

**ANNUAL REPORT 2005**

**IRISH TAKEOVER PANEL**

**Report for the year ended 30 June, 2005**

# **IRISH TAKEOVER PANEL**

**Report for the year ended 30 June, 2005**

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

Irish Takeover Panel (Registration No. 265647), 7/8 Upper Mount Street, Dublin 2  
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## 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                   |   |
| Pat Costello                             | - 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 Bank of Ireland      |
| Deputy Chairperson | William M. McCann             | }                                  |
|                    | Leonard Abrahamson            | Appointed by                       |
|                    | (Alternate: Brendan O’Connor) | the Irish Stock Exchange           |
|                    | Thomas Byrne                  | Appointed by the Irish Bankers     |
|                    | (Alternate: John Butler)      | Federation                         |
|                    | Paul D’Alton                  | Appointed by the Consultative      |
|                    |                               | Committee of Accountancy           |
|                    |                               | Bodies – Ireland                   |
|                    | Ann Fitzgerald                | Appointed by the Irish Association |
|                    | (Alternate: Philip Sykes)     | of Investment Managers             |
|                    | Brian J. O’Connor             | Co-opted by the Board of the Panel |
|                    | Laurence K. Shields           | Appointed by the Law Society       |
|                    | (Alternate: David Beattie)    | 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”); 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**

Takeover activity during the year was again at a low level with the Panel supervising two takeovers pursuant to the Act. However, notwithstanding the low number of takeovers the Panel was nonetheless required to meet on twenty-four occasions to consider regulatory issues. The takeovers supervised were: Heiton Group plc and ARCON International Resources plc.

The Panel is working closely with officials in the Department of Enterprise, Trade and Employment on the implementation of the Takeovers Directive which is required to be transposed by 20 May, 2006. It is likely that the Directive will be transposed by means of secondary legislation and a number of amendments to the Act are likely. It is expected that the Panel Executive will spend a considerable amount of time over the coming months on preparatory work relating to the transposition of the Directive. While the Directive will necessitate changes to the Rules, such changes are thought unlikely to be extensive.

As reported previously the Panel has been engaged in producing a set of new Rules which will apply specifically to takeovers effected by schemes of arrangement pursuant to section 201 of the Companies Act, 1963. This process has now been completed and the Panel will publish the new Rules in the coming weeks. A formal notice of the effective date of the new Rules will be published in due course.

Practitioners should be aware that section 75 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 amends the definition of "relevant company" in the Irish Takeover Panel Act, 1997 by excluding from the definition companies the only securities of which are or have been within the relevant period authorised to be traded by a recognised stock exchange are debentures or bonds or other securities in the nature of debentures or bonds that do not confer voting rights in the company.

Brian O'Connor's term of office expired on 17 June, 2005. The Board decided to co-opt Mr. O'Connor to the Board for a further period from 18 June to 31 May, 2006.

**Daniel O'Keeffe**  
Chairperson

19 September, 2005

## **Director General's Report**

The Panel had another relatively quiet year when judged against the number of takeovers supervised. However, the Panel was engaged in a number of regulatory issues which did not result in any public announcements and as a result the Panel was required to meet during the year on twenty-four occasions compared to sixteen meetings during the previous year.

### *Confidential information and announcements under Rule 2*

The Panel is concerned about the apparent leaking of information to the media before offers are announced and also during the course of an offer.

Rule 2.1 requires inter alia that the offeror, the offeree and their respective associates and advisers maintain strict confidentiality in respect of the offer or contemplated offer. The Panel regards the need for strict secrecy in such circumstances as absolutely essential and will regard any breach of this Rule as a serious matter.

Determining when an announcement is required under Rule 2.2 can often be difficult for parties to assess and accordingly, the Panel wishes to emphasise the need for prompt consultation with the Panel. It should be noted that Rule 2.2 requires inter alia immediate consultation with the Panel in circumstances where the offeree is the subject of rumour and speculation or there is an anomalous movement in its share price and the person responsible for making an announcement considers that the circumstances do not require an immediate announcement. Consultation with the Panel will not necessarily result in the Panel requiring the release of an announcement.

