

# **IRISH TAKEOVER PANEL**

**Report for the year ended 30 June 2015**

This annual report of the Irish Takeover Panel is made to  
Richard Bruton, T.D., Minister for Jobs, Enterprise and Innovation as required  
by section 19 of the Irish Takeover Panel Act, 1997

**ANNUAL REPORT 2015**

**IRISH TAKEOVER PANEL**

**Report for the year ended 30 June 2015**

# Contents

	Page
Members of the Panel, Directors and Director General	3
Introduction	4
Chairperson's Statement	5
Director General's Report	6
Directors' Report	8
Statement of Directors' Responsibilities	10
Independent Auditor's Report	11
Financial Statements	14
Appendix 1 - Administrative Appendix	22
Appendix 2 - Takeovers supervised by Irish Takeover Panel, 1 July 2014 to 30 June 2015	27
Appendix 3 - Exercise of powers by Irish Takeover Panel	28

## Members of the Panel

Irish Association of Investment Managers

Irish Clearing House Limited - Nominated by the Banking & Payments Federation Ireland

Irish Stock Exchange plc

Law Society of Ireland

Pat Costello - Nominated by the Consultative Committee of Accountancy Bodies - Ireland

## Directors of the Panel

Chairperson	Denis McDonald, S.C.	Appointed by the Governor of the Central Bank of Ireland
Deputy Chairperson	Ann Fitzgerald	Appointed by the Governor of the Central Bank of Ireland
	Thomas Byrne (Alternate: Maurice Crowley)	Appointed by the Banking & Payments Federation Ireland
	Paul D’Alton	Appointed by the Consultative Committee of Accountancy Bodies – Ireland
	Daniel Kitchen (Alternate: Hugh McCutcheon)	Appointed by the Irish Stock Exchange
	Frank O’Dwyer	Appointed by the Irish Association of Investment Managers
	Paul Egan (from 13 May 2015) (Alternate: Lorcan Tiernan)	Appointed by the Law Society of Ireland
	Mark Ryan (until 13 May 2015) (Alternate: Paul Egan)	Appointed by the Law Society of Ireland

## 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”) and is incorporated as a company limited by guarantee. The Panel is designated as the competent authority under the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (the “Regulations”) for the purpose of Article 4(1) of the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

The Panel is responsible for making rules to ensure that takeovers (including takeover bids as defined in the Regulations) 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 Panel had a very busy year primarily as a result of four very significant transactions - details of which are set out in Appendix 2.

The Panel is charged with regulating takeovers of Irish registered companies whose securities are quoted on one or more stock exchanges including NASDAQ and NYSE. In recent years there have been a number of so-called "inversion" transactions whereby foreign companies (mostly US companies) have re-domiciled in Ireland. As many of these companies have securities listed on either NASDAQ or NYSE, the Takeover Rules apply to takeovers of such companies. Recently, there have been a number of transactions involving such companies which have fallen to be regulated under the Takeover Rules. These transactions because of their size and because such transactions also fall to be regulated under US securities laws, require the Panel to undertake a substantial volume of work, much of which does not become public. Such transactions also give rise to novel and unusual issues which can require a significant level of input from the Panel. Consequently, it is very important for parties involved in such transactions to consult with the Panel at the earliest opportunity and also to bear in mind that the transaction timetable should take account of the likelihood that it will be necessary in the course of the transaction to seek Panel decisions on a range of matters including, for example, requests for derogations and/or waivers from the Takeover Rules. While the Panel makes every effort to deal with applications speedily, adequate time must be factored into the timetable to allow applications to be dealt with.

The Panel continues to be an active participant at meetings of the Takeover Bids Network which continues to be a very useful forum for the Panel and its counterparts in other Member States to exchange views and experiences in the area of takeover bids.

I would like to welcome Paul Egan on his appointment as director of the Panel on 13 May 2015. Paul replaced Mark Ryan as the nominee of the Law Society of Ireland. I would also like to thank Mark for his very significant contribution to, and support for, the Panel and to thank him for the valuable expertise provided by him during his term as director of the Panel.

