Generally

The ways in which companies can alter their structures are set out below.

Objects clause

This is less of a problem after CA 2006 s 31 which now provides that unless a company's articles specifically restrict the objects of a company, its objects are unrestricted.

Reduction of capital

See p. 162

If the company merely wishes to reduce its share capital it may do so under the procedures set out in Chapter 8. Sections 641–651 of the CA 2006 govern how a company may reduce its share capital.

Companies limited by shares – dual regime

There are two methods for companies limited by shares to reduce their share capital:

1 Court approved reduction of capital: available to both private and public companies limited by shares.
2 Reduction of capital supported by a solvency statement: only available to private companies limited by shares.

Unlimited companies

Unlimited companies are free to reduce their share capital by members' resolution without needing either court approval or a solvency statement (provided they have the power to do so in their articles of association).

The default position under the CA 2006 is that a company limited by shares is free to reduce capital by special resolution of its members (supported by either court approval or, for private companies only, a solvency statement) provided such a reduction is not prohibited by its articles (s 641(6)).

Section 641 of the CA 2006 does not apply to unlimited companies. Therefore, an unlimited company should not undertake a reduction of capital unless it has an article giving it express authority to do so.

Variation of shareholders' rights under the memorandum and articles or under the Companies Acts

See p. 144

If the company wishes to alter the rights of shareholders, this can be effected by the approval of the variation at class meetings followed by a special resolution of the company. There is, of course, always the possibility that dissentients within the class will apply to the court (see further Chapter 7).

The relevant sections apply only to registered companies and in addition do not enable any variation to be made in the rights of creditors, including debenture holders. Often, however, the trust deed of an issue of debentures will contain a similar variation clause under which the rights of debenture holders can be varied. In such a case, however, the only remedy of dissenting debenture holders is to plead a general fraud on the minority.

Purchase of own shares and financial assistance

As we have seen, the Companies Acts allow the purchase by a company of its own shares (see further Chapter 8), and lays down procedures under which a company may give, in appropriate circumstances, financial assistance for the acquisition of its shares (see further Chapter 8).

See p. 162

Re-registration

It should also be borne in mind that a private limited company may now re-register as unlimited, but only with the consent of all the members, and that an unlimited company may re-register as a private limited company, though with the preservation of the liability of former members (Insolvency Act 1986, s 77).

Other methods of changing corporate structures

In addition to the areas of reconstruction described above, for most of the transactions which a company wishes to enter into, the powers of the board combined with the approval of 51 per cent of the members in general meeting will suffice. Why, then, is it necessary to include in the CA 2006, ss 895, 896 and 899 and in the Insolvency Act 1986, ss 110 *et seqs* provisions to deal with arrangements and reconstructions?

The reason is that the provisions referred to above do not permit a company to *compel* a shareholder to sell or otherwise dispose of his shares, except as part of a reduction when he is, for example, paid off, or under CA 2006, ss 979(1)–(4) in a takeover (see below). Nor do they allow the rights of creditors to be affected or enable the liability of members to be increased without their individual consent. Nor, again, do they provide a means of amalgamating two or more companies or the transfer of the undertaking of one company to another, or the demerger or partition of a company into separate management in another company or companies.

Sections 895, 896 and 899 of the CA 2006 and s 110 of the Insolvency Act 1986 provide procedures for these kinds of changes to be made in a corporate structure.

In addition, there are some companies which cannot remedy internal problems by the use of the specific procedures referred to above. For example, the provisions allowing variation of shareholders' rights do not apply to companies which do not have a share capital. Therefore, if the rights of members are to be varied, ss 895, 896 and 899 will be used.

The provisions on schemes of arrangements and reconstructions in ss 425–427 of CA 1985 are now contained in Part 26 of the CA 2006 and the provisions on mergers and divisions in s 427A of public companies are now contained in Part 27 of the 2006 Act. Parts 26 and 27 came into force on 6 April 2008 as a result of The Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (SI 2007/3495). The sections in Part 26 of CA 2006 restate the provisions of ss 425–427 of the CA 1985, with some drafting amendments and consequential changes as a result of changes to provisions in other Parts of the CA 2006.

