

No. 5 of 1971

## AN ORDINANCE

### Relating to Companies.

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1970*.

Dated this eighteenth day of February, 1971.

PAUL HASLUCK  
Governor-General.

By His Excellency's Command,

T. E. F. HUGHES  
Attorney-General, acting for and on behalf  
of the Minister of State for the Interior.

### COMPANIES ORDINANCE 1971

1.—(1.) This Ordinance may be cited as the *Companies Ordinance 1971*.<sup>\*</sup> Short title and citation.

(2.) The *Companies Ordinance 1962-1969*<sup>†</sup> is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Companies Ordinance 1962-1971*.

2.—(1.) Sections 1 and 2 of this Ordinance shall come into operation on the date on which this Ordinance is notified in the *Gazette*. Commencement.

(2.) Sub-section (1.) of section 3 of this Ordinance shall come into operation on such date as is fixed by the Minister of State for the Interior by notice published in the *Gazette*.

(3.) Sub-section (2.) of section 3 of this Ordinance shall come into operation on such date as is fixed by the Minister of State for the Interior by notice so published.

(4.) Sub-section (3.) of section 3 of this Ordinance shall come into operation on such date as is fixed by the Minister of State for the Interior by notice so published.

<sup>\*</sup> Notified in the *Commonwealth Gazette* on 25 February 1971.

<sup>†</sup> Ordinance No. 7, 1962; as amended by No. 11, 1962; No. 19, 1963; Nos. 11 and 13, 1966; No. 31, 1968; and Nos. 4, 10 and 28, 1969.

(5.) The remaining sections of this Ordinance shall come into operation on such respective dates as are fixed by the Minister of State for the Interior by notice so published.

## Parts.

3.—(1.) Section 3 of the Principal Ordinance is amended by omitting the words—

“Part I.—Preliminary (Sections 1-6).”  
and inserting in their stead the words—

“Part I.—Preliminary (Sections 1-6A).”.

(2.) Section 3 of the Principal Ordinance is amended by inserting after the words—

“Division 3.—Shares (Sections 54-69).”  
the words—

“Division 3A.—Substantial Shareholdings (Sections 69A-69N).”.

(3.) Section 3 of the Principal Ordinance is amended by inserting after the words—

“Division 4.—Special Investigations (Sections 172-180).”  
the words—

“Part VIA.—Take-overs (Sections 180A-180Y).”.

## Interpretation.

4. Section 5 of the Principal Ordinance is amended—

(a) by adding at the end of sub-section (1.) the following definition:—

“‘voting share’, in relation to a body corporate, means an issued share in the body corporate, not being—

(a) a share to which, in no circumstances, is there attached a right to vote; or

(b) a share to which there is attached a right to vote only in one or more of the following circumstances:—

(i) during a period during which a dividend (or part of a dividend) in respect of the share is in arrear;

(ii) upon a proposal to reduce the share capital of the body corporate;

(iii) upon a proposal that affects rights attached to the share;

(iv) upon a proposal to wind up the body corporate;

(v) upon a proposal for the disposal of the whole of the property, business and undertaking of the body corporate;

(vi) during the winding up of the body corporate.”; and

(b) by omitting paragraphs (b), (c) and (d) of sub-section (6.) and inserting in their stead the following paragraphs:—

“ (b) made to a person whose ordinary business is to buy and sell shares or debentures, whether as principal or agent; or

(c) made to existing members or debenture holders of a corporation and relates to shares in or debentures of that corporation.”.

5. After section 6 of the Principal Ordinance the following section is inserted in Part I:—

“ 6A.—(1.) The following sub-sections have effect for the purposes of Division 3A of Part IV. and for the purposes of Part VIA. Interests in shares.

“(2.) Where the property subject to a trust consists of or includes shares and a person knows or has reasonable grounds for believing—

(a) that he has an interest under the trust; and

(b) that the property subject to the trust consists of or includes those shares,

he shall be deemed to have an interest in those shares.

“(3.) Where—

(a) a right (being a right or interest described in the definition of ‘interest’ in section seventy-six of this Ordinance or in the definition of that word in the corresponding provision of the law of a State or of another Territory of the Commonwealth) was issued or offered to the public for subscription or purchase;

(b) the public was invited to subscribe for or purchase such a right and the right was so subscribed for or purchased; or

(c) such a right was issued for the purposes of an offer to the public by and is held by the management company within the meaning of that section or corresponding provision,

that right does not constitute an interest in a share.

“(4.) Where a body corporate has an interest in a share and—

(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 that share;

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

(c) a person is, the associates of a person are, or a person and his associates are, entitled to exercise or control the exercise of not less than three-twentieths of the votes attached to the voting shares in the body corporate,

that person shall be deemed to have an interest in that share.

“(5.) For the purposes of paragraph (c) of the last preceding sub-section, a person is an associate of another person if the first-mentioned person is—

- (a) a corporation that, by virtue of sub-section (5.) of section six of this Ordinance, is deemed to be related to that other person;
- (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or under an obligation, whether formal or informal, to act in relation to the share referred to in the last preceding sub-section;
- (c) a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that share;
- (d) a body corporate that is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that share; or
- (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that share.

“(6.) Where a person—

- (a) has entered into a contract to purchase a share;
- (b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
- (d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder.

that person shall be deemed to have an interest in that share.

“(7.) A person shall not be deemed not to have an interest in a share by reason only that he has the interest in the share jointly with another person.

“(8.) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

“(9.) There shall be disregarded—

- (a) an interest in a share if the interest is that of a person who holds the share as bare trustee;
- (b) an interest in a share of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connexion with the lending of money;
- (c) an interest of a person in a share, being an interest held by him by reason of his holding a prescribed office; and
- (d) a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

“(10.) An interest in a share shall not be disregarded by reason only of—

- (a) its remoteness;
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is or is capable of being made subject to restraint or restriction.”.

6. Section 31 of the Principal Ordinance is amended by adding at the end thereof the following sub-sections:—

Alteration of articles.

“(4.) A special resolution passed at a general meeting of a company having a share capital for an alteration of or addition to the articles of the company to effect or authorize a restriction of voting rights attaching to the shares included in one or more classes of voting shares in the company has no effect unless the submission of the proposed special resolution to the general meeting was approved, on a separate poll held at that meeting in respect of each such class of shares, by the holders of not less than fifty-one per centum in nominal value of the aggregate of all the voting shares included in that class.

“(5.) Where shares are not divided into classes, those shares shall be deemed to constitute one class.

“(6.) For the purposes of sub-section (4.) of this section, an alteration of or addition to the articles of a company shall be deemed to effect or authorize a restriction of voting rights attaching to voting shares in the company if the alteration or addition is to effect or authorize an abrogation of those rights or to effect or authorize, in a manner prejudicial to the holders for the time being of those shares, a variation of or addition to those rights, a variation of voting rights attaching to other shares in the company or an addition of voting rights to other shares in the company.

“(7.) Sub-section (4.) of this section does not affect the operation in relation to a company of any other provision of this Ordinance or of

the articles of the company relating to the submission or passing of a special resolution at a meeting of a company, to the taking of a poll or to the alteration of or addition to those articles to the extent that that other provision is not inconsistent with that sub-section.”.

7. After Division 3 of Part IV. of the Principal Ordinance the following Division is inserted:—

“ *Division 3A.—Substantial Shareholdings.*

Application  
and interpreta-  
tion of Division.

“ 69A.—(1.) This section has effect for the purposes of this Division.

“ (2.) A reference to a company is a reference—

- (a) to a company all or any of the shares in which are listed for quotation on the official list of a Stock Exchange in Australia, not being a company that is a specified company for the purposes of the *Companies (Uranium Mining Companies) Ordinance 1970*;
- (b) to a body corporate, being a body incorporated in the Territory, that is for the time being declared by the Attorney-General, by notice published in the *Gazette*, to be a company for the purposes of this Division; or
- (c) to a body, not being a body corporate, formed in the Territory that is for the time being declared by the Attorney-General, by notice published in the *Gazette*, to be a company for the purposes of this Division.

“ (3.) In relation to a company the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the company having the same nominal amount as the amount of that stock and having attached to it the same rights as are attached to that stock.

“ (4.) A reference in the definition of ‘ voting share ’ in sub-section (1.) of section five of this Ordinance to a body corporate includes a reference to a body referred to in paragraph (c) of sub-section (2.) of this section.

Persons  
obliged to  
comply with  
Division.

“ 69B.—(1.) The obligation to comply with this Division extends to all natural persons, whether resident in the Territory or in Australia or not and whether Australian citizens or not, and to all bodies corporate, whether incorporated or carrying on business in the Territory or in Australia or not.

“ (2.) This Division extends to acts done or omitted to be done outside the Territory, whether in Australia or not.

Substantial  
shareholdings  
and substantial  
shareholders.

“ 69C.—(1.) For the purposes of this Division, a person has a substantial shareholding in a company if he has an interest or interests in one or more voting shares in the company and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than one-tenth of the aggregate of the nominal amounts of all the voting shares in the company.