**Denis McDonald**  
Chairperson

22 October, 2015

## **Director General's Report**

The level of takeover activity during the year was considerably higher than the previous year. The Panel supervised four very significant transactions which required considerable input from both the Panel and the Executive. The Panel was required to meet on forty occasions to consider regulatory and other matters. The takeovers supervised during the year are set out in Appendix 2.

Subject to certain specific exceptions, Rule 21.1 restricts an offeree during an offer period from taking certain actions. One of these exceptions allows actions taken with the approval of offeree shareholders in general meeting. The purpose of Rule 21.1 is to prevent an offeree from taking any action which may result in frustration of an offer or possible offer or deny offeree shareholders the opportunity to decide on the merits of an offer. As part of its defence strategy an offeree may consider acquiring one or more assets or businesses from a third party and may wish to enter into an agreement with that party which imposes certain contractual obligations on the offeree upon the signing of the agreement but prior to the shareholder vote. An example of such an obligation is where the offeree agrees to pay an inducement fee to the third party in connection with the transaction. While Rule 21.2 (inducement fees) does not apply, the ability of the offeree to enter into such an agreement is restricted by Rule 21.1(a)(5). This Rule prohibits an offeree from entering into a contract otherwise than in the ordinary course of business during the course of an offer or where it has reason to believe that the making of an offer is or may be imminent, unless it has obtained the prior approval of its shareholders in general meeting or with the consent of the Panel where the Panel is satisfied that such action would not constitute frustrating action. It is therefore important that the Panel be consulted at the earliest opportunity in all cases where an offeree is proposing to enter into any contract otherwise than in the ordinary course of business irrespective of whether it is to be put before shareholders. This is particularly important where the contract may impose obligations on the offeree irrespective of whether or not shareholders vote in favour of the proposed transaction.

During the year, the Panel administered one public censure. The censure was administered to Mr. David Foord of Foord Asset Management in respect of the failure to disclose dealings under Rule 8.3 in the securities of Kenmare Resources plc. The Panel regards compliance with the dealing disclosure requirements of Rule 8.3 as being extremely important. The rationale for requiring persons who have 1% or more of any class of relevant securities in issue to disclose their dealings in an offer period is to inform shareholders as to where control of the company's voting rights lies and to provide additional market transparency as to movements in the price of a company's securities.

### *Financial Statements*

Operating income in the 12 months ended 30 June 2015 decreased by 16.6 % to €877,897. The decrease was due primarily to a reduction in income from relevant company annual charges due to a

special reduction of 50% having been applied to such charges for the year commencing 1 July 2014. Income from document charges decreased by approximately 5% while income from contract note levies was marginally ahead of the previous year. Expenditure for the year amounted to €822,655, an increase of 14.7% on the previous year. While staff salaries and directors' remuneration remained in line with the previous year, the primary contributor to the increase in expenditure was a significant increase in legal fees. The Panel's cash balances as at 30 June 2015 amounted to €2.44 million.

**Miceal Ryan**

Director General

22 October, 2015

## **Directors' Report**

The directors present their annual report and audited financial statements for the year ended 30 June 2015.

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

The Irish Takeover Panel (the "Panel") is a company limited by guarantee registered under Part 18 of the Companies Act 2014. The company was incorporated on 29 April 1997.

The Panel is the statutory body responsible for monitoring and supervising takeovers and other relevant transactions in Ireland. The Panel is designated as the competent authority under the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 for the purpose of Article 4(1) of the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

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.

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

### **Principal risks and uncertainties**

Under Irish Company Law, the Panel is required to give a description of the principal risks and uncertainties which it faces. The principal risks are:

- a significant reduction in the income from relevant company charges and/or contract note levies; and
- a substantial increase in expenditure.

These risks are monitored by the Panel through its financial reporting procedures. The Panel's objective is to maintain adequate resources to meet any unforeseen substantial reduction in income and any substantial increase in expenditure.

## **Results for the year**

The results for the year are set out in the Income and Expenditure Account on page 14. There was no transfer from the Income and Expenditure Account to the Contingency Reserve (2014: €350,000).

