

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3566 of 16th November, 2006

B. 35/06

BILL

FOR

AN ORDINANCE to transpose into the law of Gibraltar Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids and matters connected thereto.

ENACTED by the Legislature of Gibraltar.

PART I

PRELIMINARY AND INTERPRETATION

Title and commencement.

1. This Ordinance may be cited as the Financial Services (Takeover Bids) Ordinance 2006 and comes into operation 30 days following its enactment.

Interpretation.

2.(1) In this Ordinance and unless the context otherwise requires—

“competent authority” means the person designated pursuant to section 3;

“Directive” means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

“EEA State” means a state party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time);

“Minister” means the Minister responsible for financial services;

“multiple-vote securities” means securities included in a distinct and separate class and carrying more than one vote each;

“offer document” shall be construed in accordance with section 13;

“offeree company” means a company, the securities of which are the subject of a bid;

“offeror” means any natural or legal person making a bid;

“parties to the bid” means the offeror, the members of the offeror's board if the offeror is a company, the offeree company, holders of securities of the offeree company and the members of the board of the offeree company, and persons acting in concert with such parties;

“persons acting in concert” means subject to subsection(2), a natural or legal person who cooperates with the offeror or the offeree company on the basis of an agreement, either express or tacit, oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid;

“regulated market”–

- (a) in respect of any EEA State, shall be construed, subject to paragraph (b), in accordance with the provisions of the Directive; and
- (b) in respect of any market for which Gibraltar is the home territory, shall be construed in accordance with the Financial Services Ordinance 1998 as amended or replaced from time to time,

“securities” means transferable securities carrying voting rights in a company;

“takeover bid” or “bid” means a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or

voluntary, which follows or has as its objective the acquisition of control of the offeree company.

(2) For the purposes of subsection (1) a controlled undertaking within the meaning of subsection (3) shall be deemed to be a person acting in concert with that other person and with each other.

(3) For the purposes of subsection (2), “controlled undertaking” means any undertaking in which a natural person or legal entity—

- (a) has a majority of the shareholders' or members' voting rights; or
- (b) has the right to appoint or remove a majority of the members of the administrative management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
- (c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.

(4) For the purpose of this section, a parent undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.

(5) Any term used in this Ordinance but not defined shall be construed in accordance with the provisions of the Directive.

PART II

COMPETENT AUTHORITY

Competent authority.

3.(1) The Minister shall designate such person as he sees fit to carry out such functions as may be necessary to give effect to the provisions of this Ordinance.

(2) The Minister shall take such steps as he deems appropriate to ensure that a person a designated under subsection (1) exercises his functions impartially and independently of all parties to a bid.

Responsibilities of the competent authority/

4.(1) The competent authority shall exercise his functions subject to the provisions of this section and section 5.

(2) The competent authority shall be responsible for supervising bids pursuant to this Ordinance in each of the following circumstances—

- (a) where the offeree company has a registered office in Gibraltar, and that company's securities are admitted to trading on a regulated market in Gibraltar;
- (b) where an offeree company has its registered office in another EEA State and its securities—
 - (i) are admitted to trading on a regulated market in Gibraltar; and
 - (ii) are admitted to trading on regulated markets in more than one EEA State, but the securities were first admitted to trading on a regulated market in Gibraltar;
- (c) where the offeree company's securities were first admitted to trading on regulated markets in more than one EEA State simultaneously, and the offeree company so determines on the first day of trading by way of notification to all regulated markets concerned and their competent authorities.

(3) The competent authority shall make public, by whatever means it deems appropriate, the fact that it is to be responsible for supervising bids pursuant to subsection (2)(c).

Regulations consequential to the operation of section 4.

5.(1) In section 4(2)–

- (a) matters relating to the consideration offered in the case of a bid, in particular the price; and
- (b) matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid; and
- (c) matters relating to the information to be provided to the employees of an offeree company with a registered office in Gibraltar; and
- (d) matters relating to the law governing companies, in particular the percentage of voting rights which confers control; and
- (e) any derogation from the obligation to launch a bid, as well as the conditions under which the board of the company may undertake any action which might result in the frustration of the bid,

shall be dealt with in accordance with regulations made by the Minister by notice in the Gazette.

