

IRISH TAKEOVER PANEL ACT, 1997, SUBSTANTIAL ACQUISITION RULES, ~~2007~~<sup>2007</sup>[\[•\]](#)

## RULE 1. CITATION, COMMENCEMENT AND REPEAL

### 1.1 CITATION

These Rules may be cited as the Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, ~~2007~~<sup>2007</sup>[\[•\]](#).

### 1.2 COMMENCEMENT

These Rules shall come into operation on ~~19th December 2007~~<sup>19th December 2007</sup>[\[•\]](#).

### 1.3 REPEAL

The Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, ~~2001 and 2005~~<sup>2007</sup> are hereby repealed.

### 1.4 TRANSITIONAL PROVISION

Notwithstanding their repeal, the rules referred to in Rule 1.3 shall continue to apply to all transactions which are in being on the date on which these Rules come into operation.

## RULE 2. INTERPRETATION

(a) In these Rules, the following words and expressions shall have the following meanings unless the context otherwise requires:

“**Rules**” means these rules in their present form or with and subject to any amendment to them for the time being in force;

“**substantial acquisition of securities**” has the meaning assigned to it by Rule 3;

“**Takeover Rules**” means the Irish Takeover Panel Act, 1997, Takeover Rules, ~~2007~~<sup>2007</sup><sup>\*</sup>[\[•\]](#).

(b) All terms which are used but not defined in these Rules and which are defined in the Takeover Rules shall have in these Rules the meanings assigned to them in the Takeover Rules unless the context otherwise requires.

(c) Rules ~~2.3, 2.4, 2.5, 2.6~~ and 3.3 of Part A [of the Takeover Rules and Rule 30.4 of Part B](#) of the Takeover Rules shall apply to these Rules as if they were incorporated in these Rules.

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~~References in the Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, 2007, to the "Takeover Rules" are references to the Irish Takeover Panel Act, 1997, Takeover Rules, 2007, as originally made, exclusive of all amending and superseding takeover rules subsequently made by the Panel.~~

### RULE 3. SPECIFICATION: SUBSTANTIAL ACQUISITION OF SECURITIES

(a) An acquisition or a series of acquisitions by a person of voting securities of a relevant company or of rights over voting securities of that company shall be regarded, for the purposes of the Act, as a substantial acquisition of securities if:

(i) any voting securities so acquired by that person and the voting securities the subject of any rights so acquired by that person confer in the aggregate 10% or more of the voting rights in the company; and

(ii) any voting securities so acquired by that person and the voting securities the subject of any rights so acquired by that person, when aggregated with any voting securities already held by that person and any voting securities over which that person already holds rights, confer 15% or more, but less than 30%, of the voting rights in the company; and

(iii) in the case of a series of acquisitions of securities, all of such acquisitions are made within a period of 7 days;

provided that neither the acquisition of new voting securities, of securities convertible into new voting securities or of rights to subscribe for new voting securities (other than the purchase of rights arising pursuant to a rights issue), nor the acquisition of new or existing voting securities, or of rights over such securities, under an established share option scheme nor the acquisition of existing voting securities by the exercise of an option, shall be treated as an acquisition of voting securities or rights over voting securities for the purposes of Rule 3 but so that this proviso shall be without prejudice to the subsequent aggregability, for the purposes of Rule 3, of such securities as securities held by the person who so acquired them.

(b) For the purposes of these Rules:

(i) any two or more persons who are acting in concert shall together be deemed to constitute one person and accordingly every acquisition by, and every holding of, such persons or any of them of voting securities of the relevant company concerned or of rights over voting securities of that company shall be aggregated with every other such acquisition by or (as the case may be) holding of such persons or any of them and shall be deemed to be an acquisition by, or (as the case may be) a holding of, one person provided that the foregoing provisions of this subparagraph (i) shall not prevent an acquisition of securities by a person from a person or persons acting in concert with such

first mentioned person from being a substantial acquisition of securities by such person if, in the absence of those provisions, such acquisition would be a substantial acquisition of securities by such person;

- (ii) no voting security shall be counted more than once in any aggregation under these Rules;
- (iii) if a person manages investment accounts on a discretionary basis, securities acquired or held for such accounts shall be treated as acquired or (as the case may be) held by that person and not by the persons on whose behalf the holdings of securities are managed; and
- (iv) a discretionary fund manager shall be presumed (until the contrary is established to the satisfaction of the Panel) to be acting in concert with any company controlling, controlled by or under the same control as the fund manager.

#### RULE 4. RESTRICTION ON ACQUISITIONS

(a) Except as permitted by Rule 5 and subject to paragraph (b), no person shall make a substantial acquisition of securities.

