

# **IRISH TAKEOVER PANEL**

**Report for the year ended 30 June, 2001**

This annual report of the Irish Takeover Panel is made to  
Mary Harney, T.D., Minister for Enterprise, Trade and Employment as  
required by section 19 of the Irish Takeover Panel Act, 1997

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# Contents

|  | Page |
|--|------|
| Members of the Panel, Directors and Director General                                     | 3    |
| Introduction   | 5    |
| Chairperson's Statement  | 7    |
| Director General's Report  | 9    |
| Directors' Report  | 13   |
| Statement of Directors' Responsibilities   | 15   |
| Auditors' Report   | 16   |
| Financial Statements   | 18   |
| Appendix 1 - Administrative Appendix   | 24   |
| Appendix 2 - Takeovers supervised by Irish Takeover Panel, 1 July, 2000 to 30 June, 2001 | 30   |
| Appendix 3 - List of Relevant Companies as at 30 June, 2001                              | 31   |

## **Members of the Panel**

Irish Association of Investment Managers

Irish Clearing House Limited - Nominated by the Irish Bankers Federation

Irish Stock Exchange Limited

Law Society of Ireland

Brian Walsh - Nominated by the Consultative Committee  
of Accountancy Bodies - Ireland

## **Directors of the Panel**

|                    |   |  |
|--------------------|---|--|
| Chairperson        | Daniel O’Keeffe, S.C. }                             | } Appointed by the Governor of the Central<br>Bank of Ireland              |
|                    | William M. McCann, FCA }                            |  |
| Deputy Chairperson | Leonard Abrahamson<br>(Alternate: Brendan O’Connor) | Appointed by the Irish Stock Exchange                                      |
|                    | Ann Fitzgerald<br>(Alternate: Philip Sykes)         | Appointed by the Irish Association of<br>Investment Managers               |
|                    | Daniel J. Kitchen                                   | Appointed by the Consultative Committee<br>of Accountancy Bodies - Ireland |
|                    | Brian J. O’Connor<br>(Alternate: Laurence Shields)  | Appointed by the Law Society of Ireland                                    |
|                    | Roisin Brennan<br>(Alternate: John Butler)          | Appointed by the Irish Bankers Federation                                  |

## **Director General (and Secretary of the Panel)**

Miceal Ryan



## **Introduction**

The Irish Takeover Panel (“the Panel”) is the statutory body responsible for monitoring and supervising takeovers and other relevant transactions in Ireland. The Panel was established by the Irish Takeover Panel Act, 1997 (“the Act”); it is incorporated as a company limited by guarantee. The Panel is responsible for making Rules to ensure that takeovers and other relevant transactions comply with the General Principles set out in the Schedule to the Act. These General Principles are designed to ensure fair and equal treatment of all shareholders in relation to takeovers. The Rules also serve to provide an orderly framework within which takeovers can be conducted.

The Panel has extensive powers under the Act to make rulings and give directions, to hold hearings, to summon witnesses and to require production of documents and other information, where these are appropriate in the discharge of its statutory functions.



## **Chairperson's Statement**

The year ended 30 June, 2001 was a busy and significant year for the Panel.

Following a lengthy review process involving, inter alia, public consultation, an amended version of the Rules came into effect on 1 July, 2001. These Rules embody amendments to the original Rules and also contain three new Rules. The amendments reflect matters which the Panel considered appropriate to regulate in its Rules based on the experience of the Panel over four years and also incorporate suggestions made by practitioners during the consultation process. One of the more substantial amendments is to Rule 9 which regulates mandatory takeover offers. As a result of an amendment, the permitted acquisition in any twelve month period is reduced from 1% to 0.05% and the exclusion for persons holding more than 50% of voting rights in a company is limited to single holders of securities, or persons regarded as such under the Rules. In response to the increasing use of inducement fees in takeovers, the Panel has amended Rule 21 which regulates actions which may frustrate takeover offers. The effect of the amendment is to prohibit specifically such fees without the consent of the Panel. Such consent would only be likely to be granted in relation to specific quantifiable third party costs, subject to an upper limit of 1% of the value of the offer, and confirmation to the Panel from the offeree board and its financial adviser that the proposed arrangement is in the best interests of the shareholders of the offeree. The three new Rules which have come into effect regulate dual company transactions, reverse takeover transactions and schemes of arrangement pursuant to section 201 of the Companies Act, 1963.