(2) The competent authority shall possess responsibility for all matters referred to in subsection (1).

(3) The Minister may, by notice in the Gazette, make regulations conferring on the competent authority such additional powers as he may deem necessary for the purpose of enabling the competent authority to carry out his duties under this Ordinance.

(4) Without prejudice to the general principles set out in section 9, regulations made under this section may provide for such exceptions as the Minister may deem reasonable—

- (a) in respect of matters the subject of regulations made by the Minister under this Ordinance; or
- (b) granting the competent authority powers to waive any requirement—
 - (i) being the subject of regulations made by the Minister under this Ordinance; or
 - (ii) in other specified circumstances, in which case the competent authority shall be required to give a reason for its decision.

Duty of confidentiality.

6.(1) Persons employed or formerly employed by the competent authority are bound by professional secrecy.

(2) No information covered by professional secrecy may be divulged to any person or authority except in such circumstances as the Minister may prescribe by notice in the Gazette.

Duty to assist authorities of EEA States.

7.(1) The competent authority shall co-operate with the authorities of other EEA States—

- (a) to the extent necessary for the competent authority to carry out his functions under this Ordinance; and
- (b) to the extent necessary to the authorities of other EEA States for carrying out functions pursuant to legislation implementing the Directive in those States.

(2) Information exchanged pursuant to subsection (1) is covered by the same obligation of professional secrecy to which persons employed or formerly employed by the competent authority are subject pursuant to section 6.

(3) In pursuance of his duties under subsection (1), the competent authority—

- (a) shall serve legal documents necessary to enforce measures taken by the authorities of other EEA States in connection with bids, as well as such other assistance as may reasonably be requested for the purpose of investigating any actual or alleged breaches of legislation implementing the Directive in such States;
- (b) may request the authorities of other EEA States to serve legal documents necessary to enforce measures taken by the competent authority in connection with bids, as well as such other assistance as may reasonably be requested for the purpose of investigating any actual or alleged breaches of this Ordinance.

(4) Co-operation under this section may include the sharing of information that the competent authority is not prevented from disclosing by virtue of any statutory provision or rule of law.

(5) References in this section to authorities of other EEA States are to—

- (a) authorities designated by other EEA States for the purposes of Article 4(1) of the Directive; and
- (b) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside Gibraltar, that appear to the competent authority to be similar to his own functions under this Ordinance.

PART III

SCOPE AND GENERAL PRINCIPLES

Scope of Ordinance.

8.(1) This Ordinance applies to takeover bids for the securities of companies governed by the law of Gibraltar or other EEA States, where all or some of those securities are admitted to trading on a regulated market—

- (a) in Gibraltar; or
- (b) in Gibraltar and one or more other EEA States.

(2) This Ordinance does not apply to takeover bids for securities issued by companies, the object of which is the collective investment of capital provided by the public—

- (a) operating on the principle of risk-spreading; and
- (b) the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies.

(3) Action taken by companies referred to in subsection (2) to ensure that the stock exchange value of their units does not vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption.

(4) This Ordinance does not apply to takeover bids for securities issued by EEA States' central banks.

General principles.

9. The competent authority shall ensure that the following provisions are complied with—

- (a) all holders of the same class of securities of an offeree company shall be afforded equivalent treatment, and if a person acquires control of a company other holders of securities shall be protected;
- (b)
 - (i) holders of the securities of an offeree company shall be afforded sufficient time and information enabling them to reach a reasonably informed decision on the bid; and
 - (ii) in advising holders of securities, the board of the offeree company shall include in its advice comments on the effects of the bid on employment, conditions

of employment and the location of the company's places of business;

- (c) the board of an offeree company shall, at all times, act in the interests of the company as a whole and shall not take steps to deny the holders of securities the opportunity to decide on the merits of the bid;
- (d) false markets shall not be created in the securities of the offeree company, of the offeror company or of any other company involved in the bid in such a way that the normal functioning of the markets is distorted by rise or fall of the price of the securities becoming artificial;
- (e) an offeror shall announce a bid only after ensuring that he can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;
- (f) an offeree company shall not be hindered in the conduct of its affairs by a bid for its securities for longer than is reasonable.

