out full particulars of the shares in the target company to which the on-market offeror is entitled or, if there are no such shares, set out a statement to that effect;
- (c) set out full particulars of marketable securities of the target company (not being shares) to which the on-market offeror is entitled or, if there are no such securities to which the on-market offeror is entitled, set out a statement to that effect;
- 35 (d) where the on-market offeror is or includes a natural person or natural persons, specify the name, address and occupation of that person or of each of those persons and set out a summary of the principal business activities of that person or of each of those persons and specify the corporations (if any) of which that person or any of those persons is a director or other officer, it being sufficient, where a person is a director of one or more subsidiaries of the same holding
- 40



**SCHEDULE—continued**

company, to specify that he holds one or more directorships in a group of companies that may be described by the name of the holding company with the addition of the word "Group";

- 5 (e) particulars of all acquisitions or disposals of shares in the target company by the on-market offeror or any person associated with the offeror in the period of 3 months preceding the date of the take-over announcement, including particulars of the price per share in relation to each acquisition or disposal; and
- 10 (f) where the on-market offeror intends, if he is required under sub-section 43 (4) to give notice to the holders of any non-voting shares in, renounceable options granted by, or convertible notes issued by, the target company, to propose terms for the acquisition of those shares, renounceable options or convertible notes—set out those proposed terms.

**3. The statement shall set out—**

- 15 (a) if the on-market offeror is to provide from his own funds some or all of the cash payable as consideration for the acquisition of shares to which the take-over announcement relates or for the acquisition of any shares, renounceable options, or convertible notes referred to in paragraph 2 (f)—particulars sufficient to identify the cash amounts held by the on-market offeror for or in respect
- 20 of payment of the consideration; and
- (b) if the on-market offeror is not to provide from his own funds all of the cash payable as consideration for the acquisition of shares to which the take-over announcement relates or for the acquisition of any shares, renounceable options or convertible notes referred to in paragraph 2 (f), or is not to provide any of
- 25 that cash from his own funds—particulars sufficient to identify the other person who is, or each of the other persons who are, to provide, whether directly or indirectly, some or all of the cash from his or their own funds and particulars of the arrangements by which that cash will be provided by that other person or those other persons.

**30 4. The statement shall set out—**

- (a) where it is proposed in connection with the take-over announcement that any payment or other benefit will—
- 35 (i) be made or given to any director, secretary or executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company; or
- 40 (ii) be made or given to any director, secretary or executive officer of any corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company,
- 45 particulars of the proposed payment or benefit;

SCHEDULE—*continued*

- 5 (b) where there is any other agreement or arrangement made between the on-market offeror and any of the directors of the target company in connection with or conditional upon the outcome of the take-over announcement—particulars of any such agreement or arrangement;
- (c) whether, within the knowledge of the on-market offeror, the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change known to the on-market offeror;
- 10 (d) where there is any agreement or arrangement whereby any shares acquired by the on-market offeror pursuant to the take-over announcement will or may be transferred to any other person—
- 15 (i) the names of the persons who are parties to the agreement or arrangement, the number, description and amount of the shares that will or may be so transferred and, if the transferee is not a party to the agreement or arrangement, the name of the transferee; and
- 20 (ii) the number, description and amount of any shares in the target company held by or on behalf of each of the persons who are parties to the agreement or arrangement and, if the transferee is not a party to the agreement or arrangement, by or on behalf of the transferee or, if no such shares are so held, a statement to that effect;
- 25 (e) where there is any agreement or arrangement for the acquisition of shares in the target company by the on-market offeror or by a person associated with the on-market offeror, being an agreement or arrangement under which the person, or either or any of the persons, from whom the shares have been or are to be acquired or any person associated with that person or with either or any of those persons may, at any time after the take-over announcement is made, become entitled to any benefit, whether by way of receiving an increased price for those shares or by payment of cash or otherwise, that is related to, dependent upon, or calculated in any way by reference to, the consideration payable for shares acquired after the agreement or arrangement was entered into—full particulars of that agreement or arrangement; and
- 30 (f) any other information (other than matter that is not permitted to be included in a statement referred to in section 37 or 38 without the consent of the Commission) material to the making of a decision by an offeree whether or not to accept an offer, being information that is within the knowledge of the on-market offeror and has not previously been disclosed to the holders of shares in the target company.
- 35
- 40 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.



