



Information Note

Financial reporting considerations relevant to the disclosure requirements of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006

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1. Context for, and purpose of, this Information Note

The European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 ('the Takeover Regulations')¹ requires disclosure in the Directors' Report, by reference to the end of the financial year concerned, of certain information regarding the following:

- (a) the structure of the company's capital;
- (b) any restrictions on the transfer of securities in the company;
- (c) details of significant direct or indirect holdings of securities in the company;
- (d) details of securities carrying special rights with regard to control of the company;
- (e) details as to how certain rights are exercisable regarding employees' share schemes;
- (f) any restrictions on voting rights;
- (g) any agreements between shareholders that may result in restrictions on the transfer of securities or on voting rights;
- (h) any rules which the company has in force concerning appointment and replacement of directors or amendment of the articles of association;
- (i) the powers of the company's directors;
- (j) significant agreements that take effect, alter or terminate upon a change of control of the company following a bid, and the effects of any such agreements; and
- (k) any agreements between the company and its directors or employees providing for compensation for loss of office or employment that occurs because of a bid.

During the course of its financial reporting review activity, the Irish Auditing & Accounting Supervisory Authority ('IAASA') has identified a number of instances in which the required disclosures have not been provided by equity issuers.

The purpose of this Information Note is, therefore, to draw to the attention of the directors of those companies coming within IAASA's financial reporting review remit the requirements applying in this area, thereby assisting them to ensure compliance with their disclosure obligations.

2. Relevant legislative provisions

The Takeover Regulations give effect to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids.

Regulation 21(2) of the Takeover Regulations require that the Director's Report of a company which has securities admitted to trading on a regulated market in the financial year in question shall contain specified information by reference to the end of the financial year concerned. The specific information is set out in Regulation 21(2).

¹ Available at <http://www.irishstatutebook.ie/2006/en/si/0255.html>

The text of Regulation 21 is reproduced in the Appendix to this Information Note for ease of reference.

The disclosures required by the Takeover Regulations are in addition to disclosures mandated by, for example, the *Main Securities Market Listing Rules and Admission to Trading Rules*² (12 December, 2011) of the Irish Stock Exchange.

3. Findings and remediating action taken on foot of IAASA's findings

As stated above, IAASA has identified a number of instances in which disclosures required by the Takeover Regulations have not been provided in equity issuers' annual reports.

Consequent upon correspondence between IAASA and the relevant issuers' directors, the directors concerned have provided undertakings to IAASA to provide the required disclosures in future annual reports.

IRISH AUDITING & ACCOUNTING SUPERVISORY AUTHORITY
16 MAY, 2012

² Available at http://www.ise.ie/ISE_Regulation/Publications_/Listing_Rules_.pdf

**Regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC))
Regulations 2006**

21. (1) The report, pursuant to section 158 of the Companies Act 1963, of the directors of a company which had securities admitted to trading on a regulated market in the financial year in question, shall contain, in addition to the information specified in that section, section 13 of the Companies (Amendment) Act 1986, the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005) and any other enactment, the information specified in paragraph (2).
- (2) The information mentioned in paragraph (1) is full information, by reference to the end of the financial year concerned, on the following matters –
- (a) the structure of the company's capital, including in particular –
 - (i) the rights and obligations attaching to the shares or, as the case may be, to each class of shares in the company, and
 - (ii) where there are two or more such classes, the percentage of the total share capital represented by each class,
 - (b) any restrictions on the transfer of securities in the company, including in particular –
 - (i) limitations on the holding of securities, and
 - (ii) requirements to obtain the approval of the company, or of other holders of securities in the company, for a transfer of securities,
 - (c) to the extent not already required to be disclosed pursuant to section 67 or 91 of the Companies Act 1990, in the case of each person with a significant direct or indirect holding of securities in the company, such details as are known to the company of –
 - (i) the identity of the person,
 - (ii) the size of the holding, and
 - (iii) the nature of the holding,
 - (d) in the case of each person who holds securities carrying special rights with regard to control of the company –
 - (i) the identity of the person, and
 - (ii) the nature of the rights,
 - (e) where –
 - (i) the company has an employees' share scheme, and
 - (ii) shares to which the scheme relates carry rights with regard to control of the company that are not exercisable directly by the employees,

how those rights are exercisable,

- (f) any restrictions on voting rights, including in particular –
 - (i) limitations on voting rights of holders of a given percentage or number of votes,
 - (ii) deadlines for exercising voting rights, and
 - (iii) arrangements by which, with the company's cooperation, financial rights carried by securities are held by a person other than the holder of the securities,
 - (g) any agreements between shareholders that are known to the company and may result in restrictions on the transfer of securities or on voting rights,
 - (h) any rules which the company has in force concerning –
 - (i) appointment and replacement of directors of the company, or
 - (ii) amendment of the company's articles of association,
 - (i) the powers of the company's directors, including in particular any powers in relation to the issuing or buying back by the company of its shares,
 - (j) any significant agreements to which the company is a party that take effect, alter or terminate upon a change of control of the company following a bid, and the effects of any such agreements,
 - (k) any agreements between the company and its directors or employees providing for compensation for loss of office or employment (whether through resignation, purported redundancy or otherwise) that occurs because of a bid.
- (3) The report of the directors referred to in paragraph (1) shall also contain any necessary explanatory material with regard to information that is required to be included in the report by that paragraph.
- (4) For the purposes of paragraph (2)(a) a company's capital includes any securities in the company that are not admitted to trading on a regulated market.
- (5) For the purposes of paragraph (2)(c) a person has an indirect holding of securities if –
- (a) they are held on his or her behalf, or
 - (b) he or she is able to secure that rights carried by the securities are exercised in accordance with his or her wishes.
- (6) Paragraph (2)(j) does not apply to an agreement if –
- (a) disclosure of the agreement would be seriously prejudicial to the company, and
 - (b) the company is not under any other obligation to disclose it.
- (7) The requirements of this Regulation apply in relation to reports of directors for financial years beginning on or after 20 May 2006.