

4. No frustrating action

Once a bona-fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bona-fide offer may be imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in general meeting. In particular the offeree company's board must not, without such approval, do or agree to do the following:-

- (a) issue any shares;
- (b) create, issue or grant, or permit the creation, issue or grant of, any convertible securities, options or warrants in respect of shares of the offeree company;
- (c) sell, dispose of or acquire assets of a material amount;
- (d) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or
- (e) cause the offeree company or any subsidiary or associated company to purchase or redeem any shares in the offeree company or provide financial assistance for any such purchase.

Where the offeree company is under a prior contractual obligation to take any such action, or where there are other special circumstances, the Executive must be consulted at the earliest opportunity. In appropriate circumstances the Executive may grant a waiver from the general requirement to obtain shareholders' approval.

Notes to Rule 4:

1. *Consent by the offeror*

The requirement of a shareholders' meeting may be waived by the Executive if the offeror (or, in the case of more than one offeror, all offerors) agrees.

2. *Service contracts*

The Executive will regard amending or entering into a service contract with, or creating or varying the terms of employment of, a director as entering into a contract "otherwise than in the ordinary course of business" for the purpose of this Rule 4 if the new or amended contract

or terms constitute an abnormal increase in his emoluments or a significant improvement in his terms of service.

This will not prevent any such increase or improvement which results from a genuine promotion or new appointment but the Executive must be consulted in advance in such cases.

3. ~~Directors' votes~~ Votes of controlling shareholders and directors

The Executive should be consulted on whether ~~directors'~~ shareholdings of controlling shareholders, directors and their respective associates should be voted at the shareholders' meeting, where an actual or potential conflict of interest exists.

4. Executive waiver

The Executive, when deciding whether to grant a waiver of the requirement to obtain shareholders' approval, will take particular account of what details, if any, the offeree company's board of directors has disclosed to its shareholders of any contractual obligation, duty or right, the fulfilment or enforcement of which may result in the offer being frustrated or the shareholders of the offeree company being denied the opportunity to decide on the merits of the offer.

~~5. Disclosure of standstill agreements~~

~~Any agreement between the offeree company and its shareholders or other parties which restricts the ability of, or restrains, any person from making a general offer for the offeree company must be fully disclosed to its shareholders on a timely basis by the board of the offeree company. Failure to do so will normally result in the Executive requiring independent shareholders approval of the legal action proposed to be taken by the board of the offeree company to enforce such agreements which could effectively frustrate the offer. [Moved to new Rule 33.]~~

5. Notice of general meeting

The notice convening a meeting of shareholders pursuant to this Rule 4 must include information about the offer or possible offer.

6. "Material amount"

For the purpose of determining whether a disposal or acquisition is of a "material amount" the Executive will, in general, apply the same tests as those set out in the Listing Rules to determine whether a transaction is a "discloseable transaction".

If several transactions relevant to this Rule 4, but not individually material, occur or are intended, the Executive will aggregate such

transactions to determine whether the requirements of this Rule 4 are applicable to any of them.

The Executive should be consulted in advance where there may be any doubt as to the application of the above.

7. When there is no need to proceed with an offer

The Executive may allow an offeror not to proceed with its offer if, prior to the posting of the offer document, the offeree company:-

(a) passes a resolution in general meeting as envisaged by this Rule 4;
or

(b) announces a transaction which would require such a resolution but for the fact that it is pursuant to a contract entered into earlier or that the Executive has ruled that an obligation or other special circumstance exists.

8. Established share option schemes

Where the offeree company proposes to grant options over *shares*, the timing and level of which are in accordance with its normal practice under an established share option scheme, the Executive will normally give its consent.

9. Interim dividends

The declaration and payment of an interim dividend by the offeree company, outside the normal course, during an offer period may be contrary to General Principle 9 and this Rule 4 in that it could effectively frustrate an offer. The offeree companies and its advisers must, therefore, consult the Executive in advance.