

WELCOME NEWS WITH THE AUTUMN STATEMENT

The UK Shareholders' Association is delighted by the Government announcement today that takeovers by schemes of arrangement are to be subject to tax.

Takeovers by schemes of arrangement, under Part 26 of the Companies Act, take place without the participation of and sometimes without even the knowledge of a very substantial body of private investors. These are investors in pooled nominee accounts, whose names are not on the share register of a target company and therefore invisible to the company, to the acquirer, to the High Court which presides over the process (little more than a rubber stamp) and to the Takeover Panel (which loftily chooses to ignore the matter).

Unlike ordinary takeovers, where each beneficial owner of shares in the target company must be persuaded by an acceptable price to surrender his or her shares, takeovers by schemes of arrangement are decided by a voting process. A qualified majority of shares in favour is required for the takeover to succeed, but the number of shares voted is irrelevant.

Unlike an ordinary takeover, where 90 percent of the shares must be surrendered voluntarily before the acquirer can "squeeze out" the remaining tenth, a takeover by scheme of arrangement delivers 100 percent of the shares to it, regardless of how few shares are actually voted. Every beneficial owner receives payment, but those in nominee accounts who did not want to sell, or did not want to sell at the price offered are, with very few exceptions, powerless.

Acquisitive companies like the arrangement, because they can obtain full control by paying a lower price than would be necessary to persuade those with as many as 90 percent of the shares to part with them. City institutions like the arrangement, because the documents which must be circulated give lucrative business to lawyers, accountants and others too. Company directors in target companies are seemingly all too easily persuaded that, an offer having been received and confirmed as "fair value" by a supposedly independent agent, this must be put to registered shareholders with their personal support. Major shareholders, investing other people's money, are usually part of the process by which such schemes see the light of day, so their support is usually assured.

It's the private investors, with their own money at stake, who are out of the loop and with an increasing number of them obliged to be in pooled nominee accounts they may not even know of the takeover until it has been concluded and their shares acquired. Some account providers do enable client participation, but this inevitably comes with delays and with so many companies discarding the 21 day protection given by the EU and adopting a 14 day notice period instead, this doesn't lend itself to proper assessment of what is on offer and gives virtually no time at all to attend a meeting or vote. Private investors can be left feeling cheated.

Until now, takeovers by schemes of arrangement have had the additional advantage of being free of stamp duty on the shares acquired. This has been an unjustifiable loophole which has given added incentive to use such arrangements. As these arrangements have been against the interests of private investors generally, the UK Shareholders' Association is delighted with the Government's decision announced today, which at least marginally reduces the incentive to use Part 26 for a purpose which seems unlikely to have been intended.