

Decision No. E/2/2019

Issuing the Takeover and Acquisition Regulation

Based on the Capital Market Law enacted by Royal Decree No. 80/98; and

The Executive Regulation of the Capital Market Law issued by Decision No. 1/2009;
and

The approval of the Board of Directors of the Capital Market Authority; and

The approval of the Ministry of Finance; and

Based on the requirements of the public interest,

It has been decided

First Article

The provisions of the attached Regulation shall have effect with regard to the takeover and acquisition of shares of a public joint stock company listed on the Muscat Securities Market.

Second Article

Anything that violates the attached Regulation or is inconsistent with its provisions shall be repealed.

Third Article

This Decision shall be published in the Official Gazette and shall have effect on the day following the date of publication.

Issued on: 3 Ramadhan 1440 H

Corresponding to: 9 May 2019

Yahya Said Abdullah Al Jabri

Chairman of the Board of Directors of the Capital Market Authority

TAKE OVER AND ACQUISITION REGULATION

CHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

Article (1): In the application of this Regulation, the following words and expressions shall have the meaning respectively ascribed to them.

“**CMA**” means the Capital Market Authority.

“**MSM**” means the Muscat Securities Market.

“**Company**” means a public joint stock company listed on the MSM.

“**Associate company**” means a concern on which the company has influence in relation to its financial and operational decisions and treated as such according to IFRS for the purposes of presenting financial statements.

“**Subsidiary**” means a concern which is financially and operationally controlled by the company and treated as such according to IFRS for the purposes of presenting financial statements.

“**Acquisition**” means acquiring shares in the company.

“**Takeover**” means an offer made by a person, jointly or severally, to acquire 25% or more of the voting shares in the company. Any subsequent offer shall be deemed a competing offer.

“**Offer document**” means the document containing all the statements and information related to the takeover offer sent to the shareholders of the offeree by the offeror.

“**Person**” means a natural or juristic person.

“**Offeror**” means any person making a takeover offer, jointly or severally.

“**Offeree**” means holders of voting shares of the offeree to which the takeover offer relates, other than the offeror.

“Compulsory acquisition” means the acquisition by the offeror of all remaining shares of an offeree after obtaining the approval of the CMA and acceptances of the shareholders at 90% of the voting shares, excluding shares already held by the offeror or persons acting in concert with the offeror.

“Adviser” means an Issue Manager licensed by the CMA and appointed by the offeror.

“Independent adviser” means an Issue Manager licensed by the CMA and appointed by the offeree or offeror (where there is a conflict of interest with the offeree or on exercising a reverse takeover).

“Takeover offer advertisement” or “press advertisement” means an advertisement to be issued in at least two (2) newspapers, one of which shall be in Arabic language and one in the English language for two (2) consecutive days.

“Persons involved ” means every person involved in the takeover offer such as the offeror, offeree, the adviser, independent adviser and persons acting in a manner affecting the takeover offer such as auditors or legal advisors.

“Reverse takeover” means a situation where an offeror makes a takeover offer for the voting shares of an offeree by means of an exchange of shares, such that if the takeover offer is accepted, the offeree shareholders would have voting shares in the offeror.

“Relatives” means the spouse and relatives up to the second degree.

“Conflict of Interest” means a situation where the person is in a position whereby he can directly or indirectly obtain personal or professional interest and benefit from accessing information obtained in such capacity.

Article (2): This Regulation shall apply to:

- (a) Any person who owns, jointly or severally, less than 25% of the voting shares in the public joint stock company, and intends to acquire **25% or more** of its shares.
- (b) Any person who owns, jointly or severally, 25% of the voting shares in the public joint stock company, and intends to acquire voting shares at **more than 2% every six (6) months** from the date of the first purchase transaction.
- (c) Any person acquiring, jointly or severally, 25% of the voting shares in **any company controlling the public joint stock company**, and intends to acquire voting shares in the company at more than 2% every six (6) months from the date of the first purchase transaction.

Article (3): The provisions of this Regulation shall not apply on any person who holds 75% or more of the shares of any public joint stock company listed on the MSM or any company controlling the public joint stock company, **prior** to this Regulation having effect.