Part 27 of the CA 2006 restates the provisions contained in s 427A and Sch 15B to the CA 1985. However, the provisions have been reorganised into a separate chapter for each of mergers and divisions, thereby making the provisions more accessible, depending on the structure chosen by a public company for the scheme of arrangement.

Sections 895 and 896 restate ss 425(1) and (6) of the CA 1985 and grant the power for a company; any of the company's creditors or members; or a liquidator or administrator (if the company is being wound up or an administration order is in force in relation to it), to apply to the court to sanction a compromise or arrangement, as well as providing for the convening of the relevant meetings by the court.

Section 897 restates s 426 of the CA 1985 and prescribes the details that must be contained in the statement that accompanies a notice convening a meeting of creditors or members. The duty of directors and trustees to provide information to the company for the purposes of the statement (section 426(7), CA 1985) has been restated in section 898 of CA 2006.

Section 899 restates s 425(2) of the CA 1985 and sets out the condition that must be satisfied before the court can sanction a compromise or agreement, namely if, at a meeting properly summoned, a majority in number, representing 75 per cent in value of the creditors or class of creditors or members or class of members (as the case may be), agree to the compromise or arrangement. Section 899(2) provides that the persons who may apply for a court order sanctioning a compromise or arrangement are the same as those who may apply to the court for an order for a meeting (under s 896(2)). Section 899 also restates the first part of s 425(3) of the CA 1985, which provides that the court's order has no effect until a copy of it has been delivered to the Registrar (s 899(4)).

Section 900 restates ss 427(1) to (6) of the CA 1985 and provides powers for the court to make provisions to facilitate a reconstruction or amalgamation and requires a copy of any court order made pursuant to the court's powers to make provisions to facilitate a reconstruction or amalgamation to be delivered to the Registrar within seven days of the making of such court order.

Section 901 restates part of ss 425(3) and 425(4) of the CA 1985, but with consequential amendments to reflect the new provisions under the CA 2006 relating to a company's memorandum and articles of association. The requirement in s 425(3) of the CA 1985 for a copy of the court's order to be annexed to every copy of the company's memorandum is replaced with a requirement to annex a copy of any order under s 899 (order sanctioning a compromise or arrangement) and any order under s 900 (order facilitating reconstruction or amalgamation) that alters the company's constitution to every copy of the company's articles issued after the order has been made, unless the effect of the order has been incorporated into the articles by amendment (s 901(3)). A reference to the company's articles includes the memorandum, so the order must be attached to both.

In addition, if the order amends the company's articles or any resolution or agreement affecting the company's constitution, the copy of the order delivered to the Registrar must be accompanied by a copy of the company's articles or the relevant resolution or agreement, as amended. These changes have been included for consistency with other provisions in the CA 2006 concerning such orders.

Re NFU Development Trust Ltd [1973] 1 All ER 135

The company was limited by guarantee without a share capital and had 94,000 members. All members could vote at general meetings and in the event of a winding-up had a right to the surplus assets of the company in such proportions as the directors should determine. The company proposed a scheme of arrangement where in order to reduce the expense of administration in sending out notices and other communications to the 94,000 members, the number of members of the company would be reduced to seven, all the other members being deprived of their membership. At a meeting to consider the scheme 85 per cent of the votes were cast in favour of it. Application was then made to the court to sanction the scheme.

Held – by Brightman J – that the scheme would not be approved. It was not a compromise or arrangement within the terms of s 425. The rights of members were being expropriated without any compensating advantage and in this sense it could not be said that they were entering into a compromise or arrangement with the company.

Comment

The CA 1985, s 425 (ss 895 *et seq* in the CA 2006) had to be used here, albeit unsuccessfully, because the company did not have a share capital, which meant that the usual variation of rights procedure was not available. Brightman J suggested that the solution was that members who were not interested in receiving, e.g. reports and accounts, should be asked to resign.

Amalgamations and reconstructions

The term 'reconstruction' is not defined by company legislation. However, it may be said that in a reconstruction the undertaking of the company concerned is preserved and is carried on *after* reconstruction by substantially the *same people* as it was before.