It should also be noted that the requirement to make an announcement under Rule 2.2(d) can arise prior to any decision being made to make an approach to an offeree. If there is rumour and speculation in relation to a particular offeree or there is an untoward movement in its share price and there are reasonable grounds for concluding that this is as a result of the potential offeror's actions, an announcement of its potential interest is required notwithstanding that the potential offeror may not yet have decided to proceed with an approach to the offeree.

It is of the utmost importance that information released during an offer satisfies the highest standards of accuracy and that when information is released, it should be made available equally to all shareholders as required under General Principle 2.

### *Rule 2.2(e)/ When an announcement is required*

The Panel has previously commented on Rule 2.2(e) and the need to consult with it when negotiations or discussions concerning an offer are about to be extended to include more than a very restricted number of people. The Rule requires that an offeror who proposes to approach a wider group of people consult with the Panel in advance. The Notes to Rule 2.2(e) provide guidance on the meaning of “a very restricted number of people”. The Notes state that the Panel should be consulted unless an immediate announcement is to be made when knowledge that offer discussions are taking place is likely to extend to persons other than those who need to know in the companies concerned and their immediate financial and legal advisers.

The Panel notes that a practice has developed whereby parties other than those referred to in the Notes to Rule 2.2(e) are being involved in offer discussions without the Panel being consulted in advance. While it is acknowledged that there may be circumstances when it is necessary to extend knowledge of the offer discussions beyond the parties referred to in the Notes to Rule 2.2(e), the Panel should be consulted in advance of any discussions with such parties.

### *Excercise of Panel’s supervisory role*

The Panel is frequently requested to exercise its supervisory powers by interested parties to a transaction. The submissions from such parties should contain all relevant material and undisputed facts available to or then known by such parties. In some instances it has been left to the responding parties to reveal such undisputed facts and material, which can materially alter the nature of the issue under investigation. The Panel is concerned that such instances could cause unfairness and oppression to the responding parties and could also delay the investigation by the Panel.

### *Financial statements*

In the year to 30 June, 2005 operating income increased by 17.5% to €878,186. The increase was entirely due to the fact that there was no reduction in the relevant company charges for the year ended 30 June, 2005 compared to the previous year when there was a significant reduction in such charges. Income from document charges decreased reflecting the low level of takeover activity during the year. Expenditure for the year decreased by over 6.4% to €899,879. The Panel’s cash balances increased marginally during the year and stood at €1,593,268 at 30 June, 2005.

**Miceal Ryan**

Director General

19 September, 2005

## **Directors' Report**

The directors present their report and audited financial statements for the year ended 30 June 2005.

### **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 2005. 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 for the year**

The results for the year are set out in the Income and Expenditure Account on page 16. There was no transfer from the Income and Expenditure Account to the contingency reserve (2004: Nil).

### **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.

### **Accounting records**

The directors believe that they have complied with the requirements of section 202 of the Companies Act, 1990 with regard to books of account by employing accounting personnel with appropriate expertise and by providing adequate resources to the financial function. The books of account of the company are maintained at 7/8 Upper Mount Street, Dublin 2.

## **Post balance sheet events**

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

## **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 2005

## 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 2005 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 2005

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

(limited by guarantee)

We have audited the financial statements on pages 15 to 21.

This report is made solely to the company's members, as a body, in accordance with Section 193 of the Companies Act, 1990. 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 auditors' 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.

## **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 12, 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; and
- 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 2005 and of its surplus for the year then ended and have been properly prepared in accordance with the Companies Acts, 1963 to 2005 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 10 and 11 is consistent with the financial statements.

**KPMG**

*Chartered Accountants*

*Registered Auditors*

19 September 2005

# **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. A full years 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 under the Companies (Amendment) Act, 1986.

