

2008 No. 3122

COMPANIES

**The Companies Act 2006 (Extension of Takeover Panel
Provisions) (Isle of Man) Order 2008**

Made - - - - - *10th December 2008*

Coming into force - - - *1st March 2009*

At the Court at Buckingham Palace, the 10th day of December 2008

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 965 of the Companies Act 2006(a), by and with the advice and consent of Her Privy Council, makes the following Order:

Citation and commencement

1. This Order may be cited as the Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2008 and shall come into force on 1st March 2009.

Extension of Takeover Panel provisions to the Isle of Man

2. Chapter 1 of Part 28 of the Companies Act 2006 (takeovers etc: the Takeover Panel) shall extend to the Isle of Man with the modifications set out in the Schedule to this Order.

Judith Simpson
Clerk of the Privy Council

(a) 2006 c 46.

SCHEDULE

Article 2

Modifications with which Chapter 1 of Part 28 of the Companies Act 2006 extends to the Isle of Man

1. In section 948 (restrictions on disclosure)—
 - (a) omit subsections (4) and (5);
 - (b) in subsection (7) after paragraph (a) insert—

“(aa) the Financial Supervision Commission of the Isle of Man;” and
 - (c) in subsection (9) for “the Data Protection Act 1998 (c 29)” substitute “the Data Protection Act 2002 (an Act of Tynwald: c 2)”.
2. In section 949(2) (punishment of disclosure in contravention of section 948)—
 - (a) in paragraph (a) for “on indictment, to imprisonment” substitute “on information, to custody”; and
 - (b) for paragraph (b) substitute—

“(b) on summary conviction, to custody for a term not exceeding six months or to a fine not exceeding £5,000 (or both).”.
3. In section 950(1) (Panel’s duty of co-operation) after paragraph (a) insert—

“(aa) the Financial Supervision Commission of the Isle of Man;”.
4. In section 953(6) (punishment for failure to comply with rules about bid documentation)—
 - (a) in paragraph (a) for “indictment” substitute “information”; and
 - (b) in paragraph (b) for “the statutory maximum” substitute “£5,000”.
5. In section 955 (enforcement by the court)—
 - (a) in subsection (2) for “the High Court or, in Scotland, the Court of Session” substitute “the High Court of the Isle of Man”; and
 - (b) in subsection (3) omit paragraph (b) and the word “or” preceding it.
6. In section 961(3) (extent of exemption from liability in damages) for “section 6(1) of the Human Rights Act 1998 (c 42)” substitute “section 6(1) of the Human Rights Act 2001 (an Act of Tynwald: c 1)”.
7. In section 962(2) (exceptions to the privilege against self-incrimination) for “one of the following provisions” to the end substitute “section 5 of the Perjury Act 1952 (an Act of Tynwald: Volume XVIII of the Isle of Man Statutes, p. 86).”.
8. For section 964 (amendments to Financial Services and Markets Act 2000) substitute—

“Amendments to the Financial Services Act 2008 (an Act of Tynwald)”

- 964.**—(1) The Financial Services 2008 (an Act of Tynwald: c 8) is amended as follows.
- (2) In section 48 (interpretation)—
- (a) in subsection (1) insert at the appropriate places—

““the Panel on Takeovers and Mergers” means the body referred to in section 942(1) of the Companies Act 2006 (an Act of Parliament: c 46);” and

““the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and the Council of the European Communities(a);”;

(b) after subsection (4) insert—

“(4A) In this Act—

“public functions” includes—

- (a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;
- (b) functions conferred by or in accordance with any provisions contained in the Community Treaties within the meaning of the European Communities (Isle of Man) Act 1973 (c 14);
- (c) similar functions conferred on persons by or under provisions having effect as part of the law of—
 - (i) a part of the British Islands outside the Island; or
 - (ii) a country or territory outside the British Islands;
- (d) functions in relation to disciplinary proceedings of a description prescribed by regulations made by the Treasury.”.

(3) In paragraph 2 of Schedule 1 (functions of the Financial Supervision Commission)—

(a) in sub-paragraph (1) after paragraph (e) insert—

“(ea) the duty to take such steps as it considers appropriate to co-operate with the bodies specified in sub-paragraph (1A);”;

(b) after sub-paragraph (1) insert—

“(1A) The bodies referred to in sub-paragraph (1)(ea) are—

- (a) the Panel on Takeovers and Mergers;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive; and
- (c) any other person or body which exercises functions of a public nature, under legislation, in any country or territory outside the British Islands, that appear to the Commission to be similar to those of the Panel on Takeovers and Mergers.”.

(4) In paragraph 2 of Schedule 5 (exceptions from restrictions on disclosure) after sub-paragraph (4) insert—

“(4A) Paragraph 1 shall not preclude—

- (a) the disclosure by a recipient to which sub-paragraph (4B) applies of confidential information disclosed to it by the Commission if the Commission’s disclosure was made for the purpose of facilitating the carrying out of a public function;
- (b) the disclosure of such information by a person obtaining it directly or indirectly from a recipient to which subsection (4B) applies.