The contrast with an 'amalgamation' is that while a reconstruction consists of the reorganisation of one company or group, an amalgamation involves two or more companies (e.g. A and B) being brought together under one. That one may be either a new company, C, to absorb both A and B, or one of the companies, say B, may absorb the other, A.

Nevertheless, CA 2006, ss 900 *et seq*, which is the major reconstruction section of the 2006 Act, can be used to effect an amalgamation by takeover by one company of another.

The takeover

Section 110 of the Insolvency Act 1986 is useful in obtaining mergers where the boards of the companies concerned are willing for the merger to take place. If they face opposition from members and/or creditors, then CA 2006, ss 895 *et seq* would be the better approach.

In a takeover proper, the board of the company to be acquired, say B, is not willing to co-operate so that the company seeking to acquire is forced to address an offer direct to the shareholders of B.

In an amalgamation or takeover involving A and B where A and B are in a similar line of business or are complementary, as where A makes the goods and B markets them, there is potentially a monopoly. In such a case the Secretary of State for BIS may, on the recommendation of the Director of Fair Trading, refer the merger to the Competition Commission under the Competition Act 1998. The merger will not then proceed until the Commission agrees that it should.

When a merger has been referred to the Commission, the parties are prohibited, for the duration of the inquiry, from acquiring shares in any of the other parties without the consent of the Secretary of State.

The Secretary of State is permitted to accept legally binding undertakings for part of the merged business to be disposed of, as an alternative to reference to the Commission.

Formerly these undertakings had to involve agreements to dispose of parts of the business. The Competition Act 1998 now provides for the acceptance of a wider range of undertakings, such as agreements for the future conduct of the business.

The Coalition Government announced as of 15 October 2010 that it will merge the Competition Commission into the Office of Fair Trading.

Amalgamation (or reconstruction) under the Insolvency Act 1986, s 110

Section 110 gives a liquidator power to accept shares as consideration for the sale of the property of a company, so that if A is in voluntary liquidation it may empower its liquidator by special resolution to sell its business and assets to B in exchange for B's shares.

The section would be used where there was no real opposition to an *amalgamation* by the members of A and no compromise with creditors was necessary. There are no provisions for variation of creditors' rights. Creditors are still entitled to prove in the liquidation of A.

If, in order to effect a *reconstruction*, the transfer of the undertaking of one company, A, to another, B, is to be associated with the liquidation of A, the scheme may be carried out under s 110 provided no compromises are required. For example, the section may be used to *demerge*, as where the various business activities of one large company, A, are placed under separate management in a number of other companies, B, C and D, and A is wound up. It may also be used to *partition* companies, as where a family company, E, is carrying on various activities and certain members of the family wish to carry on the activities separately through independent companies, F, G and H, and E is to be wound up.

Procedure

This is as follows:

(a) The company proposing to be wound up voluntarily will pass a special resolution for winding-up and appoint a liquidator.
(b) It will authorise the liquidator by special resolution to transfer the company's assets to a new company in return for shares in the new company. The new company may be one formed for the purpose or it may be an existing company.
(c) Such shares will be distributed among the members of the old company.
(d) Any member who did not vote in favour of the resolution can express his dissent by serving a written notice on the liquidator within seven days requiring him either:
    (i) to abstain from carrying the scheme into effect; or
    (ii) to purchase his shares at a price to be fixed by agreement or by arbitration, and the company must not be wound up until any such dissentient has been paid off, so that opposition from too many members could be costly.
(e) In ***Payne* v *The Cork Co Ltd*** [1900] 1 Ch 308 it was held that any provision in the articles preventing a member from dissenting was void.
(f) If an order for the compulsory winding-up of the company is made within a year, the special resolution authorising the transfer is void unless the leave of the court is given.
(g) It should be noted that in the case of a creditor's voluntary winding-up, the consent of the liquidation committee (if any) or the court is necessary. Apart from this there is no provision for a compromise with creditors.