Following consultation with the Panel, the Minister for Enterprise, Trade and Employment introduced new Regulations prescribing additional categories of companies as relevant companies in order to secure more fully the protection of their shareholders. The new Regulations came into effect on 26 March, 2001 and extend the definition of "relevant company" in the Act to include companies incorporated in Ireland and whose securities are

quoted on the London Stock Exchange, the New York Stock Exchange, Nasdaq, Nasdaq Europe or the Neuer Markt. As a result, the Panel will monitor and supervise takeovers of such companies and other relevant transactions involving such companies. The Regulations recognise that the substantial developments in capital markets in recent years has resulted in such companies seeking listings and raising capital on markets other than the Irish Stock Exchange. The Regulations had the effect of bringing eight new companies under the jurisdiction of the Panel.

Following a number of amendments by the European Parliament, agreement on a compromise text for the European Takeover Directive was reached in June, 2001. However, the vote in the European Parliament on 4 July was tied with 273 votes both for and against the proposed Directive and thus it fell as it failed to achieve the simple majority required. The European Commission has set up a high level group of company law experts that will assist the Commission in preparing a new proposal for a Directive on the conduct of takeover bids. However, it is unlikely to be introduced in the short term. A harmonised European approach to takeover regulation would thus seem to be some distance away.

**Daniel O’Keeffe**

Chairperson

19 September, 2001

## **Director General's Report**

The Panel supervised eight takeovers during the year. The Board met on thirty one occasions to consider regulatory issues, a considerable increase on the 20 regulatory Board meetings the previous year. The transactions before the Panel included the offers for Adare Printing Group plc, Athlone Extrusions plc and Seafield plc. While no offer had been made by 30 June, 2001, the proposed takeover of eircom by competing offerors generated a substantial level of regulatory activity for the Panel during the last quarter of the year.

### *Regulatory Operations*

The eight takeovers, set out in Appendix 2, supervised by the Panel during the year were as follows:

#### Adare Printing Group plc

A recommended cash offer by NAPG Limited, a company backed by funds managed by Allen, McGuire & Partners Limited.

#### Dunloe Ewart plc

A proposal was made to shareholders to take the company private by way of a scheme of arrangement. However, the proposal was subsequently withdrawn.

#### Ivernia West plc

The takeover of Ivernia West plc, which did not involve a change of beneficial control, was effected by way of a transfer to a new Canadian registered company, Ivernia West Inc..

#### ICC Bank plc

The takeover of ICC Bank plc was effected by way of a recommended offer by Bank of Scotland.

#### Tullow Oil plc

The takeover of Tullow Oil plc, which did not involve a change of beneficial control, was effected by way of a transfer to a new UK registered company, also named Tullow Oil plc.

#### Vislink plc

The takeover of Vislink plc, which did not involve a change of beneficial control, was effected by way of a transfer to a new UK registered company, also named Vislink plc.

#### Athlone Extrusions plc

Barlo Group plc acquired Athlone Extrusions plc by way of a recommended cash offer for the company.

#### Seafield plc

The takeover of Seafield plc was effected by way of a recommended cash offer by Orb Acquisitions II Limited, a wholly owned subsidiary of Orb Securities Limited.

In the course of its regulatory activities during the year, the Panel exercised certain of its powers under the Act as follows:

#### Rulings:

The Panel issued thirty one rulings during the year, of which thirteen related to the proposed takeover of eircom plc. Of these thirteen rulings, five related to Rule 16 which regulates arrangements with favourable terms. The majority of the remaining rulings related to the takeover of Adare Printing Group plc, the Dunloe Ewart plc scheme of arrangement, the proposed takeover of James Crean plc and the granting of exempt market-maker and exempt fund manager status to certain market makers and fund managers.

### Waivers:

Seven waivers were granted during the year, of which three were in respect of waivers of Rule 37 (redemption or purchase by a company of its own securities) and one in respect of a waiver of Rule 9 (mandatory offer and its terms). Two of the waivers related to waivers of Rule 2.6 (obligation on the offeree to circulate announcements) in connection with the proposed takeover of eircom plc. The remaining waiver related to Rule 3 (independent advice).

### Derogations:

The Panel granted twenty derogations during the year of which eight related to the proposed takeover of eircom plc and seven related to the takeover of ICC Bank plc. Of the twenty derogations seven were granted in respect of Rule 20 which deals with equality of information.