“(2.) For the purposes of this Division, a person has a substantial shareholding in a company, being a company the share capital of which is divided into two or more classes of shares, if he has an interest or interests in one or more voting shares included in one of those classes and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than one-tenth of the aggregate of the nominal amounts of all the voting shares included in that class.

“(3.) For the purposes of this Division, a person who has a substantial shareholding in a company is a substantial shareholder in that company.

“69D.—(1.) A person who is a substantial shareholder in a company shall give notice in writing to the company stating his name and address and full particulars (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder) of the voting shares in the company in which he has an interest or interests and full particulars of each such interest and of the circumstances by reason of which he has that interest.

Substantial shareholder to notify company of his interests.

“(2.) The notice shall be given—

- (a) if the person was a substantial shareholder on the date on which this Division came into operation—within one month after that date; or
- (b) if the person became a substantial shareholder after that date—within fourteen days after becoming a substantial shareholder.

“(3.) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of whichever period referred to in the last preceding sub-section is applicable.

“69E.—(1.) Where there is a change (not being a prescribed change) in the interest or interests of a substantial shareholder in a company in voting shares in the company, he shall give notice in writing to the company stating his name and full particulars of the change, including the date of the change and the circumstances by reason of which that change has occurred.

Substantial shareholder to notify company of change in his interests.

“(2.) The notice shall be given within fourteen days after the date of the change.

“(3.) For the purposes of sub-section (1.) of this section, where a substantial shareholder in a company acquires or disposes of voting shares in the company, there shall be deemed to be a change in the interest or interests of the substantial shareholder in voting shares in that company.

“69F.—(1.) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

Person who ceases to be substantial shareholder to notify company.

"(2.) The notice shall be given within fourteen days after the person ceased to be a substantial shareholder.

References to  
operation of  
section 6A.

" 69G. The circumstances required to be stated in a notice under section sixty-nine D, sixty-nine E or sixty-nine F of this Ordinance include circumstances by reason of which, having regard to the provisions of section six A of this Ordinance—

- (a) a person has an interest in voting shares;
- (b) a change has occurred in an interest in voting shares; or
- (c) a person has ceased to be a substantial shareholder in a company,

respectively.

Persons  
holding shares  
as trustees.

" 69H.—(1.) A person who holds voting shares in a company, being voting shares in which a non-resident has an interest, shall—

- (a) give to the non-resident a notice in the prescribed form as to the requirements of this Division; or
- (b) where the first-mentioned person knows or has reasonable grounds for believing that an interest of the non-resident in the shares is an interest that the non-resident holds for another person—give to the non-resident a notice in the prescribed form as to the requirements of this Division and direct the non-resident to give the notice, or a copy of the notice, to that other person.

" (2.) The notice shall be given—

- (a) if the first-mentioned person holds the shares on the date on which this Division came into operation—within fourteen days after that date; or
- (b) if the first-mentioned person did not hold the shares on that date—within fourteen days after becoming the holder of the shares.

" (3.) In this section, 'non-resident' means a person who is not resident in Australia or a body corporate that is not incorporated in Australia.

" (4.) Nothing in this section affects the operation of section sixty-nine B of this Ordinance.

Registrar may  
extend time  
for giving notice  
under this  
Division.

" 69J. The Registrar may, on the application of a person who is required to give a notice under this Division, in his discretion, extend, or further extend, the time for giving the notice.

Company to  
keep register of  
substantial  
shareholders.

" 69K.—(1.) A company shall keep a register in which it shall forthwith enter—

- (a) in alphabetical order the names of persons from whom it has received a notice under section sixty-nine D of this Ordinance; and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section sixty-nine E or sixty-nine F of this Ordinance, the information given in that notice.

“(2.) The register shall be kept at the registered office of the company, or, if the company does not have a registered office, at the principal place of business of the company in the Territory, and shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of Fifty cents or such lesser sum as the company requires.

“(3.) A person may request the company to furnish him with a copy of the register or any part of the register on payment in advance of a sum of Twenty cents or such lesser sum as the company requires for every one hundred words or fractional part thereof required to be copied and the company shall send the copy to that person, within fourteen days or such longer period as the Registrar thinks fit, after the day on which the request is received by the company.

“(4.) The Registrar may at any time in writing require the company to furnish him with a copy of the register or any part of the register and the company shall furnish the copy within fourteen days after the day on which the requirement is received by the company.

“(5.) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence.

Penalty: One thousand dollars.

Default penalty: Two hundred dollars.

“(6.) A company is not, by reason of anything done under this Division—

- (a) to be taken for any purpose to have notice of; or
- (b) put upon inquiry as to,

a right of a person to or in relation to a share in the company.

“69L. A person who fails to comply with section sixty-nine D, sixty-nine E, sixty-nine F or sixty-nine H of this Ordinance is guilty of an offence. Offences against certain sections.

Penalty: One thousand dollars.

Default penalty: Two hundred dollars.

“69M.—(1.) It is a defence to a prosecution for failing to comply with section sixty-nine D, sixty-nine E, sixty-nine F or sixty-nine H of this Ordinance if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that— Defence to prosecutions.

- (a) he was not so aware on the date of the information or summons;
- (b) he became so aware less than fourteen days before the date of the information or summons; or
- (c) he became so aware not less than fourteen days before the date of the information or summons and gave the notice under the relevant section within fourteen days after becoming so aware.

“(2.) For the purposes of the last preceding sub-section, a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master’s or principal’s interest or interests in a share or shares in the company concerned, was aware at that time.

Powers of court with respect to defaulting substantial shareholders.

“69N.—(1.) Where a person (in this section referred to as ‘the substantial shareholder’) is, or at any time after the date on which this Division came into operation has been, a substantial shareholder in a company and has failed to comply with section sixty-nine D, sixty-nine E or sixty-nine F of this Ordinance, the Court may, on the application of the Attorney-General, whether or not that failure still continues, make one or more of the following orders:—

- (a) an order restraining the substantial shareholder from disposing of any interest in shares in the company in which he is or has been a substantial shareholder;
- (b) an order restraining a person who is, or is entitled to be registered as, the holder of shares referred to in the last preceding paragraph from disposing of any interest in those shares;
- (c) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;
- (d) an order directing the company not to make payment, or to defer making payment, of any sum due from the company in respect of any share in which the substantial shareholder has or has had an interest;
- (e) an order directing the sale of all or any of the shares in the company in which the substantial shareholder has or has had an interest;
- (f) an order directing the company not to register the transfer or transmission of specified shares;
- (g) an order that any exercise of the voting or other rights attached to specified shares in the company in which the substantial shareholder has or has had an interest be disregarded;
- (h) for the purposes of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

“(2.) Any order under this section may include such ancillary or consequential provisions as the Court thinks just.

“(3.) An order under this section directing the sale of a share may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, if the Court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become, a substantial shareholder in the company.

“(4.) The Court may direct that, where a share is not sold in accordance with an order of the Court under this section, the share shall vest in the Registrar.

“(5.) The Court shall, before making an order under this section 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 any person.

“(6.) 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 failure of the substantial shareholder to comply as mentioned in sub-section (1.) of this section 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 failure ought to be excused.

“(7.) The Court may, before making an order under this section, 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.

“(8.) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

“(9.) Section three hundred and eleven of this Ordinance applies in relation to a share that vests in the Registrar under this section as the first-mentioned section applies in relation to an estate or interest in property referred to in the first-mentioned section.

“(10.) A person shall not contravene or fail to comply with an order under this section that is applicable to him.

Penalty: One thousand dollars.

Default penalty: Two hundred dollars.

“(11.) The last preceding sub-section does not affect the powers of the Court in relation to the punishment of contempts of the Court.”

8. Section 122 of the Principal Ordinance is amended by omitting paragraph (c) of sub-section (1.) and inserting in its stead the following paragraph:—

“(c) of any offence under section one hundred and twenty-four, one hundred and eighty J or three hundred and three of this Ordinance;”

Power to restrain certain persons from managing companies.

9. Section 127 of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“(1.) A director of a company shall give notice to the company of such matters relating to himself as are necessary for the purposes of compliance by the company with any of the provisions of section one hundred and twenty-six, one hundred and thirty-four, one hundred and eighty-four or Part VIA. of this Ordinance or of the Tenth Schedule that are applicable in relation to him.”

General duty to make disclosure.

Special  
resolutions.

**10.** Section 144 of the Principal Ordinance is amended by inserting after sub-section (2.) the following sub-section:—

“(2A.) Where it is proposed to submit to a general meeting of a company having a share capital a special resolution proposing an alteration of or addition to the articles of the company to effect or authorize a restriction (within the meaning of section thirty-one of this Ordinance) of voting rights attaching to voting shares in the company, the notice of the general meeting shall specify that the poll referred to in sub-section (4.) of that section will be held.”.

**11.** After Part VI. of the Principal Ordinance the following Part is inserted:—

“PART VIA.—TAKE-OVERS.

Interpretation.

“180A.—(1.) This section has effect for the purposes of this Part and of the Tenth Schedule.