Amalgamation (or reconstruction) under the CA 2006, s 895

If on a company *reconstruction* any compromise or arrangement is proposed between the company and its members or creditors s 895 must be used. The use of s 900 (as well) is essential for *amalgamation* where rights of members, debenture holders and creditors are to be compromised.

Procedure

This is as follows:

(a) The court has to be consulted at the outset and must be asked to direct the holding of meetings of members, creditors and debenture holders to discuss the proposed scheme. At this first stage the court will not exercise its discretion to call the meetings if, having regard to the opposition to the scheme by the holders of the majority of the votes, the meetings will serve no useful purpose. In addition, the court is concerned to see that the meetings are properly constituted. For example, a class meeting of shareholders may not be enough if there are groups within each class with different interests (***Re Hellenic and General Trust Ltd***, 1975; see further Chapter 1 See p. 2). The same problems can exist with creditors who may have different interests, e.g. some may have securities and others not.

However, in ***Anglo-American Insurance Ltd*** [2001] 1 BCLC 755 the High Court ruled that separate meetings of creditors were not required even though some were short term and some long term or resident in the USA. It appeared that they all had the same substantial rights under the scheme. The problems presented by a challenge to the suitability of the meetings held should not occur unless the company's creditor and/or member ***structure*** is significantly diverse. This view is supported by the decision in ***Re Hawk Insurance Co Ltd*** [2001] All ER (D) 289 (Feb) which is to the effect that unless significant and substantial differences in rights exist all creditors/members are capable of consulting together. The decision prevents unreasonable and oppressive complaints by minority interests but it has also, some say, significantly reduced the consideration and protection of minority concerns.

If the court agrees, the meetings will be summoned and full details of the scheme presented. The scheme may involve a winding-up of the company and a transfer of assets under CA 2006, ss 895, 896 and 899 (see below) or it may be an internal reconstruction of the kind seen in ***NFU Development Trust Ltd***, 1973. In particular, the scheme must disclose the effect of the amalgamation upon directors, especially where it involves the retirement of some of them and payment to them of compensation for loss of office. This must be disclosed in the notices and sanctioned by the members.

Where the rights of debenture holders are affected, a reference to the material interests, if any, of the trustees for the debenture holders must be disclosed as for directors.

(b) The scheme must be approved by a majority in number and three-quarters in value of the members, creditors and debenture holders. For example, if a company has 100 members and A has got 901 shares of £1 each, and the other 99 members have one share each, then the rest cannot force a scheme on A. Equally, A plus 49 of the rest cannot force a scheme on the remainder but A plus 50 of the rest can force the scheme on the others. The same rules apply to creditors and debenture holders. The court must then be asked to consent to the scheme as approved. The court will have to be satisfied in particular that creditors are not being prejudiced by the scheme of arrangement proposed by the company; and creditors have not only the right to hold their own meeting before the court hearing, as we have seen, but also to be represented in court on the issue of the court's approval. In practice, the company will make sure at a very early stage that creditors are fully satisfied with the proposed scheme and will not raise objections. Furthermore, the court must be satisfied that there is a genuine 'compromise or arrangement' within the meaning of CA 2006, s 895; this implies some element of accommodation on each side, so that a scheme involving the total surrender of the rights of one side will not be approved (see ***NFU Development Trust Ltd***, 1973).

(c) If the court approves the scheme it will do so by order and a copy of the court order certified is delivered to the Registrar at which point the scheme becomes binding on all concerned (s 901, CA 2006).

Although any member or creditor can ask the court to convene meetings under CA 2006, s 895, provided some compromise or arrangement is proposed, it appears that the court cannot do this unless the company has generated, or at least approves of, the scheme. Thus in ***Re Savoy Hotel Ltd*** [1981] 3 All ER 646, Trusthouse Forte had made a bid for the shares of Savoy but could not get acceptance from the major class of voting shareholders. Trusthouse Forte asked the court to convene a meeting of those shareholders under former CA 1985, s 425 so that the bid might be discussed with them, and hopefully they might be convinced to accept it. The judge held that he had no power to convene the meeting because the Savoy Company had not generated the scheme, nor did the board or the voting members appear to approve of it.