### Enquiries (section 9(5)):

One enquiry was initiated by the Panel under section 9(5) of the Act to procure information required by the Panel in the exercise of its functions.

### *Financial Statements*

In the year to 30 June, 2001 operating income fell 12% from €999,355 to €879,925. The reduction was as a result of reduced income from document charges and the contract note levy. Expenditure for the year increased by over 21% to €773,074. The major reasons for this increase in expenditure related to costs associated with the amendment of the Rules including professional fees and an increase in Directors' fees due to the higher number of regulatory Board meetings.

A significant proportion of the Panel's income is fee income generated from takeover and trading activity and is therefore of a volatile nature and consequently extremely difficult to predict at the outset of a financial year. The Panel's objective is to maintain sufficient cash resources to cope with any unforeseeable substantial reduction in income or substantial increase in expenditure. Investments and cash balances at 30 June, 2001 were €1.08 million.

**Miceal Ryan**  
Director General

19 September, 2001

## **Directors' Report**

The directors present their report and audited financial statements for the year ended 30 June, 2001.

### **Principal activities, review of operations and future developments**

The Irish Takeover Panel is a public company limited by guarantee formed and registered under the Companies Acts 1963 to 1999. The company was incorporated on 29 April, 1997 in accordance with the Irish Takeover Panel Act, 1997 ("the Act") to:

- a) monitor and supervise takeovers and other relevant transactions so as to ensure that the provisions of the Act and any rules thereunder are complied with; and
- b) make rules under the provisions of the Act in relation to takeovers and other relevant transactions.

A review of operations and future developments is contained in the Chairperson's Statement and the Director General's Report.

### **Results and transfers to reserves**

The results for the year are set out in the Income and Expenditure Account on page 19. An amount of €126,974, (2000: €380,922) was transferred from the Income and Expenditure Account to a contingency reserve.

### **Health and safety of employees**

It is the policy of the company to ensure the safety, health and welfare of employees by maintaining a safe place and system of work. This policy is based on the requirements of employment legislation including the Safety, Health and Welfare at Work Act, 1989.

### **Post balance sheet events**

There were no important events since the end of the financial year.

### **Introduction of the euro**

The company's systems are capable of dealing with the introduction of the euro.

### **Auditors**

In accordance with section 160 (2) of the Companies Act, 1963, KPMG, Chartered Accountants, continue in office.

On behalf of the Board

D. O'Keeffe

*Chairperson*

W. M. McCann

*Deputy Chairperson*

19 September, 2001

## Statement of Directors' Responsibilities

Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the income and expenditure for that period. In preparing these financial statements, the directors are required to;

- select suitable accounting policies and then apply them consistently
- make judgements and estimates that are reasonable and prudent
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper books of account which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Acts, 1963 to 1999 and all Regulations to be construed as one with those Acts. They have general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the company and to prevent and detect fraud and other irregularities.

On behalf of the Board

D. O'Keeffe

*Chairperson*

W. M. McCann

*Deputy Chairperson*

19 September, 2001

# **Auditors' Report to the members of the Irish Takeover Panel**

## **(limited by guarantee)**

We have audited the financial statements on pages 18 to 23.

### **Respective responsibilities of directors and auditors in relation to the financial statements**

The directors are responsible for preparing the directors' report and, as described on page 15, the financial statements in accordance with applicable Irish law and accounting standards. Our responsibilities, as independent auditors, are established in Ireland by statute, the Auditing Practices Board and by our profession's ethical guidance.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Companies Acts. As also required by the Acts, we state whether we have obtained all the information and explanations we require for our audit, whether the financial statements agree with the books of account and report to you our opinion as to whether:

- the company has kept proper books of account
- the directors' report is consistent with the financial statements;

We also report to you if, in our opinion, information specified by law regarding directors' remuneration and transaction with the company is not disclosed.

### **Basis of opinion**

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

## **Opinion**

In our opinion, the financial statements give a true and fair view of the state of the affairs of the company at 30 June, 2001 and of its surplus for the year then ended and have been properly prepared in accordance with the Companies Acts, 1963 to 1999 and all Regulations to be construed as one with those Acts.

We have obtained all the information and explanations we considered necessary for the purpose of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the Directors' Report on pages 13 and 14 is consistent with the financial statements.