Article (4): The company intending to continue as a public joint stock company shall offer **at least 25%** of its shares to the public, other than the directors of the public joint stock company or its subsidiaries or related parties, provided the holdings of a single shareholder shall not exceed 5% of the shares of the company. The percentage held by publicly offered investment funds and pension funds at less than 15%, can be part of the 25% of the company shares offered to the public.

Article (5): A person who is involved in a takeover and acquisition process shall:

- (a) observe the highest standards of integrity and transparency.
- (b) provide fair and equal treatment to all shareholders.
- (c) ensure that information is not furnished to shareholders on a selective basis during a takeover offer.
- (d) ensure not to create a false impression of market participant through the published information that there is active market for the securities of the offeree, the offeror or any other company concerned in the takeover offer in such a way that the rise or fall of the prices of the securities becomes artificial.

Article (6): The persons who, pursuant to an agreement, arrangement or understanding, co-operate to acquire, jointly or severally, voting shares of a public joint stock company for the purpose of obtaining control of that company shall be deemed as “**persons acting in concert**”.

The following persons shall be presumed to be **persons acting in concert**, unless the contrary is established:

- (a) a company and its subsidiaries and associate companies;
- (b) a company and any of its directors or their relatives;
- (c) a company and any investment or pension fund established by it;
- (d) a person and any investment company or fund whose investments such person manages on the basis of their instructions;
- (e) a person who and his relatives owns or controls, jointly or severally, 20% or more of the voting shares of a company falling within paragraph (a) of this Article.

Article (7): Where an offeror, offeree, advisers or any other person who provides any information or documents required under this Regulation contains a material statement which is false or misleading, contains a statement from which there is a material omission, or does not contain a statement relating to a material development, before an offer closes, he shall:

- (a) immediately inform the CMA in writing of such acts or facts; and
- (b) immediately make a disclosure to the MSM.

Article (8): The CMA may require the person involved in a takeover to submit such information or statements as the CMA may see necessary.

Article (9): The CMA may extend the periods stipulated in this Regulation as it sees necessary for the purpose of a takeover.

Article (10): In the application of this Regulation, if any stipulated deadline is an official holiday, it shall extend to the first trading day thereafter.

Article (11): The CMA may, in the event of a violation of the provisions of this Regulation, take the legal action provided for in the Capital Market Law and the Executive Regulation.

CHAPTER II

TAKEOVER AND ACQUISITION PROCEDURES

Article (12): The offeror shall monitor the trading movement of shares of the offeree and where there is unusual movement in the shares of an offeree, make a disclosure to the MSM as to whether he has the intention of making a takeover offer before approaching the board of directors of the offeree.

Article (13): The offeror or any person acting in concert with the offeror, **shall not, within one (1) year** after making an announcement that he does not intend to make a takeover offer, undertake any steps to take over the company.

Article (14): Any person who intends, jointly or severally, to make a takeover and acquisition offer **shall appoint an adviser** to do the following:

- (a) provide advice that would enable the person concerned to make informed decisions;
- (b) facilitate early consultation with and consideration by the CMA (if necessary) to enable prompt action by persons involved in a takeover offer or acquisition;
- (c) ensure that any application pertaining to a takeover offer or compulsory acquisition complies with the format and content of the applications specified in the form issued by the CMA;
- (d) ensure that the offeror is able to implement the takeover and acquisition and ensure the offeror's solvency and ability to discharge the obligations resulting from making the offer; and
- (e) the notice of the takeover offer is dispatched when the obligation arises.

Article (15): An **offeror** shall **immediately** make a **takeover offer advertisement**. If the offeror is a listed company on the MSM, it shall, in addition to the advertisement, disclose the takeover offer in the website of the MSM.

Article (16): After announcing the takeover offer stated in the previous Article, the offeror shall, before the trading session of MSM, send a **written notice** to:

- (a) the board of directors of the offeree; and
- (b) the CMA and MSM.