“(2.) Unless the contrary intention appears—

‘company’ means a company as defined by sub-section (1.) of section five of this Ordinance, and includes a body corporate incorporated in the Territory that has a share capital;

‘dispatch’ includes communicate by any means whatsoever;

‘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;

‘invitor’ means—

(a) a person who dispatches, or proposes to dispatch, an invitation, whether he dispatches or proposes to dispatch the invitation himself or by an agent; or

(b) two or more persons who together dispatch, or propose to dispatch, an invitation, whether they dispatch, or propose to dispatch, the invitation themselves or by an agent;

‘offeree’, in relation to an invitation, means a holder of shares to which the invitation relates;

‘offeree company’ means—

(a) in relation to a take-over offer that is constituted by an offer to which sub-section (1.) of section one hundred and eighty c of this Ordinance applies—a 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 offer that is constituted by an invitation—a company in relation to shares in which that invitation has been, or is proposed to be, dispatched; and

(c) in relation to a take-over scheme—a company shares in which are proposed to be acquired under the scheme;

‘ offeror ’ means—

(a) a person who dispatches, or proposes to dispatch, an offer to acquire shares, whether he dispatches, or proposes to dispatch, the offer himself or by an agent; or

(b) two or more persons who together dispatch, or propose to dispatch, an offer to acquire shares, whether they dispatch, or propose to dispatch, the offer themselves or by an agent,

and includes an invitor;

‘ Part A statement ’ means a statement in writing that complies with the requirements of Part A of the Tenth Schedule;

‘ Part B statement ’ means a statement in writing that complies with the requirements of Part B of the Tenth Schedule;

‘ Stock Exchange ’ means a prescribed Stock Exchange;

‘ take-over offer ’ means—

(a) an offer to which sub-section (1.) of section one hundred and eighty c of this Ordinance applies; or

(b) an invitation to which sub-section (3.) of that section applies;

‘ take-over scheme ’ means a take-over scheme as referred to in sub-section (4.) of this section.

“ (3.) In relation to a company the whole or a portion of the share capital of which consists of stock, a reference to a number of shares includes a reference, in relation to an amount of stock, to a number of shares equal to the number of shares from which that amount of stock was converted.

“ (4.) Where an offeror has dispatched, or proposes to dispatch, two or more take-over offers that relate to shares in a company and the same period is specified in those offers as the period during which those shares are proposed to be acquired, those take-over offers together constitute a take-over scheme and each of those offers is an offer under that scheme.

“ (5.) The shares in a company to which a person is entitled include—

(a) shares in which that person has an interest; and

(b) shares in which an associate of that person has an interest.

“ (6.) A reference in paragraph (b) of the last preceding sub-section to an associate of a person is a reference to—

(a) a corporation that, by virtue of sub-section (5.) of section six of this Ordinance, is to be deemed to be related to that person;

- (b) a person in accordance with whose directions, instructions or wishes the first-mentioned person is accustomed or under an obligation, whether formal or informal, to act in relation to shares in the company referred to in the last preceding sub-section;
- (c) a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first-mentioned person in relation to shares in that company;
- (d) a body corporate that is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to shares in that company;
- (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that person is accustomed or under an obligation, whether formal or informal, to act in relation to shares in that company; or
- (f) a person who is associated with the first-mentioned person as provided by the next succeeding sub-section.

“(7.) For the purposes of paragraph (f) of the last preceding sub-section, a person is associated with another person—

(a) if—

- (i) he has an agreement, arrangement or undertaking, whether formal or informal and whether expressed or implied, with that other person; and
  - (ii) he or that other person may, by reason of that agreement, arrangement or undertaking, exercise directly or indirectly control the exercise of, or substantially influence the exercise of, the voting power attached to a share in the company referred to in sub-section (5.) of this section; or
- (b) if he is associated, whether formally or informally, with that other person in relation to the proposed acquisition by that other person of shares in that company otherwise than solely as a holder of shares in that company.

“(8.) For the purposes of sub-paragraph (ii) of paragraph (a) of the last preceding sub-section, 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.

“(9.) An offer to acquire a right to acquire a share or an interest in a share under an option shall be deemed to be an offer to acquire a share.

“(10.) A reference to a person who holds shares includes a reference to a person who holds a right to acquire a share or an interest in a share under an option.

“(11.) A reference to a person associated with an offeror or an invitor is—

- (a) a reference to a corporation that, by virtue of sub-section (5.) of section six of this Ordinance, is deemed to be related to the offeror or invitor;
- (b) in relation to an offer or invitation relating to shares in a company, a reference to a person—
  - (i) who is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of, or with the authority of, the offeror or invitor;
  - (ii) who is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of, or with the authority of, a person in accordance with whose directions or instructions or under whose authority the offeror or invitor is under such an obligation to act in relation to the offer or invitation;
  - (iii) who has an agreement, arrangement or undertaking whether formal or informal and whether express or implied with the offeror or invitor by reason of which he or the offeror or invitor may exercise, or directly or indirectly control the exercise of, the voting power attached to a share in the company; or
  - (iv) in accordance with whose directions, instructions or wishes, or under whose authority, the offeror or invitor is under an obligation, whether formal or informal, to act in relation to the offer or invitation; or
- (c) a reference to a person who is associated, whether formally or informally, with the offeror or invitor in relation to an offer or invitation relating to shares in a company made or proposed to be made by the offeror or invitor.

“(12.) For the purposes of the last preceding sub-section, where two or more persons constitute an offeror or an invitor, a person is associated with the offeror or invitor if he is associated with any of those persons.

“180B.—(1.) The application of this Part extends to and in relation to all natural persons, whether resident in the Territory or in Australia or not and whether Australian citizens or not, and to all bodies corporate, whether incorporated or carrying on business in the Territory or in Australia or not, and extends to acts done or omitted to be done outside the Territory, whether in Australia or not.

Application of Part.

“(2.) Nothing in the last preceding sub-section extends the definition of ‘company’ in sub-section (2.) of the last preceding section so as to include a body corporate that is not incorporated in the Territory.

“ (3.) If, in the Territory, a person does an act, or omits to do an act, and that person would, if he had done that act, or had omitted to do that act, in a State or in another Territory of the Commonwealth, have been guilty of an offence against the law of that State or Territory that corresponds to this Part, that person is guilty of an offence against this Part punishable as the first-mentioned offence is punishable.

“ (4.) Where an act or omission constitutes an offence both under this Part and under the law of a State or of another Territory of the Commonwealth and the offender has been punished for the offence under that law, he is not liable to be punished in respect of the offence under this Ordinance.

Take-over  
offers.

“ 180C.—(1.) Subject to the next succeeding sub-section, a person, or two or more persons together, shall not dispatch an offer to acquire shares in a company unless—

(a) the offer is in writing that—

- (i) specifies the number and other particulars of the shares in the company proposed to be acquired during a period specified in the offer;
- (ii) specifies the terms of that offer and of all other offers dispatched, or to be dispatched, in respect of shares referred to in the last preceding sub-paragraph;
- (iii) specifies the number and particulars of the shares in the company to which that person, or any of those persons, was entitled immediately before the offer was dispatched;
- (iv) sets out how and by what date the obligations of the offeror are to be satisfied;
- (v) sets out all other particulars of the offer, including terms that this Part requires to be terms;
- (vi) bears a date which is not more than three days before the date on which the offer is dispatched; and
- (vii) is accompanied by a copy of the statement referred to in sub-paragraph (i) of the next succeeding paragraph and, if the offeree company has given to the offeror a Part B statement, by a copy of that statement;

(b) the offeror has, not earlier than forty-two days and not later than twenty-eight days before the offer is dispatched, given to the offeree company—

- (i) a Part A statement relating to that offer that is signed, where the offeror is a natural person or includes one or more natural persons, by that person or by each of those persons and, where the offeror is or includes one or more corporations, by not less than two directors of the corporation, or by two 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;

- (ii) where the statement referred to in the last preceding sub-paragraph is not signed by all the directors of a corporation, a copy of the resolution referred to in the last preceding sub-paragraph and a statement showing the names of the directors who were present at each meeting at which the resolution was agreed to and the names of any directors who voted against the resolution; and
  - (iii) in respect of each report referred to in paragraph (e) of clause 2 of Part A of the Tenth Schedule that is set out in the Part A statement referred to in sub-paragraph (i) of this paragraph, 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; and
- (c) the offeror has, before the offer is dispatched, lodged with the Registrar a copy of the Part A statement given under the last preceding paragraph.

“(2.) The last preceding sub-section does not apply to—

- (a) an offer to acquire voting shares in a company if the number derived from the formula set out in the next succeeding section, calculated as at the time immediately before the offer is dispatched, is less than fifteen;
- (b) an offer to acquire shares in a company (not being an offer that is dispatched at the same time as another offer to acquire shares in the company is dispatched) if—
  - (i) the offeror has not or, where two or more persons constitute the offeror, none of those persons has; and
  - (ii) no person associated with the offeror has, dispatched offers to acquire shares in the company, or an invitation or invitations relating to the acquisition of shares in the company, to more than three members of the company within the period of four months immediately preceding the dispatch of the first-mentioned offer;
- (c) an offer to acquire shares in a company that are not voting shares unless the offeror proposes to acquire—
  - (i) all the shares in the company that are not voting shares; or
  - (ii) all the shares, not being voting shares, included in a class of shares in the company, other than shares to which the offeror, or, where two or more persons constitute the offeror, any of those persons, is entitled immediately before the offer is dispatched;

- (d) an offer to acquire shares in a company that does not have more than fifteen members; or
- (e) an offer to acquire shares in a proprietary company that has more than fifteen members if the members of the company have consented in writing to the provisions of this Part not applying to or with respect to the offer.