Protection of minority shareholders, the mandatory bid and the equitable price.

10.(1) Where a person, as a result of his own acquisition or the acquisition by persons acting in concert with him—

- (a) holds securities of a company to which section 8(1) applies; and
- (b) those securities when added to any existing holdings of those securities of his and the holdings of those securities of persons acting in concert with him, directly or indirectly give him a prescribed percentage of voting rights in that company such that give him control of that company,

such person shall be required by the competent authority—

- (i) to make a bid as a means of protecting the minority shareholders of that company; and

- (ii) to address the bid at the earliest opportunity to all holders of securities for all their holdings at an equitable price in accordance with subsection (4) and (5).

(2) The obligation laid down in subsection (1) to launch a bid does not apply where control has been acquired following a voluntary bid made to all the holders of securities for all their holdings in accordance with this Ordinance.

(3) The percentage of voting rights conferring control for the purposes of subsection (1) and the method of its calculation in relation to a company having a registered office in Gibraltar shall be such as the Minister may prescribe by regulations.

(4)

- (a) The highest price paid for the same securities by the offeror, or by persons acting in concert with him, over a period prescribed by the Minister by regulations, being not less than six months and not more than 12 before the bid referred to in subsection (1) shall be regarded as the equitable price.
- (b) Where, after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him purchases securities at a price higher than the offer price, the offeror shall increase his offer so that it is not less than the highest price paid for the securities so acquired.

(5) Without prejudice to section 3, the Minister may make regulations—

- (a) authorising the competent authority to adjust the price referred to in subsection (1) in circumstances and in accordance with criteria that are clearly defined:
- (b) drawing up a list of circumstances in which the highest price may be adjusted either upwards or downwards, for example -
 - (i) where the highest price was set by agreement between the purchaser and a seller;

- (ii) where the market prices of the securities in question have been manipulated;
 - (iii) where market prices in general or certain market prices in particular have been affected by exceptional occurrences; or
 - (iv) in order to enable a firm in difficulty to be rescued;
- (c) determining the criteria to be applied in cases referred to in this section, for example the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis.

(6) Any decision by the competent authority to adjust the equitable price pursuant to regulations made under this section shall be substantiated and made public in such manner as the Minister may deem appropriate.

(7) Without prejudice to the foregoing, the Minister may, by regulations, provide for such further measures intended to protect the interests of the holders of securities as he deems appropriate provided only that such measures do not hinder the normal course of a bid.

Consideration for bids.

11.(1) Subject to the provisions of subsection (2) to (4), the offeror may offer securities, cash or a combination of both as consideration for a bid.

(2) Where the consideration offered does not consist of liquid securities admitted to trading on a regulated market, consideration shall include a cash alternative.

(3) The offeror shall offer a cash consideration as an alternative where he or persons acting in concert with him, over a period beginning—

- (a) at the same time as the period determined in accordance with section 10(4) ; and
- (b) ending when the offer closes for acceptance,

have purchased for cash securities carrying 5 % or more of the voting rights in the offeree company.

(4) The Minister may, by regulations, provide that a cash consideration shall be offered, at least as an alternative, in all cases.

Publicity surrounding bids.

12.(1) Subject to subsection (2), a decision by any person to make a bid shall be made public and the competent authority informed at the first reasonable opportunity.

(2) The Minister may, by regulations, require that the competent authority be informed before a decision by any person to make a bid is made public.

(3) When a bid has been made public, the boards of the offeree and offeror companies shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves of the fact.

Offer document.

13.(1) An offeror shall draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid.

(2) An offer document—

- (a) shall be communicated by the offeror to the competent authority prior to it being made public;
- (b) shall be communicated by the boards of the offeree and offeror companies to the representatives of their respective employees or, where there are no such representatives, to the employees themselves after being made public.

(3) Subject to subsection (4), the Minister may, by regulations, provide that an offer document communicated to the competent authority pursuant to subsection (2) shall not be made public or issued the holders of the offeree

company's securities until such time as the competent authority certifies compliance of the document with the provisions of this Ordinance.

