

## **REQUIRING INFORMATION AND DOCUMENTS**

1. Section 947 of the Companies Act 2006 (the Act) gives the Panel power to require documents and information. This power will not apply to the Channel Islands or the Isle of Man until the provisions of Chapter 1 of Part 28 of the Act are extended to them pursuant to the Act or equivalent statutory provision is made in those jurisdictions. Where documents or information are reasonably required in connection with the exercise of its functions, the Panel may by notice in writing require any person: (i) to produce any documents that are specified or described in the notice; and/or (ii) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice, within such reasonable period and at such place as is specified in the notice. The Panel may also require any information or document so provided to be verified or authenticated in such manner as it may reasonably require.
2. By a Resolution of the Panel adopted on 10 January 2007, the Panel delegated to the Executive and authorised the Executive, acting through its Director General (or, where he is unavailable, any Deputy Director General) to exercise, on behalf of the Panel, the power to require documents and information under Section 947.
3. This document sets out how the Executive intends to exercise the power under Section 947 on behalf of the Panel.

### **Requests for information and documents**

4. Paragraph 9(a) of the Introduction to the Code provides that, in dealing with the Panel, a person must disclose to the Panel any information known to them and relevant to the matter being considered by the Panel (and correct or update that information if it changes), and that a person dealing with the Panel or to whom enquiries or requests are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel. Reference to the Panel in paragraph 9(a) includes the Executive.
5. In some cases, where the Executive has determined that it requires the production of documents or the provision of information by a person in order to enable it to discharge its functions, it may, rather than exercising the powers of the Panel under Section 947, request that person to produce the documents or provide the information in question. Where it makes such a request, the Panel will specify a date by which it expects the documents and/or information requested to be produced and/or provided. The Executive expects prompt co-operation and assistance from those to whom such requests are directed.
6. The making of a request of this kind will not prevent the Executive from subsequently exercising the powers of the Panel under Section 947 by issuing a notice requiring the production and/or provision of the same documents and/or information. The Executive will not usually issue a notice under Section 947 until after the date specified in any request for production and/or provision of the documents and/or information.

7. However, the Executive does not intend, in all cases, to request documents and/or information prior to issuing a notice under Section 947. The Executive shall, where it considers necessary, appropriate or expedient, issue a notice under Section 947 without having previously made any request for production and/or provision of the documents and/or information in question.

### **Criteria for exercising the power to require information and documents**

8. In considering whether to issue a notice under Section 947, the Executive may take into account some or all of the following criteria:

8.1 whether the person to whom the notice is to be directed has previously been asked to produce the documents and/or provide the information in question and that person's response to that request;

8.2 the potential risk, if any, of the documents and/or the information being destroyed or taken outside the United Kingdom or otherwise rendered unavailable to the Executive if a notice under Section 947 is not issued;

8.3 the urgency of the matter;

8.4 the extent to which the Executive may be able to obtain the documents and/or the information by other means;

8.5 whether there are serious or systemic weaknesses in the management systems or internal controls of the person to whom the notice is to be directed which give rise to concern that the documents and/or information may be rendered unavailable to the Executive if a notice under Section 947 is not issued;

8.6 whether the person to whom the notice is to be directed has previously co-operated with Executive investigations and requests in the same or any other matter;

8.7 whether the person to whom the notice is to be directed has previously attempted to conceal information from, provide misleading information to or otherwise mislead the Executive (or is suspected by the Executive on reasonable grounds of having done so);

8.8 whether the documents and/or information are required in order to respond effectively to a request by the European Commission or by a supervisory authority in another Member State (whether or not in connection with the Panel's duty of co-operation under Article 4(4) of Directive 2004/25/EC on takeover bids (the Directive)) or by any other supervisory or regulatory authority;

8.9 the extent to which the documents and/or information are required for the purpose of investigating any actual or alleged breaches of the Code or other rules applicable to takeovers, including rules made or introduced pursuant to the Directive; and

8.10 any other matter which the Executive considers relevant.

## **Notices under Section 947**

9. Where the Executive issues a notice under Section 947 it will specify or describe clearly the documents which must be produced and/or information which must be provided. Where the Executive is able to identify precisely the documents and/or information which it requires and knows those documents and/or information to exist, it will specify the documents and /or information required in the notice. In all other cases, the Executive will describe the documents and/or information required with as much precision and in as much detail as is reasonably possible in order to assist the person from whom the documents and /or information are requested in complying with the notice.

10. A notice issued by the Executive under Section 947 will be signed by the Director General (or, where he is unavailable, one of the Deputy Directors General).

11. A notice issued by the Executive under Section 947 will specify:

11.1 the legal authority under which the Notice is issued;

11.2 the addressee(s) of the Notice;

11.3 any specific documents which must be produced;

11.4 any general categories of documents which must be produced;

11.5 any specific information which must be provided;

11.6 any general categories of information which must be provided;

11.7 the date on which any documentation and/or information so required is to be produced/provided;

11.8 the place at which any documentation and/or information so required is to be produced/provided;

11.9 the manner and/or form in which any documentation and/or information so required is to be produced/provided; and

11.10 a brief explanation of measures available to the Executive in the event of non-compliance with the Notice.