

CREEPING' UNDER RULE 7(E)

A holder or controller of between 50% and 90% of the voting rights in a Code company can increase its control percentage by “creeping” under rule 7(e) of the Code.

Rule 7(e) allows a person to increase its holding by no more than 5% of the Code company's total voting rights in a 12 month period. The increase is to be calculated by reference to the lowest holding during the last 12 months.

The effect is that a person cannot take advantage of rule 7(e) if their control percentage has already increased by 5% or more from its lowest point over the last year, regardless of how that increase in control percentage came about.

Example: If a shareholder's control percentage of a Code company went from 0% to 75% by a shareholder-approved allotment made on 31 March 2002, that shareholder is not able to increase its control percentage again until after 31 March 2003 (unless it made a Code offer or obtained shareholder approval). It could then move up to 80% during the next twelve months.

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