“(3.) A person, or two or more persons together, shall not dispatch an invitation relating to shares in a company unless—

- (a) the invitation is in writing that—
  - (i) specifies the maximum number and other particulars of the shares in the company proposed to be acquired during a period specified in the invitation;
  - (ii) specifies the terms upon which the shares referred to in the last preceding sub-paragraph are proposed to be acquired;
  - (iii) specifies the number and other particulars of the shares in the company to which that person or any of those persons was entitled immediately before the invitation was dispatched;
  - (iv) bears a date that is not more than three days before the invitation is dispatched; and
  - (v) is accompanied by a copy of the statement referred to in sub-paragraph (i) of the next succeeding paragraph and, if the offeree company has given to the invitor a Part B statement, by a copy of that statement;
- (b) the invitor has, not earlier than forty-two days and not later than twenty-eight days before the invitation is dispatched, given to the offeree company—
  - (i) a Part A statement relating to that invitation that is signed, where the invitor is a natural person or includes one or more natural persons, by that person or by each of those persons and, where the invitor is or includes one or more corporations, by not less than two directors of the corporation, or by two directors of each of those corporations, authorized so to sign in pursuance of a resolution passed at a meeting of the directors, or in the case of a corporation that has only one director, by that director;
  - (ii) where the statement referred to in the last preceding sub-paragraph is not signed by all the directors of a corporation, a copy of the resolution referred to in that sub-paragraph and a statement showing the names of the directors who were present at each meeting at which the resolution was agreed to and the names of any directors who voted against the resolution; and

(iii) in respect of each report referred to in paragraph (e) of clause 2 of Part A of the Tenth Schedule that is set out in the Part A 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 inclusion of the report in the statement in the form and context in which it is included;

- (c) the invitor has, before the invitation is dispatched, lodged with the Registrar a copy of the Part A statement given under the last preceding paragraph;
- (d) the invitor includes in the invitation, or dispatches with the invitation, a statement setting out how and by what date the obligations of the invitor arising from his acceptance of an offer made by an offeree are to be satisfied; and
- (e) the invitor includes in the invitation, or dispatches with the invitation, a statement setting out all other particulars of the invitation, including the matters that have effect under section one hundred and eighty F of this Ordinance.

“ (4.) Any of the following persons, that is to say—

- (a) an invitor who has dispatched an invitation relating to shares in a company;
- (b) a person associated with such an invitor; or
- (c) where two or more persons constitute such an invitor—any of those persons,

shall not, during the period specified in the invitation or during the period of four months after the invitation is dispatched, whichever is the longer, acquire for valuable consideration (otherwise than in pursuance of a take-over offer or in the ordinary course of trading at an official meeting of a Stock Exchange) a share in the company if the number derived from the formula set out in the next succeeding section, calculated as at the time immediately before the acquisition of the share, is fifteen or more.

“ (5.) In the last two preceding sub-sections, ‘ invitation ’ does not include—

- (a) an invitation relating to voting shares in a company if the number derived from the formula set out in the next succeeding section, calculated as at the time immediately before the invitation was dispatched, is less than fifteen;
- (b) an invitation relating to shares in a company (not being an invitation that is made to more than three people or that is dispatched at the same time as another invitation relating to shares in the company is dispatched) if—
  - (i) the invitor has not, or where two or more persons constitute the invitor, none of those persons has; and
  - (ii) no person associated with the invitor has,

dispatched offers to acquire shares in the company or an invitation or invitations relating to the acquisition of shares in the company to more than three members of the

- company within the period of four months immediately preceding the dispatch of the first-mentioned invitation;
- (c) an invitation relating to shares in a company that are not voting shares unless the invitor proposes to acquire—
- (i) all the shares in the company that are not voting shares; or
  - (ii) all the shares, not being voting shares, included in a class of shares in the company, other than shares to which the invitor or, where two or more persons constitute the invitor, any of those persons, is entitled immediately before the invitation is dispatched;
- or
- (d) an invitation relating to shares in a company that does not have more than fifteen members.

“(6.) In this section, ‘offer’ does not include an offer made at an official meeting of a Stock Exchange in the ordinary course of trading on the Stock Exchange.

“(7.) For the purposes of this section—

- (a) an invitation relating to the acquisition of shares in a company that is dispatched otherwise than to a person or persons named in the invitation shall be deemed to be dispatched to more than three members of the company; and
- (b) an offer or invitation that is dispatched within three days before or within three days after another offer or invitation is dispatched shall be deemed to be dispatched at the same time as that other offer or invitation.

Formula for  
calculating  
voting power.

“180D.—(1.) For the purposes of the last preceding section, the formula is the formula  $\frac{100(A + B)}{C}$ , where—

- (a) A is a number equal to the maximum number of votes that might be exercised at a general meeting of the company in respect of the voting shares in the company to which the offeror is entitled, or, where two or more persons constitute the offeror, the aggregate of the number of—
  - (i) voting shares in the company to which each of those persons is entitled; and
  - (ii) if one or more of those persons is entitled to voting shares in the company with another person—those shares;
- (b) B is a number equal to the maximum number of votes that might be exercised at a general meeting of the company in respect of—
  - (i) the voting shares in the company, not being voting shares referred to in the last preceding paragraph, in respect of which the offeror or a person associated with the offeror (or, where two or more persons constitute the offeror, any of those persons) has, during the preceding period of four months dispatched offers (being offers that have not been

withdrawn) or proposes to dispatch offers during the ensuing period of four months; and

- (ii) voting shares in the company, not being voting shares referred to in the last preceding sub-paragraph, that the offeror or a person associated with the offeror (or, where two or more persons constitute the offeror, any of those persons) might acquire for valuable consideration (otherwise than in the ordinary course of trading at an official meeting of a Stock Exchange) as the result of an invitation or invitations made by any of those persons during the preceding period of four months or as the result of an invitation or invitations proposed to be made by any of those persons during the ensuing period of four months; and

- (c) C is a number equal to the maximum number of votes that might be exercised at a general meeting of the company in respect of all the voting shares in the company.

“(2.) For the purposes of paragraph (a) of the last preceding sub-section, a voting share—

- (a) that a person referred to in that paragraph has a right to acquire; or  
 (b) an interest in which a person so referred to has a right to acquire,

shall be deemed to be a voting share to which that person is entitled.

“(3.) For the purposes of paragraph (b) of sub-section (1.) of this section, votes that might be exercised in respect of voting shares to which the offeror, or, where two or more persons constitute the offeror, any of those persons, is entitled shall be disregarded.

“(4.) For the purposes of this section, voting shares shall be deemed to be held by such person or persons and in such manner as would enable the greatest number of votes to be exercised at a general meeting of the company in respect of them.

“180E.—(1.) The following sub-sections of this section have effect in respect of a take-over offer that is constituted by an offer.

“(2.) It shall be a term of the take-over offer that it will, unless withdrawn, remain open during a period ending on a specified date, being a date that is not less than one month after the date that the take-over offer bears.

“(3.) The take-over offer shall not be conditional upon the offeree approving or consenting to a payment or other benefit being made or given to a director of the offeree company, or of a corporation that is deemed by virtue of sub-section (5.) of section six of this Ordinance to be related to the offeree company, as compensation for loss of office or as consideration for or in connexion with his retirement from office.

“(4.) If a take-over offer under a take-over scheme is withdrawn, a contract arising from the acceptance of any other take-over 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 first-mentioned take-over offer is withdrawn.

Terms and conditions of take-over offers.

“ (5.) Where a take-over offer is subject to a condition in relation to which section one hundred and eighty N of this Ordinance applies, the offer shall specify a date, being a date that is not less than seven days before the end of the period during which the offer remains open, for the publication of the notice referred to in sub-section (3.) of that section.

Terms and  
conditions of  
invitations.

“ 180F.—(1.) The following sub-sections of this section have effect in respect of a take-over offer that is constituted by an invitation.

“ (2.) The invitation shall be expressed to remain open until a specified date, being a date that is not less than one month after the date that the invitation bears.

“ (3.) The invitor shall not indicate or imply, whether by statement in the invitation or in any other manner, that an offer made by an offeree will not be accepted by the invitor unless the offeree approves or consents to a payment or other benefit being made or given to a director of the offeree company, or of a corporation that is deemed by virtue of sub-section (5.) of section six of this Ordinance to be related to the offeree company, as compensation for loss of office or as consideration for or in connexion with his retirement from office.