## **Accounting records**

The directors believe that they have complied with the requirements of section 281 to 285 of the Companies Act 2014 with regard to accounting records by employing accounting personnel with appropriate expertise and by providing adequate resources to the financial function. The accounting records of the company are maintained at 76 Merrion Square, Dublin 2.

## **Post balance sheet events**

No material events effecting the financial statements have occurred since the end of the financial year.

## **Auditor**

In accordance with section 383(2) of the Companies Act 2014, the auditor, KPMG, Chartered Accountants, will continue in office.

On behalf of the Board

D. McDonald  
*Chairperson*

A. Fitzgerald  
*Deputy Chairperson*

22 October, 2015

## Statement of Directors' Responsibilities

The directors are responsible for preparing the Directors' Report and financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial period. Under that law, the directors have elected to prepare the company financial statements in accordance with accounting standards issued by the Financial Reporting Council and promulgated by the Institute of Chartered Accountants in Ireland (Generally Accepted Accounting Practice in Ireland).

Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the assets, liabilities and financial position of the Company and of its profit or loss 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;
- state whether applicable Accounting Standards have been followed, subject to any material departures disclosed and explained in the financial statements; and
- 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 accounting records that disclose with reasonable accuracy at any time the financial position of the Company and enable them to ensure that its financial statements comply with the Companies Act 2014. 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.

The directors are also responsible for preparing a Directors' Report that complies with the requirements of the Companies Act 2014.

On behalf of the Board

D. McDonald  
*Chairperson*

A. Fitzgerald  
*Deputy Chairperson*

22 October, 2015

## **Independent Auditor's Report to the members of the Irish Takeover Panel**

We have audited the financial statements of Irish Takeover Panel for the year ended 30 June 2015 which comprise the Income and Expenditure Account, Balance Sheet and the related notes. The financial reporting framework that has been applied in their preparation is Irish law and accounting standards issued by the Financial Reporting Council and promulgated by the Institute of Chartered Accountants in Ireland (Generally Accepted Accounting Practice in Ireland).

### **Opinions and conclusions arising from our audit**

#### ***1. Our opinion on the financial statements is unmodified***

In our opinion the financial statements:

- give a true and fair view of the assets, liabilities and financial position of the Company as at 30 June 2015 and of its profit for the year then ended;
- have been properly prepared in accordance with Generally Accepted Accounting Practice in Ireland; and
- have been properly prepared in accordance with the requirements of the Companies Act 2014.

#### ***2. Our conclusions on other matters on which we are required to report by the Companies Act 2014 are set out below***

We have obtained all the information and explanations which we consider necessary for the purposes of our audit.

In our opinion the accounting records of the Company were sufficient to permit the financial statements to be readily and properly audited and the financial statements are in agreement with the accounting records.

In our opinion the information given in the Directors' Report is consistent with the financial statements.

#### ***3. We have nothing to report in respect of matters on which we are required to report by exception***

ISAs (UK & Ireland) require that we report to you if, based on the knowledge we acquired during our audit, we have identified information in the annual report that contains a material inconsistency with either that knowledge or the financial statements, a material misstatement of fact, or that is otherwise misleading.

## **Independent Auditor's Report to the members of the Irish Takeover Panel (continued)**

In addition, the Companies Act 2014 requires us to report to you if, in our opinion, the disclosures of directors' remuneration and transactions required by sections 305 to 312 of the Act are not made.

### **Basis of our report, responsibilities and restrictions on use**

As explained more fully in the Statement of Directors' Responsibilities set out on page 10, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view and otherwise comply with the Companies Act 2014. Our responsibility is to audit and express an opinion on the financial statements in accordance with Irish law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the Financial Reporting Council's Ethical Standards for Auditors.

An audit undertaken in accordance with ISAs (UK & Ireland) involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the Company's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the directors; and the overall presentation of the financial statements.

In addition, we read all the financial and non-financial information in the Annual Report to identify material inconsistencies with the audited financial statements and to identify any information that is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by us in the course of performing the audit. If we become aware of any apparent material misstatements or inconsistencies we consider the implications for our report.