Article (17): The announcement stipulated in Article (15) of this Regulation and written notice stipulated in Article (16) of this Regulation shall include the following information:

- (a) the identity of the offeror and all persons acting in concert with the offeror;
- (b) the basis of the offer price;
- (c) the consideration for shares and convertible securities, if other than by way of cash and method of computing and evaluation;
- (d) the type and total number of voting shares of the offeree acquired or controlled by the offeror or any person acting in concert with the offeror;
- (e) the details of any existing or proposed agreement, arrangement or understanding relating to voting shares referred to in paragraph (d) between the offeror or any person acting in concert with the offeror and the offeree shareholders; and
- (f) the terms and conditions of the takeover offer, including conditions relating to acceptances, listing and increase of capital.

Article (18): The board of directors of the **offeree** shall, upon receiving a written notice:

- (a) disclose through the MSM website, upon receiving the written notice, and make an announcement to the public in the daily newspapers (*press advertisement*), **within 24 hours** of the receipt of such notice. The announcement published by the board of directors of the offeree shall contain the following:
 - (i) all the information received in the written notice from the offeror;
 - (ii) statement whether the board of directors of the offeree is seeking another person to make a competing takeover offer.
- (b) dispatch the announcement stipulated in paragraph (a) of this Article to all the shareholders of the offeree **within seven (7) days** from the date of receiving the written notice.

Article (19): The board of directors of the offeree in the takeover offer shall in respect of the holders of securities in the offeree:

- (a) not withhold information that will enable the holders of securities to take proper decision with regard to the takeover offer.
- (b) shall not undertake any action or make any decision that could effectively result in any takeover offer being frustrated, or the shareholders being denied an opportunity to decide on the merits of a takeover offer.

Article (20): The CMA may direct any offeror or board of director of offeree, or both, to make the announcement in any other manner as the CMA thinks fit.

Article (21): An offeror shall, **within 4 days** from the date of sending of the written notice stipulated in Article (16) of this Regulation, **submit the offer document to the CMA** for its consent, after payment of the relevant fees at **five in one thousand (0.5%)** of the total market value of the shares to be acquired.

Article (22): The offeror shall include in the offer document a statement that the CMA has consented to the offer document and that the consent of the CMA shall not be taken to suggest that the CMA recommends the takeover offer.

Article (23): The offer document as consented by the CMA, shall be dispatched by the offeror, to the board of directors of the offeree and offeree shareholders **within twenty one (21) days** from the date of sending of the written notice stipulated in Article (16) of this Regulation.

Article (24): An offeror shall also include in the offer document all information and statements as required on the form prepared by the CMA.

Article (25): In the case of a **reverse takeover**, the board of directors of the **offeror** shall obtain the approval of the holders of voting shares of the offeror in an extraordinary general meeting, **prior** to the dispatch of the offer document.

Article (26): An offeror and any person acting in concert with the offeror, shall not, sell or transfer the voting shares in the offeree, or enter into an arrangement or agreement to reduce the offeror's holding or entitlement in relation to the voting shares in the offeree, during the offer period.

Article (27): The board of directors of the **offeree** shall issue its comments, opinion and information on the takeover offer, in a form of a report (*together with the independent advice report*) to every offeree shareholder and the CMA, **within ten (10) days** from the date that the offer document was received. The report shall also include, but shall not be limited to:

- (a) the offeror's stated intentions regarding any major changes to be introduced in the business, including the intention in continuation of the business and any plans to liquidate the offeree, sell its assets or make any other major change in the structure of the offeree;
- (b) the offeror's stated intentions with regard to the continued employment of the employees of the offeree and its subsidiaries;
- (c) the reasonableness of the takeover offer, including the reasonableness and accuracy of profit forecasts for the offeror, if such forecast is included by the offeror in the offer document; and
- (d) the convertible securities outstanding in the offeree, if any.

Article (28): The board of directors of the offeree shall disclose all information that the offeree shareholders and their advisers would reasonably require and expect to find in the report issued for the purpose of making an informed decision as to the merits of accepting or rejecting the takeover offer.

Article (29): The directors of an offeree who have a conflict of interest position or any of their relatives, shall abstain from making any recommendation with regards to the takeover offer.

Article (30): The board of directors of the offeree shall be responsible toward the shareholders of the offeree for all comments, opinions and information disclosed in the report.