(b) (i) Paragraph (a) shall not apply to a substantial acquisition of securities by a person whose business is dealing in securities (in this paragraph (b) referred to as a “dealer”) from a single holder of securities (within the meaning of Rule 5) if the dealer makes the substantial acquisition of securities with the intention of selling to persons who are not ~~associates of~~ persons acting in concert with the dealer, before 12.00 noon on the following business day:

(1) such number of the voting securities, or of the rights over voting securities, comprised in the substantial acquisition of securities as will reduce the aggregate percentage of the voting rights in the company concerned conferred by the remainder of those voting securities and by the voting securities the subject of the remainder of those rights to less than 10%; or

(2) (if the voting securities, and the voting securities the subject of the rights, held by the dealer immediately prior to the substantial acquisition of securities confer in the aggregate less than 15% of the voting rights in the company concerned), such number (if lesser) of the voting securities, or of the rights over voting securities, comprised in the substantial acquisition of securities as will reduce the aggregate percentage of the voting rights in the company conferred by the remainder of those voting securities and by the voting securities the subject of the remainder of those rights to less than 15%.

A dealer which makes a substantial acquisition of securities shall disclose it to the Panel immediately after it is made, but the securities so acquired shall not be taken into account for the purposes of Rule 6 provided that the dealer disposes, in accordance with the terms of the preceding sentence and before the stipulated time, of the requisite amount of voting securities or rights over voting securities to persons who are not ~~associates of~~ persons acting in concert with the dealer. If the dealer does not do so, it shall immediately consult the Panel, which may require the dealer to disclose the acquisition pursuant to Rule 6; the Panel may also require the dealer to reduce its holding of voting securities, or of rights over voting securities, of the company concerned as soon as is practicable and may impose restrictions on further acquisitions by the dealer of securities of that company and on the exercise by the dealer of the voting rights in that company conferred by the securities held by it.

(ii) If a dealer purchases a portfolio of securities without knowledge of its contents and thereby inadvertently makes a substantial acquisition of securities, the dealer shall consult the Panel immediately, and paragraph (a) shall not apply to such substantial acquisition of securities nor shall the voting securities or rights over voting securities comprised in such substantial acquisition of securities be taken into account for the purposes of Rule 6 provided that before 12.00 noon on the following business day the dealer disposes to persons who are not ~~associates of the dealer~~ acting in concert with it of:

(1) such number of the voting securities, or of the rights over voting securities, comprised in the substantial acquisition of securities as will reduce the aggregate percentage of the voting rights in the company concerned conferred by the remainder of those voting securities and by the voting securities the subject of the remainder of those rights to less than 10%; or

(2) (if the voting securities, and the voting securities the subject of the rights, held by the dealer immediately prior to the purchase of the portfolio confer in the aggregate less than 15% of the voting rights in the company concerned), such number (if lesser) of the voting securities, or of the rights over voting securities, comprised in the substantial acquisition of securities as will reduce the aggregate percentage of the voting rights in the company concerned by the remainder of those voting securities and by the voting securities the subject of the remainder of those rights to less than 15%.

If the dealer does not do so, it shall immediately consult the Panel, which may require the dealer to disclose the purchase pursuant to Rule 6; the Panel may also require the dealer to reduce its holding of voting securities, or of rights over voting securities, of the company concerned as soon as is practicable and may impose restrictions on further acquisitions by the dealer of securities of that company and on the exercise by the dealer of the voting rights in that company conferred by the securities held by it.

~~(iii) — For the purposes of this paragraph (b), a person shall be deemed to be an “associate” of a dealer if, on the assumption that the dealer were an offeror, that person would be an associate of the dealer for the purposes of the Takeover Rules by reference to any of paragraphs (a), (b), (c), (f), (g), (h) and (k) in Rule 2.2 of Part A of the Takeover Rules.~~

#### RULE 5. EXCEPTIONS TO RESTRICTION

(a) The restriction in Rule 4(a) does not apply to a substantial acquisition of securities by a person:

(i) from a single holder of securities, if it is the only acquisition of voting securities, or of rights over voting securities, of the company concerned made by that person within any period of 7 days; or

(ii) pursuant to a tender offer in accordance with Rule 7; or

(iii) immediately before that person announces a firm intention to make an offer in respect of the company concerned ~~(whether or not the posting of the offer is to be subject to a pre-condition),~~

provided that the offer will be publicly recommended for acceptance by, or the acquisition is made with the agreement of, the offeree board and the acquisition is conditional upon the announcement of the offer; or

(iv) after that person has announced a firm intention to make an offer in respect of the company concerned, ~~provided that the making of the offer is not, at the time of the acquisition, subject to a pre-condition.~~

(b) For the purposes of paragraph (a)(i) and subject to paragraph (c), acquisitions of voting securities, or of rights over voting securities, of a relevant company from two or more persons shall be regarded as an acquisition from a single holder of securities if but only if:

(i) one of such persons is a spouse, civil partner, cohabitant, parent, brother, sister or child of the other such person or, as the case may be, of each of the other such persons; or

(ii) one of such persons is (1) a subsidiary, (2) the holding company or (3) a subsidiary of a body corporate which is the holding company, of the other such person or, as the case may be, of each of the other such persons.

