

## Chapter 22

### Corporate Reconstructions and Takeovers

Here, basic guidance to the end-of-chapter questions will be provided.

**1. Define the following terms:**

- **scheme of arrangement;**
- **takeover;**
- **mandatory offer;**
- **squeeze-out rights;**
- **sell-out rights.**

Term	Definition
scheme of arrangement	A compromise or arrangement between a company and (i) its creditors, or any class of them; or (ii) its members, or any class of them
takeover	A transaction under which one company acquires sufficient shares in another company to give it control
mandatory offer	An offer to purchase the shares of all shareholders that must be made by a person who acquires an interest in shares that carry at least 30 per cent of the company's voting rights
squeeze-out rights	The ability of a bidder to compel the remaining shareholders to sell their shares
sell-out rights	The ability of a shareholder to compel a bidder to purchase his shares

**2. State whether each of the following statements is true or false and, if false, explain why:**

- **a scheme of arrangement is a binding agreement between a company and (i) its members, (ii) its directors, or; (iii) its creditors;**
- **a scheme of arrangement involves two court hearings;**
- **a scheme of arrangement binds only those persons who voted for it;**
- **the Takeover Code is not concerned with the financial or commercial merits of a takeover bid, nor is it concerned with the implications on competition;**
- **if a person acquires at least 30 per cent of a company's shares, he must make an offer to all the remaining shareholders;**
- **squeeze out and sell out rights come into effect once the bidder has acquired over 50 per cent of a company's shares.**

- **A scheme of arrangement is a binding agreement between a company and (i) its members, (ii) its directors, or; (iii) its creditors:** This statement is false. A scheme of arrangement cannot be between a company and its directors.
- **A scheme of arrangement involves two court hearings:** This statement is true.

- **A scheme of arrangement binds only those persons who voted for it:** This statement is false. A scheme of arrangement binds all those party to it, even if they voted against it.
- **The Takeover Code is not concerned with the financial or commercial merits of a takeover bid, nor is it concerned with the implications on competition:** This statement is true.
- **If a person acquires at least 30 per cent of a company's shares, he must make an offer to all the remaining shareholders:** This statement is true.
- **Squeeze out and sell out rights come into effect once the bidder has acquired over 50 per cent of a company's shares:** This statement is false. Squeeze-out and sell-out rights only come into effect once the bidder has acquired at least 90 per cent of the target company's shares.

### 3. Analyse the advantages and disadvantages of the scheme of arrangement.

#### Introduction

- Every essay should begin with a succinct introduction that demonstrates that you understand the essay question. Briefly explain what the essay is about and set out what the essay will discuss and how it will be structured.
- This question requires you to discuss the advantages and disadvantages of a scheme of arrangement.

#### Advantages

- An advantage of a scheme of arrangement is its flexibility. The CA 2006 sets out the process for approving a scheme, but it imposes no limitations in terms of the scheme's content. As a result, a scheme of arrangement is very flexible and can be used in a wide range of situations to effect a range of transactions.
- For example, a scheme of arrangement can be used to effect a takeover, merge two or more companies, aid in the rescue of a company, or to reorganise a company's share capital.
- Another advantage of a scheme of arrangement is that, once approved, it binds all persons party to it, even if they did not vote for it.
- Another advantage is that the court's heavy involvement in the approval process provides certain safeguards (e.g. that the proper process has been followed, that the views of those who did not approve the proposal were given impartial consideration).

#### Disadvantages

- The principal disadvantage of a scheme of arrangement is the complex process for getting a scheme approved.
- At stage 1, applications must be made to the court to summon the relevant meetings of members and/or creditors (or relevant classes of members/creditors). This means that the applicant must correctly identify which members and creditors are affected by the scheme but, where only certain classes of member/creditor are affected, this can be

difficult. If the applicant gets this wrong, the court will likely reject the application at stage 3.

- Throughout the process, the company is required to provide the court with detailed explanatory statements, which can be a burdensome obligation.
- The court is involved twice (at stage 1 and stage 3) and this can be costly and time consuming.

### **Conclusion**

- Every essay should end with a conclusion. Briefly summarise the main points/arguments and, if possible, come to a conclusion regarding the essay topic (i.e. which of the opposing views has the stronger arguments).

**4. Spartan plc is considering diversifying its business into the manufacture of certain PC components. It has acquired 29.6 per cent of the shares in PC Tech plc, a company that specializes in manufacturing PC components. Spartan is considering taking over PC Tech, but before it makes an offer, it seeks your advice regarding the following:**

- **what percentage of PC Tech's shares will Spartan need to acquire in order to take it over;**
- **a shareholder who owns 2 per cent of PC Tech's shares has offered to sell them to Spartan, and Spartan seeks your advice on whether it should accept this offer;**
- **if Spartan were to make a bid for PC Tech, explain the principal rules that Spartan would need to comply with;**
- **the directors of Spartan have stated that, ideally, they would like PC Tech to become a wholly-owned subsidiary of Spartan and seek your advice as to how to achieve this aim.**

### **Taking a company over**

- There is no universal, precise definition of exactly when one company is taken over by another. The generally accepted principle is that a company (company A) will take over another (company B) if company A acquired enough shares in company B to give it control.

### **Should Spartan purchase the shares in PC Tech?**

- Spartan has acquired 29.6 per cent of PC Tech's shares. It needs to be careful when acquiring any further shares as this could trigger the mandatory offer rule.
- Rule 9 of the Takeover Code provides that if Spartan acquires an interest in shares that carry at least 30 per cent of the voting rights in PC Tech, then Spartan will need to make an offer to the holders of any class of equity shares. As a result, if Spartan acquires the further shares, it will need to make an offer to purchase the shares of the other shareholders.

- Accordingly, Spartan should only purchase the shares if it is in a financial position to make an offer to purchase the other shares and have sufficient reserves to pay for those shares.

### **Making a bid**

- Explain the principal rules relating to a bid, namely:
  - (a) the rules relating to the announcement of an offer or possible offer;
  - (b) ensuring the announcement contains the required information;
  - (c) ensuring that the information provided to the offeree's shareholders is provided at the same time and in the same manner;
  - (d) ensuring that the required documentation is published at the required time, notably the offer document;
  - (e) ensuring that the offer timetable is adhered to.

### **PC Tech becoming a wholly-owned subsidiary**

- If Spartan wishes to acquire PC Tech as a wholly-owned subsidiary, there are several possible ways to do this.
- The easiest method would be for all of PC Tech's shareholders to agree to sell their shares to Spartan.
- However, there may be shareholders who do not wish to sell their shares to Spartan. Despite this, Spartan could still acquire PC Tech as a wholly-owned subsidiary if it can acquire at least 90 per cent in value of PC Tech's shares and those shares carry at least 90 per cent of the voting rights. In such a case, Spartan will be able to exercise squeeze-out rights and give notice to PC Tech's remaining shareholders that it wishes to acquire their shares. This compels the remaining shareholders of PC Tech to sell their shares to Spartan, unless they successfully challenge the notice.