(4B) This sub-paragraph applies to—

- (a) the Panel on Takeovers and Mergers;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises public functions, under legislation in an EEA State other than the United Kingdom, that are similar to the Commission’s functions or those of the Panel on Takeovers and Mergers.”.

(a) OJ L 142, 30.04.2004, p. 12.

9. In Part 1 of Schedule 2 (specified persons for the purposes of section 948)—

(a) after paragraph 3 insert—

“3A. The Treasury of the Isle of Man.”;

(b) after paragraph 5 insert—

“5A. The Financial Supervision Commission of the Isle of Man.”;

(c) after paragraph 7 insert—

“7A. The Attorney General of the Isle of Man.”; and

(d) after paragraph 12 insert—

“12A. The members and officers of each of the Departments constituted by section 1(1) of the Government Departments Act 1987 (an Act of Tynwald: c 13).

“Member” has the same meaning as it has by virtue of section 7(1) of that Act.”.

10. In Part 2 of that Schedule (specified descriptions of disclosures for the purposes of section 948)—

(a) after paragraph 14 insert—

“14A. A disclosure for the purpose of enabling or assisting an inspector appointed by the High Court of the Isle of Man under the enactments relating to companies to discharge the functions of the inspector.”;

(b) after paragraph 22 insert—

“22A. A disclosure for the purpose of enabling or assisting a person conducting an investigation under—

(a) section 16 of the Collective Investment Schemes Act 2008 (an Act of Tynwald: c 7);

(b) Schedule 2 to the Financial Services Act 2008 (an Act of Tynwald: c 8); or

(c) Schedule 5 to the Insurance Act 2008 (an Act of Tynwald: c 16),

to exercise that person’s functions.”;

(c) after paragraph 25 insert—

“25A. A disclosure for the purpose of enabling or assisting the Financial Supervision Commission of the Isle of Man to exercise any of its functions.

25B. A disclosure for the purpose of enabling or assisting an auditor of a permitted person (within the meaning of the Financial Services Act 2008 (an Act of Tynwald)) to discharge the auditor’s functions.”;

(d) after paragraph 27 insert—

“27A. A disclosure for the purpose of enabling the Treasury of the Isle of Man to discharge its functions under the enactments relating to companies, insurance companies or insolvency.

27B. A disclosure for the purpose of enabling or assisting a receiver or liquidator (whether appointed in the Isle of Man or elsewhere and whether in respect of a person in the Island or elsewhere) to discharge the receiver or liquidator’s functions.”;

(e) after paragraph 29 insert—

“29A. A disclosure for the purpose of enabling or assisting—

(a) the Insurance and Pensions Authority of the Isle of Man; or

(b) the Retirement Benefits Schemes Supervisor of the Isle of Man,

to exercise their functions under the Retirement Benefits Schemes Act 2000 (an Act of Tynwald: c 14).”;

(f) after paragraph 32 insert—

“**32A.** A disclosure for the purpose of enabling the Assessor of Income Tax to discharge the Assessor’s functions under the enactments of the Isle of Man relating to income tax.”;

(g) in paragraph 39 after “Attorney General” insert “or the Attorney General of the Isle of Man”;

(h) after paragraph 48 insert—

“**48A.** A disclosure for the purpose of enabling or assisting the body administering a scheme under section 25 of the Financial Services Act 2008 (an Act of Tynwald) (compensation schemes) to discharge its functions under the scheme.”;

(i) after paragraph 52 insert—

“**52A.** A disclosure with a view to the institution of, or otherwise for the purposes of, civil proceedings arising under or of by virtue of the Financial Services Act 2008 (an Act of Tynwald).”;

(j) after paragraph 55 insert—

“**55A.** A disclosure for the purpose of enabling or assisting an official receiver appointed in the Isle of Man (whether in respect of a person in the Island or elsewhere) to discharge that person’s functions under the enactments relating to insolvency.”; and

(k) in paragraph 70 at the end add “as it has effect in the Island”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends the provisions of Chapter 1 of Part 28 of the Companies Act 2006 (c 46) to the Isle of Man with the modifications set out in the Schedule. Its purpose is to place on a statutory footing the role of the Panel on Takeovers and Mergers (“the Takeovers Panel”) in supervising relevant takeovers involving Isle of Man companies.

The modifications in the Schedule reflect differences in the legal system and governmental and regulatory structures of the Isle of Man, and make necessary consequential amendments to the Financial Services Act 2008 (an Act of Tynwald: c 8). Among other things, the modifications impose a duty on the Island’s Financial Supervision Commission to co-operate with the Takeover Panel.

The modifications also provide for the exchange of information about takeovers (subject to appropriate safeguards) between:

- (i) the Takeover Panel and those with regulatory, registry, prosecution and disciplinary functions on the Isle of Man in relation to companies and their officers; and
- (ii) those Manx authorities and corresponding bodies elsewhere.

The City Code on Takeovers and Mergers, which is referred to in the Order, can be found at <http://www.thetakeoverpanel.org.uk/new/codesars/DATA/code.pdf>.

The Order does not impose new costs on business, government or the voluntary sector.

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STATUTORY INSTRUMENTS

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Provisions) (Isle of Man) Order 2008

£5.00