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

## Financial Statements

### Income and Expenditure Account

for the year to 30 June, 2005

|   | <i>Notes</i> | <b>Year ended<br/>30 June 2005</b><br>€ | Year ended<br>30 June 2004<br>€ |
|---|--------------|---|---------------------------------|
| <b>Operating income</b>                           | <i>1</i>     | <b>878,186</b>                          | 747,437                         |
| <b>Operating expenditure</b>                      | <i>2</i>     | <b>(899,879)</b>                        | (961,692)                       |
|   |              | <hr/>                                   | <hr/>                           |
| <b>Operating (deficit)</b>                        |              | <b>(21,693)</b>                         | (214,255)                       |
| Interest income                                   |              | <b>33,602</b>                           | 30,598                          |
|   |              | <hr/>                                   | <hr/>                           |
| <b>Operating surplus/(deficit) after interest</b> |              | <b>11,909</b>                           | (183,657)                       |
|   |              | <hr/>                                   | <hr/>                           |
| Surplus/(Deficit) for the financial year          |              | <b>11,909</b>                           | (183,657)                       |
| Accumulated surplus at beginning of year          |              | <b>30,150</b>                           | 213,807                         |
|   |              | <hr/>                                   | <hr/>                           |
| <b>Accumulated surplus at end of year</b>         |              | <b>42,059</b>                           | 30,150                          |
|   |              | <hr/> <hr/>                             | <hr/> <hr/>                     |

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, 2005

|  |       | 30 June 2005 | 30 June 2004 |
|--|-------|--------------|--------------|
|  | Notes | €            | €            |
| <b>Fixed assets</b>                            |       |              |              |
| Tangible fixed assets                          | 6     | 11,111       | 23,824       |
|  |       | <hr/>        | <hr/>        |
| <b>Current assets</b>                          |       |              |              |
| Debtors and prepayments                        | 7     | 160,210      | 227,670      |
| Cash at bank                                   |       | 1,593,268    | 1,562,295    |
|  |       | <hr/>        | <hr/>        |
|  |       | 1,753,478    | 1,789,965    |
|  |       |              |              |
| <b>Current liabilities</b>                     |       |              |              |
| Creditors: amounts falling due within one year | 8     | (20,226)     | (81,335)     |
|  |       | <hr/>        | <hr/>        |
| <b>Net current assets</b>                      |       | 1,733,252    | 1,708,630    |
|  |       | <hr/>        | <hr/>        |
| <b>Total assets less current liabilities</b>   |       | 1,744,363    | 1,732,454    |
|  |       | <hr/> <hr/>  | <hr/> <hr/>  |
| <b>Accumulated surplus and reserve</b>         |       |              |              |
| Contingency reserve                            | 9     | 1,702,304    | 1,702,304    |
| Income and Expenditure account                 |       | 42,059       | 30,150       |
|  |       | <hr/>        | <hr/>        |
|  |       | 1,744,363    | 1,732,454    |
|  |       | <hr/> <hr/>  | <hr/> <hr/>  |

On behalf of the Board

D. O'Keeffe  
*Chairperson*

W. M. McCann  
*Deputy Chairperson*

# Financial Statements

## Notes

|          |   |                                    |                            |
|----------|---|------------------------------------|----------------------------|
| <b>1</b> | <b>Operating income</b>   | <b>Year ended<br/>30 June 2005</b> | Year ended<br>30 June 2004 |
|          |   | <b>€</b>                           | <b>€</b>                   |
|          | Relevant company annual charges   | 481,684                            | 163,940                    |
|          | Document charges  | 139,994                            | 314,850                    |
|          | Contract note levies  | 254,897                            | 266,855                    |
|          | Other   | 1,611                              | 1,792                      |
|          |   | <hr/>                              | <hr/>                      |
|          |   | 878,186                            | 747,437                    |
|          |   | <hr/> <hr/>                        | <hr/> <hr/>                |
| <b>2</b> | <b>Operating expenditure</b>  | <b>Year ended<br/>30 June 2005</b> | Year ended<br>30 June 2004 |
|          |   | <b>€</b>                           | <b>€</b>                   |
|          | Operating expenditure includes:   |                                    |                            |
|          | Depreciation  | <b>12,713</b>                      | 17,154                     |
|          | Auditors' remuneration  | <b>5,000</b>                       | 5,000                      |
|          |   | <hr/>                              | <hr/>                      |
| <b>3</b> | <b>Employees</b>  | <b>Year ended<br/>30 June 2005</b> | Year ended<br>30 June 2003 |
|          | The average number of persons employed by the company and the employee costs during the year were as follows: | <b>Number</b>                      | <b>Number</b>              |
|          | <b>Number:</b>  |                                    |                            |
|          | Administration  | <b>5</b>                           | 5                          |
|          | Directors   | <b>8</b>                           | 8                          |
|          |   | <hr/>                              | <hr/>                      |
|          |   | <b>13</b>                          | 13                         |
|          |   | <hr/> <hr/>                        | <hr/> <hr/>                |

