

Right to buy out shareholders dissenting from scheme or contract approved by majority and right of such shareholders to be bought out

457. (1) In this section “relevant scheme, contract or offer” means a scheme, contract or offer involving the acquisition by a person (in this Chapter referred to as the “offeror”) of the beneficial ownership of all the shares (other than the shares in which the offeror already has a beneficial interest) in the capital of a company (in this section referred to as the “offeree company”).

(2) This section applies where the relevant scheme, contract or offer—

(a) has become binding or been approved or accepted in respect of not less than 80 per cent in value of the shares affected, and

(b) has become so binding or been so approved or accepted not later than the date 4 months after the date of publication generally to the holders of the shares affected of the terms of such scheme, contract or offer,

but subject to section 458 as regards the right of the offeror under subsection (3) (offeror's right of buy-out).

(3) Where this section applies, the offeror shall be entitled to acquire the beneficial ownership of all or any of the remaining shares affected from the dissenting shareholder or shareholders on—

(a) the same terms as have become binding or been approved or accepted as mentioned in subsection (2), or

(b) where an application is made under section 459 (5)(a), any different terms that the court specifies,

but only if, in either case, the following conditions are satisfied.

(4) Those conditions for such acquisition of the shares of a dissenting shareholder are:

(a) the offeror, at any time before the expiration of the period of 6 months after the date of the publication referred to in subsection (2)(b), gives notice in the prescribed form to the dissenting shareholder that the offeror desires to acquire the beneficial ownership of his or her shares (which notice is referred to in this section as the “call notice”); and

(b) either—

(i) 30 days pass after the date that the call notice was given without an application being made to the court under section 459 (5)(a) by the dissenting shareholder or, following such an application to the court by the dissenting shareholder, the court nonetheless approves such acquisition; or

(ii) an application is made to the court under section 459 (5)(a) by the dissenting shareholder within that period but is withdrawn.

(5) Where the scheme, contract or offer provides that an assenting shareholder may elect between 2 or more sets of terms for the acquisition by the offeror of the beneficial ownership of the shares affected—

(a) the call notice shall be accompanied by, or embody, a notice stating the alternative sets of terms between which assenting shareholders are entitled to elect and specifying which of those sets of terms shall be applicable to the dissenting shareholder if he or she does not, before the expiration of 14 days after the date of the giving of the notice, notify to the offeror in writing his or her election as between such alternative sets of terms, and

(b) the terms upon which the offeror shall under this section be entitled and bound to acquire the beneficial ownership of the shares of the dissenting shareholder shall be the set of terms which the dissenting shareholder shall so notify or, in default of such notification, the set of terms so specified as applicable, but subject, in either case, to subsection (3)(b).

(6) Save where the offeror has given a call notice to the particular dissenting shareholder, the offeror shall, within 30 days after the date of the scheme, contract or offer becoming binding, approved or accepted, give notice of that fact in the prescribed manner to each of the dissenting shareholders (which notice is in this section referred to as an “information notice”).

(7) The offeror shall be bound to acquire the beneficial ownership of the remaining shares affected on the same terms as have become binding or been approved or accepted (5)(b), on any different terms that the court specifies) if—

(a) the offeror has become entitled to acquire the shares under subsection (3), or

(b) save where paragraph (a) applies, the dissenting shareholder, at any time within 3 months after the date of the giving of the information notice to him or her, requires the offeror to acquire his or her shares.

(8) Where the consideration for the acquisition pursuant to subsection (3) or (7) of the share or shares of a person who is resident in the State is paid, wholly or partly, in cash by way of cheque that cheque shall, unless that person agrees otherwise, be one drawn upon an account operated with a clearing bank or such other credit institution as may be prescribed, being an account operated with that bank or other institution at a branch of it established in the State.