SCHEDULE--continued

PART D—STATEMENT TO BE FURNISHED BY TARGET COMPANY  
TO WHICH TAKE-OVER ANNOUNCEMENT RELATES

1. The statement shall set out—

- 5 (a) except in the case of a target company that is in the course of being wound up or is under official management, in relation to each director of the target company—
- 10 (i) if the director desires to make and considers himself justified in making, a recommendation in relation to the offers—where the director recommends the acceptance offers constituted by the take-over announcement or recommends against such acceptance and, in either case, his reasons for so recommending;
- 15 (ii) if the director is not available to consider the offers—that the director is not so available and the reasons for his being not so available; or
- (iii) in any other case—that the director does not desire to make a recommendation or does not consider himself justified in making a recommendation and his reasons for not so desiring or for so considering; or
- 20 (b) in the case of a target company that is in the course of being wound up or is under official management, in relation to each liquidator or each official manager, as the case requires—
- 25 (i) if the liquidator or official manager, as the case may be, desires to make and considers himself justified in making, a recommendation in relation to the offers—whether the liquidator or official manager, as the case may be, recommends the acceptance of offers constituted by the take-over announcement or recommends against such acceptance and, in either case, his reasons for so recommending; or
- 30 (ii) in any other case—that the liquidator or official manager, as the case may be, does not desire to make a recommendation or does not consider himself justified in making a recommendation and his reasons for not so desiring or for so considering.
2. The statement shall set out—
- (a) the number, description and amount of marketable securities of the target company held by or on behalf of each director of the company or, in the case of a director by or on behalf of whom none are so held, that fact;
- 35 (b) in respect of each director of the target company by whom, or on whose behalf, shares in the target company are held—
- (i) whether the director intends to accept any offer that has been made in respect of those shares; or
- (ii) that the director has not decided whether he will accept such an offer;
- 40 (c) the name of any director of the target company who voted against the relevant resolution authorizing the Part D statement and, if the director so requires, a statement by that director setting out his reasons for so voting;
- (d) where the on-market offeror is or includes a corporation or corporations, whether any marketable securities of that corporation or of any of those corporations are held by, or on behalf of, any director of the target company and, if so, the number, description and amount of those marketable securities;
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SCHEDULE—continued

- (e) where it is proposed in connection with the take-over announcement that any payment or other benefit will—
- 5 (i) be made or given to any director, secretary or executive officer of the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company; or
- 10 (ii) be made or given to any director, secretary or executive officer of any corporation that is related to the target company as compensation for loss of, or as consideration for or in connection with his retirement from, office as a director, secretary or executive officer or any other office in connection with the management of affairs of the target company or of a corporation that is related to the target company,
- 15 particulars of the proposed payment or benefit;
- (f) where there is any other agreement or arrangement made between any director of the target company and any other person in connection with or conditional upon the outcome of the offers constituted by the take-over announcement—
- 20 particulars of any such agreement or arrangement;
- (g) whether any director of the target company has an interest in any contract entered into by the on-market offeror and, if so, particulars of the nature and extent of each such interest;
- (h) whether, within the knowledge of—
- 25 (i) in the case of a Part D statement that is signed as mentioned in paragraph 32 (2) (a)—any of the directors of the target company; or
- (ii) in the case of a Part D statement that is signed as mentioned in paragraph 32 (2) (b)—the liquidator or official manager, as the case may be,
- 30 the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting or dispatched to shareholders in accordance with section 164 of the *Companies Act*, 1961, and, if so, full particulars of any such change or changes; and
- (j) any other information (other than matter that is not permitted to be included in a statement referred to in section 37 or 38 without the consent of the Commission) material to the making of a decision by an offeree whether or not to accept an offer made by virtue of the take-over announcement, being information that is within the knowledge of—
- 35 (i) in the case of a Part D statement that is signed as mentioned in paragraph 32 (2) (a)—any of the directors of the target company; or
- 40 (ii) in the case of a Part D statement that is signed as mentioned in paragraph 32 (2) (b)—the liquidator or official manager, as the case may be,
- and has not previously been disclosed to the holders of shares in the target company.