(4) Where an offer document issued by a company with securities admitted to trading in a regulated market in Gibraltar has been approved by the authorities of another EEA State—

- (a) subject to paragraph (b), the approval shall be recognised for the purposes of this Ordinance, subject to any translation required, without it being necessary to obtain the approval of the competent authority;
- (b) the competent authority may require the inclusion of additional information in the offer document—
 - (i) where such information is specific to the Gibraltar market; and
 - (ii) which relates to the formalities to be complied with to accept the bid and to receive the consideration due at the close of the bid; and
 - (iii) which relates to the tax arrangements to which holders of the securities will be subject.

(5) References in this section to an offer document being made public are to the offer document being made public in accordance with the provisions of section 16.

PART IV

TAKEOVER BIDS AND OFFEREE RESPONSE

Content of offer documents.

14.(1) An offer document shall include the following information—

- (a) the terms of the bid;
- (b) the identity of the offeror and, where the offeror is a company, the type of company, and the name and registered office of the company;

- (c) the securities or, where appropriate, the class or classes of securities for which the bid is made;
- (d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;
- (e) the compensation offered for the rights which might be removed as a result of the operation of section 19(6) with particulars of the way in which that compensation is to be paid and the method employed in determining it;
- (f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;
- (g) details of any existing holdings of the offeror, and of persons acting in concert with him, in the offeree company;
- (h) all the conditions to which the bid is subject;
- (i) the offeror's intentions with regard to—
 - (i) the future business of the offeree company and, in so far as it is affected by the bid, the offeror company; and
 - (ii) the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment; and
 - (iii) in particular the offeror's strategic plans for the two companies; and
 - (iv) the likely repercussions on employment and the locations of the companies' places of business;
- (j) the time allowed for acceptance of the bid;
- (k) where the consideration offered by the offeror includes securities of any kind, information concerning those securities;

- (l) information concerning the financing for the bid;
 - (m) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types of company, and the names, registered offices and relationships with the offeror and, where possible, with the offeree company;
 - (n) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts.
- (2) Without prejudice to the provisions of subsection (1)–
- (a) the competent authority may, at any time it sees fit, request any party to a bid for securities admitted to trading in a regulated market in Gibraltar to supply all information in their possession necessary for the competent authority to discharge its functions under this Ordinance; and
 - (b) a party to a bid who has received a request for information pursuant to paragraph (a) shall provide such information to the competent authority as soon as reasonably possible.

Time allowed for acceptance.

15. The Minister may, by regulations–

- (a) provide that the time allowed for the acceptance of a bid may not be less than two weeks nor more than 10 weeks from the date of publication of the offer document;
- (b) without prejudice to the general principles laid down in section 3, provide that the period of 10 weeks set out in paragraph (a) may be extended on condition that the offeror gives at least two weeks' notice of his intention of closing the bid.
- (c) provide for the alteration of the periods referred to in paragraph (a) in specific cases;

- (d) authorise the competent authority to grant a derogation from the period referred to in paragraph (a) to allow the offeree company to call a general meeting of shareholders to consider the bid.

Disclosure.

16.(1) The Minister may make regulations—

- (a) to ensure that a bid is made public in such a way as ensures market transparency and integrity for the securities of the offeree company, of the offeror or of any other company affected by the bid, in particular in order to prevent the publication or dissemination of false or misleading information;
- (b) providing for the disclosure of all information and documents required by sections 13 in such manner as ensures that they are both readily and promptly available to holders of securities at least on the regulated markets of which the offeree company's securities are admitted to trading and to the representatives of the employees of the offeree company and the offeror or, where there are no such representatives, to the employees themselves.

(2) Regulations made under subsection (1) may provide for such consequential matters, including fees, offences and penalties as the Minister may deem appropriate.

Obligations of the board of an offeree company.

17.(1) This section is subject to the provisions of sections 12 and 20.