**KPMG**

*Chartered Accountants*

*Registered Auditors*

19 September, 2001

# Financial Statements

## Statement of accounting policies

### **Basis of preparation**

The financial statements are prepared in accordance with generally accepted accounting principles under the historical cost convention, and comply with the financial reporting standards of the Accounting Standards Board, as promulgated by the Institute of Chartered Accountants in Ireland.

### **Operating income**

This represents primarily the invoiced value of annual and document charges that the company is entitled to levy and contract note levies on dealings in quoted securities of relevant companies collected through brokers on an accruals basis.

### **Tangible fixed assets and depreciation**

Tangible fixed assets are carried at cost less accumulated depreciation. Depreciation is calculated to write off the original cost of tangible fixed assets over their expected useful lives at the following annual rates:-

|                       |         |
|-----------------------|---------|
| Fixtures and fittings | 5 years |
| Computers             | 3 years |
| Motor vehicle         | 4 years |

### **Valuation of investments**

Interest bearing securities are carried at cost, which excludes accrued income.

### **Cash flow statement**

The company is exempted from the preparation of a cash flow statement as it qualifies as a small company under the Companies (Amendment) Act, 1986.

### **Pensions**

Pensions costs are charged to the Income and Expenditure Account on an accruals basis.

## Financial Statements

### Income and Expenditure Account

for the year to 30 June, 2001

|   |      | Year ended<br>30 June, 2001 | Year ended<br>30 June, 2000 |
|---|------|-----------------------------|-----------------------------|
|   | Note | €                           | €                           |
| <b>Operating income</b>                   | 1    | <b>879,925</b>              | 999,355                     |
| <b>Operating expenditure</b>              | 2    | <b>(773,074)</b>            | (636,871)                   |
|   |      | _____                       | _____                       |
| <b>Operating surplus</b>                  |      | <b>106,851</b>              | 362,484                     |
| Interest income                           |      | <b>56,557</b>               | 31,334                      |
|   |      | _____                       | _____                       |
| <b>Operating surplus after interest</b>   |      | <b>163,408</b>              | 393,818                     |
|   |      | _____                       | _____                       |
| Surplus for the financial year            |      | <b>163,408</b>              | 393,818                     |
| Accumulated surplus at beginning of year  |      | <b>141,202</b>              | 128,306                     |
| Transfer to contingency reserve           |      | <b>(126,974)</b>            | (380,922)                   |
|   |      | _____                       | _____                       |
| <b>Accumulated surplus at end of year</b> |      | <b>177,636</b>              | 141,202                     |
|   |      | =====                       | =====                       |

The results derive from continuing operations.

There were no recognised gains or losses in the financial year or preceding financial year other than those included above in the Income and Expenditure Account.

On behalf of the Board

D. O’Keeffe  
Chairperson

W. M. McCann  
Deputy Chairperson

## Financial Statements

### Balance Sheet

as at 30 June, 2001

|  | <i>Note</i> | <b>30 June,<br/>2001<br/>€</b> | 30 June,<br>2000<br>€ |
|--|-------------|--------------------------------|-----------------------|
| <b>Fixed assets</b>                            |             |                                |                       |
| Tangible fixed assets                          | 6           | <b>29,389</b>                  | 37,419                |
|  |             | <hr/>                          | <hr/>                 |
| <b>Current assets</b>                          |             |                                |                       |
| Debtors  | 7           | <b>56,342</b>                  | 47,119                |
| Investments                                    | 8           | <b>952,304</b>                 | 1,009,322             |
| Cash at bank                                   |             | <b>130,939</b>                 | 10,440                |
|  |             | <hr/>                          | <hr/>                 |
|  |             | <b>1,139,585</b>               | 1,066,881             |
| <b>Current liabilities</b>                     |             |                                |                       |
| Creditors: amounts falling due within one year | 9           | <b>(39,034)</b>                | (137,768)             |
|  |             | <hr/>                          | <hr/>                 |
| <b>Net current assets</b>                      |             | <b>1,100,551</b>               | 929,113               |
|  |             | <hr/>                          | <hr/>                 |
| <b>Total assets less current liabilities</b>   |             | <b>1,129,940</b>               | 966,532               |
|  |             | <hr/>                          | <hr/>                 |
| <b>Accumulated surplus and reserve</b>         |             |                                |                       |
| Contingency reserve                            | 10          | <b>952,304</b>                 | 825,330               |
| Income and Expenditure Account                 |             | <b>177,636</b>                 | 141,202               |
|  |             | <hr/>                          | <hr/>                 |
|  |             | <b>1,129,940</b>               | 966,532               |
|  |             | <hr/> <hr/>                    | <hr/> <hr/>           |