**COMPANIES (ACQUISITION OF SHARES)  
(APPLICATION OF LAWS) ACT, 1981, No. 62**

**New South Wales**



ANNO TRICESIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 62, 1981.**

An Act relating to the application of laws to regulate the acquisition of shares in companies incorporated in New South Wales and matters connected therewith, to amend the Companies Act, 1961, and for other purposes. [Assented to, 28th May, 1981.]

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*Companies (Acquisition of Shares) (Application of Laws).*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**Short title.**

1. This Act may be cited as the "Companies (Acquisition of Shares) (Application of Laws) Act, 1981".

**Commencement.**

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Interpretation.**

3. (1) In this Act, unless the contrary intention appears—

"Agreement" means the agreement made on 22nd December, 1978, between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected;

"Commission" or "National Commission" means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

"Ministerial Council" means the Ministerial Council for Companies and Securities established by the Agreement;



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*Companies (Acquisition of Shares) (Application of Laws).*

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“State Commission” means the Corporate Affairs Commission continued in existence by the Corporate Affairs Commission Act, 1981;

“the applied provisions” means the provisions applying by reason of sections 4 and 6;

“the Commonwealth Act” means the Companies (Acquisition of Shares) Act 1980 of the Commonwealth.

(2) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

(3) The provisions of the Interstate Corporate Affairs Agreement do not apply to or with respect to the applied provisions or the administration of the applied provisions.

(4) In this Act, a reference to the commencement of this Act is a reference to the commencement of this Act except sections 1 and 2.

**Application of law relating to acquisition of shares.**

4. Subject to this Act, the provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5) apply—

(a) as if amended as set out in Schedule 1; and

(b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as laws of New South Wales.

**Incorporation in Companies Act, 1961.**

5. (1) The provisions applying by reason of section 4—

(a) except as provided by section 17, operate to the exclusion of Part VIB of, and the Tenth Schedule to, the Companies Act, 1961; and



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*Companies (Acquisition of Shares) (Application of Laws).*

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- (b) are incorporated with, and shall be read as one with, the Companies Act, 1961 (other than Part VI B of, and the Tenth Schedule to, that Act).

(2) The provisions of subsection (1) do not, unless the contrary intention appears—

- (a) revive anything not in force or existing at the time at which the exclusion of the provisions of Part VI B of, and the Tenth Schedule to, the Companies Act, 1961, takes effect;
- (b) affect the previous operation of that Part or Schedule or anything duly done or suffered under that Part or Schedule;
- (c) affect any right, privilege, obligation or liability acquired or incurred under that Part or Schedule;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that Part or Schedule; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

**Application of regulations relating to acquisition of shares.**

6. Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply—

- (a) as if amended as set out in Schedule 2; and



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*Companies (Acquisition of Shares) (Application of Laws).*

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- (b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as regulations made under the provisions applying by reason of section 4.

**Incorporation in Companies Regulations.**

7. The provisions applying by reason of section 6 are incorporated with, and shall be read as one with, regulations under the Companies Act, 1961 (other than regulations under or for the purposes of Part VI B of that Act).

**Operation of Companies Act, 1961.**

8. For the purposes of the operation of the Companies Act, 1961, 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, the applied provisions—

- (a) references in that Act or those regulations to the State Commission shall be construed as references to the National Commission;
- (b) references in that Act or those regulations to documents submitted to, or filed or lodged with, the State Commission shall be construed as references to documents submitted to, or filed or lodged with, the National Commission under the applied provisions; and
- (c) references in those regulations to the Companies Act, 1961, shall be construed as including references to the Companies (Acquisition of Shares) (New South Wales) Code.

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*Companies (Acquisition of Shares) (Application of Laws).*

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**Fees payable.**

9. (1) There shall be paid to the State Commission, for and on behalf of the State, for or in respect of—

- (a) the lodgment of documents with the National Commission under the applied provisions;
- (b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (c) the production by the National Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the issuing of documents or copies of documents, the granting of consents or approvals or the doing of other acts or things by the National Commission under the applied provisions; and
- (e) the making of inquiries of, or applications to, the National Commission in relation to matters arising under the applied provisions,

such fees (if any) as are prescribed by regulations in force for the time being under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the National Commission and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.