(2)

- (a) During the period established in accordance with paragraph (b), the board of an offeree company shall obtain the prior authorisation of the general meeting of shareholders given for this purpose before taking any action, other than seeking alternative bids, which may result in the frustration of a bid and in particular before issuing any new shares which may

result in a lasting impediment to the offeror acquiring control of the offeree company; and

- (b) the authorisation referred to paragraph (a) shall be mandatory at least from the time the board of the offeree company receives the information referred to in section 12 concerning the bid and until the result of the bid is made public or the bid lapses.

(3) The Minister may, by regulations, require that the authorisation referred to in subsection (2) be obtained at an earlier stage, for example as soon as the board of the offeree company becomes aware that the bid is imminent.

(4) A general meeting of shareholders may approve or confirm any decision—

- (a) taken before the beginning of the period referred to in subsection (2)(b) and not yet partly or fully implemented; and
- (b) which does not form part of the normal course of the company's business; and
- (c) the implementation of which may result in the frustration of the bid.

(5) The Minister may make regulations allowing a general meeting of shareholders to be called at short notice, provided that the meeting does not take place within two weeks of notifications being given for the purpose of obtaining the prior authorisation, approval or confirmation of the holders of securities referred to in subsections (2) to (4).

(6) Upon receipt of a bid, the board of the offeree company—

- (a) shall draw up and make public a document setting out its opinion of the bid and the reasons on which it is based, including its views on—
 - (i) the effects of implementation of the bid on all the company's interests and specifically employment; and

- (ii) the offeror's strategic plans for the offeree company;
and
 - (iii) the likely repercussions on employment; and
 - (iv) the locations of the company's places of business as set out in the offer document in accordance with section 14; and
- (b) shall at the same time communicate the opinion in paragraph (a) to the representatives of its employees or, where there are no such representatives, to the employees themselves.

(7) Where the board of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the document referred to in subsection (6).

(8) For the purposes of this section, where a company has a two-tier board structure, "board" means both the management board and the supervisory board.

Information on companies to which section 8(1) applies.

18.(1) Companies to which section 8(1) applies shall publish detailed information on the following matters—

- (a) the structure of their capital, including securities which are not admitted to trading on a regulated market, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;
- (b) any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities;
- (c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) in companies the shares of which are officially listed on a stock exchange or exchanges situated or operating in Gibraltar, or in Gibraltar and another EEA State;

- (d) the holders of any securities with special control rights and a description of those rights;
- (e) the system of control of any employee share scheme where the control rights are not exercised directly by the employees;
- (f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities;
- (g) any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities or voting rights;
- (h) the rules governing the appointment and replacement of board members and the amendment of the articles of association;
- (i) the powers of board members, and in particular the power to issue or buy back shares;
- (j) any agreements of significance—
 - (i) to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects thereof; and
 - (ii) the disclosure of which would not be seriously prejudicial to the company; or
 - (iii) the disclosure of which would be seriously prejudicial to the company but the company is specifically obliged to disclose the information by operation of law;
- (k) any agreements between the company and its board members or employees providing for compensation if they resign or are

made redundant without valid reason or if their employment ceases because of a takeover bid.

(2) The information referred to in subsection (1) shall be published in the company's annual report in accordance with the provisions of the Companies Ordinance.

(3) In the case of companies the securities of which are admitted to trading on a regulated market, the board shall present an explanatory report to the annual general meeting of shareholders on all applicable matters referred to in subsection (1).

PART V

MEASURES FOLLOWING A TAKEOVER BID

Defensive measures following bid.

19.(1) This section is subject to the provisions of sections 12 and 20.

(2) This section applies when a bid has been made public.

(3) Restrictions by a company—

(a) on the transfer of securities provided for in the articles of association of the offeree company shall not apply in relation to the offeror during the time allowed for acceptance of the bid laid down in section 15;

(b) relating to

(i) the transfer of securities provided for in contractual agreements between the offeree company and holders of its securities; or

(ii) contractual agreements between holders of the offeree company's securities entered into after the coming into operation of this Ordinance,

shall not apply in relation to the offeror during the time allowed for acceptance of the bid laid down in section 15;