“ (4.) The invitor shall not—

- (a) indicate or imply, whether by statement in the invitation or in any other manner, that the order in which offers made by offerees are dispatched or received may have an effect in relation to the determination of the offers that will be accepted;
- (b) accept an offer to dispose of shares made in consequence of the invitation before the expiration of the period during which the invitation is expressed, in pursuance of sub-section (2.) of this section, to remain open; or
- (c) accept an offer or offers made in consequence of the invitation in such a manner as to be unfair to persons who so made offers.

“ (5.) If the invitor accepts an offer for the reason only that it was received before another offer, he shall, unless he satisfies the Court that he had reasonable grounds for doing so, be deemed, for the purposes of paragraph (c) of the last preceding sub-section, to have accepted that offer in such a manner as to be unfair to other persons who made offers in consequence of the invitation.

Statement by  
offeree  
company.

“ 180G.—(1.) Where an offeree company receives a Part A statement given under section one hundred and eighty c of this Ordinance, the company shall—

- (a) not later than fourteen days after receipt of the statement, give to the offeror; or
- (b) not later than fourteen days after the first take-over offer, or the invitation, to which the statement relates, as the case

may be, is dispatched, give to each holder of shares to which the statement refers,

a Part B statement signed by all the directors of the company or by not less than two directors of the company 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.

“ (2.) The Part B statement may contain such information in addition to that referred to in Part B of the Tenth Schedule as the directors of the offeree company think fit.

“ (3.) The offeree company shall, forthwith after giving a Part B statement under sub-section (1.) of this section, lodge with the Registrar—

- (a) a copy of the statement; and
- (b) where the statement is not signed by all the directors of the company, a copy of the resolution passed at a meeting of the directors authorizing the signing of the statement and a statement showing the names of the directors who were present at the meeting at which the resolution was agreed to and the names of any directors who voted against the resolution.

“ 180H.—(1.) Where a take-over offer has been dispatched, the offeror shall—

Notice to offeree company.

- (a) on the day on which the take-over offer is dispatched, give notice in writing to the offeree company that the offer has been dispatched and of the date that it bears; and
- (b) on the same day or, if the office of the Registrar is not open on that day, on the next day on which that office is open, lodge with the Registrar a copy of the notice.

“ (2.) The last preceding sub-section does not apply where the requirements of that sub-section have already been complied with in respect of another take-over offer under the take-over scheme.

“ 180J.—(1.) Where a Part A statement given under section one hundred and eighty c of this Ordinance is false or misleading in a material particular or there is an omission from such a statement of any material matter, a person to whom this section applies is, subject to this section, guilty of an offence against this Ordinance.

Liability for mis-statements in Part A statements.

Penalty: Two thousand dollars or imprisonment for one year, or both.

“ (2.) A person to whom this section applies is, in the circumstances referred to in the last preceding sub-section, whether he has been convicted of an offence under that sub-section or not, liable, subject to this section, to pay compensation to a person who accepts a take-over offer on the faith of the contents of the statement for any loss or damage sustained by reason of the false or misleading matter or by reason of the omission.

“ (3.) The persons to whom this section applies are—

- (a) the offeror;
- (b) where the offeror is or includes a corporation, a person who was a director of that corporation at the time the statement was given, 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
  - (ii) a director who voted against that resolution; and
- (c) subject to the next succeeding sub-section, a person a notice of whose consent to the inclusion in the statement of a report made by him has been given to the offeree company under paragraph (b) of sub-section (1.), or under paragraph (b) of sub-section (3.), of section one hundred and eighty c of this Ordinance.

“ (4.) A person referred to in paragraph (c) of the last preceding sub-section is guilty of an offence under sub-section (1.) of this section, and liable to pay compensation under sub-section (2.) of this section, only in respect of false or misleading matter in the report referred to in that paragraph or an omission of material matter from that report.

“ (5.) It is a defence to a prosecution of a person for an offence under sub-section (1.) of this section if the person proves—

- (a) that, when the statement was given, he—
  - (i) believed on reasonable grounds that the false matter was true;
  - (ii) believed on reasonable grounds that the misleading matter was not misleading;
  - (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—
  - (i) on the date of the information or summons, 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 public notice containing such matters as were necessary to correct the false or misleading statement or the omission.

“ (6.) It is a defence to an action under sub-section (2.) of this section if the defendant proves—

- (a) any matter referred to in paragraph (a) of the last preceding sub-section; and
- (b) that—
  - (i) when the plaintiff accepted the take-over offer, the defendant believed as mentioned in sub-paragraph (i), (ii) or (iii) of paragraph (a) of the last

preceding sub-section or did not know that the omitted matter was material; or

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

“(7.) In this section, a reference to a statement includes a reference to a statement as modified by modifications referred to in sub-section (6.) of section one hundred and eighty L of this Ordinance.

“(8.) Nothing in this section affects any cause of action existing apart from this section.

“180K. Where, at the time when a take-over offer is made to a person or at any time during the period during which the offer is open, another person is, or is entitled to be registered as, the holder of shares to which the offer relates, then, except in so far as the offer otherwise provides—

Acceptance  
of take-over  
offers by  
third parties.

- (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.

“180L.—(1.) An offeror may not vary a take-over offer except in accordance with this section.

Variation of  
take-over  
offers.

“(2.) An offeror may vary a take-over offer that is constituted by an offer by doing one or more of the following in relation to the whole or a part of the consideration that is offered for the shares proposed to be acquired:—

- (a) where a cash sum is so offered—by increasing the amount of that sum;
- (b) where shares are so offered—by increasing the number of those shares;
- (c) where stock is so offered—by increasing the amount of that stock;
- (d) where debentures are so offered—by increasing the rate of interest payable under those debentures;
- (e) where debentures are so offered—by increasing the amount of those debentures.

“(3.) An offeror may vary a take-over offer by extending the period during which it remains open and, where an offeror so varies a take-over offer that contains a condition in relation to which section one hundred and eighty N of this Ordinance applies, he may correspondingly vary the date specified for the publication of the notice referred to in sub-section (3.) of that section.

“(4.) Where the consideration that is offered for the shares proposed to be acquired under a take-over offer is varied under sub-section (2.) of this section, each person whose shares are acquired before or after the variation under a like take-over offer (that is to say, a take-over offer that, disregarding the person who is the offeree and the number of shares to which the offer relates, is the same as the first-mentioned take-over offer) is entitled to receive consideration as varied accordingly.

“(5.) Where an offeror varies a take-over offer, he shall forthwith give to the offeree company, to the offeree and to each other offeree to whom a like take-over offer within the meaning of the last preceding sub-section has been made a notice in writing in accordance with the next succeeding sub-section and shall forthwith lodge with the Registrar a copy of the notice.

“(6.) The notice shall set out in an appropriate form particulars of such modifications of the Part A statement given under section one hundred and eighty c of this Ordinance as are necessary having regard to the variation.

Offerees not to be given benefits except under take-over scheme.

“180M.—(1.) While a take-over offer under a take-over scheme remains open—

- (a) the offeror;
- (b) where the offeror is or includes a corporation, a corporation that, by virtue of sub-section (5.) of section six of this Ordinance, is to be deemed to be related to the first-mentioned corporation;
- (c) a person who has an agreement, arrangement or undertaking whether formal or informal and whether express or implied with the offeror by reason of which he or the offeror may exercise, or directly or indirectly control the exercise of, the voting power attached to a share in the company to which the take-over scheme relates; or
- (d) a person in accordance with whose directions, instructions or wishes, or under whose authority, the offeror is under an obligation, whether formal or informal, to act in relation to the take-over scheme,

shall not, except in pursuance of a variation made in accordance with the last preceding section, give, offer to give or agree to give to a person whose shares may be acquired under the take-over scheme any benefit (whether by payment of cash or otherwise) not provided for in the particulars of the take-over scheme as set out in the Part A statement given in respect of the take-over scheme under section one hundred and eighty c of this Ordinance.

“(2.) For the purposes of this section, where two or more persons constitute an offeror, a reference in the last preceding sub-section to the offeror shall be read as a reference to each of those persons.

“(3.) Nothing in this section prevents the acquisition of shares in a company at an official meeting of a Stock Exchange in the ordinary course of trading on the Stock Exchange.

“ 180N.—(1.) Where two or more take-over offers that, disregarding the persons who are the offerees and the number of shares to which the offers relate, are the same are subject to a particular condition, the offeror may not declare any of the take-over offers to be free from the condition unless it is a term of each offer that he may do so not less than seven days before the end of the period during which it is open.

Declaration  
where take-over  
offers are  
conditional.

“ (2.) If the offeror declares one of the offers to be free from the condition, he shall forthwith declare the other offers to be free from the condition and shall forthwith cause to be published a notice—

(a) stating that the offers are free from the condition; and

(b) specifying—

(i) the proportion that the number of shares to which, to his knowledge, he is entitled at the time of lodging the notice for publication bears to the number of issued shares in the company; or

(ii) if offers were made in respect of shares included in one or more classes of shares—the proportion that the number of shares included in that class or in each of those classes, to which he is so entitled bears to the number of issued shares included in that class, or in each of those classes, as the case may be.