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*Companies (Acquisition of Shares) (Application of Laws).*

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(3) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of any matter involving the doing of any act or thing by the National Commission, the National Commission shall not do that act or thing until the fee has been paid.

(4) This section has effect notwithstanding anything contained in the applied provisions.

(5) Nothing in this section prevents the State Commission for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or
- (b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

(6) In this section, unless the contrary intention appears, the expressions used have the same respective meanings as in the applied provisions.

**Amendment of regulations pursuant to Agreement.**

10. (1) Where, under the Agreement, the Ministerial Council approves a proposed amendment of regulations in force for the time being under the Commonwealth Act or the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth and, upon the expiration of 6 months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 6 or the regulations referred to in section 9, as the case may be.

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*Companies (Acquisition of Shares) (Application of Laws).*

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(2) Regulations made by the Governor under subsection (1) may amend Schedule 2 or 3, as the case may be, and that Schedule as so amended shall be Schedule 2 or 3, as the case may be, to this Act.

(3) In this Act—

- (a) a reference to provisions of regulations applying by reason of section 6 includes a reference to provisions as so applying as amended in accordance with this section; and
- (b) a reference to fees prescribed by regulations under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

**Publication of Companies (Acquisition of Shares) (New South Wales) Code.**

**11. (1)** The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5), amended as set out in Schedule 1 and in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the headings and sections set out in Schedule 4;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the “Companies (Acquisition of Shares) (New South Wales) Code”.



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*Companies (Acquisition of Shares) (Application of Laws).*

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(3) A document that is or purports to be a copy of the Companies (Acquisition of Shares) (New South Wales) Code that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Commonwealth Act applying by reason of section 4 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

**Publication of Companies (Acquisition of Shares) (New South Wales) Regulations.**

12. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) amended as set out in Schedule 2 and in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the headings and provisions set out in Schedule 5;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the "Companies (Acquisition of Shares) (New South Wales) Regulations".

(3) A document that is or purports to be a copy of the Companies (Acquisition of Shares) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions applying by reason of section 6 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).



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*Companies (Acquisition of Shares) (Application of Laws).*

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**Publication of Companies (Acquisition of Shares—Fees) (New South Wales) Regulations.**

**13. (1)** The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth amended as set out in Schedule 3 and in operation, or to come into operation, in New South Wales.

**(2)** A document published under subsection (1)—

- (a) shall include the headings and provisions set out in Schedule 6;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the “Companies (Acquisition of Shares—Fees) (New South Wales) Regulations”.

**(3)** A document that is or purports to be a copy of the Companies (Acquisition of Shares—Fees) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the Schedule to regulations referred to in section 9 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

**Publication of provisions of amended Code or regulations.**

**14. (1)** The Minister may from time to time authorize the publication by the Government Printer of a document setting out—

- (a) provisions that by reason of—
  - (i) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and



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*Companies (Acquisition of Shares) (Application of Laws).*

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- (ii) the operation of section 4 (including the operation, if applicable, of Schedule 1),  
apply, or will apply, as laws of New South Wales;
- (b) provisions that by reason of—
  - (i) regulations under the Commonwealth Act; and
  - (ii) the operation of section 6 (including the operation, if applicable, of Schedule 2),  
apply, or will apply, as regulations made under the provisions applying by reason of section 4; or
- (c) fees that by reason of—
  - (i) regulations under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth; and
  - (ii) the operation of section 9 (including the operation, if applicable, of Schedule 3),  
are, or will be, payable under that section.

(2) A document published under subsection (1) shall include a notification of the date, or dates, on which the provisions or fees set out in the document came, or come, into operation in New South Wales.

(3) A document that has been or purports to have been published in accordance with this section is prima facie evidence of provisions or fees referred to in subsection (1) set out in the document.