On behalf of the Board

D. O'Keeffe  
*Chairperson*

W. M. McCann  
*Deputy Chairperson*

## Financial Statements

### Notes

| <b>1 Operating income</b>       | <b>Year ended<br/>30 June, 2001</b> | <b>Year ended<br/>30 June, 2000</b> |
|---------------------------------|-------------------------------------|-------------------------------------|
|                                 | <b>€</b>                            | <b>€</b>                            |
| Relevant company annual charges | <b>552,350</b>                      | 512,605                             |
| Document charges                | <b>207,366</b>                      | 344,239                             |
| Contract Note levies            | <b>111,715</b>                      | 142,476                             |
| Other                           | <b>8,494</b>                        | 35                                  |
|                                 | <u><b>879,925</b></u>               | <u>999,355</u>                      |

| <b>2 Operating expenditure</b>  | <b>Year ended<br/>30 June, 2001</b> | <b>Year ended<br/>30 June, 2000</b> |
|---------------------------------|-------------------------------------|-------------------------------------|
|                                 | <b>€</b>                            | <b>€</b>                            |
| Operating expenditure includes: |                                     |                                     |
| Depreciation                    | <b>16,226</b>                       | 16,240                              |
| Auditors' remuneration          | <b>2,539</b>                        | 2,540                               |
|                                 | <u>          </u>                   | <u>          </u>                   |

### 3 Employees

The average number of persons employed by the company and the employee costs during the year were as follows:

|                                 | <b>Year ended<br/>30 June, 2001</b> | <b>Year ended<br/>30 June, 2000</b> |
|---------------------------------|-------------------------------------|-------------------------------------|
|                                 | <b>Number</b>                       | <b>Number</b>                       |
| <b>Number:</b>                  |                                     |                                     |
| Administration                  | <b>5</b>                            | 3                                   |
| Non - executive directors       | <b>7</b>                            | 7                                   |
|                                 | <u>          </u>                   | <u>          </u>                   |
| <b>Costs:</b>                   | <b>Year ended<br/>30 June, 2001</b> | <b>Year ended<br/>30 June, 2000</b> |
|                                 | <b>€</b>                            | <b>€</b>                            |
| Salaries                        | <b>226,681</b>                      | 232,947                             |
| Non - executive directors' fees | <b>176,836</b>                      | 143,591                             |
| Social Welfare costs            | <b>13,212</b>                       | 15,266                              |
| Pension costs (note 4)          | <b>31,745</b>                       | 6,991                               |
|                                 | <u><b>448,474</b></u>               | <u>398,795</u>                      |

## Financial Statements

### Notes (continued)

| 4 Pension costs | Year ended<br>30 June, 2001<br>€ | Year ended<br>30 June, 2000<br>€ |
|-----------------|----------------------------------|----------------------------------|
| Pension charge  | 31,745                           | 6,691                            |
|                 |                                  |                                  |

The company contributes to a defined contribution scheme for certain employees. The cost of contributions are included in the Income and Expenditure Account. At 30 June, 2001, €4,565 was prepaid in debtors relating to this scheme.

### 5 Taxation

Under the provisions of the Finance Act, 1997 the company is exempt from Corporation Tax on its income.

### 6 Tangible fixed assets

|                         | Motor<br>vehicle<br>€ | Fixtures and<br>fittings<br>€ | Computers<br>€ | Total<br>€ |
|-------------------------|-----------------------|-------------------------------|----------------|------------|
| <i>Cost</i>             |                       |                               |                |            |
| At 30 June, 2000        | 31,743                | 33,257                        | 4,960          | 69,960     |
| Acquisitions            | -                     | 8,196                         | -              | 8,196      |
|                         | 31,743                | 41,453                        | 4,960          | 78,156     |
| <i>Depreciation:</i>    |                       |                               |                |            |
| At 30 June, 2000        | 7,936                 | 19,645                        | 4,960          | 32,541     |
| Charge for year         | 7,936                 | 8,290                         | -              | 16,226     |
|                         | 15,872                | 27,935                        | 4,960          | 48,767     |
| <i>Net book amount:</i> |                       |                               |                |            |
| At 30 June, 2000        | 23,807                | 13,612                        | -              | 37,419     |
|                         | 15,871                | 13,518                        | -              | 29,389     |