Article (31): The board of directors of the **offeree** shall appoint an **independent adviser** who must not:

- (a) hold 10% or more of the voting shares in the offeror or the offeree at any time during the last twelve (12) months from the beginning of the offer period;
- (b) have a business relationship with the offeror or the offeree, at any time during the last twelve (12) months from the beginning of the offer period, that contributes to 10% or more in revenue or profit of the independent adviser;
- (c) have a representative on the board of directors of the offeror or the offeree;

- (d) be involved in the financing of the takeover offer;
- (e) be a creditor of either the offeror or the offeree, based on the latest audited accounts or the latest management accounts (if the latest audited accounts is more than 6 months);
- (f) have a financial interest in the outcome of the takeover offer other than outlined in paragraphs (a) to (e) above; or
- (g) have a representative from either the offeror or the offeree on the board of directors of the independent adviser.

Article (32): The independent adviser shall:

- (a) Submit a report, ensuring its independence from any conflict of interest.
- (b) Submit comments, opinions and recommendation on a takeover offer in an **independent advice report**, to the board of directors (*including shareholders*) of the offeree and the CMA, **within ten (10) days** from the date the offer document was dispatched to the offeree shareholders.

Article (33): The board of directors of the **offeror** shall appoint an **independent adviser**, if the takeover offer is a **reverse takeover**.

The independent adviser shall issue the independent advice report to the offeror shareholders and holders of convertible securities of the offeror and the CMA, including the opinions and recommendations of the board of directors of the offeror on the takeover offer or the situation of conflict of interest on the form prepared by the CMA.

Article (34): An independent adviser of the offeree or offeror shall be responsible for all comments, opinions and information disclosed in the independent advice report and shall be obligated by the following:

- (a) disclose all information that the offeror shareholders, the board of directors of the offeree, the offeree shareholders, the holders of convertible securities and their advisers would reasonably require to find in the independent advice report issued or for the purpose of making an informed decision as to the merits of accepting or rejecting the takeover offer.
- (b) shall include in the independent advice report to the board of directors of the offeree all information and statements as required under the form prepared by the CMA.

CHAPTER III

TERMS OF THE TAKEOVER OFFER

Article (35): An offeror shall not withdraw the offer after having received acceptances which would result in the offeror and all persons acting in concert with the offeror, holding in aggregate **75% or more** of the voting shares of the offeree. Where the offeror fails to receive such percentage at the end of the offer period, the offeror may choose to withdraw the takeover offer or suffice with what was received.

Article (36): The takeover offer term shall lapse if the percentage referred to in the previous article is not fulfilled before 2.00 p.m. on the **60th day** from the date on which the offer document was dispatched to the offeree shareholders.

Article (37): A person who has accepted a takeover offer may withdraw his acceptance within the offer period, **unless** the offeror has announced the acceptance percentage is 75% of the voting shares.

Article (38): The offeror shall offer as purchase price, an amount of not less than the highest price paid, **within 6 months** prior to the beginning of the offer period.

Article (39): Where the offeror or any person acting in concert with the offeror, has purchased or agreed to purchase any voting shares of the offeree during the offer period at a higher consideration than the consideration in the offer document, the offeror shall increase the consideration of the takeover offer, to not less than the highest price of the voting shares purchased prior to the offer period.

Article (40): Where a price for voting shares is offered pursuant to the previous Article, the offeror shall immediately announce to the public in the daily newspapers (*press advertisement*) and disclose in the MSM's website, the following information:

- (a) the revised offer price; and
- (b) the number of voting shares to which the takeover offer relates that has been purchased or agreed to be purchased.

Article (41): The offeror, shall pay the cash consideration to all offerees accepting the takeover offer **within ten (10) days** from the date of closure of the takeover offer.

Article (42): In the case where the consideration involves only securities, or a combination of cash and securities, the offeror shall credit the consideration to the securities accounts with Muscat Clearing and Depository Company (MCD) of all the persons accepting the takeover offer, **within fourteen (14) days** from the date of closure of the takeover offer.

Article (43): An offeror shall provide the consideration to be paid in cash. Where the offer includes exchange of securities, the cash option shall also be provided for the shareholders of the offeree.

Article (44): Where the offeror offers securities untraded on the MSM as consideration for a takeover offer, the offeror shall disclose in the offer document the fair value of the untraded securities made by an internationally recognized independent valuer whose purpose includes valuation of securities.

