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Private companies and takeover regulations

THE 2008 Companies Act created the Takeover Regulation Panel to regulate certain transactions affecting companies.

The main purpose of the Panel is to look after the interests of minority shareholders by ensuring that certain information is available to shareholders whenever a takeover of a company occurs. With this information, shareholders are able to fully consider their position and make an informed decision to protect their investment.

The previous Companies Act had created a similar body called the Securities Regulation Panel. The main difference between the new Companies Act and the old Companies Act is that the Panel now has jurisdiction to regulate not only large transactions affecting public and state owned companies, but also small private companies.

The Panel now regulates what

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are termed "Regulated Companies" and "Affected Transactions".

A Regulated Company is a company in which 10% or more of its shares have been transferred during the last 24 months, irrespective of the type or size of the company. Regulated Companies and their shareholders may not implement "Affected Transactions" without complying with the Takeover Regulations (being the takeover regulatory framework created by the New Companies Act and Companies Regulations) and being supervised by the Panel. The Affected Transaction may only be implemented if

the Panel has issued a compliance certificate or, on application, exempted the company from having to comply with the Takeover Regulations.

An "Affected Transaction" includes:

- the transfer of shares where the acquirer's shareholding is increased to over 5% or a multiple of 5%;
- the disposal of the greater portion of the assets of the company;
- an amalgamation or merger; or
- the acquisition of all of the shares of a company.

Therefore a simple share transfer between two shareholders of a private company (where there has

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already been a transfer of more than 10% of its issued Share Capital during the last 24 months) and where the acquirer's shareholding increases to 5% or a multiple of 5% is governed by the Takeover Regulations and is subject to the Panel's supervision.

Although the protection of minority shareholders remains important, the new Companies Act and the Takeover Regulations have unnecessarily regulated private companies and placed undue restrictions on their shareholders.

Too many companies, many of which are not even aware of the application of the Takeover Regulations, are being unnecessarily caught in the net created by these provisions and are subject to the administrative headaches and costs associated with them.

The Panel seems to have recognised that the Takeover Regula-

tions have gone too far. In a recent announcement by the Executive Director of the Panel, it was acknowledged that the sections affecting private companies should be amended or repealed.

Until this occurs any share or merger transaction affecting a private company needs to be carefully analysed so as to ensure there is compliance with the Takeover Regulations.

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