## Financial Statements

### Notes *(continued)*

| 7 Debtors                      | as at<br>30 June, 2001<br>€ | as at<br>30 June, 2000<br>€ |
|--------------------------------|-----------------------------|-----------------------------|
| Debtors                        | 10,625                      | 1,255                       |
| Prepayments and accrued income | 45,717                      | 45,864                      |
|                                | 56,342                      | 47,119                      |
|                                | 56,342                      | 47,119                      |

All amounts fall due within one year.

| 8 Investments    | as at<br>30 June, 2001<br>€ | as at<br>30 June, 2000<br>€ |
|------------------|-----------------------------|-----------------------------|
| Commercial paper | 952,304                     | 1,009,322                   |
|                  | 952,304                     | 1,009,322                   |

| 9 Creditors: amounts falling due within one year | as at<br>30 June, 2001<br>€ | as at<br>30 June, 2000<br>€ |
|--|-----------------------------|-----------------------------|
| Trade creditors                                  | 669                         | 1,107                       |
| PAYE and Social Welfare insurance                | 3,403                       | 52,782                      |
| Accrued expenses                                 | 34,962                      | 83,879                      |
|  | 39,034                      | 137,768                     |
|  | 39,034                      | 137,768                     |

| 10 Contingency reserve                       | as at<br>30 June, 2001<br>€ | as at<br>30 June, 2000<br>€ |
|--|-----------------------------|-----------------------------|
| At beginning of year                         | 825,330                     | 444,408                     |
| Transfer from Income and Expenditure Account | 126,974                     | 380,922                     |
|  | 952,304                     | 825,330                     |
|  | 952,304                     | 825,330                     |

### 11 Approval of financial statements

The Board of Directors approved these financial statements on 19 September, 2001.

# Appendix 1

## Administrative Appendix

### *Relevant Companies*

The Irish Takeover Panel Act, 1997 (“the Act”) established the Irish Takeover Panel as the body responsible for the monitoring and supervision of takeovers and certain other transactions in relation to securities in relevant companies in Ireland. A relevant company is defined in the Act to include public limited companies or other bodies corporate incorporated in Ireland whose securities are currently being traded, or (if the subject of a takeover or other relevant proposal) were traded within the previous five years, on a market regulated by a recognized stock exchange. In addition, the Minister, after consultation with the Panel, may prescribe any other public limited company as a relevant company in order to secure the protection of its investors. On 26 March, 2001 the Irish Takeover Panel Act, 1997 (Relevant Company) Regulations, 2001 came into operation pursuant to section 2(c) of the Act. These Regulations extended the definition of “relevant company” in the Act to include companies incorporated in Ireland and trading on the London Stock Exchange, the New York Stock Exchange, Nasdaq, Nasdaq Europe or the Neuer Markt. At 30 June, 2001 79 companies were deemed relevant for the purposes of the Act (see Appendix 3).

### *The Rules*

In addition to its supervisory function, the Panel is also entrusted with a rulemaking function. The Irish Takeover Panel Act, 1997, Takeover Rules, 2001 (“the Rules”) and the Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, 2001 which came into effect on 1 July, 2001. These Rules have been made principally to ensure that takeovers and other relevant transactions comply with the principles (referred to in the Rules as “the General Principles”)

set out in the Schedule to the Act. The Rules also provide an orderly framework within which takeovers are conducted. They are not concerned with the financial or commercial advantages or disadvantages of a takeover, which are matters for the companies concerned and their shareholders. Neither are the Rules concerned with issues such as competition and merger policies, which are regulated under different legislation. Whilst the Rules are similar to the City Code of the UK Panel on Takeovers and Mergers however, there are significant differences at the detail level.

*Members of the Panel and Board of Directors*

The Members of the Panel are representative of bodies professionally involved in the securities markets and in the field of takeovers. They comprise the following five bodies, or in certain cases, their corporate or personal nominee:

Consultative Committee of Accountancy Bodies – Ireland

Law Society of Ireland

Irish Association of Investment Managers

Irish Bankers Federation

Irish Stock Exchange Limited

If deemed necessary, the Minister may alter this list by introducing appropriate regulations. Each of the aforementioned bodies has appointed a director to the Board of the Panel. In addition, the Governor of the Central Bank of Ireland has appointed the Chairperson and Deputy Chairperson to the Board.