Article (45): Where the offeror offers securities traded on the MSM as consideration for the takeover offer, the value of the consideration to be paid shall be:

- (a) in the case of **unissued securities**, the price shall be as approved by the extraordinary general meeting of the offeror's shareholder.
- (b) in the case of **issued securities**, the price to be calculated is at the **weighted average market price for the past five (5) trading days** preceding the date of the written notice of the takeover offer.

CHAPTER IV

TIMING OF THE TAKEOVER OFFER

Article (46): An offeror shall keep a takeover offer open for acceptance for a period of **at least twenty one (21) days**, but in any case **shall not be more than seventy four (74) days**, from the dispatch of the offer document to the shareholders of the offeree.

Where there is a **competing takeover offer** made during such period, the original offer period shall commence from the date of dispatch of the competing takeover offer document.

Article (47): Where an offeror revises the takeover offer, the offeror shall:

- (a) announce and disclose such revision through the MSM website immediately prior to the trading session following the revision;
- (b) serve the written notification of the revised takeover offer to the CMA and all offeree shareholders, including offeree shareholders who have accepted the original takeover offer;
- (c) keep the revised takeover offer open for acceptance for **at least another fourteen (14) days** from the date of serving the written notification of the revised takeover offer stipulated in paragraph (b) of this Article, but **not more than seventy four (74) days** from the date of sending the original offer document, and specifying the next closure date of the revised takeover offer.

Article (48): An offeror **shall not revise** the original takeover offer, **after the 46th day** from the date of dispatching the offer document to the offeree. A competing takeover offer shall not be made after the end of such term.

Article (49): A takeover offer shall be deemed to be closed prior to the expiry date as stated in the offer document, if the offeror announces he has received acceptances amounting to **all of the voting shares** to which the takeover offer relates.

Article (50): An offeror may, if he receives acceptances at 75% or more of the voting shares of the offeree **on the date of dispatching the offer document**, keep the offer period open for **not more than sixty (60) days** from the date of dispatching the offer document.

Article (51): An offeror shall, if he receives acceptances at 75% or more **within forty six (46) days** from the date of dispatching the offer document, keep the offer open for not less than fourteen (14) days and **not more than sixty (60) days**.

Article (52): An offeror shall, if he receives acceptances at 75% or more of the voting shares **after the forty sixth (46) day** from the date of dispatching the offer document, keep the offer open for not less than fourteen (14) days and **not more than seventy four (74) days**.

Article (53): An offeror shall announce, **at least fourteen (14) days** prior to the end of the offer to the offeree shareholders, that the takeover offer is still open:

- (a) to the public in a *press advertisement*; and
- (b) disclosure on the MSM website,

Article (54): Where the securities of the offeror or offeree are traded on the MSM, the offeror shall inform the CMA and disclose on the MSM website, before the trading session on the day following the day on which a takeover offer is closed, or announced it becomes unconditional or revised.

Article (55): The notice and disclosure referred to in Article (54) of this Regulation shall include the following statements:

- (a) the total number of voting shares for which acceptance have been received.
- (b) the total number of voting shares held by the offeror and all the person acting in concert with the offeror.
- (c) The total number of voting shares acquired by the offeror and all the persons acting in concert with the offeror, after the offer.

Article (56): Where the securities of the offeree or the offeror are not traded on the MSM, the offeror shall inform the CMA and announce to the public in the daily newspapers (*press advertisement*) before the trading session on the trading day following the day on which a takeover offer is closed, announced unconditional or revised. The notice and announcement shall include the particulars referred to in Article (55) of this Regulation.

Article (57): Where the offeror fails to comply with any of the requirements of Articles (54) and (55) of this Regulation, any person who has accepted the takeover offer shall be entitled to withdraw his acceptance immediately thereafter.

CHAPTER V

OBLIGATIONS OF OFFEROR

Article (58): An offeror shall be obligated to deal equally and unfavorably with all the offeree shareholders each as per the class of security he holds.

Article (59): Where a takeover offer is made for the voting shares of an offeree, the offeror shall commit to the holders of the convertible securities to safeguard their interest.