**Interpretation of references to the applied provisions.**

**15. (1)** Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or any other Act or in any other document made by or under the authority of, or for the purposes of, a law of New South Wales—

- (a) a reference to the Companies (Acquisition of Shares) (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 4;

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*Companies (Acquisition of Shares) (Application of Laws).*

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- (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;
- (c) a reference to the Companies (Acquisition of Shares) (New South Wales) Regulations is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 6;
- (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
- (e) a reference to the Companies (Acquisition of Shares—Fees) (New South Wales) Regulations is a reference to the Schedule to regulations prescribing fees under the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth as referred to in section 9; and
- (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations in force under that Act as referred to in section 9.

(2) In subsection (1), “provision” includes Part, Division, section, sub-section, paragraph, sub-paragraph, Schedule, form, regulation, clause, sub-clause or other division.

**Amendment of certain provisions in accordance with approval of Ministerial Council.**

16. Where, under the Agreement, the Ministerial Council—

- (a) approves—
  - (i) a proposed amendment of the Commonwealth Act;
  - (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);



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*Companies (Acquisition of Shares) (Application of Laws).*

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- (iii) a proposed amendment of the Companies (Acquisition of Shares—Fees) Act 1980 of the Commonwealth; or
  - (iv) regulations proposed to be made under that Act (whether or not amending other regulations); and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),
- the Governor may make regulations amending Schedule 1, 2 or 3 or section 9, as the case may be, in accordance with that approval, and that Schedule or section as so amended shall be Schedule 1, 2 or 3 or section 9, as the case may be, of this Act.

**Take-overs pending at commencement of Act.**

**17. (1)** Where a take-over offer in relation to shares in a company was dispatched more than 30 days before the date of commencement of this Act and the period during which the take-over offer remains open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation is expressed to remain open, had not expired before that date—

- (a) this Act, other than this section, does not apply to or in relation to—
  - (i) the acquisition of shares in the company pursuant to the take-over offer; or
  - (ii) any other acquisition of shares in the company during the period during which the take-over offer remains open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation is expressed to remain open, by the offeror or invitor who dispatched the take-over offer; and
- (b) the superseded take-over laws continue to apply to and in relation to any offers or invitations to acquire shares in the company, being offers or invitations referred to in paragraph (a).

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*Companies (Acquisition of Shares) (Application of Laws).*

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(2) Where a take-over offer in relation to shares in a company was dispatched during the period of 30 days before the date of commencement of this Act and the period during which the take-over offer remains open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation is expressed to remain open, had not expired before that date, this Act, other than this section—

- (a) does not apply to or in relation to the acquisition by any person of shares in the company during the period commencing on the date of commencement of this Act and ending at the expiration of 60 days after—
  - (i) if the take-over offer was not under a take-over scheme—the date on which the take-over offer was dispatched; or
  - (ii) if the take-over offer was under a take-over scheme—the last day before the date of commencement of this Act on which a take-over offer under the take-over scheme was dispatched; and
- (b) does not apply to or in relation to the acquisition by any person of shares in the company after the expiration of the period referred to in paragraph (a) pursuant to offers or invitations made or issued before the end of that period,

and the superseded take-over laws continue to apply to and in relation to offers or invitations to acquire shares in the company made or issued before the end of that period.

(3) For the purposes of this section—

- (a) “the superseded take-over laws” means the provisions of the law relating to take-overs in force immediately before the date of commencement of this Act, including the provisions of Part VIB of, and the Tenth Schedule to, the Companies Act, 1961;
- (b) a reference to the application of the superseded take-over laws to and in relation to offers or invitations to acquire shares in a company includes, without limiting



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*Companies (Acquisition of Shares) (Application of Laws).*

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the generality of those words, a reference to the application of sections 180x and 180y of the Companies Act, 1961, as amended and in force immediately before the date of commencement of this Act in relation to shares in that company consequent upon the making of those offers or the issuing of those invitations; and

- (c) except where the contrary intention appears, expressions used in this section have the same respective meanings as those expressions have in Part VIb of the Companies Act, 1961, as amended and in force immediately before the date of commencement of this Act.