The Act also provides for the Governor of the Central Bank and the five nominating bodies to designate one or more alternates for each director appointed by them, and three of the nominating bodies have done so. This facilitates the functioning of the Panel when directors are unavailable or are faced with a potential conflict of interest in relation to a case under consideration. Finally, there is also a provision for up to three additional directors to be co-

opted by the existing directors. To date, no additional directors have been co-opted. The Board is often required to meet at short notice in order to consider issues requiring urgent decisions.

#### *The Executive*

The day-to-day work of the Panel is carried out by the Executive through the office of the Director General. The Executive deals with the general administration of the Panel and the Rules, including consideration of queries and submissions which do not require reference to the Board. The Executive is available for consultation and to give guidance before and during takeover transactions. The Executive is also responsible for monitoring dealings in the shares of relevant companies to ensure compliance with the Rules.

#### *Enforcement of the Rules*

The Act gives the Panel statutory authority to make rulings as to whether any activity or proposed activity complies with the General Principles and the Rules. The Panel is also empowered to give directions to any party to a takeover to do or refrain from doing anything specified by the Panel. The Panel may also investigate a person's conduct where it reasonably believes that a contravention of the General Principles or Rules has occurred or may occur. Where appropriate, the Panel may advise, admonish or censure such a person in relation to his or her conduct. In order to carry out its functions, the Panel may conduct a hearing in relation to the matter concerned. For the purposes of such a hearing, the Panel has the same powers, rights and privileges as are vested in the High Court in relation to compelling attendance, examining on oath and compelling the production of documents. The Act also affords witnesses before the Panel the same immunities and privileges as witnesses before the High Court.

### *Access to Reports*

Where it deems it necessary, the Panel (under section 21 of the Act) may require a Court-appointed inspector to furnish it with a copy of a report provided to the Court or the Minister under the Companies Act, 1990. Similarly, the Panel may require a recognised Stock Exchange to furnish it with a copy of any report given to the Director of Public Prosecutions in respect of an insider dealing offence. To date, no such requests have been made.

### *Charges*

In order to defray the expenses incurred in the performance of its functions under the Act, the Panel is authorised to impose charges on relevant companies, on offerors who are not relevant companies, on dealings in the securities of relevant companies and on documentation submitted to the Panel in accordance with the Rules or in relation to Panel proceedings. The consent of the Minister to the current level of charges, which are set out below, has been obtained.

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## **Panel Charges**

made under section 16 of the Act and effective from 1 July, 2001.

### 1. *Annual charge payable by relevant companies*

Relevant companies pay an annual charge to the Panel based on Market Capitalisation as at 30 June in each year. The scale is as follows:

| Market Capitalisation<br>€ Million | Annual Charge<br>€ |
|------------------------------------|--------------------|
| over 1,250                         | 18,750             |
| 625 - 1,250                        | 12,500             |
| 125 - 625                          | 6,250              |
| 62 - 125                           | 5,000              |
| 31 - 62                            | 3,750              |
| 12 - 31                            | 2,500              |
| Under 12                           | 1,250              |

2. *Charge on transactions in securities of relevant companies*

Charges are made on contracts in respect of dealings in securities of relevant companies. This charge amounts to €1.25 on each contract note in respect of transactions valued at more than €12,500.

3. *Document charges - takeovers and other relevant transactions*

A document charge is made in respect of documents furnished to the Panel under the rules in connection with takeovers and other relevant transactions. The scale for these charges is:

| Value of the Offer<br>€ Million | Charge<br>€ |
|---------------------------------|-------------|
| Under 5                         | 2,500       |
| 5 - 15                          | 10,000      |
| 15 - 35                         | 17,500      |
| 35 - 65                         | 35,000      |
| 65 - 125                        | 50,000      |
| Over 125                        | 62,500      |

The charge in respect of “whitewash” waiver applications is €2,500.

4. *Charge on offerors which are not relevant companies*

Where an offeror is not a relevant company, or a subsidiary of a relevant company, a charge is made additional to the document charge as set out above. This charge is made for an amount equal to the annual charge payable by a relevant company having a market capitalisation equal to that of the offeree at the offer price.

5. *Document charge - proceedings of the Panel*

The Panel is empowered to charge up to €900 per document, in respect of documents furnished to the Panel by a person in relation to proceedings to the Panel.

Note: There are provisions for certain of the above charges to be mitigated in certain circumstances. Further details can be obtained from the Executive.