(c) Except with the consent of the Panel, a ~~market-maker~~ principal trader shall not be considered to be a single holder of securities for the purposes of paragraph (a)(i).

## RULE 6. DISCLOSURE

(a) Subject to paragraph (b) and as provided below, a person who acquires voting securities, or rights over voting securities, of a relevant company shall disclose that acquisition and that person's total holdings of voting securities, and rights over voting securities, of the company, by electronic mail to the company ~~the Stock Exchange~~ and the Panel ~~and shall be made to a Regulatory Information Service~~ not later than 12.00 noon on the business day following the date of the acquisition if:

(i) the voting rights in the company conferred by any voting securities already held by that person and by any voting securities over which that person already holds rights confer in the aggregate less than 15% of the voting rights in the company and that percentage is increased, or subject only to the issue in the State of a governmental or regulatory authorisation, consent, approval or clearance will be increased, to or beyond 15% when aggregated with the voting rights conferred by the voting securities, or by the voting securities the subject of the rights, so acquired by that person; or

(ii) the voting rights in the company conferred by any voting securities already held by that person and by any voting securities over which that person already holds rights confer in the aggregate 15% or more but less than 30% of the voting rights in the company and that percentage is increased, or subject only to the issue in the State of a governmental or regulatory authorisation, consent, approval or clearance will be increased, to or beyond any whole percentage figure when aggregated with the voting rights conferred by the voting securities, or by the voting securities the subject of the rights, so acquired by that person;

provided that this paragraph (a) shall not apply to the acquisition of new voting securities, of securities convertible into new voting securities or of rights to subscribe for new voting securities (other than the purchase of rights arising pursuant to a rights issue), the acquisition of new or existing voting securities, or of rights over such securities, under an established share option scheme or the acquisition of existing voting securities by the exercise of an option, but so that this proviso shall be without prejudice to the subsequent aggregability, for the purpose of Rule 6, of such securities as securities held by the person who so acquired them.

The disclosure shall distinguish between acquisitions and existing holdings of voting securities and rights over voting securities and shall specify the nature of any such rights and number and type of voting securities in each case. Where an option over existing voting securities is acquired, the disclosure shall specify the period of the option or its expiry date.

Disclosure under this paragraph (a) shall follow the format of Form SAR 6 in the Appendix to these Rules, ~~and shall be delivered by facsimile, by hand or, if available, by electronic mail.~~

(b) Paragraph (a) shall not apply to a substantial acquisition of securities which falls within Rule 5(a)(ii), (iii) or (iv).

## RULE 7. TENDER OFFERS

### 7.1 SUBSTANTIAL ACQUISITIONS OF SECURITIES MADE BY TENDER OFFER

(a) The maximum number of securities of a relevant company that are the subject of any tender offer shall not be such as would, if the tender offer were subscribed in full, result in the person who seeks to purchase securities under the tender offer and persons acting in concert with it (in Rule 7 collectively referred to as the “buyer”) holding voting securities or rights over voting securities which securities would confer in the aggregate 30% or more of the voting rights in that company on the date on which the tender offer closes.

(b) Rules 7.2 to 7.6 shall apply only to a tender offer which, if subscribed in full, would constitute a substantial acquisition of securities by the buyer.

(c) Securities acquired under a tender offer shall be treated, for the purposes of these Rules, as having been acquired on the date on which the tender offer closes.

### 7.2 PROCEDURE AND APPROVAL

(a) A person who publishes a tender offer (whether it is made on the Stock Exchange or elsewhere) shall do so by paid advertisement in two Irish national daily newspapers and shall notify the Panel, the Stock Exchange and the relevant company securities of which are the subject of the tender offer (in Rule 7 referred to as the “company concerned”) of the information specified in Rule 7.3 at least 7 days before the day on which the tender offer closes.

(b) Subject to paragraph (c), the buyer shall treat all holders of securities who tender on equal terms.

(c) A tender offer shall be for cash only but may be at a fixed price or a maximum price; top-up arrangements are not permitted.

(i) Fixed price: if the tenders exceed the number of securities sought, the tenders shall be scaled down pro rata.

(ii) Maximum price: if the tender offer is over-subscribed, the striking price for the offer shall be the lowest price at which the number of securities sought is met and all who tender at or below the striking price shall receive that price. Where appropriate, tenders made at the striking price shall be scaled down pro rata or balloted.

If the tender offer is under-subscribed, all persons who tender shall receive the same price (the maximum or fixed price, as the case may be), except where fewer securities are tendered than the percentage below which the tender is void.