“ (3.) The offeror shall, whether or not he has caused a notice to be published under the last preceding sub-section, cause to be published, on the date specified in the take-over offer in accordance with sub-section (5.) of section one hundred and eighty E of this Ordinance, a notice—

(a) stating whether the offeror has declared the offers to be free from the condition; or

(b) stating whether, to his knowledge, the condition was, at the time of lodging the notice for publication, fulfilled or not.

“ (4.) Where a notice under the last preceding sub-section states that the offeror has declared the offers to be free from the condition or that the condition has been fulfilled, the notice shall also specify—

(a) the proportion that the number of shares to which, to his knowledge, he is entitled at the time of lodging the notice for publication bears to the number of issued shares in the company; or

(b) if offers were made in respect of shares included in one or more classes of shares—the proportion that the number of shares included in that class or in each of those classes, to which he is so entitled bears to the number of issued shares included in that class, or in each of those classes, as the case may be.

“ (5.) A notice under sub-section (2.) or (3.) of this section shall be published in a newspaper circulating generally in the Territory and, if shares in the offeree company are listed for quotation on the official list of a Stock Exchange in a State and that newspaper does not circulate generally in that State, in a newspaper that does so circulate.

“ (6.) On the first day on which a notice under sub-section (2.) or (3.) of this section is lodged for publication, the offeror shall send, by telegraph, a message to the effect of the notice to each Stock Exchange on the official list of which shares in the offeree company are listed for quotation.

“ (7.) Where a condition referred to in sub-section (1.) of this section has not been fulfilled and a notice has not been published as required by sub-section (3.) of this section, all contracts formed by the acceptance of take-over offers under the take-over scheme are void.

Expenses  
of directors  
of offeree  
company.

“ 180P. Notwithstanding anything in the articles of a company, or in the document by which a company is constituted, the directors of the company are entitled to have refunded to them by the company any expenses reasonably incurred by them on behalf of and in the interest of the members of the company in relation to a take-over scheme involving the acquisition of shares in the company.

Statements  
as to proposed  
take-over  
offers.

“ 180Q.—(1.) A person who does not intend to make an offer in the nature of a take-over offer shall not give notice or publicly announce that he intends to make a take-over offer, or an offer in the nature of a take-over offer, whether under this Ordinance or otherwise.

“ (2.) Persons who do not intend to make an offer in the nature of a take-over offer shall not give notice or publicly announce that they intend to make together a take-over offer, or an offer in the nature of a take-over offer, whether under this Ordinance or otherwise.

“ (3.) A person shall not make a take-over offer or an offer in the nature of a take-over offer, or give notice or publicly announce that he intends to make such an offer, if he has no reasonable or probable grounds for believing—

- (a) that he will be able to perform his obligations if the offer is accepted; or
- (b) in the case of a take-over offer, or an offer in the nature of a take-over offer, that is constituted by an invitation—that he will be able to perform his obligations if he accepts some or all of the offers that may be made to him in consequence of the invitation.

“ (4.) Persons shall not together make a take-over offer or an offer in the nature of a take-over offer, or give notice or publicly announce that they intend to make together such an offer, if they have no reasonable or probable grounds for believing—

- (a) that they will be able to perform their obligations if the offer is accepted; or
- (b) in the case of a take-over offer, or an offer in the nature of a take-over offer, that is constituted by an invitation—that they will be able to perform their obligations if they accept some or all of the offers that may be made to them in consequence of the invitation.

“ 180R.—(1.) Where two or more take-over offers that constitute a take-over scheme have been made, the Court may, on the application of the Attorney-General or of the offeree company, where the Court is satisfied that a provision of this Part 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, including, but without limiting the generality of the foregoing, one or more of the following orders:—

Orders to protect rights under take-over schemes.

- (a) an order restraining the registration of transfers of shares in the offeree company;
- (b) an order restraining the disposal of any interest in shares in the offeree company;
- (c) an order cancelling a contract, arrangement or offer relating to the take-over scheme;
- (d) an order declaring a contract, arrangement or offer relating to the take-over scheme to be voidable; and
- (e) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act.

“ (2.) A person shall not contravene or fail to comply with an order under the last preceding sub-section that is applicable to him.

“ (3.) The last preceding sub-section does not affect the powers of the Court in relation to the punishment of contempts of the Court.

“ 180s.—(1.) Where a person has failed to comply with a provision of this Part and the Court is satisfied that the non-compliance was due to inadvertence, mistake or circumstances beyond his control and that, in all the circumstances, the failure ought to be excused, the 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 failure to comply.

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

“ (2.) An order under the last preceding sub-section may include such ancillary or consequential provisions as the Court thinks just.

“ 180T.—(1.) The Court shall, before making an order under either of the last two preceding sections, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

Powers of Court.

“ (2.) The Court may, before making an order under either of the last two preceding sections, 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.

“ (3.) The Court may rescind, vary or discharge an order made by it under either of the last two preceding sections or suspend the operation of such an order.

“ 180U.—(1.) The regulations may vary the requirements set out in any part of the Tenth Schedule, either by omitting or altering any such requirement or by adding additional requirements, and any reference in this Part to the requirements of a part of the Tenth Schedule shall be read as a reference to those requirements as so varied for the time being.

Regulations may be made with respect to certain matters.

“(2.) The regulations may require the lodging, as prescribed, with one or more Stock Exchanges, or with the Registrar, or with both, of—

- (a) a signed copy of a prescribed document, being a document made or given in pursuance of this Part; or
- (b) a notice in the prescribed form, and containing the prescribed particulars, of such a document.

Power to exempt from compliance with Part.

“180v. The Attorney-General may, by notice in writing published in the *Gazette*, exempt a person, as specified in the notice and subject to such terms and conditions (if any) as are specified in the notice, from compliance with all or any of the provisions of this Part or of the requirements set out in the Tenth Schedule.

Offences.

“180w.—(1.) A person who contravenes or fails to comply with a provision of this Part is guilty of an offence against this Ordinance.

“(2.) If a take-over offer or an invitation is dispatched in contravention of this Part, the offeror, or, where the offeror is two or more persons, each of those persons, is guilty of an offence against this Ordinance.

“(3.) Where an offence against this Part is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this Ordinance.

“(4.) The penalty for an offence against this Ordinance arising under this section is a fine not exceeding Two thousand dollars or imprisonment for a period not exceeding three months, or both.

“(5.) Sub-section (1.) of section three hundred and seventy-nine of this Ordinance does not apply in relation to this Part.

Acquisition of shares of shareholders dissenting from a take-over scheme.

“180x.—(1.) For the purposes of this section—

- (a) where two or more take-over offers (not being take-over offers constituted by invitations) that constitute a take-over scheme have been made in respect of all the shares included in a class of shares (other than shares to which the offeror, or, where two or more persons constitute the offeror, any of those persons, is entitled), the shares in respect of which those take-over offers were made are shares subject to acquisition;
- (b) outstanding shares are shares subject to acquisition in respect of which a take-over offer was made but has not been accepted; and
- (c) a dissenting offeree is a person who is, or is entitled to be registered as, a holder of outstanding shares.

“(2.) Where the shares in a company are not divided into two or more classes, those shares shall be deemed to constitute a class.

“(3.) Where—

- (a) take-over offers in respect of shares included in the class of shares referred to in paragraph (a) of sub-section (1.) of

this section representing not less than nine-tenths of the nominal amount of shares subject to acquisition have been accepted; and

- (b) if the shares subject to acquisition represent less than nine-tenths of the nominal amount of all the shares included in that class—take-over offers in respect of those shares have been accepted by not less than three-quarters of the offerees,

the offeror may, within two months after the last day (disregarding any extension under sub-section (3.) of section one hundred and eighty L of this Ordinance of the period during which the take-over offer remains open) upon which a take-over offer under the take-over scheme was open for acceptance, give notice as prescribed to a dissenting offeree to the effect that take-over offers have been accepted as mentioned in paragraphs (a) and (b) of this sub-section and that the offeror desires to acquire the outstanding shares held by the dissenting offeree.

“(4.) For the purposes of paragraph (b) of the last preceding sub-section, two or more persons holding jointly shares in respect of which a take-over offer has been made shall be deemed to be one offeree.

“(5.) Where such a notice is so given, the offeror is entitled and bound, subject to this section, to acquire those shares on the terms applicable under the take-over offer.

“(6.) The last preceding sub-section does not have effect where, on an application made by the dissenting offeree—

- (a) within one month after the date on which the notice was given; or  
 (b) within fourteen days after a statement is supplied to the dissenting offeree under sub-section (9.) of this section,

whichever is the later, the Court orders that that sub-section is not to have effect.

“(7.) Where alternative terms were offered under the take-over offer, the dissenting offeree may, by notice in writing given to the offeror—

- (a) within one month after the date on which the notice was given under sub-section (3.) of this section; or  
 (b) within fourteen days after the giving to him of a statement under sub-section (9.) of this section,

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.

“(8.) If the dissenting offeree fails to give the notice within the time allowed by the last preceding sub-section, the offeror may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the outstanding shares of the dissenting offeree.