- (c) on voting rights provided for in the articles of association of the offeree company shall not have effect at a general meeting of shareholders deciding on any defensive measures in accordance with section 17;
 - (d) on voting rights provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the coming into operation of this Ordinance shall not have effect at a general meeting of shareholders deciding on any defensive measures in accordance with section 17.
- (4) Multiple-vote securities shall carry only one vote each at a general meeting of shareholders deciding on any defensive measures in accordance with section 17.
- (5) Where, following a bid, the offeror holds 75 % or more of the capital carrying voting rights—
- (a) there shall be no restrictions on the transfer of securities or on voting rights referred to in subsection (3) or (4) nor any extraordinary rights of shareholders regarding the appointment or removal of board members provided for in the articles of association of the offeree company; and
 - (b) multiple-vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid and called by the directors at the request of the offeror in order to amend the articles of association or to remove or appoint board members; and
 - (c) the offeror shall have the right to request that the directors convene a general meeting of shareholders at short notice, provided that the meeting does not take place within two weeks of notification.
- (6) Where rights are removed on the basis of subsections (3), (4), (5) or section 20 equitable compensation shall be provided for any loss suffered by the holders of those rights. The Minister, may, by regulations, set the terms for determining such compensation and the arrangements for payment.

(7) Subsections (3)(c), (d), (4) and (5) shall not apply to securities where restrictions on voting rights are compensated for by specific pecuniary advantages.

(8) This section does not apply—

- (a) to securities held by the Crown in an offeree company conferring special rights on the Crown compatible with the European Communities Ordinance, or special rights provided for under the law of Gibraltar compatible with the European Communities Ordinance; or
- (b) to a cooperative society within the meaning of the Cooperative Societies Ordinance.

Miscellaneous exemptions.

20.(1) Subject to the provisions of this section, companies to which section 8(1) applies with a registered office in Gibraltar need not apply section 17(2) to (4) or section 19.

(2) Without prejudice to Article 11(7) of the Directive, a decision by a company not to apply section 17(2) to (4) or section 19 shall be reversible.

(3) The decision of a company not to apply section 17(2) to (4) or section 19 or a decision to reverse such a decision—

- (a) shall be taken by a general meeting of shareholders, in accordance with the provisions of the Companies Ordinance;
- (b) shall be communicated without delay to the competent authority and to the authorities of EEA States in which the companies securities are admitted to trading on regulated markets or where such admission has been requested.

(4) The Minister may by Order in the Gazette, and subject to such conditions as he may see fit, exempt companies applying section 17(2) to (4) or section 19 from applying those provisions where they become the subject of an offer launched by a company which does not apply those same provisions, or by a company controlled, directly or indirectly, by such company where, in the case of an offer made by a company registered in a territory outside the EEA States, it appears to the Minister that, by reason of

the fact that the offeror is not required to comply with provisions corresponding to section 17(2) to (4) or section 19, it is expedient in the interests of equity that the offeree company should be exempt from applying those provisions in respect of the offer.

(5) An exemption as set out in subsection (4) shall be applied by a company subject to the authorisation of a general meeting of shareholders granted no earlier than 18 months before the bid was made public in accordance with Section 12.

Squeeze-out.

21.(1) This section and section 22 apply following a bid made to all the holders of an offeree company's securities for all of their securities.

(2) An offeror may require holders of remaining securities to sell him their securities at a fair price in one of the following circumstances—

- (a) where the offeror holds securities representing either—
 - (i) not less than 90 % of the capital carrying voting rights and 90 % of the voting rights in the offeree company; or
 - (ii) not less than 95 % of the capital carrying voting rights and 95 % of the voting rights in the offeree company,

as the Minister may provide by regulations; or

- (b) where, following acceptance of the bid, he has acquired or has firmly contracted to acquire securities representing not less than 90 % of the offeree company's capital carrying voting rights and 90 % of the voting rights comprised in the bid.

(3) Regulations made under this section—

- (a) shall provide for a means of determining when the thresholds referred to in subsection (2) are reached;
- (b) may provide that the right of an offeror to require all holders of remaining securities to sell him their securities at a fair

price can be exercised only in the class of securities in which the thresholds referred to in subsection (2) have been reached, where the offeree company has issued more than one class of securities.

(4) Where an offeror wishes to exercise the right to require all holders of remaining securities to sell him their securities in accordance with this section, he shall do so within three months of the end of the time allowed for acceptance of the bid referred to in section 15.