However, where the board and the majority of the shareholders of the company to be acquired wish to accept the bid a scheme under CA 2006, s 899 is useful, because s 899 only requires a majority in number and 75 per cent in value of the shareholders attending a meeting and voting in favour of the acquisition of their company to bind any dissenting minority, whereas under a normal takeover offer 90 per cent of the shareholders of the victim company must accept the bid before the predator company can compulsorily acquire the rest.

The provisions of the CA 2006, s 900 (formerly CA 1985, s 427)

Where a scheme under CA 2006, s 900 involves a winding-up, either to an internally reconstructed new company having the same members, debenture holders and creditors, or to a new or existing company as part of a merger, the court may by order:

(a) transfer assets to the other company;
(b) allot shares or debentures to members and debenture holders of the old company;
(c) allow the old company's actions to be brought in the name of the other company;
(d) dissolve the old company without a winding-up;
(e) provide for dissentients otherwise than outlined in the scheme, e.g. by requiring them to be paid off.

Orders made under s 900 must be filed with the Registrar (CA 2006, s 901).

Examples of schemes of internal reconstruction approved by the court under the CA 2006, s 900

Where s 900 is used internally, it represents a means by which a company can enter into a compromise or arrangement with its creditors and/or members without going into liquidation. Schedule 4, Part I of the Insolvency Act 1986 allows a compromise with creditors in the context of a winding-up, though Part I of the 1986 Act also provides a procedure for compromise with creditors, even though the company concerned is not in the course of winding-up. These provisions are considered in more detail later.

The court has approved the following types of internal reconstructions under ss 427(1) to (6) of the CA 1985 (which has been restated in CA 2006, s 900):

(a) Debenture holders have given extension of time for the payment of their loan capital.
(b) Debenture holders have accepted a cash payment less than the par value of the debentures.
(c) Debenture holders have given up their security, thus releasing it to secure further loans.
(d) Debenture holders have exchanged their debentures for shares.
(e) Creditors have taken cash in part payment of their debt and the balance in shares.
(f) Preference shareholders have given up their right to arrears of dividend.
(g) To simplify the capital structure of companies within a group, as where H is the holding company of several partly owned subsidiaries, all of which have old-fashioned complex capital structures comprising many types of shares carrying widely varying rights. The capital structure of the group has been simplified by exchanging all the subsidiary companies' shares held by minority shareholders for ordinary shares or even loan stock in the holding company by means of a scheme of arrangement.

As (g) above shows, reconstruction does not necessarily involve compromising with creditors, nor is it always set in a context of financial difficulty. It is, for example, a technique used for demerging and incentives to dismantle a large group of companies are given, as we have
See p. 258
seen, by the Companies Acts in terms of share premium (see Chapter 13).

An example of a demerger attracting share premium relief appears in Figures 24.1 and 24.2. The activities of the companies are indicated, as is the holding of H in each.

(a) A allots 1,000 £1 ordinary shares (valued at £6.00 per share) to H.
(b) H transfers its 75 per cent holding in B to A.
(c) C allots 1,000 £1 ordinary shares (valued at £6.00 per share) to H.
(d) H transfers its 65 per cent holding in D to C.
(e) H is then wound up, its holdings in A and C being sold, e.g. by a public placing.