Whilst an audit conducted in accordance with ISAs (UK & Ireland) is designed to provide reasonable assurance of identifying material misstatements or omissions it is not guaranteed to do so. Rather the auditor plans the audit to determine the extent of testing needed to reduce to an appropriately low level the probability that the aggregate of uncorrected and undetected misstatements does not exceed materiality for the financial statements as a whole. This testing requires us to conduct significant audit work on a broad range of assets, liabilities, income and expense as well as devoting significant time of the most experienced members of the audit team, in particular the engagement partner responsible for the audit, to subjective areas of the accounting and reporting.

Our report is made solely to the Company's members, as a body, in accordance with section 391 of the Companies Act 2014. Our audit work has been undertaken so that we might state to the Company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company and the Company's members as a body, for our audit work, for this report, or for the opinions we have formed.

*Colin O'Brien*

22 October, 2015

**for and on behalf of**

**KPMG**

**Chartered Accountants, Statutory Audit Firm**

*1 Stokes Place*

*St. Stephen's Green*

*Dublin 2*

*Ireland*

## Financial Statements

### Income and Expenditure Account

*For the year to 30 June 2015*

	<i>Notes</i>	<b>30 June 2015</b>	30 June 2014
		€	€
<b>Operating income</b>	2	<b>877,897</b>	1,052,593
<b>Operating expenditure</b>	3	<b>(822,655)</b>	(717,496)
 <b>Operating surplus</b>		<hr/> <b>55,242</b>	<hr/> 335,097
Interest income		<b>18,758</b>	18,531
 <b>Surplus for the financial year</b>	 11	<hr/> <b>74,000</b> =====	<hr/> 353,628 =====

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. McDonald  
*Chairperson*

A. Fitzgerald  
*Deputy Chairperson*

## Financial Statements

### Balance Sheet

*as at 30 June 2015*

	<i>Notes</i>	<b>30 June 2015</b>	30 June 2014
		€	€
<b>Fixed assets</b>			
Tangible assets	7	752	1,003
<b>Current assets</b>			
Debtors and prepayments	8	161,830	159,142
Cash at bank		2,443,751	2,342,392
		<u>2,605,581</u>	<u>2,501,534</u>
<b>Creditors:</b> amount falling due within one year	9	<b>(87,726)</b>	<b>(57,930)</b>
		<u>2,517,855</u>	<u>2,443,604</u>
<b>Net current assets</b>		<b>2,517,855</b>	<b>2,443,604</b>
<b>Total assets less current liabilities</b>		<b>2,518,607</b>	<b>2,444,607</b>
<b>Accumulated surplus and reserve</b>			
Contingency reserve	10	2,150,000	2,150,000
Income and Expenditure account	11	368,607	294,607
		<u>2,518,607</u>	<u>2,444,607</u>
On behalf of the Board			
D. McDonald		A. Fitzgerald	
<i>Chairperson</i>		<i>Deputy Chairperson</i>	

# Financial Statements

## Notes forming part of the financial statements

### 1 Statement of accounting policies

The following accounting policies have been applied consistently in dealing with items which are considered material in relation to the Company's financial statements.

#### **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 Financial Reporting Council, 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 stated at cost less accumulated depreciation.

Depreciation is calculated to write off the original cost of tangible fixed assets over their expected useful lives. A full year's depreciation is charged in the year of acquisition.

Depreciation is applied at the following annual rates:

Fixtures and fittings	20%
Computers	33%
Motor Vehicle	25%

#### **Cash flow statement**

The Company is exempted from the preparation of a cash flow statement as it qualifies as a small company as defined by section 350(5) of the Companies Act 2014.

#### **Pensions**

The Company operates a defined contribution pension scheme. The assets of the scheme are held separately from those of the Company in an independently administered fund. The annual charge is

## Financial Statements

### Notes (continued)

#### 1 Statement of accounting policies (continued)

#### Pensions (continued)

calculated as a percentage of pensionable payroll and is charged to the Income and Expenditure Account on an accruals basis.