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

“(10.) Where the offeror has given notice under sub-section (3.) of this section and the Court has not, on an application made by the dissenting offeree, ordered to the contrary, the offeror shall, within fourteen days after—

- (a) the expiration of one month after the notice was given;
- (b) the expiration of fourteen days after the last day on which a statement under the last preceding sub-section was given;
- or
- (c) where an application has been made to the Court by the dissenting offeree—the application has been disposed of,

whichever last happens, give a copy of the notice to the offeree company together with an instrument of transfer of the outstanding shares held by the dissenting offeree executed on behalf of the dissenting offeree by a person appointed by the offeror and also executed by the offeror and pay, allot or transfer to the offeree company the consideration for the transfer and the offeree company shall thereupon register the offeror as the holder of those shares.

“(11.) The consideration so received shall be held by the offeree company in trust for the dissenting offeree.

“(12.) Where consideration held as provided by the last preceding sub-section consists of or includes money, that money shall be paid into a bank account established for that purpose only.

“(13.) 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 two years, the company shall, before the expiration of ten 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 sum or property—that property) to the Treasurer.

“(14.) The Treasurer 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 as if they were moneys paid to him under the *Companies (Unclaimed Assets and Moneys) Ordinance 1950-1966*.

“(15.) Where any property other than money transferred to the Treasurer under this section includes shares in a corporation, the Treasurer is not subject to any obligation—

- (a) to pay any calls;
- (b) to make any contribution to the debts and liabilities of the corporation; or
- (c) to discharge any other liability,

in respect of the shares, whether the obligation arises before or after the date of the transfer, but this sub-section does not affect the right of the corporation to forfeit a share.

“(16.) Where, under the law of a State or of another Territory that corresponds to this section, shares in a company are transferred to an authority specified in that law, that authority is not subject to any obligation as specified in the last preceding sub-section in respect of those shares, but this sub-section does not affect a right of the company to forfeit a share.

“(17.) Neither the Commonwealth nor the Treasurer is liable for any loss or damage suffered by a person arising out of the exercise of any of the powers of the Treasurer under this section.

“180y.—(1.) The following sub-sections of this section have effect where the aggregate nominal value of—

Rights of  
remaining  
shareholders.

- (a) shares included in a class of shares in an offeree company to which the offeror, or, where two or more persons constitute the offeror, any of those persons, becomes entitled in consequence of take-over offers under a take-over scheme; and
- (b) any other shares included in that class to which the offeror, or, where two or more persons constitute the offeror, any of those persons, was entitled before the take-over offers were dispatched,

is not less than nine-tenths of the nominal value of the issued shares included in that class.

“(2.) The offeror shall, within one month after the date on which the aggregate nominal value of the shares referred to in paragraphs (a) and (b) of the last preceding sub-section becomes not less than nine-tenths of the nominal value of the shares last-mentioned in that sub-section, give notice of the fact as prescribed to the holders of the remaining shares included in that class who, when the notice is given, had not been given notice under sub-section (3.) of section one hundred and eighty x of this Ordinance.

“(3.) A holder of remaining shares referred to in the last preceding sub-section may, within three months after the giving of notice to him under that sub-section, require the offeror to acquire shares included in that class of which he is the holder and, where alternative terms were offered in respect of shares included in that class in take-over offers under the take-over scheme, elect which of those terms he will accept.

“(4.) Where a shareholder gives notice under the last preceding sub-section with respect to his shares, the offeror is entitled and bound to acquire those shares—

- (a) on the terms on which shares were acquired under the take-over scheme and, where alternative terms were offered to the holders of those shares, on the terms for which the shareholder has elected or where he has not so elected for whichever of the terms the offeror determines; or
- (b) on such other terms as are agreed or as the Court, on the application of the offeror or the shareholder, thinks fit to order.

“ (5.) Where the shares in a company are not divided into two or more classes, those shares shall be deemed to constitute a class.”

Repeal of section 184 and transitional provisions.

12.—(1.) Section 184 of the Principal Ordinance is repealed.

(2.) Notwithstanding the repeal effected by the last preceding sub-section, the Principal Ordinance applies to and in relation to a take-over scheme in respect of which a notice was given under paragraph (a) of sub-section (2.) of section 184 of the *Companies Ordinance* 1962 or of that Ordinance as amended before the date of commencement of this section.

(3.) Subject to the last preceding sub-section, the *Companies Ordinance* 1962-1971 applies to and in relation to anything done after the date of commencement of this section under or in connexion with a scheme that is a take-over scheme within the meaning of section 184 of the Principal Ordinance, as in force before that date, whether or not the scheme was prepared before that date and whether or not anything was done in connexion with the scheme before that date.

13. Section 185 of the Principal Ordinance is repealed and the following section inserted in its stead:—

Acquisition of shares of shareholders dissenting from scheme or contract approved by majority.

“ 185.—(1.) Where a scheme or contract (not being a take-over scheme referred to in sub-section (4.) of section one hundred and eighty A of this Ordinance) involving a transfer of the shares included in a class of shares in a company (in this section referred to as ‘ the transferor company ’) to a person (in this section referred to as ‘ the transferee ’) has, within four months after the making of the offer in that behalf by the transferee been approved by the holders of not less than nine-tenths in nominal value of the shares included in that class of shares (other than shares already held at the date of the offer by or by a nominee for the transferee or, where the transferee is a company, its subsidiary), the transferee may at any time within two months after the offer has been so approved give notice as prescribed to a dissenting shareholder that he desires to acquire the shares of that shareholder and, when such a notice is given, the transferee is, unless on an application made by a dissenting shareholder within one month after the date on which the notice was given or within fourteen days after a statement is supplied to a dissenting shareholder in pursuance of sub-section (5.) of this section (whichever is the later), the Court thinks fit to order otherwise, entitled and bound, subject to this section, to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

“ (2.) Where the shares in a company are not divided into two or more classes, those shares shall be deemed to constitute a class.

“ (3.) Where alternative terms were offered to the approving shareholders, the dissenting shareholder is entitled to elect not later than the expiration of one month after the date on which the notice is given under sub-section (1.) of this section or fourteen days after the date on which a statement is supplied in pursuance of sub-section (5.) of this section

(whichever is the later) which of those terms he prefers and if the dissenting shareholder fails to make the election within the time allowed by this sub-section, the transferee may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting shareholder.

“ (4.) Notwithstanding anything in sub-section (1.) of this section, where shares in the transferor company of the same class as the shares whose transfer is involved are already held as mentioned in sub-section (1.) of this section, to a nominal value greater than one-tenth of the aggregate of their nominal value and that of the shares (other than those already held as mentioned in sub-section (1.) of this section) whose transfer is involved, the provisions of sub-section (1.) of this section do not apply unless—

- (a) the transferee offers the same terms to all holders of the shares (other than those already held as mentioned in sub-section (1.) of this section) the transfer of which is involved; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in nominal value of the shares (other than those already held as mentioned in sub-section (1.) of this section) the transfer of which is involved, are not less than three-fourths in number of the holders of those shares.

“ (5.) Where the transferee has given notice to a dissenting shareholder that he desires to acquire that shareholder's shares, that shareholder is entitled to require the transferee, by a demand in writing served on the transferee within one month after the date on which the notice was given, to furnish to him a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members.

“ (6.) Where, in pursuance of such a scheme or contract, the transferee becomes beneficially entitled to shares in the transferor company which, together with any other shares in the transferor company to which the transferee or, where the transferee is a company, any corporation that, by virtue of sub-section (5.) of section six of this Ordinance, is deemed to be related to the transferee is beneficially entitled, comprise or include nine-tenths in nominal value of the shares included in the class of shares concerned, then—

- (a) the transferee shall, within one month after the date on which he becomes beneficially entitled to those shares (unless in relation to the scheme or contract he has already complied with this requirement), give notice of the fact as prescribed to the holders of the remaining shares included in that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferee under sub-section (1.) of this section; and
- (b) such a holder may, within three months after the giving of the notice to him, require the transferee to acquire his shares and, where alternative terms were offered to the

approving shareholders, elect which of those terms he will accept,

and, where a shareholder gives notice under paragraph (b) of this subsection with respect to his shares, the transferee is entitled and bound to acquire those shares—

- (c) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to him and, where alternative terms were offered to those shareholders, on the terms for which the shareholder has elected, or where he has not so elected, for whichever of the terms the transferee determines; or
- (d) on such other terms as are agreed or as the Court, on the application of the transferee or of the shareholder, thinks fit to order.

“(7.) Where a notice has been given by the transferee under subsection (1.) of this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee shall, within fourteen days after—

- (a) the expiration of one month after the date on which the notice is given;
- (b) the expiration of fourteen days after a statement under subsection (5.) of this section is supplied; or
- (c) where an application has been made to the Court by a dissenting shareholder, the application is disposed of,

whichever last happens, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder, by a person appointed by the transferee and, on his own behalf, by the transferee, and pay, allot or transfer to the transferor company the consideration representing the price payable by the transferee for the shares that, by virtue of this section, the transferee is entitled to acquire and the transferor company shall thereupon register the transferee as the holder of those shares.

“(8.) All sums received by the transferor company under this section shall be paid into a separate bank account and those sums, and any other consideration so received, shall be held by that company in trust for the several persons entitled to the shares in respect of which they were respectively received.