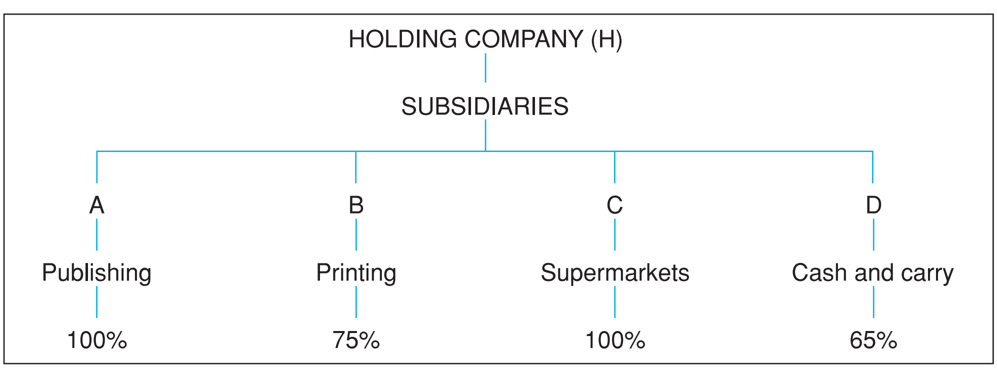

Figure 24.1 Old group structure

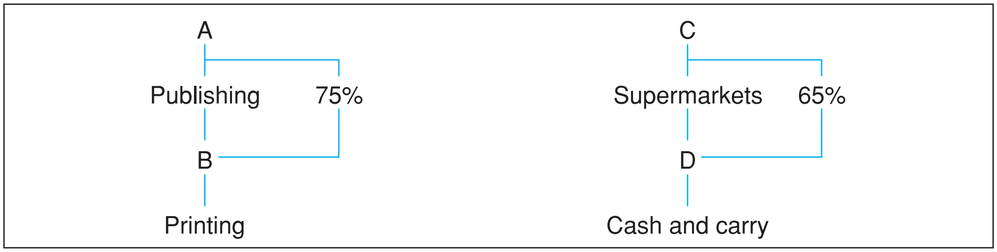

Figure 24.2 New demerged structure

Share premium relief: CA 2006, s 611 (formerly CA 1985, s 132)

A and C need only transfer to share premium the 'minimum premium value'. This is the amount, if any, by which the base values of the shares in B and D exceed the aggregate nominal value of the shares A and C allotted to H.

Base value is the lower of the cost to H of the shares in B and D and the amount at which the shares of B and D were stated immediately prior to the transfer in the accounting records of H.

Example

(i) Shares in B and C cost H £4,000 in each case but stood in the accounting records of H at £3,000: base value £3,000.

(ii) Nominal value of shares allotted by A and C was £1,000, so minimum premium value is £2,000. This goes to a share premium account in the books of A and C, but not the true value of the consideration received from B and D by allotting shares to H. The true value, of course, is the total value of the assets of B and D which could run into many thousands or millions of pounds.

It should be noted that share premium relief under s 611 is available where the consideration for the issue of the shares consists of any *non-cash assets* of the company providing the consideration and not merely of shares in another subsidiary of the holding company.

Takeovers

Section 942 of the Companies Act 2006 confers certain statutory powers upon the Takeover Panel but does not seek to regulate the constitution of the Panel itself. The composition of the Panel is to be found not in the legislation but in the Takeover Code.

This area of corporate activity is covered by the law of the Panel on Takeovers and Mergers. The Panel has been designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers under the EC Directive on Takeover Bids (2004/25/EC). Its statutory functions are set out in and under Chapter 1 of Part 28 of the Companies Act 2006. Additionally, there are now criminal penalties for insider dealing generally and during a takeover, under the Criminal Justice Act 1993. If applicable, one must also consider The Unregistered Companies Regulations 2009.

The majority of the rules relating to takeovers are still contained in the Takeover Code, which was given a statutory basis by Part 28 of the CA 2006 in relation to all offers and other statutory merger transactions to which it applies. The General Principles and Code Rules were amended in CA 2006 to implement certain of the provisions of the Takeovers Directive as well as to bring into effect a number of other amendments that had been the subject of a public consultation process by the Panel and the Code Committee, including the abolition of the Rules Governing Substantial Acquisitions of Shares (SARs)

Definition

On the assumption that A plc is acquiring B plc, a takeover may be defined as an offer to all the shareholders of B or one or more classes of shareholders of B, to buy their shares for cash and/or securities in A, the purpose being that A will obtain control of B. A's offer is normally conditional upon sufficient acceptances to ensure control.

A takeover proper occurs when the directors of B do not support the bid. In such a situation A must deal direct with the shareholders of B. As we have seen, if the directors of B do support a merger with A, then they can call the necessary meetings and in general terms organise an amalgamation by methods set out in s 110 of the Insolvency Act 1986 or the CA 2006, s 895 which have already been dealt with.