# Financial Statements

## Notes (continued)

### 3 Employees (continued)

| Costs:                  | Year ended   | Year ended   |
|-------------------------|--------------|--------------|
|                         | 30 June 2005 | 30 June 2004 |
|                         | €            | €            |
| Salaries                | 272,171      | 277,759      |
| Directors' remuneration | 224,622      | 199,842      |
| Social Welfare costs    | 26,115       | 20,461       |
| Pension costs (note 4)  | 37,359       | 40,213       |
|                         | <hr/>        | <hr/>        |
|                         | 560,267      | 538,275      |
|                         | <hr/> <hr/>  | <hr/> <hr/>  |

| 4 Pension costs | Year ended   | Year ended   |
|-----------------|--------------|--------------|
|                 | 30 June 2005 | 30 June 2004 |
|                 | €            | €            |
| Pension charge  | 37,359       | 40,213       |
|                 | <hr/>        | <hr/>        |

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 €37,359 (2004: €40,213) are included within operating expenditure. At 30 June 2005 €6,680 (2004: €6,000) was prepaid within debtors in relation to this scheme.

### 5 Taxation

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

## Financial Statements

### Notes (continued)

#### 6 Tangible fixed assets

|                                 | Motor<br>vehicle<br>€ | Fixtures and<br>fittings<br>€ | Computers<br>€ | Total<br>€    |
|---------------------------------|-----------------------|-------------------------------|----------------|---------------|
| <i>Cost:</i>                    |                       |                               |                |               |
| <b>At 30 June 2004 and 2005</b> | 44,441                | 41,834                        | 16,923         | 103,198       |
| <i>Depreciation:</i>            |                       |                               |                |               |
| At 1 July 2004                  | 22,220                | 40,231                        | 16,923         | 79,374        |
| Charge for year                 | 11,110                | 1,603                         | -              | 12,713        |
| <b>At 30 June 2005</b>          | <b>33,330</b>         | <b>41,834</b>                 | <b>16,923</b>  | <b>92,087</b> |
| <i>Net book value:</i>          |                       |                               |                |               |
| At 30 June 2004                 | 22,221                | 1,603                         | -              | 23,824        |
| <b>At 30 June 2005</b>          | <b>11,111</b>         | <b>-</b>                      | <b>-</b>       | <b>11,111</b> |

|                                  | 30 June 2005<br>€ | 30 June 2004<br>€ |
|----------------------------------|-------------------|-------------------|
| <b>7 Debtors and prepayments</b> |                   |                   |
| Debtors                          | -                 | 1,540             |
| Prepayments and accrued income   | <b>160,210</b>    | 226,130           |
|                                  | <b>160,210</b>    | 227,670           |

All amounts fall due within one year.

## Financial Statements

### Notes (continued)

|   | <b>As at</b>                 | As at                 |
|---|------------------------------|-----------------------|
| <b>8 Creditors: amounts falling due within one year</b> | <b>30 June 2005</b>          | 30 June 2004          |
|   | <b>€</b>                     | <b>€</b>              |
| Trade creditors   | <b>1,037</b>                 | 1,217                 |
| PAYE and Social Welfare insurance                       | -                            | 413                   |
| Accrued expenses  | <b>19,189</b>                | 79,705                |
|   | <hr/> <b>20,226</b> <hr/>    | <hr/> 81,335 <hr/>    |
|   |                              |                       |
|   | <b>As at</b>                 | As at                 |
| <b>9 Contingency reserve</b>                            | <b>30 June 2005</b>          | 30 June 2004          |
|   | <b>€</b>                     | <b>€</b>              |
| At beginning and end of year                            | <b>1,702,304</b>             | 1,702,304             |
|   | <hr/> <b>1,702,304</b> <hr/> | <hr/> 1,702,304 <hr/> |
|   |                              |                       |
| <b>10 Approval of financial statements</b>              |                              |                       |

The Board of Directors approved these financial statements on 19 September 2005.

# 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 recognised 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 and Nasdaq. Section 75 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005, which came into effect on 30 June 2005, amends the definition of “relevant company” in the Act by excluding from the definition companies the only securities of which are or have been within the relevant period authorised to be traded by a recognised Stock Exchange are debentures or bonds or other securities in the nature of debentures or bonds that do not confer voting rights in the company.