**Consequential amendment of Act No. 71, 1961.**

**18.** The Companies Act, 1961, is amended—

**Sec. 5.**

**(Interpretation.)**

- (a) by inserting in section 5 (6) (d) after the words “a company” the words “or, within the meaning of section 42 of the Companies (Acquisition of Shares) (New South Wales) Code, to a dissenting offeree in relation to shares in a company”;

**Sec. 69D.**

**(Substantial shareholder to notify company of relevant interests.)**

- (b) by omitting from section 69D (2) the matter “14 days” and by inserting instead the matter “2 days”;

**Sec. 69E.**

**(Substantial shareholder to notify company of change in his relevant interests.)**

- (c) by omitting from section 69E (2) the words “fourteen days” and by inserting instead the matter “2 days”;



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*Companies (Acquisition of Shares) (Application of Laws).*

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**Sec. 69F.**

**(Person who ceases to be substantial shareholder to notify company.)**

- (d) by omitting from section 69F (2) the words “fourteen days” and by inserting instead the matter “2 days”;

**Sec. 122.**

**(Power to restrain certain persons from managing companies.)**

- (e) by inserting in section 122 (1) (c) before the words “or under section 113” the words “or under section 44 of the Companies (Acquisition of Shares) (New South Wales) Code or the corresponding provision of the law of another State or of a Territory of the Commonwealth”;

**Sec. 127.**

**(General duty to make disclosure.)**

- (f) by inserting in section 127 (1) (c) after the word “Schedule” the words “or the Companies (Acquisition of Shares) (New South Wales) Code”;

**Sec. 129.**

**(Payments to director for loss of office, &c.)**

- (g) by inserting in section 129 (2) after the matter “Part VIB” the words “or the Companies (Acquisition of Shares) (New South Wales) Code”;

**Sec. 185.**

**(Acquisition of shares of shareholders dissenting from scheme or contract approved by majority.)**

- (h) by omitting from section 185 (1) the words “(not being a take-over scheme as referred to in subsection (4) of section 180A)” and by inserting instead the words “, not being—
- (a) a take-over scheme as referred to in section 180A (4);



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*Companies (Acquisition of Shares) (Application of Laws).*

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- (b) a scheme involving the acquisition of shares in a company as a result of the acceptance of offers to acquire those shares made under a take-over scheme in relation to that company as referred to in section 16 of the Companies (Acquisition of Shares) (New South Wales) Code; or
- (c) a scheme involving the acquisition of shares in a listed public company where the shares are acquired as a result of the acceptance of offers made in accordance with section 17 of the Companies (Acquisition of Shares) (New South Wales) Code;”;

**Sec. 354.**

**(The branch register.)**

- (i) by inserting in section 354 (8) after the matter “185” the words “of this Act or section 42 of the Companies (Acquisition of Shares) (New South Wales) Code”.

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SCHEDULE 1.

(Sec. 4.)

The provisions of the Commonwealth Act apply as if—

1. Unless inconsistent with another provision of this Schedule—

- (a) for the words “*Companies Ordinance 1962*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Companies Act, 1961*” or the words “*Companies Act, 1961*,” whichever are applicable;
- (b) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “New South Wales”;
- (c) for the words “this Act” in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words “commencement of”) there were substituted the words “this Code”;

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*Companies (Acquisition of Shares) (Application of Laws).*

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SCHEDULE 1—*continued.*

- (d) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the words “commencement of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*” or the words “commencement of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*,” whichever are applicable;
- (e) for the words “law of a State or of another Territory” and “law of a State or another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law of a State other than New South Wales or of a Territory”.

## 2. In section 6 of the Commonwealth Act—

- (a) before the definition of “company” there were inserted the following definition:—

*“Companies (Acquisition of Shares) (New South Wales) Code”*  
or “Code” means the provisions applying by reason of section 4 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*;

- (b) in the definition of “convertible note” after the matter “1936” there were inserted the words “of the Commonwealth as amended and in force for the time being”;
- (c) after the definition of “recorded” there were inserted the following definition:—

“regulations” means the provisions applying as regulations made under this Code by reason of section 6 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*;

## 3. In section 28 (7) of the Commonwealth Act—

- (a) for the words “stock exchange in a State or in another Territory” there were substituted the words “stock exchange in a State other than New South Wales or in a Territory”;
- (b) for the words “other Territory” there were substituted the word “Territory”.