Why the City Code?

The City Code on Takeovers and Mergers and the Takeover Panel which administer it provide legal control in regard to some of the following:

(a) The offer document

This is used to convey the offer to the shareholders of the company to be acquired, in this case B, is a prospectus and governed by the rules of the Financial Services and Markets Act 2000 and the Stock Exchange Listing requirements.

However, the documents issued by the offeror (or the offeree board, giving, for example, advice to its members whether or not to accept) are also governed by section J of the City Code, Rules 23–27. The full details are beyond the scope of a book of this nature. However, Rule 23 expresses the general standard of care in regard to documents from the offeror and offeree board as follows:

> Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer. Such information must be available to shareholders early enough to enable them to make a decision in good time. The obligation of the offeror in these respects towards the shareholders of the offeree company is no less than an offeror's obligation towards its own shareholders.

Of major importance is the requirement to give stated financial information about the offeror company (see Rule 24.2). This includes, for the last three financial years for which information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, minority interests, the amount absorbed by dividends and earnings and dividends per share.

(b) Partial bids

In the absence of the City Code there would be nothing to prevent a company making a partial bid in order to achieve control of a company 'on the cheap' as it were. It is not in practice necessary to acquire 50 per cent or more of the voting power of a company in order to control it. The making of partial bids is controlled by the Code and there are provisions under which a mandatory bid must be made for the remainder of the shares of the company to be acquired once a certain number of shares in that company has been obtained. These matters will be considered in more detail later.

(c) Insider dealing

The Code deals with insider trading in quoted companies and the Takeover Panel can publish reprimands in respect of those who deal inside. These are extra-legal sanctions, the Criminal Justice Act 1993 providing for criminal sanctions. The contribution in this field made by the Financial Services and Markets Act 2000 on market abuse under the control of the Financial Services Authority has already been noted (see Chapter 13 ➡).

➡ See p. 259

(d) Misleading profit forecasts

Directors and other officers of companies do, from time to time, make public statements as to the future profits of companies which are misleading. The Panel has been active in this area in requiring the publication of corrections of misleading statements.

In addition, when a forecast of profit before taxation appears in a document addressed to shareholders, there must be included forecasts of taxation, extraordinary items and minority interests.

(e) Tactics of directors

The directors of the company to be acquired have in the past used tactics to frustrate the bid and retain control. The Panel takes action on the basis of the Code's general principle 7 which states:

> At no time after a bona fide offer has been communicated to the board of the offeree company or after the board of the offeree company has reason to believe that a bona fide offer might be imminent may any action be taken by the board of the offeree company in relation to the affairs of the company, without the approval of the shareholders in general meeting, which could effectively result in any bona fide offer being frustrated or in the shareholders being denied an opportunity to decide on its merits.

In the past, directors' tactics used to frustrate a bid have often consisted of the issue of additional shares to a company or person(s) who would not accept the bid, without consulting the shareholders of the victim company as to whether this tactic of the directors was acceptable. Obviously general principle 7 would apply to such a situation but now the 2006 Act provides, as we have seen, that the authority of the company is required before the allotment of certain securities by the directors (see Chapter 11 ➡). This is reinforced by Rule 21 which carries a similar provision regarding the issue of shares but extends to the making of other contracts otherwise than in the ordinary course of business.

➡ See p. 226

However, there are some situations where general principle 7 and Rule 21 would be the only sanction, for example where the directors lease off the company's property to put it beyond the control of the bidder so that he does not continue with his bid. If we assume that company B, our victim company, owns the freehold of a large block of flats which a bidder for company B wishes to demolish in order to develop the site, then if the directors of B were to lease out the block of flats for, say, 99 years, thus preventing the bidder, even if he were successful, from demolishing the premises for that period so that he did not proceed with his bid, then such a tactic would, unless approved by ordinary resolution of the members, infringe general principle 7 and Rule 21 and the 'proper purpose' rule and could be the basis of a complaint to the Panel and action by it to prevent infringement of the Code.