### *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 and the Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, 2001 came into effect on 1 July, 2001. In addition, the Irish Takeover Panel Act, 1997, Takeover (Amendment) Rules, 2002 came into effect on 1 January, 2003. 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 four 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, 2005.

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 | Annual Charge |
|-----------------------|---------------|
| € Million             | €             |
| 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.

## Appendix 2

### Takeovers supervised by Irish Takeover Panel

1 July, 2004 to 30 June, 2005

- (i) Heiton Group plc Recommended offers by Grafton Group Holdings Limited, a wholly-owned subsidiary of Grafton Group plc.
  
- (ii) ARCON International Resources plc Recommended merger offer by Lundin Mining Corporation.

Note: The following company was in an offer period at 30 June 2005 but no offer had been made for the company at that date:

Jurys Doyle Hotel Group plc

## Appendix 3

### List of Relevant Companies under the Irish Takeover Panel Act, 1997 as at 30 June, 2005

|                                    |                              |                               |
|------------------------------------|------------------------------|-------------------------------|
| Abbey plc                          | Glanbia plc                  | Oakhill Group plc             |
| AgCert International plc           | Glencar Mining plc           | Oglesby and Butler Group plc  |
| Allied Irish Banks plc             | Grafton Group plc            | Ormonde Mining plc            |
| Alltracel Pharmaceuticals plc      | Greencore Group plc          | Ovoca Resources plc           |
| Aminex plc                         |                              |                               |
| Anglo Irish Bank Corporation plc   | Healthy Living Centres plc   | Petrel Resources plc          |
|                                    | Horizon Technology Group plc | Petroceltic International plc |
| Bank of Ireland Group              |                              | Paddy Power plc               |
|                                    | IAWS Group plc               | Providence Resources plc      |
| C&C Group plc                      | ICON plc                     |                               |
| Calyx Group plc                    | IFG Group plc                | Qualceram Shires plc          |
| Celtic Resources Holdings plc      | Independent News & Media plc |                               |
| Circle Oil plc                     | IONA Technology plc          | Readymix plc                  |
| ClearStream Technologies Group plc | Irish Continental Group plc  | Ryanair Holdings plc          |
| CNG Travel Group plc               | Irish Life & Permanent plc   |                               |
| Conroy Diamonds and Gold plc       | IWP International plc        | Skillsoft plc                 |
| CPL Resources plc                  |                              | Smart Telecom plc             |
| CRH plc                            | Jurys Doyle Hotel Group plc  | South Whart plc               |
|                                    |                              |                               |
| Datalex plc                        | Kenmare Resources plc        | ThirdForce plc                |
| DCC plc                            | Kerry Group plc              | Trinity Biotech plc           |
| Donegal Creameries plc             | Kingspan Group plc           | Trintech Group plc            |
| Dragon Oil plc                     |                              |                               |
|                                    | McInerney Holdings plc       | Unidare plc                   |
| Elan Corporation, plc              | Minco plc                    | United Drug plc               |
|                                    | Minmet plc                   |                               |
| FBD Holdings plc                   |                              | Waterford Wedgwood plc        |
| Fortfield Investments plc          | Norish plc                   |                               |
| Fyffes plc                         |                              |                               |

## Appendix 4

During the course of the year the Panel exercised certain of its powers under the Act as follows:

### *Rulings*

The Panel issued thirty three rulings during the year of which ten related to the takeover of Heiton Group plc, seven related to the takeover of ARCON International Resources plc and a further five were issued in connection with the proposed takeover of Jurys Doyle Hotel Group plc.

### *Waivers*

Sixteen waivers were granted during the year. Nine of the waivers were in respect of waivers of Rule 9 (mandatory offer and its terms) and Rule 37 (redemption or purchase by a company of its own securities). Two of the waivers were in respect of waivers of the Takeover Rules in relation to transactions by companies deemed to be relevant companies pursuant to section 2(b) of the Act.

### *Derogations*

The Panel granted three derogations during the year two of which related to the proposed takeover of Jurys Doyle Hotel Group plc. The remaining derogation related to the takeover of ARCON International Resources plc.

### *Directions*

There were no directions issued by the Panel during the year.

### *Enquiries (section 9(5))*

There were no enquiries initiated by the Panel under section 9(5) of the Act during the year.