<b>2</b>	<b>Operating Income</b>	<b>30 June 2015</b>	<b>30 June 2014</b>
		€	€
	Relevant company annual charges	452,794	613,897
	Document charges	155,000	162,465
	Contract note levies	268,967	263,406
	Other	1,136	12,825
		877,897	1,052,593
		877,897	1,052,593

<b>3</b>	<b>Operating expenditure</b>	<b>30 June 2015</b>	<b>30 June 2014</b>
		€	€
	Operating expenditure includes:		
	Depreciation	251	13,254
	Auditor's remuneration	6,150	6,150
		6,401	19,404
		6,401	19,404

#### 4 Employees

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

	<b>30 June 2015</b>	<b>30 June 2014</b>
<b>Number:</b>	<b>Number</b>	<b>Number</b>
Administration	4	4
Directors	7	7
	11	11
	11	11

## Financial Statements

### Notes (continued)

#### 4 Employees (continued)

Costs:	30 June 2015	30 June 2014
	€	€
Salaries	279,039	279,200
Directors' remuneration	235,956	238,917
PRSI costs	23,423	31,392
Pension costs (note 5)	71,855	68,435
	610,273	617,944
	610,273	617,944

5 Pension costs	30 June 2015	30 June 2014
	€	€
Pension charge	71,855	68,435
	71,855	68,435

The Company makes contributions to a defined contribution scheme for certain employees, the assets of which are vested in independent trustees for the benefit of members and their dependants. The contributions for the year totalling €71,855 (2014: €68,435) are included within operating expenditure. At 30 June 2015 €12,072 (2014: €11,379) was prepaid within debtors in relation to this scheme.

#### 6 Taxation

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

## Financial Statements

### Notes (continued)

#### 7 Tangible assets

	Motor vehicle €	Fixtures and fittings €	Computers €	Total €
<i>Cost:</i>				
At 1 July 2014	44,440	70,381	21,600	136,421
Additions	-	-	-	-
	44,440	70,381	21,600	136,421
	44,440	70,381	21,600	136,421
<i>Depreciation:</i>				
At 1 July 2014	44,440	69,378	21,600	135,418
Charge for year	-	251	-	251
	44,440	69,629	21,600	135,669
	44,440	69,629	21,600	135,669
<i>Net book value:</i>				
At 30 June 2015	-	752	-	752
	-	1,003	-	1,003
	-	1,003	-	1,003

#### 8 Debtors and prepayments

	30 June 2015	30 June 2014
	€	€
Debtors	48	798
Prepayments and accrued income	161,782	158,344
	161,830	159,142
	161,830	159,142

## Financial Statements

### Notes (continued)

<b>9</b>	<b>Creditors:</b> amounts falling due within one year	<b>30 June 2015</b>	30 June 2014
		€	€
	Accrued expenses	33,645	10,691
	PAYE and Social Welfare insurance	51,341	46,443
	Public Service Withholding Tax	2,740	796
	Bank overdraft	-	-
		87,726	57,930
		87,726	57,930
<b>10</b>	<b>Contingency reserve</b>	<b>30 June 2015</b>	30 June 2014
		€	€
	At beginning of year	2,150,000	1,800,000
	Transfer from Income and Expenditure Account at end of year	-	350,000
		2,150,000	2,150,000
		2,150,000	2,150,000
<b>11</b>	<b>Income and Expenditure account</b>	<b>30 June 2015</b>	30 June 2014
		€	€
	At beginning of year	294,607	290,979
	Surplus for financial year	74,000	353,628
	Transfer to Contingency Reserve	-	(350,000)
		368,607	294,607
		368,607	294,607
<b>12</b>	<b>Approval of financial statements</b>		

The Board of Directors approved these financial statements on 22 October, 2015.