(5) For the purposes of subsection (2) the price at which an offeror may require all holders of remaining securities to sell him their securities shall take the same form as the consideration offered in the bid or, alternatively, cash.

(6) The Minister may, by regulations, provide that cash shall be offered at least as an alternative for all purposes connected with the operation of subsection (5).

(7) For the purposes of subsection (2), the consideration offered in a mandatory bid shall be presumed to be fair. In a voluntary bid, it shall be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90 % of the capital carrying voting rights comprised in the bid.

Sell-out.

22.(1) Where this section applies, holders of remaining securities may require the offeror to purchase their securities at a fair price in one of the following situations—

- (a) where the offeror holds securities representing either—
 - (i) not less than 90% of the capital carrying voting rights and 90% of the voting rights in the offeree company; or
 - (ii) not less than 95% of the capital carrying voting rights and 95% of the voting rights in the offeree company,

as the Minister may provide by regulations; or

- (b) where, following acceptance of the bid, he has acquired or has firmly contracted to acquire securities representing not less than 90% of the offeree company's capital carrying voting rights and 90% of the voting rights comprised in the bid.

(2) Regulations made under this section—

- (a) shall provide for a means of determining when the thresholds referred to in subsection (1) are reached;
- (b) may provide that the right of an offeror to require all holders of remaining securities to sell him their securities at a fair price can be exercised only in the class of securities in which the thresholds referred to in subsection (1) have been reached, where the offeree company has issued more than one class of securities.

(3) Where an offeror wishes to exercise the right to require all holders of remaining securities to sell him their securities in accordance with this section, he shall do so within three months of the end of the time allowed for acceptance of the bid referred to in section 15.

(4) For the purposes of subsection (1) the price at which an offeror may require all holders of remaining securities to sell him their securities shall take the same form as the consideration offered in the bid or, alternatively, cash.

(5) The Minister may, by regulations, provide that cash shall be offered at least as an alternative for all purposes connected with the operation of subsection (4).

(6) For the purposes of subsection (1), the consideration offered in a mandatory bid shall be presumed to be fair. In a voluntary bid, it shall be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid.

PART VI

**ARRANGEMENTS BETWEEN THE UNITED KINGDOM AND
GIBRALTAR**

Arrangements between the United Kingdom and Gibraltar.

23.(1) Gibraltar and the United Kingdom shall be treated for all purposes connected to the operation of this Ordinance as if each were a separate EEA State.

(2) A court in Gibraltar shall have regard to, but shall not be bound by, the principles laid down by and any relevant decision of the European Court of Justice in determining any question as to the meaning or effect of any provision of the Directive for the purposes of this section.

PART VII

FINAL PROVISIONS

Regulations applicable to the conduct of bids.

24.(1) The Minister shall make regulations governing the conduct of bids.

(2) Without prejudice to the generality of subsection (1), regulations made under subsection (1) shall include the following matters—

- (a) the lapsing and revision of bids;
- (b) competing bids;
- (d) the disclosure of the results of bids; and
- (e) the irrevocability of bids and the conditions permitted.

Enforcement.

25.(1) Any act or omission contrary to the provisions of this Ordinance and in respect of which no provision has been made for a penalty shall be an

offence and liable on summary conviction to a fine at level 5 on the standard scale.

(2) The Financial Services Commission may, in its complete discretion, suspend, revoke or refuse to renew any licence, permit or authorisation issued to a person convicted of an offence contrary to section (1) where that licence, permit or authorisation relates to an activity closely connected to the facts of the offence.

(3) Subsection (1) does not apply to the competent authority or an agent or delegate of the competent authority.

EXPLANATORY MEMORANDUM

This Bill transposes into the law of Gibraltar Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

The Directive contains provisions covering takeover bids and the calculation of the equitable price in the event of a bid, and for compulsory acquisition and sell - out rights when a bidder achieves a 90 - 95 % holding.

The directive bans defensive measures by the target company unless approved by its shareholders after a bid is launched, and seeks to set aside certain provisions and arrangements which might hamper a successful bidder exercising control rights.

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