Article (60): The offer document shall be dispatched to the holders of convertible securities at the same time when the offer document is dispatched to the offeree shareholders.

Article (61): Where an offeror makes a takeover offer for more than one class of securities, separate offers shall be made for each class, and the offeror shall state, if the offeror intends to resort to **compulsory acquisition**.

Article (62): Where an offeror has obtained acceptances amounting to 90% of the shares of that class (**excluding** shares already held at the date of the takeover offer by the offeror or persons acting in concert), the offeror shall:

- (a) inform the CMA in writing;
- (b) announce to the public in the daily newspapers (*press advertisement*) the percentage of acceptance; and
- (c) disclose on the MSM website.

Article (63): The offeror shall, after receiving the acceptance percentage specified in Article (62) of this Regulation, apply to the CMA to obtain its consent for compulsory acquisition of the remaining shares of the offeree together with a statement showing their plan after the compulsory acquisition and the company's direction and the period required for implementation.

Article (64): Where a takeover offer by an offeror to acquire all the shares has obtained acceptances stipulated under Article (62) of this Regulation, the offeror may, at any time **within sixty (60) days** from the date the acceptances have been achieved, give notice to any dissenting shareholder that it desires to acquire his shares in accordance with the takeover offer and the same terms and conditions.

Article (65): Where a notice has been given by the offeror, the offeror shall, **after the expiration of thirty (30) days** after the date on which the notice referred to in Article (64) has been given:

- (a) pay the amount of the offeree's shares as stated in the offer document;
- (b) MCD shall transfer the ownership of the offeree shares to the offeror after payment of the amount for such shares, as stated in the offer document.

Article (66): The following persons, shall disclose through the adviser, to the CMA and MSM before the trading session, the total number and amount of shares or convertible securities of the **offeree** which are dealt in for their own account during the offer period:

- (a) the offeror and all persons acting in concert with the offeror;
- (b) shareholders of the offeror whose holdings are more than five percent (5%);
- (c) directors and senior management of the offeror.
- (d) relatives of the persons referred to in paragraphs (a), (b) and (c) of this Article.

Article (67): An offeror or any person acting in concert with the offeror, shall not withdraw a takeover offer without the prior written approval of the CMA.

Article (68): An offeror and all persons acting in concert with the offeror, shall not **within twelve (12) months** from the date of the announcement that the takeover offer was withdrawn, lapsed or failed, make a takeover offer for any class of the securities that had been the subject of the previous takeover offer.

Article (69): An offeror and all persons acting in concert with the offeror, shall furnish to the CMA on a monthly basis, evidence that they didn't increase their voting shares during the twelve (12) months following the announcement that the takeover offer was withdrawn, lapsed or failed.

Article (70): In consequence of a successful takeover offer, an offeror and any person acting in concert with the offeror, shall not acquire further voting shares in the offeree on more favourable terms than the previous takeover offer, **within six (6) months** immediately after the close of the takeover offer.

CHAPTER VI

OBLIGATIONS OF OFFEREE

Article (71): An offeree or board of directors of the offeree who gives any information to an offeror, shall give the same information to another potential offeror upon request.

Article (72): A director of the offeree shall not resign from the board of directors of the offeree until the closure of the takeover offer.

Article (73): The board of directors of the offeree shall not undertake any action or decision that could effectively result in any takeover offer being frustrated or the shareholders being denied an opportunity to decide on the merits of a takeover offer, or any of the following acts:

- (a) the issuance of new shares;
- (b) the sale of any assets of the offeree or making any act impacting the company or the price of its shares in the market;
- (c) the entering into a contract or allowing contracts for or on behalf of the offeree to be entered into otherwise than in the ordinary course of business of the offeree;
- (d) the selling of treasury shares into the market;

Article (74): All the persons listed below, shall disclose during the offer period to the CMA and MSM before the trading session, if there is any change in the holdings in the **offeror or offeree**. The disclosure shall be on the day following the day of concluding the transaction:

- (a) the offeree;
- (b) shareholders of the offeror and offeree whose holdings are more than five percent (5%);
- (c) directors and senior management of the offeror and offeree;
- (d) relatives of the persons referred to in paragraphs (a), (b) and (c) of this Article.