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### **Administrative Diary**

|                |  |
|----------------|--|
| 26 March, 2001 | The Irish Takeover Panel Act, 1997 (Relevant Company) Regulations, 2001 came into operation pursuant to section 2(c) of the Act.                       |
| 1 July, 2001   | The Irish Takeover Panel Act, 1997, Takeover Rules, 2001 and the Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, 2001 came into effect. |

## Appendix 2

### Takeovers supervised by Irish Takeover Panel 1 July, 2000 to 30 June, 2001

- |        |                          |   |
|--------|--------------------------|---|
| (i)    | Adare Printing Group plc | Offer by NAPG Limited, a Company backed by funds managed by Allen, McGuire & Partners Limited             |
| (ii)   | Dunloe Ewart plc         | Scheme of Arrangement to take the company private   |
| (iii)  | Ivernia West plc         | Transfer, without change of beneficial interests, to a new Canadian registered company, Ivernia West Inc. |
| (iv)   | ICC Bank plc             | Offer by Bank of Scotland   |
| (v)    | Tullow Oil plc           | Transfer, without change of beneficial interests, to a new UK registered company, Tullow Oil plc          |
| (vi)   | Vislink plc              | Transfer, without change of beneficial interests, to a new UK registered company, Vislink plc             |
| (vii)  | Athlone Extrusions plc   | Offer by Barlo Group plc  |
| (viii) | Seafield plc             | Offer by Orb Acquisitions II Limited  |

Note: The following companies were in an Offer Period at 30 June, 2001 but offers had not been made for any of the companies at that date:

Ire-Tex Group plc

James Crean plc

eircom plc

Marlborough International plc

Golden Vale plc

Reflex Group plc

## Appendix 3

### List of Relevant Companies under the Irish Takeover Panel Act, 1997 as at 30 June, 2001

|                                   |                               |                              |
|-----------------------------------|-------------------------------|------------------------------|
| Abbey plc                         | Glanbia plc                   | Oakhill Group plc            |
| Allied Irish Banks plc            | Glencar Mining plc            | Oglesby and Butler Group plc |
| Aminex plc                        | Golden Vale plc               | Ormonde Mining plc           |
| Anglo Irish Bank Corporation plc  | Grafton Group plc             | Ovoca Resources plc          |
| Arcon International Resources plc | Greencore Group plc           |                              |
| Ardagh plc                        | Green Property plc            | Parthus Technologies plc     |
| Arnotts plc                       |                               | Petrel Resources plc         |
|                                   | Heiton Holdings plc           | Providence Resources plc     |
| Bank of Ireland Group             | Hibernia Foods plc            | Power Leisure plc            |
| Barlo Group plc                   | Horizon Technology Group plc  |                              |
| Bula Resources (Holdings) plc     |                               | Qualceram Shires plc         |
|                                   | IAWS Group plc                |                              |
| Celtic Resources Holdings plc     | ICON plc                      | Rapid Technology Group plc   |
| Conduit plc                       | IFG Group plc                 | Readymix plc                 |
| Conroy Diamonds and Gold plc      | IRE-TEX Group plc             | Reflex Group plc             |
| CPL Resources plc                 | Independent News & Media plc  | Riverdeep Group plc          |
| James Crean plc                   | IONA Technology plc           | Ryanair Holdings plc         |
| CRH plc                           | Irish Continental Group plc   | Ryan Hotels plc              |
|                                   | Irish Life & Permanent plc    |                              |
| Datalex plc                       | ITG Group plc                 |                              |
| DCC plc                           | IWP International plc         | Sherry FitzGerald Group plc  |
| Donegal Creameries plc            |                               | SmartForce plc               |
| Dragon Oil plc                    | Jurys Doyle Hotel Group plc   | SMF Technologies plc         |
| Dunloe Ewart plc                  |                               | Jefferson Smurfit Group plc  |
|                                   | Kenmare Resources plc         |                              |
| eircom plc                        | Kerry Group plc               | Trinity Biotech plc          |
| Elan Corporation, plc             | Kingspan Group plc            | Trintech Group plc           |
| Ennex International plc           |                               |                              |
|                                   | Marlborough International plc |                              |
| FBD Holdings plc                  | McInerney Holdings plc        | Unidare plc                  |
| First Active plc                  | Minco plc                     | United Drug plc              |
| Fyffes plc                        | Minmet plc                    |                              |
|                                   | Norish plc                    | Waterford Wedgwood plc       |