“(9.) Where a sum 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 two years, the company shall before the expiration of ten years after the date on which the sum was paid or the consideration was allotted or transferred to the company pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it, to the Treasurer.

“(10.) The Treasurer shall sell or dispose of any property other than cash so received and any property that becomes substituted for it that he comes to hold in right of any property other than cash received

under the last preceding sub-section in such manner as he thinks fit and shall deal with the proceeds of the sale or disposal and any cash so received and any dividends paid to him in respect of shares in a corporation as if they were moneys paid to him under the *Companies (Unclaimed Assets and Moneys) Ordinance 1950-1966*.

“(11.) Where any property other than cash transferred to the Treasurer under this section or any corresponding previous provision includes shares in a corporation, the Treasurer is not subject to any obligation—

- (a) to pay any calls;
- (b) to make any contribution to the debts and liabilities of the corporation; or
- (c) to discharge any other liability,

in respect of the shares, whether the obligation arises before or after the date of the transfer, and is not liable to be sued for any calls, contribution or other liability, but this sub-section does not affect the right of a corporation to forfeit a share upon which a call or contribution remains unpaid or a liability undischarged.

“(12.) Where, under the law of a State or of another Territory that corresponds to this section, shares in a company are transferred to an authority specified in that law, that authority is not subject to any obligation as specified in the last preceding sub-section, and is not liable to be sued as so specified, in respect of those shares, but this sub-section does not affect a right of the company to forfeit a share.

“(13.) Neither the Commonwealth nor the Treasurer is liable for any loss or damage suffered by a person arising out of the exercise of any of the powers of the Treasurer under this section.

“(14.) In this section, ‘dissenting shareholder’ means a shareholder who has not assented to the scheme or contract and a shareholder who has failed or refused to transfer his shares to the transferee in accordance with the scheme or contract.”

14. Section 354 of the Principal Ordinance is amended by omitting from sub-section (8.) the words “corresponding with section” and inserting in their stead the words “that corresponds to section one hundred and eighty x or”. The branch register.

15. The Tenth Schedule to the Principal Ordinance is repealed and the following Schedule inserted in its stead:— Tenth Schedule.

“ TENTH SCHEDULE.

Section 180c.

PART A.

*Requirements with which Statement Given by Offeror to Comply.*

1. The statement shall set out full particulars of the take-over offer and, if that offer and one or more other take-over offers constitute a take-over scheme, full particulars of those offers.

2. The statement shall—

- (a) where the offeror is or includes one or more corporations, specify the names, occupations and addresses of all the directors of the corporation or of each corporation;

- (b) where the offeror is or includes one or more corporations, contain a summary of the principal activities of the corporation or of each corporation;
- (c) set out full particulars of the shares in the offeree company to which the offeror is entitled or, if there are no such shares, set out a statement to that effect;
- (d) set out full particulars of marketable securities of the offeree company (not being shares referred to in the last preceding paragraph) to which the offeror is entitled or, if there are no such securities, set out a statement to that effect;
- (e) where the offeror is or includes one or more corporations and shares may be acquired for a consideration that is or includes shares in, or marketable securities of, that corporation or of any of those corporations, set out, in respect of that corporation or of each such corporation—
  - (i) the reports that, if the statement were a prospectus issued on the date on which the statement is given to the offeree company, would be required to be set out in a statement under clauses 20 and 23 of the Fifth Schedule; and
  - (ii) full particulars of any alterations in the capital structure of the corporation and of any subsidiary of the corporation during the period of five years immediately preceding the date the statement is given to the offeree company and particulars of the source of any increase in capital; and
- (f) where the offeror is or includes one or more 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 officer.

3. The statement shall set out particulars of any restriction on the right to transfer shares to which an offer under the take-over scheme relates contained in the memorandum or articles or other instrument constituting or defining the constitution of the offeree company which has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the offeree 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.

4. If the consideration for the acquisition of shares is to be satisfied in whole or in part by the payment of cash, the statement shall set out particulars of the source or sources from which that cash will be obtained.

5. The statement shall set out—

- (a) whether it is proposed in connexion with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any corporation that is, by virtue of sub-section (5.) of section six of this Ordinance, deemed to be related to that company as compensation for loss of office or as consideration for, or in connexion with, his retirement from office and, if so, particulars of the proposed payment or benefit in respect of each such director;
- (b) whether there is any other agreement or arrangement made between the offeror, or, where the offeror is two or more persons, any of those persons, and any of the directors of the offeree company in connexion with or conditional upon the outcome of the scheme and, if so, particulars of any such agreement or arrangement;
- (c) whether, within the knowledge of the offeror or, where the offeror is two or more persons, within the knowledge of any of those persons, the financial position of the offeree 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 or any of those persons; and
- (d) whether there is any agreement or arrangement whereby any shares acquired by the offeror or, where the offeror is two or more persons, by any of those persons, in pursuance of the scheme will or may be transferred to any other person and, if so—
  - (i) the names of the persons who are parties to the agreement or arrangement and the number, description and amount of the shares which will or may be so transferred and the name of the transferee; and
  - (ii) the number, description and amount of any shares in the offeree company held by or on behalf of each of those persons or of the transferee or, if no such shares are so held, a statement to that effect.

6. The succeeding provisions of this Part of this Schedule apply only where the consideration to be offered in exchange for shares in the offeree company consists, in whole or in part, of marketable securities issued, or to be issued, by a corporation,

7. Where marketable securities are issued or are to be issued by a corporation that is not, or is not included in the offeror, the statement shall so far as the information is available to the offeror or, where the offeror is two or more persons, is available to any of them contain the same information as would have to be given if that corporation were the offeror.

8. Where the marketable securities are listed on or dealt in on a Stock Exchange, the statement shall state the fact and specify the Stock Exchanges concerned and specify—

- (a) the latest available market sale price before the date on which the statement is given to the offeree company;
- (b) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales; and
- (c) where the take-over scheme has been the subject of a public announcement in newspapers or by any other means before the statement is given to the offeree company, the latest available market sale price immediately before the public announcement.

9. Where the securities are listed on or dealt in on more than one Stock Exchange, it is sufficient compliance with paragraphs (a) and (c) of the last preceding clause if information with respect to the securities is given in relation to the Stock Exchange at which there have been the greatest number of recorded dealings in the securities in the three months immediately preceding the date on which the statement is given to the offeree company.

10. Where the securities are not listed on or dealt in on a Stock Exchange, the statement shall set out all the information that the offeror, or, where the offeror is two or more persons, any of those persons, has as to the number of, amount and price at which the securities have been sold in the three months immediately preceding the date on which the statement is given to the offeree company and, if neither the offeror nor any of those persons has any such information, a statement to that effect.

11. Where marketable securities are to be issued, the information required under the last three preceding clauses 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.

##### *Requirements with which Statement Given by Offeree Company to Comply.*

1. The statement shall set out—

- (a) whether the board of directors of the offeree company recommends to shareholders the acceptance of take-over offers made, or to be made, by the offeror under the take-over scheme; or
- (b) that the board of directors of the offeree company does not desire to make a recommendation or consider themselves not justified in making a recommendation.

2. The statement shall set out—

- (a) the number, description and amount of marketable securities of the offeree company held by or on behalf of each director of that company or, in the case of a director where none are so held, that fact;
- (b) in respect of each director of the offeree company by whom, or on whose behalf, shares in the offeree company are held—
  - (i) whether the director intends to accept any take-over offer that may be made in respect of those shares; or
  - (ii) that the director has not decided whether he will accept such a take-over offer;
- (c) where the offeror is or includes one or more 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 offeree company and, if so, the number, description and amount of those securities;
- (d) whether it is proposed that any payment or other benefit shall be made or given to any director of the offeree company or of any corporation that is, by virtue of sub-section (5.) of section six of this Ordinance, deemed to be related to that company as compensation for loss of office or as consideration for, or in connexion with, his retirement from office and, if so, particulars of the proposed payment or benefit;
- (e) whether there is any other agreement or arrangement made between any director of the offeree company and any other person in connexion with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement;

- (f) whether any director of the offeree company has an interest in any contract entered into by the offeror or, where the offeror is two or more persons, any of those persons and, if so, particulars of the nature and extent of each such interest;
- (g) if the shares to which the scheme relates are not listed on or dealt in on a Stock Exchange, all the information that the offeree company has as to the number, amount and price at which any such shares have been sold in the six months preceding the date on which the statement under paragraph (b) of sub-section (1.), or under paragraph (b) of sub-section (3.), of section one hundred and eighty c of this Ordinance was given to the offeree company; and
- (h) whether the financial position of the offeree 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."

Expenses of  
directors of  
offeror  
company.

16. Where, before the date of commencement of this section, the directors of a company have reasonably incurred expenses on behalf of and in the interest of the members of the company in relation to a take-over scheme as defined by section 184 of the Principal Ordinance, as in force before that date, being a take-over scheme involving the acquisition of shares in the company, the directors of the company are entitled, and shall be deemed to have been at all times entitled, to have the expenses refunded to them by the company.