*The following appendices do not form part of the audited financial statements*

## **Appendix 1**

### **Administrative Appendix**

#### *Relevant Companies*

The Irish Takeover Panel, established pursuant to the Irish Takeover Panel Act, 1997 (the “Act”), is the body responsible for monitoring and supervising takeovers and other relevant transactions in relation to securities in relevant companies in Ireland. For the purposes of the Act a relevant company includes 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 the Irish Stock Exchange, the London Stock Exchange, the New York Stock Exchange and Nasdaq but excluding those companies whose only securities authorised to be traded on one or more of those markets during the relevant period are debentures or bonds or other securities in the nature of debentures or bonds that do not confer voting rights in the company.

On 20 May 2006 the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (the “Regulations”), which transposed the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids into Irish Law, came into effect. Under the Regulations those companies a bid in respect of which the Panel has jurisdiction by virtue of Regulation 6 to supervise, are deemed to be relevant companies under the Act.

#### *The Rules*

In addition to its supervisory function, the Panel is also entrusted under the Act with a rulemaking function. The Irish Takeover Panel Act, 1997, Takeover Rules, 2013 came into effect on 6 January 2014. In addition, the Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, 2007 came into effect on 19 December 2007. These Rules have been made principally to ensure that takeovers (including takeover bids) and other relevant transactions comply with 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.

### *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

Banking & Payments Federation Ireland

Irish Stock Exchange plc

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. 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 on pages 25 and 26, has been obtained.

## Panel Charges

made under section 16 of the Act and effective from 1 July 2015.

### 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. This scale is as follows:

Market Capitalisation € Million	Annual Charge €
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 € Million	Charge €
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.

## Appendix 2

### Takeovers supervised by Irish Takeover Panel

1 July 2014 to 30 June 2015

- |                           |  |
|---------------------------|--|
| (i) Covidien plc          | Recommended acquisition for cash and securities by Medtronic, Inc. by means of a scheme of arrangement                       |
| (ii) Fyffes plc           | Recommended acquisition for securities by Chiquita Brands International Inc. by means of a scheme of arrangement             |
| (iii) Dragon Oil plc      | Recommended cash offer by Emirates National Oil Company Limited LLC  |
| (iv) Aer Lingus Group plc | Recommended cash offer by AERL Holding Limited, a wholly-owned subsidiary of International Consolidated Airlines Group, S.A. |

The following companies were in an offer period at 30 June 2015:

Dragon Oil plc

Aer Lingus Group plc

Kenmare Resources plc

Perrigo Company plc

## Appendix 3

### Exercise of powers by Irish Takeover Panel

During the course of the year the Panel exercised certain of its powers under the Act as set out below:

#### *Rulings*

The Panel issued seventy eight rulings in respect of the following rules:

Rule	Number of Rulings
2 (confidential information; timing/contents of announcements)	9
3 (independent advice)	2
4 (restrictions on dealings in securities)	3
8 (disclosure of dealings during the offer period)	2
9 (the mandatory offer and its terms)	2
13 (pre-conditions in firm offer announcements and offer conditions)	1
16 (special arrangements with favourable terms)	6
19 (communications)	8
20 (equality of information)	3
21 (frustrating action)	32
26 (documents to be on display)	1
28 (profit forecasts)	2
29 (asset valuations)	1
40 (reverse takeover transactions)	1
Other	5

#### *Waivers*

Eighteen waivers were granted in respect of the following rules:

Rule	Number of Waivers
9 (the mandatory offer and its terms)	4
10 (acceptance condition – voluntary offers)	1
11 (nature of consideration to be offered – voluntary offers)	3
19 (communications)	1
28 (profit forecasts)	2
37 (redemption/purchase by a company of its own securities)	3
40 (reverse takeover transactions)	1
Other	3

### ***Derogations***

Twelve derogations were granted during the year. Seven derogations were in respect of Rule 20 (equality of information); three in respect of Rule 28 (profit forecasts); and one in respect of each of Rules 24 (offeror documents) and 19 (communications).

### ***Directions***

No directions were issued by the Panel during the year.

### ***Section 10(1) enquiries***

The Panel conducted three enquiries under section 10(1) of the Act.

### ***Censures***

The Panel administered one private censure and one public censure under section 10(2) of the Act.