## 4. In section 42 of the Commonwealth Act—

- (a) for the words “*Unclaimed Moneys Ordinance 1950*” (wherever occurring) there were substituted the words “*Unclaimed Moneys Act, 1917*” or the words “*Unclaimed Moneys Act, 1917*,” whichever are applicable;
- (b) in sub-section (15) for the words “that Ordinance” there were substituted the words “that Act”;



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*Companies (Acquisition of Shares) (Application of Laws).*

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SCHEDULE 1—*continued.*

(c) in sub-section (18) for the word "Commonwealth" there were substituted the word "State".

5. In section 53 (5) of the Commonwealth Act for the words "section 5 of this Act" there were substituted the words "section 5 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*".

6. In section 56 (1) and (2) of the Commonwealth Act for the words ", or of a regulation made for the purposes of sub-section 62 (3) or (4)," there were substituted the words "or of the regulations".

7. Sections 62 and 64 of the Commonwealth Act were repealed.

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SCHEDULE 2.

(Sec. 6.)

The provisions of regulations in force for the time being under the Commonwealth Act apply as if in those regulations—

1. For the words "the Act" (wherever occurring) there were substituted the words "the Code".

2. For the words "*Companies (Acquisition of Shares) Act 1980*" (wherever occurring) there were substituted the words "*Companies (Acquisition of Shares) (New South Wales) Code*".

3. For the words "Supreme Court of the Australian Capital Territory" (wherever occurring) there were substituted the words "Supreme Court of New South Wales".

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SCHEDULE 3.

(Sec. 9.)

The provisions of regulations in force for the time being under the *Companies (Acquisition of Shares—Fees) Act 1980* of the Commonwealth apply as if in those regulations—

1. For the words "the Act" (wherever occurring) there were substituted the words "the *Companies (Acquisition of Shares) (New South Wales) Code*".

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*Companies (Acquisition of Shares) (Application of Laws).*

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## SCHEDULE 4.

(Sec. 11.)

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 11:—

COMPANIES (ACQUISITION OF SHARES) (NEW SOUTH WALES) CODE

RELATING TO THE ACQUISITION OF SHARES IN COMPANIES INCORPORATED IN NEW SOUTH WALES AND MATTERS CONNECTED THEREWITH

## PART I—PRELIMINARY

1. This Code may be cited as the *Companies (Acquisition of Shares) (New South Wales) Code*.
2. This Code comes into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, commences.
3. This Code shall be read and construed together with the agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected.
4. This Code has effect subject to and in accordance with the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*.
5. This Code has effect subject to and in accordance with the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.

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SCHEDULE 5.

(Sec. 12.)

The following headings and provisions shall be included in the publication under section 12 of the provisions of regulations in force for the time being under the Commonwealth Act:—

COMPANIES (ACQUISITION OF SHARES) (NEW SOUTH WALES)  
REGULATIONS

1. (1) These regulations may be cited as the *Companies (Acquisition of Shares) (New South Wales) Regulations*.



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*Companies (Acquisition of Shares) (Application of Laws).*

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SCHEDULE 5—*continued.*

(2) These regulations shall come into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, commences.

(3) These regulations have effect subject to and in accordance with—

(a) the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*; and

(b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.

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SCHEDULE 6.

(Sec. 13.)

The following headings and provisions shall be included in the publication under section 13 of the Schedule to regulations in force for the time being prescribing fees under the *Companies (Acquisition of Shares—Fees) Act 1980* of the Commonwealth:—

COMPANIES (ACQUISITION OF SHARES—FEES) (NEW SOUTH WALES)  
REGULATIONS

1. These regulations may be cited as the *Companies (Acquisition of Shares—Fees) (New South Wales) Regulations*.

2. These regulations shall come into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, commences.

3. These regulations have effect subject to and in accordance with—

(a) the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*; and

(b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.

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*Companies (Acquisition of Shares) (Application of Laws).*

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SCHEDULE 6—*continued.*

4. The fees payable for the purposes of section 9 of the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, are the fees specified in the Schedule in relation to the respective matters so specified.

## SCHEDULE

## FEES

*In the name and on behalf of Her Majesty I assent to this Act.*

J. A. ROWLAND,  
*Governor.*

*Government House,  
Sydney, 28th May, 1981.*

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981