(d) The entire content and publication programme of the advertisement shall be subject to the prior approval of the Stock Exchange if the tender offer is made through the Stock Exchange and otherwise shall be subject to the prior approval of the Panel.

(e) In every case the buyer shall supply the Stock Exchange or, as the case may be, the Panel with copies of the final text and format of the advertisements as previously approved, no later than the time they are given to the newspapers.

(f) Except with the consent of the Panel, a person shall not publish a tender offer for securities of a company during an offer period relative to an offer in respect of that company.

### 7.3 DETAILS OF TENDER OFFER ADVERTISEMENTS

(a) The advertisement of a tender offer, which shall constitute a firm offer, shall include the particulars set out below:

(i) the name of the buyer;

(ii) the name of the broker or other agent acting for the buyer;

(iii) the name of the company concerned;

(iv) the maximum number of securities and the corresponding proportion of voting capital offered for;

(v) a statement that, if tenders totalling less than 1% of the voting rights of the company concerned are received, the tender offer will be void. Alternatively, the buyer may, subject to any applicable Stock Exchange approval, indicate a higher percentage below which the tender offer will be void;

(vi) a statement that, subject to subparagraph (v), a tender by a holder of securities will be irrevocable;

(vii) the fixed or maximum price (as the case may be);

(viii) the buyer's present holding of securities of the company concerned (including securities not conferring voting rights), specifying the number and type of securities;

- (ix) the closing day and time for the tender offer; and
- (x) the arrangements for tendering securities and for delivery and settlement (on a basis approved in advance by the Stock Exchange or the Panel as appropriate).
- (b) A tender offer shall not be subject to any condition other than a condition on the terms set out in subparagraph (a)(v).
- (c) If a buyer wishes to make a statement about its future intentions, such statement shall be contained in the advertisement of the tender offer and shall be explicit and unambiguous. The buyer shall consult the Panel in advance with regard to any such statement.
- (d) If a buyer so wishes, a statement may be made comparing the value of the tender offer with the market value of the securities the subject of the tender offer.
- (e) The advertisement shall be restricted to the items above together with any information required by law or by any rule of a regulatory authority, or by a ruling or direction of the Panel.

#### 7.4 CIRCULATION OF TENDER OFFER AND OTHER DOCUMENTS

- (a) Subject to compliance with applicable law, a buyer, or any person acting for it, may ~~despatch~~ send copies of the tender announcement to all holders of the class of securities of the company concerned. The buyer shall lodge a copy of any such circular with the Stock Exchange and the Panel no later than the time at which it is ~~despatched~~ sent to such holders.
- (b) The company concerned shall lodge with the Panel no later than the time at which it is ~~despatched~~ sent a copy of any document sent by it to holders of its securities in connection with the tender offer.

#### 7.5 ANNOUNCEMENT OF THE RESULT OF A TENDER OFFER

The buyer shall announce the result of a tender offer by 8.00 a.m. on the business day following the close of the tender offer.

#### 7.6 PROHIBITION OF FURTHER TRANSACTIONS DURING A TENDER OFFER

Other than pursuant to the tender offer, a buyer shall not acquire or dispose of any securities of the company concerned between the time of announcement of the tender offer and the time when the result of the tender offer is announced.

#### RULE 8. PERSONS ACTING IN CONCERT

(a) Where any obligation (including, without limitation, the obligation under Rule 4 not to make a substantial acquisition of securities and the disclosure obligation under Rule 6) is imposed by the Rules on a person (in this paragraph (a) referred to as the “obligor”) and by virtue of Rule 3 two or more persons who are acting in concert are together deemed to constitute the obligor, each of the persons acting in concert shall be bound by that obligation and it shall be the duty of each of them to ensure that such obligation is ~~fulfiled~~fulfilled.

(b) Where the aggregate voting rights (the “relevant voting rights” for the purposes of Rule 8) attributable to securities held, and to securities in respect of which rights are held, by two or more persons who are acting in concert, and who are together deemed under Rule 3 to constitute one person, confer 15% or more but less than 30% of the voting rights in a relevant company, such persons shall notify to the company any disposals by them or any of them of voting securities or rights over voting securities that result in the relevant voting rights decreasing below any whole percentage level as if they were parties to ~~an~~a share acquisition agreement to which section ~~73(1)~~1055 of the Companies Act, ~~1990~~2014 refers and as if the company were the “target company” for the purposes of that sub-section. Such persons shall at the same time ~~send copies of that disclosure to the Stock Exchange and the Panel by facsimile, by hand or, if available,~~disclose such disposal by electronic mail to the company and the Panel and to a Regulatory Information Service.

#### RULE 9. STATUS OF APPENDIX

The Appendix below is an appendix to, and forms part of, these Rules.

[\[Form SARS 6\]](#)